

# CONTRACT DECLARATIONS AND EXECUTION

**Intergovernmental Contract:** Non-State Agency

RFP or Informal Solicitation #	Contract #
N/A	FWBPCWP26001

Title of Contract
Drug Testing Collections and Laboratory Services

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

Agency of the State (hereafter "Agency")	
<b>Name/Principal Address of Agency:</b> Iowa Department of Health and Human Services Lucas State Office Building 321 E 12 <sup>th</sup> Street Des Moines, IA 50319-1002	<b>Agency Billing Contact Name / Address:</b> Nicole Rand 1407 Independence Ave. Waterloo, IA 50703 <b>Phone:</b> 515-316-9737
<b>Agency Contract Manager (hereafter "Contract Manager" ) /Address ("Notice Address"):</b> Linda Dettmann 321 E 12 <sup>th</sup> Street Des Moines, IA 50319-1002 <b>Phone:</b> 515-377-0324 <b>E-Mail:</b> linda.dettmann@hhs.iowa.gov	<b>Agency Contract Owner (hereafter "Contract Owner") / Address:</b> Janee Harvey 321 E 12 <sup>th</sup> Street Des Moines, IA 50319-1002 <b>E-Mail:</b> janee.harvey@hhs.iowa.gov

Contractor: (hereafter "Contractor")	
<b>Legal Name:</b> Central Iowa Juvenile Detention Center	<b>Contractor's Principal Address:</b>
<b>Tax ID #:</b>	<b>Organized under the laws of:</b> Iowa
<b>Contractor's Contract Manager Name/Address ("Notice Address"):</b>          <b>Phone:</b> <b>E-Mail:</b>	<b>Contractor's Billing Contact Name/Address:</b>          <b>Phone:</b> <b>E-Mail:</b>

<b>Contract Information</b>	
<b>Start Date:</b> 07/01/25	<b>End Date of Base Term of Contract:</b> 06/30/27
<b>Possible Extension(s):</b> The Agency shall have the option to extend this Contract up to 4 additional 1-year extensions.	
<b>Contract Contingent on Approval of Another Agency:</b> No	<b>ISPO Number:</b> DSPOR2025-067
	<b>DoIT Number:</b> N/A
<b>Contract Warranty Period (hereafter "Warranty Period"):</b> The term of this Contract, including any extensions.	<b>Contract Include Sharing SSA Data?</b> No
<b>Contractor a Business Associate?</b> No	<b>Contractor a Qualified Service Organization?</b> No
<b>Contractor subject to Iowa Code Chapter 8F?</b> Yes	<b>Contract Includes Software (modification, design, development, installation, or operation of software on behalf of the Agency)?</b> Yes
<b>Contract Payments include Federal Funds?</b> Yes <b>The Contractor for federal reporting purposes under this Contract is a:</b> Vendor <b>Federal Funds Include Food and Nutrition Service (FNS) funds?</b> No <b>UEI #:</b> <b>The Name of the Pass-Through Entity:</b> Iowa Department of Health and Human Services	
<b>ALN #:</b> 93.558	<b>Federal Awarding Agency Name:</b> Department of Health and Human Services Administration for Children and Families
<b>Grant Name:</b> Temporary Assistance for Needy Families	

**Contract Execution**

This Contract consists of this Contract Declarations and Execution Section, the Special Terms, any Special Contract Attachments, the General Terms for Services Contracts, and the Contingent Terms for Service Contracts.

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

<b>Contractor, Central Iowa Juvenile Detention Services</b>	<b>Agency, Iowa Department of Health and Human Services</b>
Signature of Authorized Representative:	Signature of Authorized Representative:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

<b>Iowa Code Chapter 8F</b>
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As a condition of entering into this Contract with the Agency, the Contractor certifies that: 1) it has the information required by Iowa Code Chapter 8F and referenced in Section 3.4, Certification Regarding Iowa Code Chapter 8F available for inspection by the Agency and the Iowa Legislative Services Agency; and 2) 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.

**[Per Iowa Code § 8F.3(2), certification shall be signed by: 1) An officer AND director; OR 2) Two directors; OR 3) The sole proprietor of the Contractor, whichever is applicable]**

<b>Contractor, by:</b>	<b>Contractor, by:</b>
Signature of Authorized Representative:	Signature of Authorized Representative:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

## SECTION 1: SPECIAL TERMS

### ***1.1 Special Terms Definitions.***

**“Authorization”** means the completed and approved form authorizing the Contractor to obtain or to attempt a Drug Testing collection from a Case.

**“Authorization System”** means the Agency’s computer program/mechanism utilized by its workers to create, to approve, and provide to the Contractor electronic forms authorizing Drug Testing collections or attempts from Cases.

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

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

**“Case”** for the purposes of this contract, means a person subject to Drug Testing.

**“Chain of Custody”** means the formal document that is filled out during the collection process and remains with sample.

**“Collection Log”** means a Contractor created document that captures basic information regarding a Sample Collection.

**“Collector”** means the entity responsible for obtaining specimens for Drug Testing laboratory analysis.

**“Combined Cost Report”** means a report that allows the Agency to determine collection service costs from non- collection Services provided by the Contractor.

**“Contract Manager”** means the staff person or persons accountable to the Contract Owner, acting under the direction and guidance of the Contract Owner for a specific RFP and contract.

**“Contract Owner”** means the administrator within the Agency who has overall responsibility, accountability, and authority for the direction and management of the procurement for a specific RFP and contract.

**“Contract Specialist”** means the Agency Worker assigned to provide review and oversight for an Agency contract with a Contractor.

**“Contractor”** means the entity delivering the service for the Agency.

**“Cultural Competence”** means the ability of individuals and systems to respond respectfully and effectively to people of all cultures, classes, races, ethnic backgrounds, sexual orientations, and faiths or religions in a manner that recognizes, affirms, and values the worth of individuals, families, tribes, and communities, and protects and preserves the dignity of each.

**“Deliverables”** means all of the Services, goods, products, work, work product, data (including data collected on behalf of the Agency), items, materials and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, the Contractor (or any

agent, contractor or subcontractor of the Contractor) in connection with any contract resulting from this RFP.

**“Drug Testing”** means the process by which a sample of hair, sweat, saliva, urine, or fingernail clippings are chemically analyzed to determine the presence of certain substances, legal or illegal, in the sample.

**“Emergency Collection Attempt”** means the physical arrival of the Contractor to the client’s address or specific location within 24 hours as arranged and related efforts at the client’s address to obtain a sample for laboratory analysis.”

**“Fixed Site Collections Facilities”** means the physical location of sites that the Contractor and/or its sub-contractor operate for collecting Drug Testing Samples from Cases authorized by the Agency.

**“In-Home Collection Attempt”** means the physical arrival of the Contractor to the client’s address or specific location as arranged and related efforts at the client’s address to obtain a sample for laboratory analysis.

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

**“Randomization”** means the practice of using chance methods such as random number tables for the selection of Case who will provide a drug-testing sample.

**“Real-Time Adjustment”** means increases in the length of operation at a Fixed Site Collection Facility or Facilities on a specific day that are implemented by the Contractor to accommodate known high volume on a specific collection day and are not included as an update to a facility’s monthly schedule.

**“Referral Worker”** means the Agency’s child welfare worker that has been assigned responsibility for a child and family’s case and has made a referral for child welfare Services to a private service provider under contract with the Agency.

**“Sample Collection”** means the process by which a sample of a bodily substance is obtained for use in a chemical analysis to determine the presence of certain substances, legal or illegal, in this sample.

**“Scheduled Collection”** means an Authorization from an Agency Referral Worker that is approved and uploaded to the system 24 hours or more prior to the day that the Fixed Site operates.

**“Service Area”** means one of the groups selected from Iowa’s 99 counties with boundaries defined by the Agency to provide for improved, localized administration of programs.

**“Service Area Drug Testing Contacts”** means the designated staff assigned to handle day-to-day operations of Drug Testing for a Service Area.

**“Service Area Manager” (SAM)** means the Agency official responsible for managing the Agency’s programs, operations, and Child Welfare budget within one of the Agency Service Areas.

**“Service Organization Control 2 (SOC 2)”** means an audit of a service provider that is relevant to compliance or operations. SOC 2 Reports specifically address one or more of the following five key

system principles: security, availability, processing integrity, confidentiality, or privacy.

**“Services”** means a term used primarily to refer to Child Welfare Services.

**“Walk-In Collections”** means an Agency Authorization that is approved and uploaded to the system less than 24 hours prior to the day that the Fixed Site operates.

## **1.2 Contract Purpose.**

The Agency has entered into this Contract for the purpose of providing Drug Testing Collection and Laboratory Services statewide.

