

**IOWA DEPARTMENT OF PUBLIC HEALTH
GENERAL CONDITIONS
Effective 02-01-07**

1. General

a. This is an integrated contract between the DEPARTMENT and the CONTRACTOR which consists of the specifications, terms, and conditions of all solicitation documents issued by the DEPARTMENT, the CONTRACTOR's proposal, the Special Conditions, these General Conditions, and any written amendments made in accordance with the provisions herein. In the event of a conflict between or among the provisions of the Contract Documents, the governing language shall be from the Contract Document listed first in the following list: (1) Written amendment mutually executed by the parties; (2) Special Conditions; (3) General Conditions; (4) RFP or other solicitation document; and (5) CONTRACTOR's proposal.

b. The CONTRACTOR shall provide the necessary facilities, materials, services, and qualified personnel to satisfactorily perform and provide all the work and services set forth in this contract. The contract budget shall be the basis for the CONTRACTOR's expenditure of the contract amount.

2. Definitions

a. "State" means the State of Iowa.

b. "DEPARTMENT" means the Iowa Department of Public Health.

c. "CONTRACTOR" means the organization or individual contracting with the DEPARTMENT.

d. "Related party transaction" means a contractual arrangement for the provision of services with an employee, consultant, or member of a governing body of the CONTRACTOR who has a family, business, or other tie to the service to be provided.

3. Accounts and Records

a. The CONTRACTOR shall maintain accurate, current, and complete records of the financial activity of this contract, including records which adequately identify the source and application of funds. Cash contributions made by the CONTRACTOR and third party in-kind (property or service) contributions shall be verifiable from the CONTRACTOR's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.

b. The CONTRACTOR shall maintain accounting records supported by source documentation including but not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract award documents.

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

d. The CONTRACTOR shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating their program.

e. The CONTRACTOR shall retain all accounting and financial records, programmatic records, supporting documents, statistical records and other records reasonably considered as pertinent to the contract, for a period of five (5) years from the day the CONTRACTOR submits its final expenditure report. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. Client records which are non-medical must be maintained for a period of five (5) years.

f. The CONTRACTOR shall retain all medical records for a period of six (6) years from the day the CONTRACTOR submits its final expenditure report; or in the case of a minor patient or client, for a period of one (1) year after the patient or client attains the age of majority, whichever is later.

g. The CONTRACTOR shall maintain the confidentiality of all records of the project in accordance with state and federal laws, rules, and regulations, and the terms of section 9 of these general conditions.

4. Equipment

a. Definition of Equipment: Any item costing \$5,000 or more and having an anticipated life of one year or more. Computer software is excluded from this definition.

b. Title and Disposition: Title to equipment purchased in whole or in part with DEPARTMENT funds resides with the DEPARTMENT. Upon contract expiration or termination the DEPARTMENT reserves the right to transfer title to the equipment to the State, the CONTRACTOR, or another contractor. The CONTRACTOR must receive written approval from the DEPARTMENT before disposing of any equipment during the contract period.

c. Records: The CONTRACTOR shall maintain inventory control records and maintenance procedures for all equipment purchased in whole or in part with DEPARTMENT funds or obtained from state surplus or the DEPARTMENT. Equipment records shall include the following for each item: state tag number (or CONTRACTOR inventory number if no state tag has been assigned); description; physical location; name of the contract purchased under; percentage of total cost of item paid for by DEPARTMENT funds; and, if available, vendor name, manufacturer's serial number, purchase price, date of acquisition, date of disposition, disposition price, and type of disposition.

d. Control System: A control system (including an annual physical inventory) shall be implemented to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated and fully documented. Where the CONTRACTOR is authorized to sell the equipment, sale procedures shall provide for competition to the extent practicable and result in the highest possible disposition price.

5. Procurement Standards and Subcontracting

a. Procurement. The CONTRACTOR shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

b. Subcontracting. None of the work or services relating to this contract shall be subcontracted to another organization or individual without specific prior written approval by the DEPARTMENT except for subcontracts under \$2000. To obtain approval, the CONTRACTOR shall submit to the DEPARTMENT the proposed contract or written agreement between the parties. The proposed contract or agreement shall contain:

(1) A list of the work and services to be performed by the subcontractor.

