

Iowa Department of Human Services  
REQUEST FOR PROPOSAL (RFP)

Project Director Services for the MMIS Implementation Project  
MED-12-018

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***RFP Purpose.***

The purpose of this Request for Proposal (RFP) MED-12-018 is to solicit bids to fulfill the Project Director scope of work for the Medicaid Management Information System (MMIS) Implementation Project. The successful bidder will be responsible for playing a key leadership role in the successful implementation of a large, complex MMIS/POS system (MMIS) and Medicaid services implementation project extending over a period of four years.

***Duration of Contract.***

The Agency anticipates executing a contract that will have an initial 4 year contract term with the ability to extend the contract for 2 additional 1-year terms. The Agency will have the sole discretion to extend the contract.

***Bidder Eligibility Requirements.***

Bidders are restricted to business entities; individuals may not apply for this RFP. In addition, the vendor winning this award may not hold any other MMIS Implementation-related contracts either already executed (MED-10-001 or MED-10-013) or anticipated to be awarded in the future including MED-12-013, MED-12-001, MED-12-014, and MED-12-017. For more information about these and other RFPs, please see Attachment F. Finally, the key person or persons designated by the vendor for this project must be able to collocate with state and other contractor staff in the Iowa Medicaid Enterprise (IME) offices at 100 Army Post Road, Des Moines, IA.

<b>Procurement Timetable</b>
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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>July 18, 2011</b>
Agency Issues RFP to Bid Opportunities Website	<b>July 20, 2011</b>
Bidder Letter of Intent to Bid Due By	<b>August 1, 2011 3:00 p.m.</b>
Bidder Written Questions Due By	<b>August 1, 2011 3:00 p.m.</b>
Agency Responses to Questions Issued By	<b>August 8, 2011</b>
<b>Bidder Proposals and any Amendments to Proposals Due By</b>	<b>August 17, 2011 3:00 p.m.</b>
Selection of Bidders to Make Presentations	<b>August 24, 2011</b>
Bidder Presentations of Bid Proposals	<b>Sept. 6 – Sept. 8, 2011</b>
Announcement of Apparent Successful Bidder/Notice of Intent to Award	<b>Sept. 12, 2011</b>
Contract Negotiations and Execution of the Contract Completed	<b>Sept. 23, 2011</b>
Anticipated Start Date for the Provision of Services	<b>Sept. 26, 2011</b>

## **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 Iowa Department of Human Services (“Agency”) is the single state agency responsible for administering the Medicaid program in Iowa. The Agency directs the Iowa Medicaid Enterprise (“IME”), which comprises state management of the Iowa Medicaid Program and the third-party professional services and systems services contractors that jointly administer the Iowa Medicaid Program. 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.

The Division of Adult, Children, and Family Services (“ACFS”) is responsible for making Iowa’s policies for Medicaid, the Supplemental Nutrition Assistance Program (called Food Assistance in Iowa) and the Temporary Assistance for Needy Families (“TANF”) cash assistance (called “Family Investment Program” (“FIP”)) eligibility.

The Agency is also the state agency responsible for administering and determining eligibility for Medicaid, Food Assistance, and TANF for eligible Iowans. The Iowa Automated Benefits Calculation (“IABC”) system is currently used by the Agency’s Division of Field Services field staff to determine eligibility and calculate benefits for these programs. IABC issues benefits through the Affiliated Computer Services (“ACS”) EPPIC system for both Food Assistance and TANF electronically into accounts where clients use cards to retrieve benefits. Once Medicaid eligibility is determined, the information is passed to the IME to assure that only claims of eligible Medicaid members are paid are paid by the system. CHIP eligibility is determined with the use of a third party administer system.

### **Iowa ABC System.**

The IABC system has been in continuous operations since the late 1980s. This system stores client data, processes eligibility determinations, calculates and issues benefits, refers non-custodial parents to the Child Support Bureau for child and medical support services, and sends correspondence and program-related information to applicants and recipients. IABC interfaces with numerous data systems to support the State's eligibility and benefit issuance obligations. Currently an assessment is underway and an RFP is being developed to procure a new integrated eligibility system that will allow the State to meet the requirements set forth in the federal Patient Protection and Affordable Care Act (PPACA).