## **1.3 Scope of Work.**

The Contractor shall provide Drug Testing Collection and Laboratory Services through its own network, using Contractor’s own testing supplies, and related Services for the Agency.

### **1.3.1 Drug Testing Collection Deliverables.**

The Contractor shall make available Drug Testing Collection Services for every county located in the State of Iowa. The Contractor shall operate Fixed Site Collection Facilities, and provide In-Home Collection and Emergency Collection Services, as required in this Contract.

#### **1.3.1.1 Authorizations and Call-In Systems.**

The Contractor shall provide Drug Testing Collection Services at the request of the Agency through the Referral Worker, who will prescribe the following:

- 1) The type of test collection being authorized;
- 2) The mode of collection (Fixed Site, In-Home, Emergency);
- 3) The frequency of testing (one test collection and stop, two test collections and stop, etc.);
- 4) Whether or not randomization of Sample Collections is required.

The Contractor shall:

1. Receive, track, and execute electronic Authorizations from the Agency through an Agency-secured portal for the collection of Drug Testing samples ( “Authorizations”).
2. If an Authorization contains multiple collections over an extended period (for example one test per month for three months) for the same Case or Cases, the Contractor shall randomize these collections throughout the identified period unless the Authorization provides otherwise.
3. Provide and maintain a toll-free telephone number call-in system and a website system that provides Cases with current and accurate schedule information. This information shall include testing site hours and identify Authorization numbers required to report to a Fixed Site for drug testing collection.
  - a. Utilize the Agency’s unique Authorization number that contains at least six numeric digits (e.g. 999999) for the telephone and website call-in systems. If more than one Case is included on the Authorization to provide a sample, the first Case is assigned position A, the second position B, and so forth.
  - b. Include only one day’s Scheduled Collection information on these systems.
4. Update the telephone call-in system and website systems daily by 9 pm the day prior to collection. When preparing the random call-in system, the Contractor shall report to Cases only the Authorization number with the letter of the alphabet (e.g. “Those reporting to [specific Fixed Site location] for Sample Collections are: 999999-A, 999999-B,” etc.).

### **1.3.1.2 Fixed Site Collections Facilities.**

The Contractor shall:

1. Provide Fixed Site Collections Facilities through Contractor-operated facilities, subcontractor-operated facilities, or a combination of both. These Fixed Site Collections Facilities shall be operational by July 1, 2025, and the locations must be Agency-approved. Refer to Attachment A for Agency Fixed Site Collection Facilities location and hours of operation requirements.
2. Secure, maintain, clean, and operate Fixed Site Collection Facilities via lease or subcontract agreement. The Contractor is solely responsible for all operational costs.
3. Deter tampering at the Collection Site by
  - Placing coloring in the toilet;
  - Inspecting site for adulterants; and
  - Preventing undetected access by others.
4. Ensure a water source is available for donor to wash their hands before providing the specimen.
5. Operate Fixed Site Collection Facilities at specific locations identified by the Agency and during minimum weekly hours as required by Agency. Some fixed sites may operate for one hour per week, while other fixed sites may operate several days or more per week. Refer to Attachment A for Agency Fixed Site Collection Facilities location and hours of operation requirements.
6. Provide the Agency a list of Fixed Site Collection Facilities within ten (10) days of Contract execution and confirm compliance with required hours and days of operation. See Attachment A.
7. Vary the hours and days of operation of the Fixed Site Collections Facilities.
  - a. Hours of operation shall vary from week to week, within a time range of 9 am to 8 pm, based on site-specific testing volume. See Section 1.3.3.1 Collections Utilization Reporting. A site that operates one day per week shall vary hours of operation from week-to-week. Sites that operate more than one time a week shall offer varied timeframes within that week.
  - b. Days of operation shall vary from week to week. A site that operates one day per week shall change the specific day of operation at a minimum twice per calendar month.
8. Operate Fixed-Site Collections Facilities so that all locations are handicap-accessible and that all locations shall provide privacy to comply with industry standards for Cases providing samples to minimize incidental disclosure of Case identity.
9. Store samples after collection in a secure location that prevents access from the public/non-Contractor staff at all times and maintains the integrity of the samples and Chain of Custody requirements as defined in Section 1.3.1.6.
10. Incorporate Real-Time Adjustment to the length of operation for a Fixed Site and/or fixed sites based on number of known collections the day before operation. These real time changes are not part of the regular scheduled time and as result, the Contractor shall not be obligated to inform HHS of these changes prior to implementation. The Contractor shall track the number of hours it has increased Fixed Site operations and report a cumulative report to the Agency Contract Specialist and Contract Manager on a quarterly basis. The Contractor shall receive no additional reimbursement for these real time changes.

#### **1.3.1.2.1 Fixed Site Weekend Operations.**

The Contractor shall substitute a weekend day for a regular weekday of operation at a Fixed Site Collection Facility. Weekend substitution shall occur at a minimum once per

calendar month. Below are the Service Areas and related counties that will be included in the weekend rotation.

1. Northern Service Area counties include Black Hawk, Story, Marshall, Floyd, Cerro Gordo, Webster.
2. Cedar Rapids Service Area counties include Jasper, Tama, Poweshiek, Mahaska, Benton, Appanoose, Wapello.
3. Eastern Service Area counties include Dubuque and Scott. Weekend operation in Scott shall be in addition to the weekday and shall be on Saturday.

#### **1.3.1.2.2 Fixed Site Monthly Schedule.**

The Contractor shall provide the Agency an advance monthly schedule with hours of operation for Fixed Site locations ten (10) days prior to month of implementation. The Contractor shall send these schedules and any updates through secure/encrypted electronic file transfer to the Agency and when available, upload them to the Agency through an Agency secure portal.

1. Maintain their Fixed Site schedule. On the occasion that a schedule change occurs, the Contractor, at a minimum, shall provide to the Agency a 14-hour notice to Agency Service Area Manager or designee if a site change occurs. If the Fixed Site change involves a change for Saturday, Sunday, and/or Monday then Contractor shall provide to the Agency an updated schedule by 12 noon the Friday prior to these changes.
2. Ten (10) days prior to Contract execution, the Contractor will finalize schedules at designated Fixed Site Collection Facilities with specific site locations and ensure that these fixed sites are operational by July 1, 2025.

#### **1.3.1.3 In-Home Collection Services.**

The Contractor shall provide In-Home collection coverage for all Agency Service Areas. The Contractor shall:

1. Receive and implement Authorizations that the Agency Service Area Managers and/or designees have approved for In-Home testing.
2. Make In-Home Collection Attempt to collect the specimen within 72 hours of Agency Authorization.
3. Obtain a sample or attempt to collect a sample during the designated timeframes identified on the Authorization. Authorization shall indicate the time the Case is available for testing.
  - a. Unsuccessful attempts to collect a sample outside of the designated timeframes are not reimbursable.
  - b. Should the Case refuse to provide a sample during an attempt to collect made within the designated timeframes, the refusal is reimbursable.
4. Make only two In-Home Collection Attempts to collect the specimen for each test authorized.
  - a. The Agency will not reimburse beyond one attempt per day up to a maximum of two total attempts.
    - i. Should the Contractor make additional attempts and successfully obtain a collection, the two total attempts and successful collection may be reimbursed.
    - ii. Should the Agency Referring Worker request an additional attempt in writing within the designated timeframe, the Contractor may be reimbursed.
5. Report accurately on In-Home Collections and Attempts.
6. Develop and implement its own internal protocol and processes with regard to worker safety and train its staff in those precautionary measures. The Agency's policy is that known safety

concerns pertinent to the collection will be identified and listed on the Authorization. Provide the Agency with an updated Coverage Plan that includes the agreed upon Fixed Sites in Attachment A for Agency Fixed Site Collection Facilities and identifies how it will deliver In-Home testing for each Agency Service Area on or before ten (10) days after Contract execution.

#### **1.3.1.4 Emergency Collection Services.**

The Contractor shall provide Emergency Collection coverage for all Agency Service Areas. The Contractor shall:

1. Receive and implement Authorizations that the Agency Service Area Managers and/or designees have approved for emergency testing to be done at Case's home or identified address.
2. Respond to the Agency worker or supervisor within one hour of receiving approved Authorization and phone call for emergency testing through telecommunication and encrypted email communication.
3. Obtain a sample or make attempt to collect a sample within 24 hours of the Authorization.
4. Obtain a sample or attempt to collect the sample during the designated timeframes identified on the Authorization. Authorization shall indicate the time the Case is available for testing.
  - a. Unsuccessful attempts to collect a sample outside of the designated timeframes are not reimbursable.
  - b. Should the Case refuse to provide a sample during an attempt to collect made within the designated timeframes, the refusal is reimbursable.
5. Make only one Emergency Collection Attempt to collect the specimen. The Agency will not reimburse beyond one attempt
  - a. Should the Contractor make additional attempt and successfully obtain a collection, the initial attempt and successful collection may be reimbursed.
  - b. Should the Agency Referring Worker request an additional attempt in writing within the designated timeframe, the Contractor may be reimbursed.
6. Report accurately collection, attempt, and refusal to the Agency.
7. Develop and implement its own internal protocol and processes with regard to worker safety and train its staff in those precautionary measures. The Agency's policy is that known safety concerns pertinent to the collection will be identified and listed on the Authorization.
8. Submit to the Agency an updated coverage plan that identifies how it will deliver emergency testing for each Agency Service Area on or before ten (10) days after Contract execution.