(2) The contract policies and requirements.

(3) Provision for the DEPARTMENT, the CONTRACTOR, and any of their duly authorized representatives to have access, for the purpose of audit and examination, to any documents, papers, and records of the subcontractor pertinent to the subcontract.

(4) The amount of the subcontract.

(5) A line item budget of specific costs to be reimbursed under the subcontract or agreement or other cost basis for determining the amount of the subcontract as appropriate.

(6) A statement that all provisions of this contract are included in the subcontract including audit requirements.

(7) Period of performance.

(8) Any additional subcontract conditions.

c. Any subcontract or other written agreement shall not affect the CONTRACTOR'S overall responsibility and accountability to the DEPARTMENT for the overall direction of the project.

d. If during the course of the subcontract period the CONTRACTOR or subcontractor wishes to change or revise the subcontract, prior written approval from the DEPARTMENT is required.

e. The CONTRACTOR shall maintain a contract administration system which ensures that subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

f. The CONTRACTOR shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of any subcontract. 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.

6. Program Income

a. Program income means gross income earned by the CONTRACTOR that is directly generated by a contract-supported activity or is earned as a result of the contract agreement. It includes, but is not limited to, income in the form of fees for services performed during the contract or subcontract period, proceeds from the sale of tangible personal or real property or equipment, usage or rental fees, and patent or copyright royalties.

b. Program income shall be returned to the program and shall be used in accordance with the conditions of the contract unless the Special Conditions of the contract specify otherwise. Program income may be used to meet the cost sharing or matching requirement of the contract.

c. When prior year refunds or rebates result from the expenditure of DEPARTMENT provided funds, they shall be returned to the DEPARTMENT in the same proportion that the DEPARTMENT funds are to the project's total income or income related to any subcontract, as appropriate.

d. Cash advances, whether permanent or in the form of working capital, must be maintained in interest bearing accounts. Interest earned by the CONTRACTOR on cash advances shall be allocated by the CONTRACTOR to the program for which the cash advance was received. All interest earned on cash advances shall be remitted to the DEPARTMENT on a quarterly basis, or more frequently if requested by the DEPARTMENT. Interest amounts up to \$250 per contract period in the aggregate for **all** federal funded programs may be retained by the CONTRACTOR for administrative expenses only.

7. Non-Supplanting Requirement

Federal and State funds made available under this contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and State funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

8. Publications, Copyrights and Rights in Data, and Patents

a. Publications: The CONTRACTOR shall not publish the results of contract activity without prior written approval by the DEPARTMENT. Such publication (written, visual, or audio) shall contain an acknowledgment of DEPARTMENT contract support. A copy of any such publication shall be furnished to the DEPARTMENT at no cost.

b. Copyrights and Rights in Data: Where activities supported by this contract produce an original computer program (including executable computer programs and supporting data in any form), writing, sound recording, pictorial reproduction, drawing or other graphical representation and work of similar nature, the DEPARTMENT reserves the right to its use, duplication, and disclosure, in whole or in part, in any manner for any purpose whatsoever.

c. Patents: If any patentable invention is developed by an employee of the CONTRACTOR in the course of employment related to this contract, such invention shall be reported to the DEPARTMENT. The DEPARTMENT shall be entitled to a share, proportionate to DEPARTMENT funding, of rights to said invention, including title to and license rights under any patent application or patent which may be issued.

d. Use of Department identifiers: Any use of the DEPARTMENT'S name, logo, or other identifying information must have prior written approval from the DEPARTMENT.