### **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 model and the Agency’s Medicaid program. In order to install these new systems and new system services the Agency is seeking contractors to oversee, manage, provide quality assurance and independent verification

and validation of the implementation of these services and systems through a series of requests for proposal (see Attachment F).

### ***hawk-i System.***

The hawk-I program is administered by a contracted Third Party Administrator (“TPA”) MAXIMUS. Eligibility is determined via the use of a completely separate proprietary system. While there is no direct interaction with IABC or any other State system, the TPA does exchange information through secured file transfers. That information is then processed and loaded into the proprietary system. Data exchanges include matching against the Medicaid eligibility file, accepting referrals from Medicaid for children who are potentially eligible for hawk-i and to verify/share citizenship and identity information.

### **Other Healthcare Projects.**

The IME has established funding, project management and quality assurance teams for Health Insurance Portability and Accountability Act 5010 (“HIPAA 5010”), National council for Prescription Drug Program D.0 projects and International Classification of Diseases version 10 (“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 assigned to the ICD-10 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.

### ***1.2 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.

**“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 form.

***Definitions Specific to this RFP***

**“CMS”** means the Centers for Medicare and Medicaid Services.

**“Executive Sponsors”** means a committee of Agency executive leadership identified to promote and sponsor the MMIS implementation project.

**“ICD-10 Project”** means the Agency’s project to convert International Code Diagnosis codes from version 9 to version 10.

**“Integrated Eligibility Project”** means the project to replace the current eligibility system for Medicaid, Food Assistance and Temporary Assistance to Needy Families (TANF) with a new eligibility system.

**“MMIS”** means the Iowa Medicaid Management Information System.

***1.3 Scope of Work.***

**1.3.1 Deliverables.**

The Contractor, through a key person or persons assigned to this project, shall provide:

1. Leadership
  - a. Serve in a leadership capacity throughout the lifecycle of the MMIS implementation project working on behalf of the Agency serving the Agency’s interests.
  - b. Establish and facilitate a change control board to ensure a successful implementation of the MMIS implementation project. The control board will be a committee that consists of state staff who will monitor and authorize changes within the MMIS. The contractor will work collaboratively with the contractor tasked with the Quality Assurance contractor who staffs this change control board to coordinate activities of the board.
  - c. Upon successful MMIS implementation and transition to operations, take the leadership role for the Agency in overseeing and working collaboratively with the Certification Manager to prepare for and orchestrating the requirements for a successful CMS certification of the MMIS system.
  - d. Provide leadership and facilitate cooperation with all other implementation teams, such as the quality assurance team, the independent verification and validation team, and the integrated eligibility project team so barriers from or to these various teams are removed.
  
2. Planning
  - a. Assist the Agency in all planning activities around the MMIS implementation project.
  - b. Collaborate with colleagues and the Executive Sponsors to orchestrate a smooth multi-faceted implementation of the major healthcare initiatives in the Agency including the Integrated Eligibility Project, the ICD-10 project, the HITECH project, and the implementation of the Affordable Care Act.

- c. Provide staffing that will participate as an evaluation team member on related procurement activities as requested by the Agency.
3. Oversight and Management
    - a. Categorize and resolve all operational problems through direct interaction with the IME contractors' implementation teams or through escalation of critical issues to the Executive Sponsors team.
    - b. Manage the contract that results from an award of RFP MED-12-013, Project Oversight, Management and Integration Services in all areas except the authorization of state funds.
    - c. Analyze the status of the MMIS implementation project on a daily basis, approving deliverables and removing barriers to its success and recommending resolutions to reduce risk.
    - d. Prioritize MMIS implementation activities and issues along the critical path as necessary to advance the project toward a successful implementation.
    - e. Direct the implementation of the MMIS project within the authority granted and escalate Agency decisions to the State Medicaid Director or the Executive Steering Committee as appropriate.
    - f. Provide input about all recommendations of risk mitigation from all implementation teams to internal and/or external stakeholders.
  4. Communication
    - a. Communicate with stakeholders, project teams, other project directors, the executive steering committees and executive sponsors as needed to promote teamwork and a positive flow of information so lack of communication does not become a risk to the project.
    - b. Meet with the executive sponsors and the executive steering committee on a regular basis to advise these stakeholders of the progress and timeliness of the MMIS implementation project. Provide written reports to these entities monthly.
    - c. Meet with assigned state staff about any requests for expenditure of funds related to the MMIS implementation project and make recommendations as to the appropriate authorization of these requests.
    - d. Develop and present, as requested by the Agency, presentations to stakeholders and outside entities about the MMIS implementation.
    - e. Prepare and provide to the Agency, written status reports at intervals to be determined by the Agency.
  5. Reporting.
    - a. The Contractor must submit weekly status reports to the State Medicaid Director or designee. These reports will detail at the minimum the activity of the week, the planned activity for the next reporting period and any issues that need to be resolved.