#### **1.3.1.5 Types of Collections.**

The Contractor shall follow the laboratory's collection instructions to fill out the corresponding Chain of Custody, obtain the sample, and prepare it for shipping to make available and complete the following types of Drug Testing collections:

1. Urine 9 Panel, Urine 9 Panel + Alcohol, Urine 14 Panel
2. Hair Test 5 Panel
3. Sweat Patch 5 Panel
4. Oral Swab 7 Panel

The Contractor shall:

1. Meet the specified standard for the collection and containment of specimens set by laboratory standards. Contractor shall submit a Collection Plan to the Agency ten (10) days after Contract execution that identifies specific industry standards and processes it will implement in addition to laboratory collection and containment standards. The Contractor shall, at all times, adhere to the Agency-approved Collection Plan.

2. Meet applicable regulatory, licensing, and industry standards for all types of collections.
3. Provide instant testing for adulterants using Instant test kits. Instant tests shall include at a minimum, tests for dilution, pH, specific gravity, creatine concentration and temperature. Temperature to read between 90-100 degrees Fahrenheit and volume shall be a minimum of 15 ml. This data shall be provided in the verified test laboratory report.
  - a. When the instant test result is a presumptive positive and the authorization includes a lab-based urine test, the Contractor shall complete and send the sample to the laboratory for confirmation following such requirements as including the Case signing the Chain of Custody and initialing the seals on the containment bag.
  - b. Contractor shall inform the Agency of the instant test results. (See *1.3.1.6 Daily Collection Logs and Chain of Custody Documents*)

#### **1.3.1.6 Daily Collection Logs and Chain of Custody Documents.**

The Contractor shall develop, maintain, and make electronically available to the Agency daily Collection Logs for each HHS Service Area. The Agency will provide the Contractor with the format of this log and it shall contain such information as the Authorization number, the Agency Service Area authorizing the collection, FACS ID Number, and the mode of collection (Fixed Site, In-Home, Emergency), the date of collection, the type of test collected or attempted to collect. This log will also include client failures to report for collection, client inability to provide a specimen, client attempting to provide adulterated or tampered specimen, and when required include the presumptive test results for instant test kits. The Contractor shall send to the Agency daily logs through secure/encrypted electronic file transfer and when available, upload to the Agency through an Agency secure portal.

Submission of daily logs shall occur on an ongoing basis to each Agency Service Area Manager and/or designee by 3:00 pm the following Business Day after the day of collection.

Upon Agency specific request, the Contractor shall electronically send to the Agency a completed Chain of Custody form for a collected sample through secure/encrypted electronic file transfer and when available, upload to the Agency through an Agency secure portal.

#### **1.3.1.7 Collections Submission of Samples to Laboratory.**

The Contractor shall send collected samples in prepaid overnight shipping containers to the laboratory facility for analysis.

1. Contractor shall ship collected samples to the laboratory within two (2) Business Days from collection.
2. Contractor shall only ship samples collected for the Agency in these prepaid shipping containers unless otherwise approved by Agency Contract Owner or Designee.
3. Contractor shall track dates of sample shipping to the laboratory facility. Contractor shall, upon request from the Agency, provide information regarding dates samples were shipped to the laboratory facility.

#### **1.3.1.8 Collections Personnel.**

Contractor shall develop and implement a Personnel Training Plan for its staff. This plan, at a minimum, shall include the training modality (face-to-face instruction, webinar, on-line, and/or combination thereof); and this plan shall identify the subject area of the training, and length of training. Training elements shall include specific topics such as *Collection procedures and processes, Signs of Adulteration and Methods used to Tamper with Samples, How to prevent or minimize the risk of Adulteration and Tampering of Samples, Chain of Custody Procedures,*

*Collection Site preparation, Identity verification, Specimen handling, Problem Collections and Troubleshooting (e.g. shy bladder protocols, adulterated, diluted, or substituted specimens), Confidentiality and Data Protection, and Cultural Awareness.* The Contractor shall submit this plan to the Agency for the Agency no later than ten (10) days after execution of this Contract and obtain Agency approval.

1. Contractor shall maintain on file the appropriate staff certificates and staff training log applicable to the specific collection methods. Contractor shall make certificates and logs available upon Agency request.
2. Contractor shall not be reimbursed for any collections administered by staff that have not had the appropriate training for the specific collection type used on a sample. The Agency reserves the right to review certificates and staff training logs and to require repayment for collections performed by staff not qualified to collect.

Contractor shall ensure Collectors:

1. Accurately complete necessary Chain of Custody paperwork for submission of samples using a form approved by the Agency.
2. Deliver Services with Cultural Competence, including providing clients with understandable explanations of the collection process.

#### **1.3.1.9 Collections Supplies and Support.**

1. The Contractor shall be responsible for obtaining a sufficient quantity sample from the Case as necessary for performing the authorized type of test, as determined by the Agency, proper storage of sample, and then shipment of sample to the laboratory and/or its subcontractor.
2. The Contractor shall maintain responsibility for all supplies to complete a collection and/or operate a Fixed Site Collection Facility. This includes, but is not limited, to the collection gloves, cleaning supplies, testing supplies and temporary storage units for samples.
3. Upon Agency request, the Contractor shall provide collection staff for court testimony through telephonic means. The Agency will reimburse the Contractor according to the Drug Testing Collection Price Schedule (Attachment B).

#### **1.3.1.10 Collections Documentation.**

1. The Contractor shall submit a completed Chain of Custody form for evidencing each sample submission to the laboratory for drug testing analysis.
2. The Contractor shall maintain a comprehensive database for collections to track and Invoice all collections in an accurate, accountable, and secure manner.
3. Contractor shall Invoice reimbursement from the appropriate funding source (identified on the Authorization) in a format and with content required by the Agency for collection Services. The Contractor shall submit electronic Invoices by service area within 15 days of the end of the month of service to the Service Area Manager or designee who will review for accuracy. Contractor's electronic submission of Invoices shall be through secure/encrypted electronic file transfer to the Agency and when available, upload Invoices to the Agency through an Agency secure portal.
  - a. The Contractor shall submit monthly expenditures within 25 days of the end of the month of service.
  - b. The Contractor shall include such expenditures on a GAX form and an Invoice, separated by funding source, listing types of collections and attempts/refusals, number of collections for each type of test, the cost for each type of test and a total cost.

- c. The Contractor shall, at a minimum, include the following data elements on the Invoice.
  - i. Authorization Number
  - ii. Client First Name
  - iii. Client Last Name
  - iv. FACS ID
  - v. Type of collection/test
  - vi. Funding Source
  - vii. Collection Mode (Fixed Site Collection Facility, In-Home, Emergency)
  - viii. Date of Collection/Test
  - ix. Cost being Billed

### **1.3.2 Drug Testing Laboratory Services Deliverables.**

#### **1.3.2.1 General Requirements**

The Contractor shall be responsible for providing Drug Testing Laboratory Services at the authorization of Agency Referral Workers, who will prescribe the type of testing to the Collector.

1. The Contractor shall provide laboratory Services and test designated samples either directly or through subcontract. If the Contractor uses a sub-contractor, the Contractor shall ensure that the subcontractor adheres to the same Contract requirements as the Contractor.
2. The Contractor shall have customer service assistance available for Agency staff during 8:00 am to 4:30 pm on Business Days.
  - a. The Contractor shall respond to questions regarding laboratory Services within 48 hours.
  - b. A running Q&A document shall be maintained in a mutually agreed upon format.
3. The Contractor shall develop and provide an electronic template Chain of Custody form or paper Chain of Custody form for each Agency Service Area.
4. The Contractor shall make the following types of Drug Testing available:
  - a. Urine 9 Panel, Urine 9 Panel + Alcohol, Urine 14 Panel
  - b. Hair Test 5 Panel
  - c. Sweat Patch 5 Panel
  - d. Oral Swab 7 Panel

#### **1.3.2.2 Personnel.**

The Contractor shall provide personnel with the appropriate training and certification in the various testing methodologies.