9. Release of Information and Confidentiality of Records

a. Release of Contract Information to the DEPARTMENT: The CONTRACTOR agrees to provide to the DEPARTMENT, upon request, all records related to the contract including, but not limited to, client records, statistical information, board and other administrative records, and financial records, including budget, accounting activities, financial statements, and the annual audit in accordance with Code of Federal Regulations, Title 45.

b. Confidentiality of Client Records: The CONTRACTOR's policies and procedures shall provide that records regarding the identity, diagnosis, prognosis, and services provided to any client in connection with the performance of the contract are confidential and that such records shall be disclosed only under the circumstances expressly authorized under state or federal confidentiality laws, rules or regulations.

c. Security of Client Files and Data: The CONTRACTOR's employees, agents, and subcontractors shall be allowed access to confidential records only as necessary for the performance of their duties related to the contract and in accordance with the policies and procedures of the custodian of the records. The CONTRACTOR shall maintain policies and procedures for safeguarding the confidentiality of such data, and may be liable civilly or criminally under state or federal confidentiality laws, rules or regulations for the unauthorized release of such information.

d. Unauthorized Disclosure: The CONTRACTOR shall maintain the confidentiality of all records related to this contract in accordance with state and federal laws and regulations. The CONTRACTOR shall protect from unauthorized disclosure all confidential records and data, including but not limited to the names and other identifying information of persons receiving services pursuant to this contract, except for statistical information not identifying any client. The CONTRACTOR shall not use such identifying information for any purpose other than carrying out the CONTRACTOR's obligations under this contract. The CONTRACTOR shall promptly transmit to the DEPARTMENT all requests for disclosure of such identifying information to anyone other than the DEPARTMENT and the CONTRACTOR shall not disseminate such information without prior written authorization from the DEPARTMENT. For purposes of this paragraph, the term "identifying" shall include, but not be limited to, name, identifying number, symbol, or other identifier particularly assigned to the individual. The CONTRACTOR shall immediately report to the DEPARTMENT any unauthorized disclosure of confidential information. The CONTRACTOR's obligations under this section shall survive termination of this contract.

10. Conflict of Interest

a. The provisions of Iowa Code Chapter 68B shall apply to this agreement. In the event a conflict of interest is proven to the DEPARTMENT, the DEPARTMENT shall terminate the contract, and the CONTRACTOR shall be liable for any excess costs to the DEPARTMENT as a result of contract default.

b. 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.

c. The CONTRACTOR shall report any related party transaction to the DEPARTMENT. Written approval from the DEPARTMENT shall be required prior to such transaction.

11. Private Consultation

Employees of the CONTRACTOR whose salaries are paid by DEPARTMENT funds shall not engage in private consultation during the hours that are paid for by DEPARTMENT funds.

12. Qualifications of Staff

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

13. Insurance

The CONTRACTOR shall procure and maintain such insurance as is required by applicable federal and state law and regulation. Such insurance should include, but not be limited to, the following: liability insurance, fidelity bonding of persons entrusted with handling of funds, workers compensation, unemployment insurance and professional liability.

14. Audit or Examination of Records

a. Subrecipients of Federal funds are required to have an audit made in accordance with the provisions of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. The DEPARTMENT may require, at any time and at its sole discretion, that recipients of state funds have an audit performed. A copy of audit reports acquired and subject to OMB Circular A-133, State regulations or otherwise required, shall be forwarded to the DEPARTMENT upon receipt and at no charge. The CONTRACTOR may be required to comply with other prescribed compliance and review procedures. The CONTRACTOR shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the DEPARTMENT. When the DEPARTMENT has agreed in writing to pay for the required audit services, the DEPARTMENT reserves the right to refuse payment for audit services which do not meet Federal or State requirements. Audits are due within nine (9) months following the end of the period covered.

b. The audit report shall contain supplementary schedules identifying by program the revenue, expenditures, and balances of each contract.

c. Upon completion of the audit, a press release shall be published to announce the availability of the audit report for review by the public at the CONTRACTOR's office. The press release shall be provided to a local newspaper with a copy sent to the DEPARTMENT and a copy maintained in the CONTRACTOR's office.

d. One (1) copy of the audit report shall be submitted to the DEPARTMENT within thirty (30) working days of its issuance, unless specific exemption is granted in writing by the DEPARTMENT. The audit shall be scheduled so that an audit report will be received by the DEPARTMENT no later than nine (9) months following the end of the contract period. To be submitted with the audit is a copy of the separate letter to management addressing non-material findings, if provided by the auditor.