### 1.3.2 Key Personnel Requirements

1. The key person or personnel assigned by the winning bidder must possess the following qualifications:
  - a. Project management – knowledge of the principles and tools needed for the successful implementation of a large, complex project with a minimum of 5 years experience as a project manager in a large system or business implementation.
  - b. Medicaid experience – must have worked in a Medicaid environment for a minimum of 8 years with knowledge of how a Medicaid Management Information

System (MMIS) works, how policy is developed, and how a Medicaid enterprise operates on a daily basis.

- c. Must be familiar with all concepts of the Medicaid Information Technology Architecture (MITA) and how it is applied to a Medicaid enterprise.
  - d. Must have managed the resources for a large project including personnel and funds within the last 5 years.
  - e. Must be familiar with Iowa's procurement and contract management policies and procedures.
  - f. Must have a minimum of 5 years of quality management in a large, complex environment.
  - g. Ability to identify and differentiate the importance of issues and risks and escalate or resolve those of a critical nature in a timely manner.
  - h. Must have a minimum of 4 years experience in contract or vendor management.
  - i. Ability to develop strong collaborative relationships across a multi-layered organization.
  - j. Ability to facilitate a positive culture that supports Agency goals, promote individual and team initiative, and foster open communication through all levels of the organization.
  - k. Must possess outstanding interpersonal and conflict resolution skills.
  - l. Ability to prioritize, meet deadlines, and excel in a fast paced work environment.
2. In addition to the minimum criteria listed above, the successful bidder will be expected to assign key personnel who will comply with the following:
- a. Adhere to State and other written established work rules. These rules consist of commonly accepted, professional business conduct.
  - b. Sign the Agency's Confidentiality Agreement form.
  - c. Complete assignments timely and submit weekly status reports indicating progress on assigned tasks, performance against assigned project due dates, and identification and suggested resolution for any issues having a potentially adverse impact on performance.
  - d. Maintain a positive working relationship with coworkers, supervisors and customers and contribute to a positive team environment and customer focus.
3. Bidders are to propose a professional level candidate(s) who have the requisite skills to meet all requirements in this RFP and who can maintain satisfactory performance standards.
- a. **Named Key Personnel:**
    - i. The Agency is requiring a key position to be named. Resumes along with letters of commitment must be supplied with the proposal.
    - ii. Key staff must be available for assignment for the MMIS and POS projects on a full-time basis and must be solely dedicated to this project. Each key staff member must have the required experience.
  - b. **General requirements for key personnel are as follows:**
    - i. The bidder must employ the key person(s) when the bidder submits the proposal.
    - ii. The bidder must commit key personnel named in the proposal to the project from the contract start date. The bidder may not reassign key personnel during the full term of the contract, except in cases of resignation or termination from the contractor's organization or in the case of the death of the named individual.
  - c. **Key Personnel Resumes.** Resumes must include the following information:
    - i. Employment history for all relevant and related experience.