##### **1.3.2.2.1 Supplies and Support.**

The Contractor shall be responsible, at no additional charge to the Agency, for the supplies to collect all types (urine, instant test kits and instant confirmation, hair, sweat patch and oral swab) of samples for drug screening/testing including the electronic Chain of Custody forms/template and other materials necessary for the specimen collection to be completed in accordance with industry standards. This will include all supplies, shipping costs, and cost of screening and confirmation of all panels with a presumptive positive.

1. Contractor shall provide an adequate number of Chain of Custody forms for each type of Drug Testing available at no charge to the Agency.
2. Contractor shall provide materials that are required to safely ship collected samples to the laboratory in accordance with industry standards and at no charge to the Agency.
3. Contractor shall provide pre-paid shipping packages for the overnight shipment of collected samples to the laboratory at no charge to the Agency. The Contractor, at no additional

reimbursement from the Agency shall pay for the pre-paid packages and shall pay for the shipping cost of overnight delivery.

4. Contractor shall provide at no cost to the Agency all supplies and materials necessary to perform the laboratory initial screening and confirmation processes of all submitted Agency test panels/samples.

5. Contractor shall provide training for Agency referral staff and other designated Agency staff on how to access test results.

#### **1.3.2.2.2 Expert Testimony.**

The Contractor shall provide expert testimony by telephone during court proceedings upon Agency request.

1. The Contractor shall provide to the Agency experts who shall be available for court testimony. The Contractor experts shall provide expert phone testimony regarding urine analysis, hair analysis, sweat patch and oral swab analysis.
  - a. At a minimum, the Contractor shall have experts available for expert testimony for topics, which include but may not be limited to the science that supports the laboratory analysis and related test results for each test type, and when applicable, how the test results remain valid with specific metabolism or conditions for children and adults.
  - b. The Contractor shall provide the following level expert for each test type.
    - i. Doctorate level expert regarding test type, laboratory process and related outcomes.
  - c. The Contractor shall provide a Listing of Experts available for court testimony to the Agency along with their credentials and testimony history no later than ten (10) days after Contract Execution.
    - i. Contractor shall provide updates to this Listing of Experts to the Agency within five (5) Business Days of the change occurring.
2. The Contractor shall receive, track, and implement all Agency requests/referrals for expert testimony.
  - a. The Contractor shall receive requests from the Agency Service Area Manager or designee for expert testimony.
  - b. The Contractor shall respond to Agency requests/referrals on or before two (2) Business Days from request. The Contractor shall coordinate and arrange for an expert to testify by telephone, providing their credentials and testimony history to the Agency.
3. No later than ten (10) Business Days prior to Contract execution, the Contractor shall submit to the Agency a draft outline of an updated Document Repository that will be accessible to and used by the Agency. This outline shall include the names and brief descriptions of such documents as educational materials, articles, and research that support the science of laboratory analysis processes and the validity of test results for Urine Analysis, Hair, Sweat Patch and Oral Swab.

This outline of the Document Repository will be the starting point for the actual updated Document Repository that the Contractor shall make accessible to or send to the Agency no later than July 1, 2025, or as agreed upon by the Agency.

- a. Contractor shall update the Document Repository on a regular basis as research and educational materials are updated.
- b. Contractor shall update the Document Repository with written opinions and related documents of experts regarding Agency expert testimony in judicial proceedings.
- c. Contractor shall make the Document Repository available to the Agency through secure/encrypted electronic file transfer and when available, upload it to the Agency through Agency secure portal.

- d. Contractor shall de-identify client information in all documents and the Agency owns the document repository and related material.

### **1.3.2.3 Training.**

#### **1.3.2.3.1 Initial Training for Agency**

The Contractor shall provide to the Agency Initial Training for Agency and Agency staff through a webinar or similar mode approved by the Agency.

1. Contractor shall provide Agency staff with an overview of the laboratory processes for urine analysis, hair analysis, sweat patch and oral swab analysis. At a minimum, this initial training shall include:
  - a. The steps that the laboratory takes from the point it obtains a specimen through the initial screening, the confirmation, and the test results of a specimen.
  - b. The steps Agency staff will take to obtain test results from a secure website/portal.
  - c. An overview of how to interpret test results including such results as *negative*, *positive*, *diluted negative*, *diluted positive*, *rejected*, and *etc.*
2. No later than ten (10) days prior to execution of contract, Contractor shall provide to the Agency a Draft Initial Training Plan that will include such things as training outline, related charts, and power points for Agency review. Contractor shall incorporate any Agency feedback into the Plan. Contractor shall provide the finalized Initial Training Plan to the Agency no later than one week prior of the actual date of the Initial Training.
3. The Contractor shall provide the Initial Training to the Agency no later than July 1, 2025, or as agreed upon by the Agency. The Agency will coordinate the specific date of training.
4. The Contractor's finalized Initial Training Plan and related materials shall be in digital format and the Agency owns the material for training upon submission and the Agency can use the training for such things as additional training to its staff.

#### **1.3.2.3.1 Annual Training for Agency**

The Contractor shall provide to the Agency Annual Training for Agency staff through a webinar or similar mode.

1. Contractor shall provide Agency staff with a brief overview of the laboratory processes for urine analysis, hair analysis, sweat patch analysis, and oral swab analysis as laid out in 1.3.2.3.1 and include the following:
  - a. Summary of Agency submitted questions and Contractor's responses as contained in the running Q&A document as required in 1.3.2.1 General Requirements with emphasis on providing educational insight to the Agency staff and on reducing repetitive questioning from the Agency.
  - b. Summary of the Agency requests for Expert Testimony including the issue at hand and expert response as laid out in 1.3.2.2.2 Expert Testimony.
  - c. Provide an opportunity for interactive/live questions from Agency staff regarding such areas as laboratory processes, test results, interpretation of test results, expert testimony, and trends in drug culture. If Contractor has to research response to question(s), then Contractor shall provide written response to such question(s) to the Agency on or before ten (10) Business Days from the Annual Training.
2. The Contractor shall provide to the Agency a draft of Annual Training Plan 30 days after Contract Execution and this plan shall include such things as training outline, related charts, and power points for Agency review, and how experts will be incorporated into this training. Contractor shall incorporate any Agency feedback into the Plan. Contractor shall provide finalized Annual Training Plan to the Agency no later than one week prior to Annual Training.
3. The Contractor shall provide the Annual Training at a date set by the Agency and agreed upon by the Contractor.

4. The Contractor's finalized Annual Training Plan and related materials shall be in digital format and the Agency owns the material for training upon submission and the Agency use the training for such things as additional training to its staff.
5. The Contractor shall repeat processes identified in this section (1.3.2.3.1 Annual Training for Agency) for each state fiscal year (July 1-June 30).
6. The Contractor shall de-identify specific client information from all training materials.

#### **1.3.2.3.3 Collection Training Plan**

The Contractor shall provide the Agency with a Collection Training Plan no later than thirty (30) Business Days after Contract execution, or as agreed upon by the Agency. Contractor shall include in the plan such things as the laboratory instructions, training, training materials and if required provide the means to be an accepted or certified laboratory Collector for all Agency required types of tests.

1. The Contractor shall submit the Collection Training Plan to the Agency with all test types (urine, instant tests, hair, sweat patch, and oral swab).
2. The Contractor shall make available to the Agency this Collection Training at no charge to the Agency.
3. If the Contractor's Collection Training Plan is updated, the Contractor shall submit the updated plan to the Agency within ten (10) Business Days and obtain approval from the Agency before implementation.

#### **1.3.2.4 Testing.**

The Contractor shall provide laboratory Gas Chromatography/Mass Spectrometry (GC/MS) or better confirmation, only for those substance(s) for which instant result samples yielded a presumptive positive result.

The Contractor shall ensure that all laboratory drug-testing conducted shall incorporate immunoassay technology and that all positive results are verifiable by Gas Chromatography/Mass Spectrometry (GC/MS), Liquid Chromatography/Mass Spectrometry (LC/MS) or Liquid Chromatography – Mass Spectrometry/Mass Spectrometry (LC-MS/MS).

The Contractor shall provide instant testing kits that align with the 9-panel laboratory test and include adulterant tests for pH, specific gravity, and temperature.

##### **1.3.2.4.1 Test Reporting.**

The Contractor shall make the drug test results available to the Agency through secure web site or secure email with on-line reporting provided by the Contractor and when available the Contractor shall upload test results to the Agency through an Agency secure portal.

1. The Contractor shall provide a report for all specimens testing negative within five (5) Business Days of receipt of specimen by the lab.
2. The Contractor shall provide a report of all specimens testing positive within ten (10) Business Days of receipt of specimen by the lab.