e. If the contract award(s) from the State of Iowa total \$150,000 or more, a pre-award survey by the State Auditor is required for private contractors. The cost of the pre-award survey and the annual audit shall be borne by the CONTRACTOR unless specifically waived in writing by the DEPARTMENT.

f. The CONTRACTOR agrees that the Auditor of the State or any 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, shall have access to, and the right to examine, audit, excerpt and transcribe any pertinent books, documents, paper, and records of the CONTRACTOR related to order, invoices, or payments of this contract.

g. The CONTRACTOR agrees that the DEPARTMENT or its authorized representatives may have access to medical records and quality assurance materials for purposes of an independent audit of quality assurance and quality of care.

h. All records and work papers resulting from this contract shall become the property of the DEPARTMENT.

15. Contract Performance

a. Monitoring of Performance

(1) The CONTRACTOR agrees that the DEPARTMENT may conduct site visits to review contract compliance, assess management controls, assess relevant services and activities, and provide technical assistance. The CONTRACTOR agrees to ensure the cooperation of the CONTRACTOR's employees, agents, and board members in such efforts.

(2) Following each site visit, the DEPARTMENT may submit a written report to the CONTRACTOR which identifies the findings of the site visit. A Corrective Action Plan with a timetable to address any deficiencies or problems noted in the site visit report may be requested. The Corrective Action Plan shall be submitted to the DEPARTMENT for approval within the timelines outlined in the written report. The CONTRACTOR agrees to implement the plan after it is approved by the DEPARTMENT. Failure to do so may result in suspension or termination of the contract.

b. Contract Performance Disputes

(1) This contract is not subject to arbitration. Any performance issues shall be identified in writing and submitted to the appropriate Division Director of the Department. All disputes concerning performance of this contract shall be decided by the appropriate Division Director, who shall put the decision in writing and serve a copy to the CONTRACTOR and the DEPARTMENT's Director.

(2) The Division Director's decision shall be final unless within fifteen (15) days from the date of service of such copy the CONTRACTOR files a contested case proceeding with the DEPARTMENT.

16. Availability of Funds

The disbursement of funds under this contract is contingent upon the continued availability of federal, state, or private funds to the DEPARTMENT.

17. Withholding of Support

a. With five (5) working days written notice, the DEPARTMENT may temporarily withhold payment of DEPARTMENT funds. The CONTRACTOR may be required to submit a corrective action plan for approval by the DEPARTMENT. Reasons for withholding payment of funds may include, but are not limited to:

(1) Delinquency in submitting required reports.

(2) Failure to show satisfactory progress in achieving the objectives of the project or failure to meet the terms and conditions of the contract.

(3) Failure to provide adequate management of contract funds or equipment.

b. Temporary withholding of funds does not constitute just cause for the CONTRACTOR to interrupt services to clients.

18. Suspension

a. When, as determined by the DEPARTMENT, a CONTRACTOR has materially failed to comply with the terms and conditions of the contract, the DEPARTMENT may suspend the contract, in whole or in part, upon written notice. The notice of suspension shall state the reason(s) for the suspension, any corrective action required, and the effective date.

b. A suspension shall be in effect until the CONTRACTOR has provided evidence satisfactory to the DEPARTMENT that corrective action has been or will be taken, or until the contract is terminated.

c. Obligations incurred by the CONTRACTOR during the suspension period shall not be allowed unless expressly authorized in the notice of suspension. Necessary costs which the CONTRACTOR could not reasonably avoid during the suspension shall be allowed only if the CONTRACTOR had a prior obligation for those expenses.

19. Termination

a. This contract may be terminated by the CONTRACTOR upon thirty (30) working days advance written notice only for the failure of the DEPARTMENT to comply with any term, condition, or provision of this contract, including but not limited to the failure to make timely payment for work performed on the project. In this event, the CONTRACTOR shall deliver to the DEPARTMENT written notice specifying the nature of the DEPARTMENT's default. The DEPARTMENT shall have the thirty-day notice period to correct the problem that resulted in the default notice.

b. This contract may be terminated effective immediately by either party when circumstances beyond the control of the DEPARTMENT or the CONTRACTOR make continuation of this contract impossible.

c. This contract may be terminated solely by the DEPARTMENT for any of the following reasons:

(1) Default by the CONTRACTOR. The failure of the CONTRACTOR to comply with any term, condition, or provision of this contract shall constitute a default by the CONTRACTOR. In this event, the DEPARTMENT shall deliver to the CONTRACTOR written notice specifying the nature of the CONTRACTOR's default. The DEPARTMENT's notice shall also include any penalties due for late or unsatisfactory performance. The DEPARTMENT may make termination of the contract effective immediately. If the notice of default sent by the DEPARTMENT does not indicate that the contract shall be terminated effective immediately, the CONTRACTOR shall have ten (10) days after receipt of such notice to correct the problem which resulted in the default notice and to submit payment for the fine imposed. The DEPARTMENT may thereafter issue a notice of immediate termination if the default is not corrected to the satisfaction of the DEPARTMENT or payment of the proposed fine is not received within the ten-day period.

(2) The Convenience of the DEPARTMENT. The DEPARTMENT may terminate this contract in whole or in part without the payment of any penalty or incurring any further obligation to the CONTRACTOR whenever, for any reason, the DEPARTMENT shall determine that such termination is in the best interest of the State. In this event, the DEPARTMENT shall issue a termination notice to the CONTRACTOR at least ten (10) days prior to the effective termination date. Following termination upon notice, the CONTRACTOR shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this contract up to and including the date of termination.

(3) Bankruptcy or Insolvency. In the event that the CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state related to insolvency or the protection of the rights of creditors,

the DEPARTMENT may, at its option, terminate this contract upon written notice to the CONTRACTOR. The CONTRACTOR must inform the DEPARTMENT of its intention to file a petition in bankruptcy at least five days prior to filing such a petition. The CONTRACTOR's failure to comply with this pre-filing notice requirement shall be deemed a material, pre-petition incurable breach. In the event the DEPARTMENT elects to terminate the contract under this provision, the date of termination shall be deemed to be the date the DEPARTMENT mailed the written termination notice to the CONTRACTOR, unless otherwise specified.

(4) Lack of Funds or Change in Law. The DEPARTMENT shall have the right to terminate this contract without penalty by providing ten (10) days written notice to the CONTRACTOR if any of the following conditions exist:

(a) Adequate funds are not appropriated or available to allow the DEPARTMENT to fulfill its obligations under this contract;

(b) Adequate funds are de-appropriated or not allocated or available or if funds needed by the DEPARTMENT, at the DEPARTMENT'S sole discretion, are insufficient for any reason;

(c) The DEPARTMENT'S authorization to operate is withdrawn or there is a material alteration in the programs administered by the DEPARTMENT;

(d) The DEPARTMENT'S duties are substantially modified.

(5) Conflict of interest. In the event that the CONTRACTOR is proven to have a conflict of interest, as defined in section 10 of this contract, the DEPARTMENT shall immediately terminate this contract.

d. In the event of termination, the CONTRACTOR shall be reimbursed by the DEPARTMENT only for those allowable costs incurred or encumbered up to and including the termination date, subject to the continued availability of funds to the DEPARTMENT. Upon receipt of notice of termination the CONTRACTOR shall cease work under this contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and shall furnish a report within thirty (30) days of the date of notice of termination describing the status of all work under the contract. The CONTRACTOR shall also immediately cease using and return to the DEPARTMENT any personal property, equipment, or materials provided by the DEPARTMENT to the CONTRACTOR and shall immediately return to the DEPARTMENT any payments made by the DEPARTMENT for services that were not rendered by the CONTRACTOR.

e. In the event of termination, the CONTRACTOR agrees to deliver such information and items which are due as of the date of termination, including but not limited to partially completed plans, drawings, data, documents, surveys, maps, reports, and models. The CONTRACTOR shall ensure a smooth transition of services to clients, regardless of whether this contract terminates prior to or upon the expiration date of the contract. If the CONTRACTOR fails to ensure a smooth transition of services to clients, the DEPARTMENT may, at its sole discretion, place the CONTRACTOR on its list of contractors barred from entering into any contract with the DEPARTMENT and immediately terminate all other then existing contracts between the DEPARTMENT and the CONTRACTOR, pursuant to subsection 19(f).