- ii. Names of employers for the past five years, including specific dates.
  - iii. All educational institutions attended and degrees obtained.
  - iv. All professional certifications and affiliations.
- d. **Key Personnel References.** References for key personnel must meet the following requirements:
- i. Must include a minimum of three professional references outside the employee's organization that can provide information about the key person's work on that assignment.
  - ii. Must include the reference's full name, mailing address, telephone number and e-mail address.
  - iii. Must include the agency's or company's full name and street address with the current telephone number and e-mail address of the client's responsible project administrator or service official who is directly familiar with the key person's performance.
  - iv. Must be available to the Agency to contact during the proposal evaluation process.
  - v. Must reflect the key person's past eight years of professional experience.
  - vi. The Agency reserves the right to check additional personnel references.
- e. **Letter of Commitment.** The proposal must include letters of commitment of key personnel named in the proposal.
- f. **Agency Approval of Key Personnel.**
- i. The Agency reserves the right of prior approval for all named key personnel in the bidder's proposal.
  - ii. The Agency also reserves the right of prior approval for any replacement of key personnel.
  - iii. The Agency will provide the selected contractor 45 days to find a satisfactory replacement for the position except in cases of flagrant violation of state or federal law or contractual terms. Extensions may be requested in writing and approved by the Agency.
  - iv. The Agency reserves the right to interview any and all candidates for named key positions prior to approval.
  - v. The Agency reserves the right to require replacement of a key person or persons at any time.
- g. **Changes to Contractor's Key Personnel.**
- i. The contractor(s) may not replace or alter the number and distribution of key personnel as bid in its proposal without prior written approval from the Agency, which shall not be unreasonably withheld.
    - 1. Replacement for key personnel will have comparable knowledge transfer, experience and ability to the person originally proposed for the position.
    - 2. Replacement personnel, whom the Medicaid Director or Contract Administrator have previously approved, must be in place performing their new functions before the departure of the key personnel they are replacing and for whom the Medicaid Director or Contract Administrator has provided written approval of their transfer or reassignment.
    - 3. The Medicaid Director or Contract Administrator may waive this requirement upon presentation of good cause by the contractor(s).
  - ii. The contractor(s) will provide the Medicaid Director or Contract Administrator with 15 business days notice prior to any proposed transfer or replacement of any contractor's key personnel.

1. At the time of providing such notice, the contractor(s) will also provide the Medicaid Director or contract administration with the resumes and references of the proposed replacement key personnel.
2. The Medicaid Director or Contract Administrator will accept or reject the proposed replacement of key personnel within 10 business days of receipt of notice.
3. Upon request, the Medicaid Director or Contract Administrator will have an opportunity to meet the proposed replacement key personnel in Des Moines, Iowa, within the 10 day period.
4. The Medicaid Director or Contract Administrator will not reject proposed replacement key personnel without reasonable cause.
5. The Medicaid Director or Contract Administrator may waive the 15 business day notice requirement when replacement is due to termination, death or resignation of a key employee.

### **1.3.2 Performance Measures.**

During the entire term of the Contract, Contractor shall document through regular reporting that any and all key personnel are providing the effective leadership role as require by the Scope of Work set forth herein. In the event that the Agency determines that Contractor is not providing the leadership role required to the satisfaction of the Agency, the Agency may require replacement of the key person or persons, or the Agency may terminate the Contract in accordance with the Termination provisions of the Contract.

### **1.3.3 Contract Payment Methodology.**

Contractor shall be paid based on the hourly rate established through the RFP process. The hourly rate bid shall be inclusive of all costs of providing the services other than travel costs when the Agency has requested the Contractor key personnel to travel. Reimbursement for transportation, meals, and lodging incurred by the Contractor for travel shall be limited to travel directly related to the services performed pursuant to this Contract that has been approved in advance by the Agency in writing. Travel-related expenses shall not exceed the maximum reimbursement rates applicable to employees of the State of Iowa as set forth in the Department of Administrative Services' State Accounting Policy and Procedures Manual, [Section 210](http://das.sae.iowa.gov/internal_services/210_travel.html), ([http://das.sae.iowa.gov/internal\\_services/210\\_travel.html](http://das.sae.iowa.gov/internal_services/210_travel.html)) and must be consistent with all Iowa Executive Orders currently in effect. The Contractor agrees to use the most economical means of transportation available and shall comply with all travel policies of the State. The Contractor shall submit original, itemized receipts and any other supporting documentation required by Section 210 and Iowa Executive Orders to substantiate expenses submitted for reimbursement. For pre-approved work-related travel, Contractor shall only be entitled to bill at 50% of the agreed hourly rate for actual travel time. Contractor shall only be entitled to bill for time incurred by named key personnel. Contractor shall only be entitled to bill for work performed on site unless prior written approval by the Agency. For purposes of this Contract, the term "on site" shall include the Iowa Medicaid Enterprise offices and the Iowa Capitol Complex.

## **Section 2 Basic Information About the RFP Process**

### **2.1 Issuing Officer.**

The Issuing Officer 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:

Mary Tavegia  
Iowa Medicaid Enterprise  
100 Army Post Rd.