##### **1.3.2.4.2 Retention.**

The Contractor shall do the following regarding test results and specimens:

1. Keep all test results on file in a secure electronic database for a minimum of seven years that is accessible to the Agency upon request.
2. Keep all specimens returning a positive result stored by the testing laboratory for a period of one year from the date that the test was conducted. After the one-year period, the test specimen shall be disposed of consistent with industry requirements.

3. Retain all specimens with a negative test result be stored by the testing laboratory for a period of one week from the date the test was conducted. After the one-week period, the test specimen shall be disposed consistent with industry requirements.

### 1.3.2.5 Drug Testing Standards.

Contractor shall ensure that each test shall be for at least the SAMHSA (Substance Abuse and Mental Health Services Administration) standards for a minimum of a five-panel test, which must include: marijuana, cocaine, PCP, amphetamines (including methamphetamine), and opiates, as well as test panels beyond the 5 panel, such as for a 9 and 14 panel tests. Contractor shall provide testing for a single additional drug not included in the standard panel test upon Agency request, when appropriate and if testing is available. The lab will test at cut off levels at or below the minimums mandated for federal workplace testing environments for urine testing. Testing shall be for the presence of parent drug and/or its metabolite(s) as industry standards of practice dictate.

Contractor's screening cutoff concentrations shall be consistent with the standards set by SAMHSA and if SAMHSA updates standards, the Contractor will implement adjustments to meet SAMHSA standards without contract amendment. These are established for urine testing. For other tests, the cutoff levels shall be within industry standards. Confirmation testing will be at or below screening test level.

Drug Testing Panel Configuration, the Contractor shall include the following:

1. 9 Panel UA:

9 Panel UA Drug Screen Drug Class		
<b>Amphetamines</b> Amphetamine Methamphetamine	<b>Benzodiazepines</b> Alprazolam Nordiazepam Diazepam Temazepam Ethyl flurazepam Lorazepam Oxazepam	<b>Methadone</b> EDDP
<b>Barbiturates</b> Amobarbital Butalbital Butobarbital Pentobarbital Phenobarbital Secobarbital	<b>Cocaine</b>  <b>Marijuana</b>	<b>Opiates</b> Morphine Codeine Hydrocodone Hydromorphone
		<b>Phencyclidine</b>  <b>Propoxyphene</b>

2. 9 Panel UA with Alcohol (using Ethanol Methodology for alcohol testing)

9 Panel UA + Alcohol Drug Screen Drug Class
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<b>Alcohol</b>	<b>Benzodiazepines</b> Alprazolam Nordiazepam Diazepam Ethyl flurazepam Temazepam Lorazepam Oxazepam	<b>Methadone</b> EDDP
<b>Amphetamines</b> Amphetamine Methamphetamine		<b>Opiates</b> Morphine Codeine Hydrocodone Hydromorphone
<b>Barbiturates</b> Amobarbital Butalbital Butobarbital Pentobarbital Phenobarbital Secobarbital	<b>Cocaine</b>  <b>Marijuana</b>	<b>Phencyclidine</b>  <b>Propoxyphene</b>

## 3. 14 Panel UA

14 Panel UA Drug Screen Drug Class		
<b>Amphetamines</b> Amphetamine Methamphetamine	<b>Benzodiazepines (cont.)</b> Temazepam Ethyl flurazepam Lorazepam Oxazepam	<b>Nalbuphine</b>
<b>Barbiturates</b> Amobarbital Butalbital Butobarbital Pentobarbital Phenobarbital Secobarbital	<b>Cocaine</b>  <b>Fentanyl</b>  <b>Marijuana</b>	<b>Opiates</b> Morphine Codeine Hydrocodone Hydromorphone
<b>Benzodiazepines</b> Alprazolam Nordiazepam Diazepam	<b>Meperidine</b>  <b>Methadone</b> EDDP	<b>Oxycodone</b> Oxymorphone
		<b>Pentazocine</b>
		<b>Phencyclidine</b>
		<b>Propoxyphene</b>

## 4. Sweat Patch

Sweat Patch Drug Class		
<b>Amphetamines</b> Amphetamine Methamphetamine	<b>Cocaine</b>  <b>Marijuana</b>  <b>Phencyclidine</b>	<b>Opiates</b> Heroin (6-MAM) Codeine Morphine

## 5. Hair Testing 5 Panel (Ingested Methodology is used for all Hair samples)

5 Panel Hair Testing Drug Screen Drug Class
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<b>Amphetamines</b>	<b>Cocaine / Metabolites</b>	<b>Opiates</b>
Amphetamine	Benzoyllecgonine	Morphine
Methamphetamine	Cocaine	Codeine
Ecstasy (MDMA)	Cocaethylene	Monoacetylmorphine (6-MAM) Heroin
MDA – Methylenedioxy - Amphetamine	Norcocaine	Hydrocodone
MDEA (Eve)	<b>Marijuana Metabolite</b>	Hydromorphone
	THCA	Oxycodone
	<b>Phencyclidine</b>	Oxymorphone

## 6. Oral Swab

7 Panel Oral Swab Drug Screen Drug Class		
<b>Amphetamines</b>	<b>Cocaine / Metabolites</b>	<b>Opiates</b>
Amphetamine	Benzoyllecgonine	Morphine
	Cocaine	Codeine
<b>Methamphetamine</b>	Cocaethylene	Monoacetylmorphine (6-MAM) Heroin
Ecstasy (MDMA)	Norcocaine	Hydrocodone
MDA – Methylenedioxy - Amphetamine	<b>Fentanyl</b>	Hydromorphone
MDEA (Eve)	<b>Marijuana Metabolite</b>	Oxycodone
	THCA	Oxymorphone
		<b>Phencyclidine</b>

## 7. Instant Test Kits

The instant test kits shall test for dilution, pH, creatine concentration, temperature and specific gravity measures. In addition, these instant test kits shall include:

- Alcohol
- Amphetamines
- Barbiturates
- Benzodiazepines
- Cocaine
- Marijuana
- Methadone
- Opiates
- Phencyclidine

### 1.3.2.6 Specific Test Methodology and Laboratory Requirements.

The Contractor shall provide to the Agency its laboratory certifications for all test types.

- The Contractor shall ensure that laboratory work is certified by the College of American Pathologists at a minimum.
- The Contractor shall provide original and updated/renewed certifications to the Agency.
- The Contractor shall implement the Services of a certified Medical Review Officer (MRO) for the review and interpretation of laboratory-based drug test results conducted under this contract, as requested by the Agency, no later than August 1, 2025. The MRO must be a

licensed physician with appropriate medical training and certification in toxicology and substance use testing review. The MRO shall:

- a. Review and verify positive, adulterated, substituted, and invalid test results.
  - b. Conduct confidential interviews with individuals to determine whether an alternative medical explanation exists for any non-negative laboratory result.
  - c. Ensure the integrity of the testing process by reviewing Chain of Custody documentation and confirming the laboratory's adherence to required testing protocols.
  - d. Report final verified results to collections and the Agency in a manner consistent with applicable laws, confidentiality requirements, and contractual obligations.
4. The Contractor shall maintain documentation of MRO qualifications and ensure that MRO Services remain in compliance with applicable federal and state regulations, including, but not limited to, U.S. Department of Health and Human Services and Substance Abuse and Mental Health Services (SAMHSA) guidelines. Failure to comply with this requirement may result in contract termination or other enforcement action as determined by the Agency.

The Agency desires these additional laboratory certifications and if the Contractor has these additional certifications, then the Contractor shall provide the Agency a copy of one or both of these specific additional certifications.

1. Certification from Substance Abuse and Mental Health Services Administration (SAMHSA).
2. Certification from Clinical Laboratory Improvement Amendments Program.

#### **1.3.2.6.1 Urine**

The Contractor shall provide both Point of Collection Test (POCT) result testing supplies and laboratory-based testing. The Contractor shall provide testing through a laboratory qualified to test urine samples and/or must have a contractual relationship with laboratory that is qualified. The Contractor shall perform adulterant checks, including temperature, specific gravity, pH, and Creatinine. The Contractor shall provide Creatinine levels for all laboratory testing.

#### **1.3.2.6.2 Hair**

The Contractor shall provide testing through a laboratory qualified to test hair.

#### **1.3.2.6.3 Alcohol**

With Agency authorization, Contractor shall provide testing for the use of alcohol. This shall be offered as POCT instant test and a lab-based urine 9 panel plus alcohol test.

#### **1.3.2.6.4 Sweat, through Sweat Patch Collection**

The Contractor shall provide the Agency with Sweat Patch Standard Panel for Agency authorized utilization.