f. Should this contract be terminated under subsection 19(c)(1) (“Default by the CONTRACTOR”) or subsection 19(c)(3) (“Bankruptcy or Insolvency” of the CONTRACTOR), or should the CONTRACTOR fail to ensure a smooth transition of services to clients as required by subsection 19(e), the DEPARTMENT may, at its sole discretion, place the CONTRACTOR on its list of contractors barred from entering into any contract with the DEPARTMENT. Such placement may be permanent or for an indefinite period of time with no possibility of reinstatement for a fixed period of time, at the sole discretion of the DEPARTMENT. The DEPARTMENT may also, at its sole discretion, immediately terminate all contracts between the DEPARTMENT and CONTRACTOR if the CONTRACTOR is placed on the barred list of contractors.

g. The DEPARTMENT shall not be liable for unemployment compensation arising from the termination of this contract.

h. The DEPARTMENT reserves all administrative, contractual and legal remedies which are available in the event that the CONTRACTOR violates or breaches the terms of this contract.

i. Should the DEPARTMENT obtain a money judgment against the CONTRACTOR as a result of a default under this contract, the CONTRACTOR hereby consents to such judgment being set off from moneys owed the CONTRACTOR by the DEPARTMENT or any other agency of the State under any other contract. The CONTRACTOR agrees that this provision constitutes proper and timely notice under the law of setoff.

20. Contested Cases

Any CONTRACTOR who wishes to contest action taken by the DEPARTMENT pursuant to these general conditions may do so within fifteen (15) calendar days following receipt of notice from the DEPARTMENT. The appeal shall be conducted in accordance with Iowa Code section 17A.12 and 641 Iowa Administrative Code chapter 173.

21. Indemnification

The CONTRACTOR and its successors and assignees agree to indemnify and hold harmless the State of Iowa and the DEPARTMENT and its officers, employees, agents, and volunteers from any and all liabilities, damages, settlements, judgments, costs and expenses, including the reasonable value of time spent by the Attorney General’s Office and the costs and expenses and reasonable attorney fees of other counsel required to defend the DEPARTMENT or the State of Iowa, related to or arising from any of the following:

a. Any violation of this contract.

b Any negligent, intentional, or wrongful act or omission of the CONTRACTOR, its officers, employees, agents, board members, contractors or subcontractors, or any other person in connection with this project.

c. Any infringement of any patent, trademark, trade dress, trade secret, copyright, or other intellectual property right.

d. The CONTRACTOR’s performance or attempted performance of this contract.

e. Any failure by the CONTRACTOR to comply with all federal, state, and local laws and regulations.

f. 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.

g. The death, bodily injury or damage to property of any enrollee, agent, employee, business invitee or business visitor of the CONTRACTOR or any of its subcontractors.

h. Any failure by the CONTRACTOR to adhere to the confidentiality provisions of this contract.

22. Changes of Key Personnel

The CONTRACTOR's personnel specified by name and title in Article III of the Special Conditions are considered to be essential to the work or services being performed. If, for any reason, substitution or elimination of a specified individual becomes necessary, the CONTRACTOR shall provide written notification to the DEPARTMENT. Such written notification shall include the successor's name and title. The CONTRACTOR shall notify the DEPARTMENT in writing within ten (10) working days of any change of key personnel. A copy of the resume for a director hired during the course of the contract shall also be sent to the DEPARTMENT within ten (10) working days from the date of hire.

23. Assignment

a. This contract shall not be assigned, transferred, or conveyed in whole or in part by the CONTRACTOR to any third party or parties without written approval in advance by the DEPARTMENT. The DEPARTMENT reserves the right to not contract with a new contractor.

b. A written agreement with the CONTRACTOR to relinquish all rights to the project, and a written agreement with the new contractor to accept all the terms and conditions of the contract shall be submitted to and approved in writing by the DEPARTMENT prior to the date of transfer.

24. Changes in Location

The DEPARTMENT shall be notified of any change in office or service location from that shown in the contract at least ten (10) working days prior to such change.

25. Changes in Service

Changes in the services to be provided by the CONTRACTOR as outlined in the contract require prior written approval by the DEPARTMENT. Discontinuation of any service may result in a decrease in the contract amount or termination of the contract.