Des Moines, IA 50315  
Phone: (515) 256-4645  
mtavegi@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 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.

### ***2.4 Online Resources.***

Information is available on the website, [www.ime.state.ia.us](http://www.ime.state.ia.us), related to this RFP in the Iowa Medicaid Enterprise Resource Library.

### ***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 Reserved.***

### ***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-12-018. 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 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 bidder is eligible to submit a bid in accordance with the Bidder Eligibility Requirements of this RFP (See Bidder Eligibility Requirements Section).

### **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 correctible 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 Presentations.**

At the discretion of the Agency, the bidder may be required to do a presentation of the Bid Proposal on the date(s) provided in the Procurement Timetable. The presentation will be held at TBD unless the bidder is notified of a change to the location prior to the presentation date. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Agency. The presentation shall not materially change the information contained in the Bid Proposal.

**2.24 Notice of Intent to Award.**

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 Medicaid Director. 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.

<b>Section 3 How to Submit A Bid Proposal: Format and Content Requirements</b>
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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>Page Limit</b>	The Bid Proposal is limited to <b>50 pages</b> .
<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 bound 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 4 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</li> </ul>

	<p>bidder. Pricing information may not be designated as confidential material. However, 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.

#### **3.2.2 Information to Include Behind Tab 2: Bidder’s Approach to Meeting Deliverables.**

To address the bidder’s approach to meeting the deliverables set forth in Section 1.3 of the RFP, the bidder shall submit no more than one page of text (1) explaining how the bidder will be able to meet all Deliverables set forth in the Scope of Work using a key person(s) assigned to the Contract and, (2) identifying any inability of the bidder or key person(s) to fully meet the Scope of Work requirements.

##### **Note:**

- 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.

#### **3.2.3 Information to Include Behind Tab 3: Letter of Commitment of Key Personnel.**

Include the letter of commitment of the candidate being offered.

**3.2.4 Information to Include Behind Tab 4: Resume of Candidate being offered.**

The Bid Proposal must contain a resume of the individual being offered as a candidate to perform the scope of work set forth in Section 1.3.

**3.2.5 Information to Include Behind Tab 5: 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)

**3.2.6 Information to Include Behind Tab 6: Bidder's Background.****3.2.6.1 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.**

Bidders must submit a completed version of the Cost Proposal Form, which is attached hereto as Attachment G. Bidders may also provide a narrative regarding the Cost Proposal, which bidders should include with the Cost Proposal Form.

**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 Presentations.**

Based on the initial scores of the written materials and the key personnel qualifications, established by the Evaluation Committee, bidders will be ranked. Bidders with the three (3) highest rankings will be requested to come to Des Moines, IA to participate in an oral presentation with the evaluation committee in the time frame set forth in the Procurement Timetable. Any and all key personnel to be assigned by the bidder to the project must be present at the presentation. Following presentations, the evaluation committee will score the presentations and establish a final ranking of bidders.

**4.4 Recommendation of the Evaluation Committee.**

The ranking and decision of the evaluation committee shall be final. In making this decision, the committee is not bound by the scores or scoring system.

**4.5 Proposal Scoring and Evaluation Criteria.**

**4.5.1 Scoring Guide.**

Points will be assigned to each evaluation component as follows:

5	Bidder’s Proposal or capability is exceptional and exceeds expectations for this criterion.
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4	Bidder's Proposal or capability is superior and slightly exceeds expectations for this criterion.
3	Bidder's Proposal or capability is satisfactory and marginally meets expectations for this criterion.
2	Bidder's Proposal or capability is fair and questionably meets expectations for this criterion.
1	Bidder's Proposal or capability is either not acceptable or not applicable for this criterion.

**4.5.2 Technical Proposal Components.**

When technical proposals are evaluated, the total points for the scoring criteria are comprised of the criteria's assigned weight multiplied by the score the technical proposal earns. Points for all criteria will be added together. The scoring criteria, including maximum points that may be awarded, are as follows:

<u>Technical Proposal Components</u>	<u>Weight</u>	<u>Score (1-5)</u>	<u>Potential Maximum Points</u>
Written Materials	50	-----	250
Key Personnel Qualifications	250	-----	1,250
Oral Presentations	500	-----	2,500

**4.5.3 Scoring of Cost**

The price per hour for the base years of the contract will be averaged to get one hourly rate.