1. The Contractor shall follow these Guidelines for Sweat Patches:
  - a. Contractor shall provide Sweat Patch Test Kits including all laboratory testing to be conducted under this Contract.
  - b. Contractor shall provide Sweat Patch Test Kit that includes all supplies for the Sweat Patch plus overlays at no additional cost to the Agency.
  - c. Contractor shall provide test kits that have marked lot number and expiration date on the outside of the package.
  - d. Contractor shall provide Sweat Patch Test Kits that are storable at room temperature and once the specimen has been collected, the specimen shall be storable and shippable at room temperature.
  - e. Contractor shall have qualified staff representatives that are trained in substance abuse and shall be available to the Agency to discuss product performance, assist in

addressing training needs, provide reports relating to product and testing performed, and address other issues that may develop.

- f. Contractor shall maintain proof of FDA 510 (k) certification of each product requiring certification. Failure to use FDA 510 (k) cleared products shall constitute a material breach of this Agreement.
- g. Contractor's sweat patch kit shall be capable of testing for at a minimum: marijuana (THC), cocaine, opiates, amphetamines, and phencyclidine (PCP).

#### **1.3.2.6.5 Oral Swab**

The Contractor shall provide testing through a laboratory qualified to test oral swabs.

### **1.3.3 Contractor Reports and Data.**

The Contractor shall provide the Agency with data, reports and information regarding Drug Testing Collections and Laboratory Services. Contractor shall send this report through secure/encrypted electronic file transfer to the Agency and when available, upload it to the Agency through Agency secure portal. The Agency reserves the right to approve the format of reports, change report submission and request additional reports in collaboration with Contractor.

#### **1.3.3.1 Collections Utilization Reporting**

The Contractor shall develop and submit the following quarterly reports to the Agency Contract Manager and Contract Specialist. The draft report format shall be provided to the Agency review and approval no later than 60 days following the execution of the contract.

##### **1. Utilization Report by Mode of Collection**

Data elements, at a minimum, shall contain:

- a. The number of collections obtained by the three modes of collection (Fixed Site Collection Facilities, In-Home Collection Services, and Emergency Collection Services).
- b. The Contractor shall capture and report these data elements for each Agency Service Area on a quarterly basis with statewide cumulative numbers.

##### **2. Fixed Site Utilization Report**

Data elements at a minimum shall contain:

- a. The total number of all types (Urine, Instant, Hair, Sweat Patch, Oral Swab) of collections, attempts, and refusals for each Fixed Site Collection Facility by Service Area.
- b. The total number of hours each Fixed Site Collection Facility operated during the quarter.
- c. The average number of collections per the hours of operation during the quarter for each Fixed Site Collection Facility

Quarterly reports shall be provided to the agency by the 25<sup>th</sup> day of the month following the end of the quarter unless otherwise approved by the Agency. Agency quarters are July- September; October-December; January-March; and April-June.

#### **1.3.3.2 Laboratory Utilization Reporting**

The Contractor shall submit Monthly Utilization Report to the Agency by the 25th day of the following month. The draft report format shall be provided to the Agency for review and approval no later than ten (10) days following the execution of the contract.

- 1. Contractor Monthly Utilization Report shall include, at minimum, all test types not directly Invoiced through the Agency secure portal
- 2. At a minimum, the fields of this report shall include the following:
  - a. Service Area Number
  - b. County Number

- c. Authorization Number
  - d. Funding Source
  - e. FACS or STAR ID
  - f. Type of test
  - g. Client Last Name
  - h. Client First Name
  - i. Date of Sample arrived at Lab
  - j. Date Lab. Analysis completed
  - k. Date Test Results available to Agency
  - l. Test result
  - m. Specimen ID Number
  - n. Amount billed
3. The report shall be in a searchable format

#### **1.3.4 Drug Testing Performance Measures.**

These Performance Measures and Targets are included as part of this Contract and may be used by the Agency to assess performance by the Contractor. The Agency has designed the Performance Measures to align Contractor performance with better outcomes for children and families. NOTE: These Performance Measures do not have incentive payments attached to them.

##### **1.3.4.1 Performance Measure 1 — Combined Error Rates**

The Contractor shall achieve a six percent (6%) combined billing error rate or less. Combined billing error rate are those errors identified on the laboratory electronic Invoice and are a result of errors created by the Contractor and the Agency.

1. The method of determination for the combined billing rate will be utilizing the reported errors on the laboratory electronic Invoice that capture collection errors, laboratory errors, and Agency errors.
2. These kinds of errors include but are not limited to the following:
  - a. Quantity not sufficient for laboratory analysis
  - b. Exceeding authorized number of tests
  - c. Tests collected before or after the Authorization expires
  - d. Wrong test conducted by laboratory
  - e. Wrong FACS ID Number
  - f. Wrong test collected
3. The Agency will determine the combined billing error rate on a quarterly basis, excluding the start-up quarter (July 1, 2025, through September 30, 2025).
  - a. If the combined billing error rate on a statewide basis is at or below six percent (6%), the Agency will not formally analyze the data to attribute the actual billing error rate.
  - b. If the combined billing error rate on a statewide basis is above six percent (6%), the Agency will formally analyze the data to attribute the actual billing error rates for collection errors, laboratory errors and Agency errors.
    - i. A Program Improvement Plan will be required from the Contractor if the actual error rate for either collection errors and/or laboratory errors is above three percent (3%). See 1.3.6.2 *Program Improvement Plans*.

##### **1.3.4.2 Performance Measure 2 – Fixed Site Scheduling**

Contractor shall submit Fixed Site Collection Facilities' monthly schedules and related changes/updates to the Agency 90 % of the time as required in this Contract.

1. The method of determination will be from a tracking tool that logs in receipt of schedules and related changes.

#### **1.3.4.3 Performance Measure 3 – Test Result Timeframes.**

The Contractor shall make the drug test results available to the Agency through secure email or with online reporting when available within specified periods at a minimum of ninety percent (90%) of the time.

The Contractor shall:

1. Provide a report for all specimens testing negative within five (5) Business Days of receipt of specimen.
2. Provide a report of all specimens testing positive within ten (10) Business Days of receipt of specimen.
3. Compliance with this performance measure may be determined by a semi-annual survey to Service Area Drug Testing Contacts and the Service Area Manager or designee and/or by cross- referencing the Quarterly Utilization Reports and Chain of Custody documents. If no concerns have been reported to assigned Contract Specialist about Laboratory timeliness, then the Agency reserves the right not to conduct a formal survey and report the performance measure as met. In the event that the Agency determines that this performance measure is not met, then the Contractor shall be expected to complete a Performance Improvement Plan and will have six months to improve their performance and to achieve this performance measure. See *1.3.6.2 Program Improvement Plans*.

#### **1.3.5 Contractor Quality Assurance and Improvement Monitoring System.**

The Contractor shall

1. Have a person or persons designated to keep delivery of service at or above contractual requirements.
  - a. The Contractor shall also designate qualified backup personnel to ensure continuity of service in the event of absence, illness, or separation of designated staff.
2. Develop and implement a Quality Assurance and Improvement Monitoring System to ensure that it is delivering collection Services in accordance with the Contractual requirements.
3. Meet with each Agency Service Area at least once per year and when requested by the Agency to review and discuss delivery of collection Services.
4. Comply with all federal and state laws regarding confidentiality of health information, including, but not limited to Iowa Code 217.30, HIPAA, and 42 CFR Part 2, as applicable.

If the Contractor is informed by the Agency that their delivery of service is below contractual requirements the Agency requires the Contractor to remedy the situation within twenty-four (24) hours.

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

**1.3.6.1 Agency Monitoring Clause.** The Agency's Service Area will assign designees to verify Invoices and supporting documentation. The Agency assigned Contract Manager and Contract Specialist will determine compliance with general contract terms, conditions, and requirements and assess compliance with Deliverables, performance measures, or other associated requirements.

The Agency's Service Area Managers or designees will perform duties related to the Contract. These designees will assist in the coordination of the day-to-day implementation of Drug Testing. They will identify and resolve most matters related to collection and laboratory issues related to

their Service Area without direct assistance from the Agency assigned Contract Manager and Contract Specialist. The following is a list of the general tasks performed by either the Service Area Drug Testing contact person and/or other Service Area designee. This list is subject to change at the sole discretion of the Agency.

1. Receive collection monthly schedule and updated schedules.
2. When required, provide technical assistance to Agency Referral workers assigned to their Service Area.
3. Respond to questions from the contractor about collections and/or the laboratory about items unique or specific to a Service Area.
4. Inform the Agency assigned Contract Manager and Contract Specialist of concerns about the Drug Testing collections and/or delivery of service.

The Agency assigned Contract Manager and Contract Specialist will oversee and monitor this Contract. This list is subject to change at the sole discretion of the Agency.