26. Contract Administration

a. Invalidity. If any provision of this contract is in conflict with any state or federal law or shall be declared to be invalid by any state or federal court of record, such invalidity shall affect only such portions as are declared invalid or in conflict with the law. Any remaining portion shall continue to be in effect.

b. Status of Contractor. The CONTRACTOR shall at all times be deemed an independent contractor. The CONTRACTOR, its employees, agents, and any subcontractors performing under this contract are not employees or agents of the State of Iowa or any agency, department, or division of the state. The CONTRACTOR shall be responsible for all its withholding taxes, social security, unemployment, worker's compensation and other taxes and shall hold the DEPARTMENT harmless for any claims for same. If the CONTRACTOR is a non-profit organization or affiliated with a government organization, the CONTRACTOR shall file all required state and federal reports to maintain such status.

c. Compliance with the law. The CONTRACTOR, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing the work and services under this agreement, including without limitation the following: all laws applicable to the prevention of discrimination in employment, all laws applicable to the nondiscriminatory provision of services or benefits, all laws applicable to accessibility of facilities, and all laws applicable to the use of targeted small businesses as subcontractors or suppliers. 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 and services to be performed under this agreement.

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

e. Joint Entity. If the CONTRACTOR is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this contract, and for any default of such activities and obligations.

f. Choice of Law and Forum. The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in the Iowa District Court in and for Polk County, Iowa. If, however, jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability that may be available to the DEPARTMENT or the State of Iowa.

g. Waiver. Except as specifically provided for in a written waiver signed by duly authorized representatives of the DEPARTMENT and the CONTRACTOR, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the contract shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

h. Headings or Captions. The section and subsection headings or captions are for identification purposes only and do not limit or construe the contents of the sections and subsections.

i. Supersedes former Contracts. This contract supersedes all prior contracts between the DEPARTMENT and the CONTRACTOR for work and services provided in connection with this contract.

j. 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.

k. Amendments. This agreement may be amended in writing by mutual consent of the parties. All amendments to this agreement must be fully executed by the parties.

l. Integration. This agreement represents the entire agreement between the parties and none of the parties are relying on any representation that may have been made which is not included in this agreement.

m. Obligations beyond contract term. This contract shall remain in full force and effect to the end of the specified term or until terminated or cancelled pursuant to this contract. All obligations of the DEPARTMENT and the CONTRACTOR incurred or existing under this contract as of the date of expiration, termination or cancellation shall survive the termination, expiration, or conclusion of this contract.

n. Authorization. Each party to this agreement represents and warrants to the other parties that it has the right, power, and authority to enter into and perform its obligations under this agreement and that it has taken all requisite action to approve execution, delivery, and performance of this agreement, and that this agreement constitutes a legal, valid, and binding obligation upon itself in accordance with its terms.

27. CONTRACTOR's Certification regarding Suspension and Debarment

The CONTRACTOR certifies pursuant to 31 CFR part 19 that neither it nor its principles are presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. The CONTRACTOR further agrees to comply with the regulations implementing executive order 12549 regarding debarment and suspension.

28. CONTRACTOR's Certification regarding Lobbying

The CONTRACTOR certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The CONTRACTOR shall require that the language of this section be included in the award documents for all subawards at all levels (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. 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. Code of Federal Regulations. 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.

29. CONTRACTOR's Certification regarding Brokering

The CONTRACTOR certifies 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 by the CONTRACTOR for the purpose of securing business. For breach or violation of this certification, the DEPARTMENT shall have the right to terminate this contract without liability, or in its discretion, to deduct from the contract price or to otherwise recover the full amount of such commission, percentage, brokerage, or contingency.

30. CONTRACTOR's Certification regarding a Drug Free Workplace

The CONTRACTOR shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. The CONTRACTOR is required to report any conviction of employees under a criminal drug statute for violations occurring on the CONTRACTOR's premises or off the CONTRACTOR's premises while conducting official business. A report of a conviction shall be made to the DEPARTMENT within five (5) working days after the conviction.