The bidder with the lowest hourly rate will receive the maximum points.

In order to calculate every other bidder's score (other than the bidder who received maximum points) for each proposal's cost will be divided into the corresponding value of the lowest bidder and then multiplied by the 1,000 maximum points. The formula for each is expressed as follows:

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

<b>COST SECTION</b>	<b>AVAILABLE POINTS</b>	<b>% ASSIGNED</b>	<b>SCORE</b>
<b>Cost</b>	<b>1,000</b>		

**Total Points Possible for Technical and Cost Proposals: 5,000**

**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”.)*

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

<b>Primary Bidder Detail</b>	
<b>Business Legal Name (“Bidder”):</b>	
<b>“Doing Business As” names, assumed names, or other operating names:</b>	
<b>Parent Corporation, if any:</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>Bidder’s Accounting Firm:</b>	
<b>If Bidder is currently registered to do business in Iowa, provide the Date of Registration:</b>	
<b>Do you plan on using subcontractors if awarded this Contract? {If “YES,” submit a Subcontractor Disclosure Form for each proposed subcontractor.}</b>	(YES/NO)

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

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

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**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>	
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<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>	

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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 Nonprocurement 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 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.

#### **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 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.

## **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.

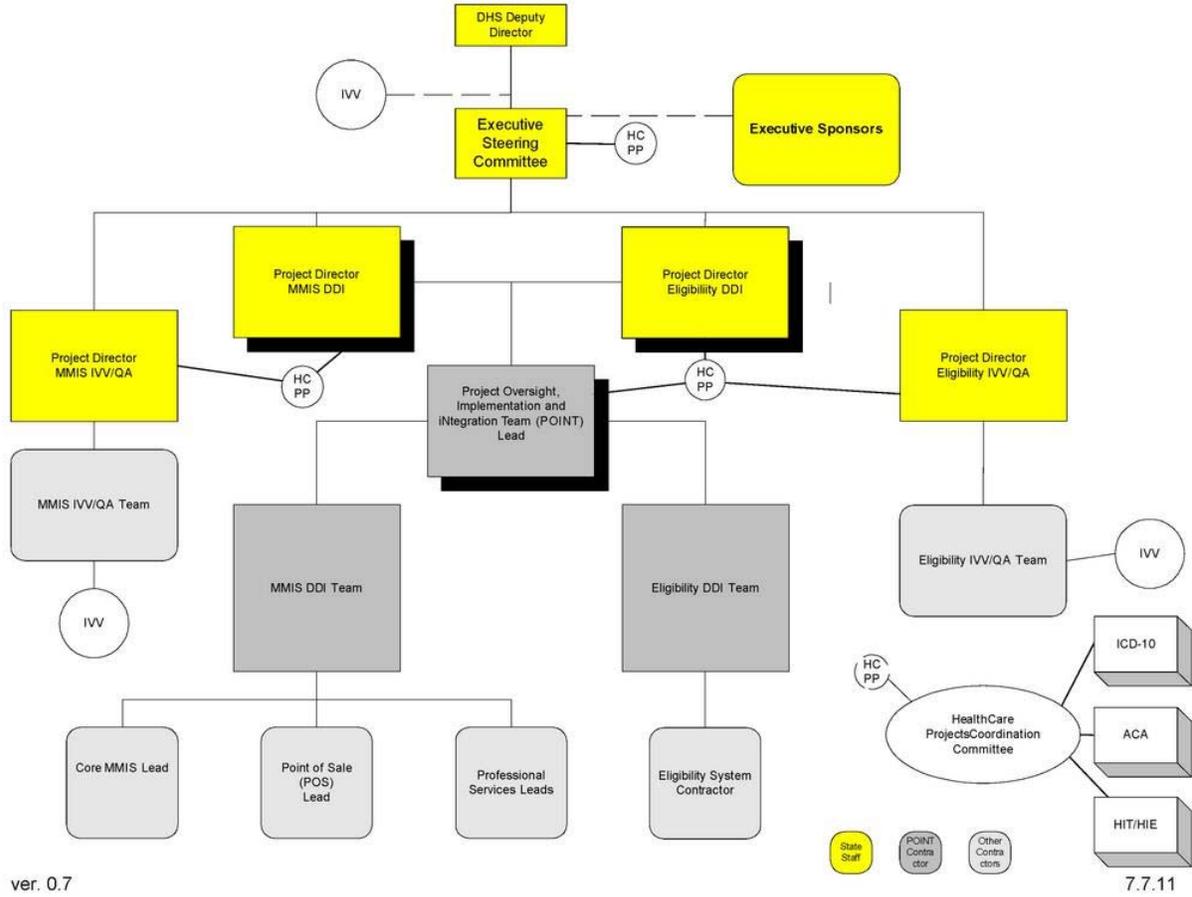
**Attachments Specific To This RFP**

**Attachment E: DDI Governance Chart**

**Attachment F: RFP Procurement Chart**

**Attachment G: Cost Proposal Form**

**Attachment E: DDI Governance**



**Attachment F: RFP Procurement Chart**

<b>RFP Procurement</b>	<b>Title</b>	<b>Description</b>	<b>Contract Start Date</b>
<b>RFP MED-09-017</b>	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
<b>RFP MED-10-001</b>	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
<b>RFP-MED-10-013</b>	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
<b>RFP ACFS-11-134</b>	Iowa Integrated Eligibility Project (IEP)	To procure a new integrated eligibility system and implement this new system into the Agency's operating environment.	February 1, 2012
<b>RFP MED-12-001</b>	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.	February 1, 2012
<b>RFP MED-012-003</b>	Electronic Health Records Medicaid	To procure a software application that will	November 1, 2011

## Project Director Services for the MMIS Implementation Project

	Incentive Payment Administration Tool	accept attestation for the meaningful use of electronic health records and administer incentive payments.	
<b>RFP MED-12-013</b>	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