1. Will review Invoices and reports.
2. Will conduct Fixed Site Collection Facility visits.
3. Will track the submission of Fixed Site Collection Monthly Facility schedule and related updates.

**1.3.6.2 Program Improvement Plans.** If the Contractor does not achieve the required Performance Measures identified in Section 1.3.4, the Contractor shall develop and submit to Agency a Program Improvement Plan for approval. The Program Improvement Plan shall be approved by the Agency's Contract Owner and in place within thirty (30) Business Days of notification from the Contract Specialist that the Contractor does not comply with performance requirements.

1. The Program Improvement Plan shall describe the action steps and appropriate improvement benchmarks the Contractor shall implement in order to meet the Agency's minimum compliance expectations.
2. The Program Improvement Plan shall continue for a maximum of six (6) months and shall contain measurable improvement goals that will be achieved by the Contractor during the six-month period. The Agency Contract Owner will review Program Improvement Plans for approval.
3. Once the Agency has approved the Program Improvement Plan, the Contractor shall submit required documentation, including monthly reports concerning progress on their plan to the Agency Contract Specialist who will disseminate the documentation to the Contract Manager and Agency Administrators. The Contract Specialist will monitor implementation of the plan and monitor monthly progress throughout its duration.

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

1. Review submitted Contractor data reports for compliance with submission requirements.
2. Develop and Submit Summary of On-Site Report to Contract Owner and make recommendations regarding such things as contract amendments and/or contract renewals.
3. Meet and discuss with Contractor overall delivery of its service and possible areas of improvement for service delivery. These meetings may be virtual, telephonic and/or face-to-face.

**1.3.6.4 Problem Reporting.** As stipulated by the Agency, the Contractor and/or Agency shall provide a report listing any problem or concern encountered. Records of such reports and other

related communications issued in writing during the course of Contract performance shall be maintained by the parties. At the next scheduled meeting after a problem has been identified in writing, the party responsible for resolving the problem shall provide a report setting forth activities taken or to be taken to resolve the problem together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. The Contract Owner has final authority to approve problem-resolution activities.

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

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

## **1.4 Contract Payment Clause.**

**1.4.1 Pricing and Payment Methodology.** In accordance with the payment terms outlined in this section and the Contractor's completion of the Scope of Work as set forth in this Contract, the Contractor will be compensated as follows. The Agency has no control over the number of clients it serves which impacts the volume of Drug Testing.

**1.4.1.1 Collections Payment Methodology.** Contractor shall Invoice for collections, attempts, refusals and related fees performed at Fixed Site Collection Facilities on a monthly basis in accordance with Drug Testing Collection Price Schedule, refer to separate Attachment B. Invoices shall be submitted for review to each Service Area within 15 calendar days of the end of the month of service. Final Invoices shall be submitted to the Contract Specialist within 25 calendar days of the end of the month of service.

1. The Contractor shall Invoice only the trip charge for In-Home Collection attempts and refusals, and Emergency Collection Attempts and refusals on a monthly basis.
2. The Contractor shall Invoice the trip charge and collection fee(s) for In-Home Collection and Emergency Collections on a monthly basis.
3. The Agency reserves the right to withhold payment to the Contractor for collections that
  - a. Exceed the authorized number of tests or for collections that occur after the Authorization expires.
  - b. Are administered by staff that have not had the appropriate training for the specific collection type used on a sample.
  - c. Are administered or attempted to administer outside of the timeframe indicated on the Authorization.
  - d. Are administered or attempted to administer without an Authorization.
4. See Drug Testing Collection Price Schedule Attachment B (separate attachment) that contains information for Agency Guaranteed structured pricing and amounts.
  - a. The Agency is guaranteeing a minimum monthly amount that is contained in the Price Schedule with related processes.
5. The Agency with approval of Contract Owner may utilize a GAX payment for guaranteed minimum amounts if volume is below scheduled levels. The Agency will determine the share of guaranteed amount for each Service Area and GAX Payment will be handled by assigned Contract Specialist.

**1.4.1.2 Laboratory Payment Methodology.** The Agency will reimburse the Contractor based on the values established on the Contract's Drug Testing Laboratory Services Price Schedule, refer to separate Attachment C. The Contractor shall submit a monthly electronic Invoice through Agency secure portal in a format determined by the Agency within 30 days of the service being provided.

The Contractor shall at a minimum, provide the following data elements that need to be included on the Invoice and uploaded onto an Agency secure website in an Agency accepted format. The Agency will provide at least the first seven elements at the time of Authorization:

1. Service Area Number
2. County Number
3. Authorization Number
4. FACS or STAR ID
5. Type of Test
6. Client Last Name
7. Client First Name
8. Date of Test
9. Test result
10. Specimen ID Number
11. Amount billed

Contractor shall submit monthly Invoices reflecting test types not directly invoiced through the Agency secure portal. When applicable, the Invoice will include costs for any single additional drugs beyond the standard panels. The Contractor will provide pricing for drugs beyond standard panel testing to the Agency for approval. Payment will be contingent on the Agency's timely receipt of utilization reports detailing test results as set forth in Section 1.3.3.2 Laboratory Utilization Reporting.

Contractor may Invoice the Agency for MRO review of positive, adulterated, substituted, and invalid test results following completion of the review in an amount consistent with the Drug Testing Services Laboratory Price Schedule (Attachment C). Invoices shall be submitted to the Contract Specialist within 25 calendar days of the end of the month of service.

Contractor may Invoice the Agency for Initial Training and annual training following completion of those trainings and in an amount consistent with the Contract's pricing sheet.

Contractor shall Invoice only for the rates established in their Cost Proposal for expert court testimony. Contractor shall only Invoice for expert testimony for preparation or consultation, rates for waiting time on telephone to testify, and rates for actual telephone testimony time. Contractor shall have no exception to this invoicing and shall be responsible for reimbursement exceeding contracted Agency payment obligations.

**1.4.2 Timeframes for Regular Submission of Initial and Adjusted Invoices.** The Contractor shall submit an Invoice for Services rendered in accordance with this Contract. Invoice(s) shall be submitted monthly. Unless a longer timeframe is provided by federal law, and in the absence of the express written consent of the Agency, all Invoices shall be submitted within six months from the last day of the month in which the Services were rendered. All adjustments made to Invoices shall be submitted to the

Agency within ninety (90) days from the date of the Invoice being adjusted. Invoices shall comply with all applicable rules concerning payment of such claims.

**1.4.3 Submission of Invoices at the End of State Fiscal Year.** Notwithstanding the timeframes above, and absent (1) longer timeframes established in federal law or (2) the express written consent of the Agency, the Contractor shall submit all Invoices to the Agency for payment by August 1<sup>st</sup> for all Services performed in the preceding state fiscal year (the State fiscal year ends June 30).

**1.4.4 Payment of Invoices.** The Agency shall verify the Contractor's performance of the Deliverables before making payment. The Agency will not automatically pay end of state fiscal year claims that are considered untimely. If the Contractor seeks payment for end of state fiscal year claim(s) submitted after August 1<sup>st</sup>, the Contractor may submit the late claim(s). The Agency may require a justification from the Contractor for the untimely submission. The Agency may reimburse the claim if funding is available after the end of the state fiscal year. If funding is not available after the end of the state fiscal year, the Agency may submit the claim to the Iowa State Appeal Board for a final decision regarding reimbursement of the claim.

The Agency shall pay all approved Invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa law.

**1.4.5 Reimbursable Expenses.** Unless otherwise agreed to by the parties in an amendment or change order to the Contract that is executed by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor pursuant to this Contract. The Contractor shall be solely responsible for paying all costs, expenses, and charges it incurs in connection with its performance under this Contract.

## **1.5 Insurance Coverage.**

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

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

Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Professional Liability	Each Occurrence	\$2 Million
	Aggregate	\$2 Million

**1.6 Data and Security.** If this Contract involves Confidential Information, the following terms apply:

**1.6.1 Security Framework.** The Contractor shall comply with at least one of the following and provide evidence of such compliance to Agency upon request:

- Certification with one or more of the following security frameworks: NIST SP 800-53, NIST Cybersecurity Framework, HITRUST, COBIT, CSA STAR, ISO 27001, SOC 2 Type II, CIS Controls or PCI-DSS prior to implementation of the system and when the certification(s) expire, or
- Compliant with HIPAA Security Rule 45 CFR Part 160 and Subparts A and C of Part 164.

**1.6.2 Vendor Security Questionnaire.** The Contractor shall provide a fully completed copy of the Agency's Vendor Security Questionnaire (VSQ) upon Agency request.