31. CONTRACTOR's Certification Regarding Environmental Tobacco Smoke

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, 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, by Federal grant, contract, loan, or loan guarantee. 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 where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

b. The CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

c. The CONTRACTOR agrees that it will require that the language of this certification be included in any subcontract or subaward that contains provisions for children's services and that all subrecipients shall certify 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.

32. Tobacco Free Environment

The CONTRACTOR agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. This section does not apply to portions of facilities used for inpatient/residential drug, alcohol, or gambling treatment, or mental health services. Applicable federal law supersedes this section.

33. Iowa Code Chapter 8F Terms

The following terms and conditions apply only when the contract is designated as an 8F contract on the Contract execution page.

a. The CONTRACTOR shall certify that the following information is available for inspection by the DEPARTMENT and the legislative services agency:

(1) Information documenting the legal status of the CONTRACTOR, such as agreements establishing the entity pursuant to chapter 28E or other intergovernmental agreements, articles of incorporation, bylaws, or any other information related to the establishment or status of the CONTRACTOR. In addition, the information shall indicate whether the CONTRACTOR is exempt from federal income taxes under section 501(c) of the Internal Revenue Code.

(2) Information regarding the training and education received by the members of the governing body of the CONTRACTOR relating to the duties and legal responsibilities of the governing body.

(3) Information regarding the procedures used by the governing body of the CONTRACTOR to do all of the following:

(a) Review the performance of management employees and establish the compensation of those employees.

(b) Review the CONTRACTOR's internal controls relating to accounting processes and procedures.

(c) Review the CONTRACTOR's compliance with the laws, rules, regulations, and contractual agreements applicable to its operations.

(d) Information regarding adopted ethical and professional standards of operation for the governing body and employees of the CONTRACTOR and information concerning the implementation of these standards and the training of employees and members of the governing body on the standards. The standards shall include but not be limited to a nepotism policy, which shall provide, at a minimum, for disclosure of familial relationships among employees and between employees and members of the governing body, policies regarding conflicts of interest, standards of responsibility and obedience to law, fairness, and honesty.

(4) Information regarding any policies adopted by the governing body of the CONTRACTOR that prohibit taking adverse employment action against employees of the CONTRACTOR who disclose information about a service contract to DEPARTMENT, the auditor of state, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under Iowa Code section 70A.28. The information provided shall state whether employees of the CONTRACTOR are informed on a regular basis of their rights to disclose information to the DEPARTMENT, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

b. The certification required by this section shall be signed by an officer and director of the recipient entity, two directors of the CONTRACTOR, or the sole proprietor of the contract, whichever is applicable. The certification must state that the CONTRACTOR is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the CONTRACTOR and the requirements of Iowa Code chapter 8F.

c. Pursuant to Iowa Code section 8F.4, CONTRACTOR shall file an annual report with the DEPARTMENT and the legislative services agency within ten months following the end of the CONTRACTOR's fiscal year. The CONTRACTOR is not required to file an annual report if (1) the CONTRACTOR reports information otherwise required to be included in the annual report to the DEPARTMENT pursuant to federal or state statutes or rules, provided the information otherwise required to be reported to the DEPARTMENT is also filed with the legislative services agency, or (2)

the CONTRACTOR is recognized by the Internal Revenue Code as a nonprofit organization or entity and provides a copy of the internal revenue service form 990 for all fiscal years in which the service contract revenues are reported.

If required, the annual report shall contain:

(1) Financial information regarding the expenditure of state and federal moneys for the prior year. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

(2) Financial information relating to service contracts during the preceding year, including the costs by category to provide the contracted services.

(3) Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the CONTRACTOR covering the preceding year.

(4) Corrective action taken or planned by the CONTRACTOR in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

(5) Any changes in the information submitted in accordance with Iowa Code section 8F.3.

(6) A certification signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

d. The CONTRACTOR shall be required to submit such information as requested by the DEPARTMENT or the legislative services agency relating to the CONTRACTOR's expenditure of state and federal moneys.

e. The DEPARTMENT may terminate the contract if the CONTRACTOR, during the duration of the contract, fails to comply with the requirements of Iowa Code chapter 8F.