

Third Amendment to the Program Integrity Services for Iowa Medicaid Contract

This Amendment to Contract Number MED-19-003-A is effective as of July 1, 2021, between the Iowa Department of Human Services (Agency) and International Business Machines Corporation (Contractor).

Section 1: Amendment to Contract Language

The Contract is amended as follows:

Revision 1. Contract Page 2, Contract Information, Possible Extension(s), is hereby modified to read as follows:

Possible Extension(s): The Agency shall have the option to extend this Contract up to 1 additional 2-year extension.

Revision 2. Contract Duration. The Contract is hereby extended from July 1, 2021, through June 30, 2023.

Revision 3. Section 1.3.1.2.C.5, Training Plan Detailing, at minimum, is deleted:

In addition, the Contractor shall include conference attendance and reasonable travel expenses at state allowed reimbursement rates for two IME staff to attend Watson Health's annual client conference and training event, if approved by the Agency. The event offers training on Watson Health solutions and enables best practices to be shared with IME.

Revision 4. Section 1.3.1.3.N.1.i, Program Analysis, is deleted:

Provide five (5) IME staff access to a cognitive solution to identify and compare Medicaid policies applicable to Medicaid payment and service delivery requirements. Contractor and the Agency shall collaborate to agree on IME corpus of policy to train the cognitive solution on during implementation (scheduled to take approximately six to eight months). IME shall not retain usage or any proprietary rights for the solution following the termination of this contract, barring the execution of a separate license agreement. Accordingly, the cognitive solution is not subject to the provisions of 1.3.1.1.D. IBM shall retain resulting intellectual property rights to the cognitive solution.

Revision 5. Section 1.3.1.3.O, Collaboration with the MCOs, is hereby amended to read as follows:

Collaboration with the MCOs and PAHPs

1. The Contractor shall collaborate with the MCOs to assure that, between the MCOs and the Contractor, all applicable requirements for data analytics presented in 42 C.F.R. Part 455 are met or exceeded. These activities shall include but are not limited to:
 - a. Participate in regular meetings between the Agency, the Contractor, and the Special Investigation Unit (SIU) leads at each MCO, to coordinate activity and prioritize work and cases.
 - b. MCO Oversight Specialist or designee schedules, coordinates, and prepares content for all program integrity 1:1 meetings with MCO/PAHP.
 - c. Development of a process to divide program integrity work activity equitably and efficiently across MCOs and the Contractor to the extent that a provider being investigated has contracts with multiple MCOs.
 - d. Establishment of standard operating processes, goals, interfaces, and reporting.

- e. Establishment of expectations about other types of data sharing among the teams.
- f. Measurement and tracking of recoveries, cost avoidance, provider actions, provider education and other outreach activities, by each MCO and the Contractor, and in the aggregate.
- g. Coordination and management of case activity and provider outreach activities to reduce provider abrasion, consolidate provider review findings and maximize recoveries.
- h. Meeting timeframe requirements for reviewing the monthly, quarterly, and annual reporting as set by the Managed Care Bureau.
- i. Providing feedback and prompting questions on the monthly, quarterly, and annual reporting requirements from all SIU and PI activities.
- j. Comparison of previous fee-for-service payment integrity results with new managed care results.
- k. Work collaboratively with the MCOs/PAHPs and the data analytics team on building analytics to ensure that the coverage provided by MCOs/PAHPs to Medicaid members adheres to the language of the policies issued by the MCOs/PAHPs to determine that their edits and reviews are successful.
- l. Measurement and reporting on trends of tips, new investigations opened, FWA provider notices, closed investigations, overpayment letters sent, and overpayments collected, year-over-year on the dashboard provided at the monthly meetings.
- m. The Contractor shall coordinate with the MCOs/PAHPs Special Investigation Units (SIUs) to maximize the effort and efficiency of all parties.
- n. The Contractor shall review the activity of each MCO to validate that the MCO/PAHP is adhering to contractual requirements and train MCO/PAHP staff in adherence improvements, as required.
- o. Coordinate semi-annual training for Program Integrity staff, MCO/PAHP staff, and Managed Care Bureau. Semi-annual training will consist of two or more trainings of current topics planned by the Contractor.
- p. All tips that are submitted to the MCOs or PAHPs from the IME are submitted through the MCO Oversight specialist or designee and tracked. This will be completed in a reasonable timeframe, to not exceed one week.
- q. The Contractor will create and distribute a provider alert list, consisting of the most current list of open investigations. The provider alert list will be distributed no later than the 15th of the month.
- r. The Contractor will update all companion guides and associated templates annually or more frequently as needed.
- s. The Contractor will participate in collaborative efforts.
- t. The Contractor will send MCO and PAHP provider actions to the provider enrollment team.
- u. The Contractor will participate in the HCBS collaboration meetings
- v. The Contractor will participate in any other collaboration efforts required by the Agency.
- w. The Contractor shall conduct audits on MCO and PAHP to ensure the compliance of contractual requirements. Audit topics will be subject to Agency approval.