<b>RFP MED-12-014</b>	Quality Assurance Services	To procure a set of services and skill sets to provide quality assurance to the implementation of the IME System Services (MED-12-001)	January 1, 2012
<b>RFP MED-12-017</b>	Independent Verification and Validation Services	To procure a set of services and skill sets to independently verify and validate the design, development and implementation (DDI) process and all related activities	January 1, 2012
<b>RFP MED-12-018</b>	Project Director Services	To procure two project directors, one to be responsible for overseeing the MMIS/POS implementation project and one for the Integrated Eligibility implementation project	August 15, 2011

**Attachment G: Cost Proposal Form**

**NOTE: This Cost Proposal Form may not be marked as confidential in any way.**

<b>Time Period</b>	<b>Hourly Rate</b>
Beginning of Contract through June 30, 2012	\$ -
July 1, 2012 - June 30, 2013	\$ -
July 1, 2013 - June 30, 2014	\$ -
July 1, 2014 - June 30, 2015	\$ -
July 1, 2015 - June 30, 2016	\$ -
July 1, 2016 - June 30, 2017	\$ -
July 1, 2017 - Anniversary of Contract	\$ -
<b>Average</b>	\$ -

**Attachment H: 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-12-018	
<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> Yes <b>Which Agency? CMS</b>
<b>Contractor a Qualified Service Organization? Yes</b>	

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.**

The Contractor shall provide the following:

#### *1.3.2 Performance Measures.*

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

**1.3.3.1 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.

**1.3.3.2 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.

**1.3.3.3 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.

**1.3.3.4 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.

#### **1.3.4 Contract Payment Clause.**

**1.3.4.1 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.)

**1.3.4.2 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.

**1.3.4.3 Reimbursable Expenses.** Unless otherwise agreed to by the parties in an amendment or change order 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:

Type of Insurance	Limit	Amount
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 Qualified Service Organization.** Contractor acknowledges that it will be receiving, storing, processing, or otherwise dealing with confidential patient records from programs covered by 42 CFR part 2, and Contractor acknowledges that it is fully bound by those regulations. Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 CFR part 2.

#### 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. If multiple contractors are involved in compounding a default, liability will be apportioned by the Agency. 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 Agency a written request to review the decision, which identifies all issues being disputed. The Director, or his designee, who may be the Medicaid Director, shall review the Contractor's request to review the Contract 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.

## 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.

**“Qualified Service Organization”** as used in this Contract has the same meaning as the definition set forth in 42 CFR § 2.11.

**“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.**