Revision 6. Section 1.3.1.3.P, Coordination with the MFCU, is hereby amended to read as follows:

1. MFCU/PI/MCO Meetings – The Contractor shall attend meetings with the entities listed as requested no less than monthly. The MCO Oversight Specialist or designee will come prepared to discuss topics, provide information and fully participate in each meeting.
2. Referral of Allegations of Fraud – The MCO Oversight Specialist or designee and State PI Staff will review all proposed referrals from all sources to ensure completeness and accuracy prior to forwarding to the MFCU. The Contractor shall coordinate with the State PI staff to refer all credible allegations of fraud to the Iowa MFCU. The Contractor shall work with the Agency and the MFCU to establish procedures that will fulfill the Agency’s responsibilities in accordance with the laws and regulations of Iowa, federal laws and regulations, and the protocols of the MFCU.
3. The MCO Oversight Specialist or designee tracks provider notices with their outcomes by the State Fiscal Year.
4. The MCO Oversight Specialist or designee sends out good cause exception notices due to network adequacy concerns for an investigation
5. The MCO Oversight Specialist or designee requests four years’ worth of data and any prior education for the subject of the investigation.
6. Monthly Report – The Contractor shall report the total number of FWA provider notices submitted by MCO/PAHP to the Agency through the dashboard. Outcomes of the provider notices are sent to the MCO/PAHP with appropriate State and Managed Care Bureau personnel once a determination has been made. This will also be present on the monthly reporting.
7. Request for Information and Documentation – The Contractor shall take all reasonable steps to respond to all Agency and/or MFCU requests for information or documentation submitted within a reasonable and agreed upon timeframe. Work will be prioritized according to the direction of the Agency if needed.

Revision 7. Section 1.3.1.3.Q, MCO Performance Measurement, is deleted and replaced as follows:

1. The Contractor will review and evaluate monthly, quarterly, and annual reports required for accuracy and completeness, as well as being compliant with State and Federal regulations.
2. The Contractor will follow the standard operating procedure for reviewing monthly, quarterly, and annual reports from the MCO/PAHP contracts when evaluating investigational activity.
3. The Contractor shall support the MCO Pay for Performance Measures by:
 - a. Calculating MCO pay for performance measures for the following calendar years (CY) and report per Agency’s reporting schedule:
 - i. CY2021
 - ii. CY2022
 - iii. CY2023
4. The Contractor shall work with the Agency to establish reasonable performance goals related to the efficient processing of cases, volume of activity, and quality of reporting.

Revision 8. Section 1.3.1.3.R, CHIPRA, Adult Medicaid, and IHAWP Quality Measures, is amended to read as follows:

1. The Contractor shall support standard Medicaid quality measures, CHIPRA and Adult Medicaid Quality, calculated using the administrative data that will be available in the PI database and supplemented with measures from the Iowa Department of Public Health

(IDPH) vital records. The Contractor shall work with IDPH and any other Agency contractor, in the fulfillment of these obligations, as required.

2. Beginning November 1, 2020, the Contractor shall program, calculate, and run IHAWP quality measures, as determined by the Agency. In addition, the Contractor shall communicate updates throughout the year with Agency staff, present to Agency leadership and submit the measures to CMS. The Contractor shall also answer any follow up questions or asks from CMS regarding the measures and re-submit as needed.
3. The Contractor shall conduct calculations and provide reports for a package of child, adult, and IHAWP quality measures for each reporting year in accordance with the Agency-approved quality measure reporting plan. Based on data for the reporting year, the Contractor shall make measures available for reporting no later than:
 - a. December 31 of each year for Adult Medicaid and CHIPRA quality measures; and
 - b. A date established by Agency each year for IHAWP quality measures.

The measure results shall include summary files for all calculated measures that provide numerators, denominators and rates for all age subsets required for reporting of these measures. Related documentation will completely describe the specification used in calculating the measure and any deviations from the official specification that may be needed to accommodate the data available from the state.

Revision 9. Section 1.3.1.3.X, Other Agency Measures, is hereby added to the Contract:

1. The Contractor shall calculate the HCBS Fiscal Accountability Measures and report to the Agency on timeline specified by the Agency..
2. The Contractor shall calculate the University of Iowa Hospitals and Clinics (UIHC) Mental Health Measures after receiving data from UIHC for the following timeframe:
 - a. CY2019
 - b. CY2020
 - c. CY2021
 - d. CY2022
3. The Contractor shall calculate the Health Home Measures for the following timeframes:
 - a. CY2021, for 2020 data
 - b. CY2022, for 2021 data
 - c. CY2023, for 2022 data

Revision 10. Section 1.3.4, Pricing. The maximum amount the Contractor will be compensated is hereby amended to \$27,481,676.11 for the entire term of the Contract.

Revision 11. Section 1.3.4.2, Payment Methodology, is hereby amended as follows:

For the period beginning July 1, 2021, the Contractor may invoice ninety percent (90%) of the operations fixed cost as follows:

Timeframe	Monthly Amount
7/1/21-6/30/22	\$415,598.29
7/1/22-6/30/23	\$415,598.29

The remaining ten percent (10%) may be invoiced as follows, and will be paid if the Agency has confirmed that all Deliverables and performance measures were satisfactorily:

Invoice Date	Withhold Amount
6/30/22	\$554,131.05
6/30/23	\$554,131.05

Notwithstanding the above, the Contractor may invoice for the IHAWP Quality Measure activities performed pursuant to Contract Section 1.3.1.3.R(3) in the amount below, upon submittal of the calculated measure results to the Agency for reporting purposes.

Description	Amount
IHAWP Quality Measure Submission Year 1	\$45,856.67
IHAWP Quality Measure Submission Year 2	\$32,239.22

Revision 12. Federal Funds. The following federal funds information is provided

Contract Payments include Federal Funds? Yes	
The contractor for federal reporting purposes under this contract is a: Vendor	
DUNS #: 036838092	
The Name of the Pass-Through Entity: Iowa Department of Human Services	
CFDA #: 93.778	Federal Awarding Agency Name: Department of Health and Human Services/Centers for Medicare and Medicaid Services
Grant Name: Medical Assistance Program	

Revision 13. Section 2.5, Termination, is amended to read as follows:

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, which shall be agreed upon by the parties, but no more than thirty days. 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 SF), 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 material 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 Contract Close-Out Duties. Upon receipt of notice of termination, at expiration of the Contract, or upon request of the Agency (hereafter, "Close-Out Event"), 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 Close-Out Event, 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 Close-Out Event 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.

Revision 14. Section 2.7, Indemnification, is amended to read as follows:

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, and volunteers, (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 that are pre-approved by Contractor, finally awarded by a court or included in a settlement approved by Contractor, directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any third party 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 misuse, unauthorized disclosure or other misappropriation of Agency's Confidential Information in breach or violation of its confidentiality obligations herein;

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 or proprietary 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.

Provided Agency promptly (i) notifies Contractor in writing of the claim, (ii) supplies information requested by Contractor, and (iii) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. Contractor has no responsibility for claims based, in whole, or in part, on Non-Contractor products, items not provided by Contractor, or any violation of law or third party rights caused by Agency's content, materials, designs, specifications, or use of a non-current version or release of a Contractor product when an infringement claim could have been avoided by using a current version or release.

2.7.2 Anything herein to the contrary notwithstanding, Contractor's aggregate liability to the State from any and all causes (except OCR Fines which are addressed in Section 2.7.3 below) relating to the subject matter of this Contract, including Contractor's indemnification obligations under this Contract, shall be limited to general money damages in an amount not to exceed 24 months' fees paid by the State. This limit applies collectively to Contractor, its subsidiaries, contractors, and suppliers.

2.7.3. Contractor shall reimburse the State for any fines assessed against the State by the U.S. Department of Health and Human Services Office for Civil Rights due to Contractor's breach of the BAA ("OCR Fines"). In no event shall Contractor's liability for OCR Fines in the aggregate under this Contract exceed \$15 million dollars (\$15,000,000) ("OCR Fines Cap"). If, at any time, the aggregate liability of Contractor for OCR Fines reaches the OCR Fines Cap, the State may request that Contractor replenish the OCR Fines Cap to an amount that is mutually agreeable to both parties. If Contractor does not agree to replenish such OCR Fines Cap in writing or the parties cannot agree on the amount of the replenishment, then the State may terminate this Contract by giving Contractor at least thirty (30) days prior written notice. For the avoidance of doubt, this paragraph does not limit the State's ability to terminate the Contract as set forth elsewhere in this Contract.

Revision 15. Section 2.9, Ownership and Security of Agency Information, is amended to read as follows:

2.9 Ownership and Security of Agency Information.

2.9.1 Ownership and Disposition of Agency Information. Any information either supplied by the Agency to the Contractor, or collected by the Contractor on the Agency's behalf in the course of the performance of this Contract, shall be considered the property of the Agency ("Agency Information"). The Contractor will not use the Agency Information for any purpose other than providing services under the Contract, nor will any part of the information and records be disclosed, sold, assigned, leased, or otherwise provided to third parties or commercially exploited by or on behalf of the Contractor. The Agency shall own all Agency Information that may reside within the Contractor's hosting environment and/or equipment/media.

2.9.2 Foreign Hosting and Storage Prohibited. Agency Information shall be hosted and/or stored within the continental United States only.

2.9.3 Access to Agency Information that is Confidential Information. The Contractor's employees, agents, and subcontractors may have access to Agency Information that is Confidential Information to the extent necessary to carry out responsibilities under the Contract. Access to such Confidential Information shall comply with both the State's and the Agency's policies and procedures. In all instances, access to Agency Information from outside of the United States and its protectorates, either by the Contractor, including a foreign office or division of the Contractor or its affiliates or associates, or any subcontractor, is prohibited.

2.9.4 No Use or Disclosure of Confidential Information. Confidential Information collected, maintained, or used in the course of performance of the Contract shall only be used or disclosed by the Contractor 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, within 48 hours, report to the Agency any unauthorized use or disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper use or disclosure of Confidential Information.

2.9.5 Contractor Breach Notification Obligations. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized use or disclosure of Confidential Information or other event(s) requiring notification in accordance with applicable law. In the event of a breach of the Contractor's security obligations, subject to the limitations on liability set forth in 2.7.2, the Contractor agrees to follow Agency directives, which may include assuming responsibility for informing all such individuals in accordance with applicable laws, and to indemnify, hold harmless, and defend the State of Iowa against any claims, damages, or other harm related to such breach.

2.9.6 Compliance of Contractor Personnel. The Contractor and the Contractor's personnel shall comply with the Agency's and the State's security and personnel policies, procedures, and rules, including any procedure which the Agency's personnel, contractors, and consultants are normally asked to follow. The Contractor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve the Contractor or the Contractor's personnel. All services shall be performed in accordance with State Information Technology security standards and policies as well as Agency security protocols and procedures. By way of example only, see Iowa Code 8B.23, <http://secureonline.iowa.gov/links/index.html>, and <https://ocio.iowa.gov/home/standards>.

2.9.7 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.

2.9.8 Return and/or Destruction of information. Upon expiration or termination of the Contract for any reason, the Contractor agrees to comply with all Agency directives regarding the return or destruction of all Agency Information and any derivative work. Delivery of returned Agency Information must be through a secured electronic transmission or by parcel service that utilizes tracking numbers. Such information must be provided in a format useable by the Agency. Following the Agency's verified receipt of the Agency Information and any derivative work, the Contractor agrees to physically and/or electronically destroy or erase all residual Agency Information regardless of format from the entire Contractor's technology resources and any other storage media. This includes, but is not limited to, all production copies, test copies, backup copies and/or printed copies of information created on any other servers or media and at all other Contractor sites. Any permitted destruction of Agency Information must occur in such a manner as to render the information incapable of being reconstructed or recovered. The Contractor will provide a record of information destruction to the Agency for inspection and records retention no later than thirty (30) days after destruction.

2.9.9 Contractor's Inability to Return and/or Destroy Information. If for any reason the Agency Information cannot be returned and/or destroyed upon expiration or termination of the Contract, the Contractor agrees to notify the Agency with an explanation as to the conditions which make return and/or destruction not possible or feasible. Upon mutual agreement by both parties that the return and/or destruction of the information is not possible or feasible, the Contractor shall make the Agency Information inaccessible. The Contractor shall not use or disclose such retained Agency Information for any purposes other than those expressly permitted by the Agency. The Contractor shall provide to the Agency a detailed description as to the procedures and methods used to make the Agency Information inaccessible no later than thirty (30) days after making the information inaccessible. If the Agency provides written permission for the Contractor to retain the Agency Information in the Contractor's information systems, the Contractor will extend the protections of this Contract to such information and limit any further uses or disclosures of such information.

2.9.10 Contractors that are Business Associates. If the Contractor is the Agency's Business Associate, and there is a conflict between the Business Associate Agreement and this Section 2.9, the provisions in the Business Associate Agreement shall control.

Revision 16. Section 2.10, Intellectual Property, is amended to read as follows:

2.10 Intellectual Property.

2.10.1 Ownership and Assignment of Other Deliverables. The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all copyrights in the Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in

and to such copyrights in the Deliverables. Notwithstanding the foregoing, Contractor shall be the sole and exclusive owner of all intellectual property, software, and materials, including all preexisting and/or independently developed intellectual property, software and materials, and all derivatives, enhancements and improvements thereto. The Deliverables are 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 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 the 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 Federal License. As this Contract is at least partially federally funded, the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, software and associated documentation designed, developed or installed in whole or in part with federal funds pursuant to this Contract.

2.10.6. Conflict. If there is a conflict between Section 1.3.1.1.D and this Section 2.10, the provisions in Section 1.3.1.1.D shall control.

Revision 17. Section 2.11, Warranties, is amended to read as follows:

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 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 of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then 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 Section 2.11.3 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 all Applicable Law.

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.

Revision 18. Section 2.13.11, Assignment and Delegation, is amended to read as follows:



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. Notwithstanding the foregoing, Contractor may, upon written notice to Agency assign or transfer this Agreement to a successor organization in connection with the transfer of all or substantially all of the business to which this Agreement relates (whether via merger, sale of stock or assets, or otherwise), without the prior consent of Customer. 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.

Section 2: Ratification & Authorization

Except as expressly amended and supplemented herein, the Contract shall remain in full force and effect, and the parties hereby ratify and confirm the terms and conditions thereof. Each party to this Amendment represents and warrants to the other that it has the right, power, and authority to enter into and perform its obligations under this Amendment, and it has taken all requisite actions (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Amendment, and that this Amendment constitutes a legal, valid, and binding obligation.

Section 3: Execution

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

Contractor, International Business Machines Corporation		Agency, Iowa Department of Human Services	
Signature of Authorized Representative: 	Date: 6/28/2021	Signature of Authorized Representative: 	Date: 6/20/21
Printed Name: Craig E. Haseltine		Printed Name: Kelly Garcia	
Title: Vice President, Global Government – Health &		Title: Director	

Human Services, IBM Watson Health	
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