**1.6.3 Cloud Services.** The Contractor shall be compliant with at least one of the following and provide evidence of such compliance to Agency upon request:

- FedRAMP authorization with impact level moderate prior to implementation of the system, or
- Certification with one or more of the following security frameworks: NIST SP 800-53, NIST Cybersecurity Framework, HITRUST, COBIT, CSA STAR, ISO 27001, SOC 2 Type II, CIS Controls or PCI-DSS prior to implementation of the system and when the certification(s) expire.

**1.6.4 Addressing Concerns.** The Contractor shall timely resolve any outstanding concerns identified by the Agency regarding the Contractor's submissions required in this section.

**1.6.5 Business Associate.** If the Contractor is designated as a Business Associate through this Contract, the Contractor agrees to follow Section 3.2 of the Contingent Terms for Service Contracts. By signing this Contract, the Business Associate certifies it will comply with the Business Associate Agreement Addendum ("BAA"), and any amendments thereof, as posted to the Agency's website: <https://hhs.iowa.gov/media/2904/download?inline>

#### **1.6.6 Data Sharing Terms.**

1.6.6.1. Purpose: Iowa HHS will provide the minimum necessary amount of client identification data (Client name, Client Phone and Client Address) to the contractor to ensure the collection of a reliable drug test and the testing of the sample. Contractor will collect and process the sample for testing, preserving the chain of custody. The results of the drug screen will be uploaded into a secure platform for HHS to review the results. There may be times when an instant test may be collected, and the instant test results will be sent electronically to the referring worker.

#### **1.6.6.2. Legal Authority**

The Agency is to administer programs designed to protect and improve the health, well-being, and productivity of the people of the state of Iowa according to Iowa Code 217.1A. Information about an

individual receiving services or assistance from the agency shall be held confidential according to Iowa Code 217.30. Iowa HHS may share this confidential data to carry out the agency's official duties or as necessary to administer a program according to Iowa Administrative Code 441—9.10(4).

## **1.7 Reserved. (*Labor Standards Provisions.*)**

# **SECTION 2. GENERAL TERMS FOR SERVICE CONTRACTS**

**2.1 Definitions.** When appearing as capitalized terms in this Contract (including any attachments) the following quoted terms (and the plural thereof, when appropriate) have the meanings set forth in this section.

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

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

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

**“Applicable Law”** means all applicable federal, state, and local laws, rules, ordinances, regulations, orders, guidance, and policies in place at Contract execution as well as future amendments, changes, and additions to such laws as of the effective date of such change. Applicable Law includes, without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of Services (e.g., Iowa Code Chapter 216 and Iowa Code § 19B.7). For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors of suppliers. The term Applicable Law also encompasses the applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Office of the Chief Information Officer.

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

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

**“Confidential Information”** means, subject to any applicable State and federal laws and regulations, including, but not limited to, Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “Disclosing Party”) to the other party (a “Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that could be used to identify recipients, subjects, or applicants of Agency Services and recipients of Contract Services including, but not limited to protected health information (45 C.F.R. § 160.103), personal information (Iowa Code § 715C.1(11)), reportable disease information (Iowa Code § 139A.3, 641 IAC chapter 1), medical records (Iowa Code § 22.7(2)), immunization information (641 IAC 7.11), public health information (Code of Iowa, Title IV), substance use treatment information (42 CFR Part 2), Agency security protocols and procedures, Agency system architecture, information that could compromise the security of the Agency network or systems, and

information about the Agency's current or future competitive procurements, including the evaluation process prior to the formal announcement of results.

Confidential Information does not include any information that: (1) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (2) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (3) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (4) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (5) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; or (6) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

**"Contract"** means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified in the Contract Declarations and Execution Section.

**"Deficiency"** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

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

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

**"Equipment"** means as any item costing \$5,000 or more and having an anticipated life of one year or more.

**"Invoice"** means a Contractor's claim for payment. At the Agency's discretion, claims may be submitted on an original Invoice from the Contractor or may be submitted on a claim form acceptable to the Agency, such as a General Accounting Expenditure (GAX) form.

**"Solicitation"** means the formal or informal procurement (and any addenda thereto) identified in the Contracts Declarations and Execution Section that was issued to solicit the Bid Proposal leading to this Contract.

**"Special Contract Attachments"** means any attachment to this Contract.

**"Special Terms"** means the Section of the Contract entitled "Special Terms" that contains terms specific to this Contract, including but not limited to the Scope of Work and contract payment terms.

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

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

**2.2 Duration of Contract.** The term of the Contract shall begin and end on the dates specified in the

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

**2.3 Scope of Work.** The Contractor shall provide the necessary facilities, materials, Services, and qualified personnel to satisfactorily perform and provide all work and Services set forth in this Contract. The Contractor shall provide Deliverables that comply with and conform to the Specifications. Deliverables shall be performed within the boundaries of the United States.

## **2.4 Compensation.**

**2.4.1 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to the Contractor, in whole or in part, without penalty to the Agency or work stoppage by the Contractor, in the event the Agency determines that: (1) the Contractor has failed to perform any of its duties or obligations as set forth in this Contract; (2) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency; or (3) the Contractor has failed to perform Close-Out Event(s). No interest shall accrue or be paid to the Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

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

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

## **2.5 Termination or Suspension.**

**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 specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to the Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

**2.5.1.1** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors 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 or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors related to the Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

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

**2.5.1.7** The Agency determines or believes the Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors 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 or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors 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 related to work under this Contract;

**2.5.1.9** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

**2.5.1.10** Any of the following has been engaged in by or occurred with respect to the Contractor or any corporation, shareholder or entity having or owning a controlling interest in the Contractor:

Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- Making an assignment for the benefit of creditors;
- Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional

capital and liquidity as is reasonably adequate or necessary in connection with the Contractor's performance of its obligations under this Contract; or

- Taking any action to authorize any of the foregoing.

**2.5.2 Termination Upon Notice.** Following a thirty (30) day written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to the Contractor. Termination can be for any reason or no reason at all.

**2.5.3 Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

**2.5.3.1** The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract;

**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;

**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;

**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.

**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;

**2.5.5.5** Any amount or form of payment that would violate State or federal law; or

**2.5.5.6** 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 or otherwise maintain or provide any property or data, records, or materials, whether tangible or intangible, provided by the Agency to the Contractor, as directed by the Agency.

**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. 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 Agency may, at its sole discretion, place the Contractor on a publicly available list of contractors barred from entering into any contract with the Agency.

**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 or that the Agency determines do not satisfy its Acceptance Tests.

**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.

**2.5.6.6** Address any equipment purchased with Agency funds with the Agency. Title to any

Equipment purchased in whole or in part with Agency funds through this Contract resides with the Agency. Upon Contract expiration or termination the Agency reserves the right to transfer title to the Equipment to the State, the Contractor, or another contractor.

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

**2.5.8 Suspension.** When, as determined by the Agency, a Contractor has materially failed to comply with the terms and conditions of the Contract, the Agency may suspend the Contract, in whole or in part, upon written notice. The notice of suspension will state the reason(s) for the suspension, any corrective action required, and the effective date.

**2.5.8.1** The Agency shall have the right to suspend the contract without penalty by providing ten (10) days written notice to the Contractor if any of the following conditions exist:

- The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract;
- Adequate funds are de-appropriated, reduced, or not allocated or available or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;
- The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department; or
- The Department's duties are substantially modified.

**2.5.8.2** A suspension shall be in effect until the Contractor has provided evidence satisfactory to the Agency that corrective action has been or will be taken, until the contract is terminated; or until sufficient funding is reallocated to the Agency, as determined by the Agency in its sole discretion.

**2.5.8.3** Obligations incurred by the Contractor during the suspension period shall not be allowed unless expressly authorized in the notice of suspension or otherwise expressly approved by the Agency.

## **2.6 Indemnification.**

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

**2.6.1.1** Any breach of this Contract;

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

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

**2.6.1.4** 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;

**2.6.1.5** Any failure by the Contractor to comply with all federal, state, and local laws and regulations applicable to this Contract; or

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

## **2.7 Insurance.**

**2.7.1 Insurance Requirements.** The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract, which includes any extensions or renewals thereof. Insurance shall be provided through companies licensed by the State of Iowa, through statutorily authorized self-insurance programs, through local government risk pools, or through any combination of these. The Contractor's insurance shall, among other things:

**2.7.1.1** Be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy.

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

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

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

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

**2.7.3 Certificates of Coverage.** The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract, which includes any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance

written approval of the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least a thirty (30) day prior written notice to the Agency. The certificates shall be subject to approval by the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

**2.7.4 Notice of Claim.** Contractor shall provide prompt notice to the Agency of any claim related to the contracted Services made by a third party. If the claim matures to litigation, the Contractor shall keep the Agency regularly informed of the status of the lawsuit, including any substantive rulings. The Contractor shall confer directly with the Agency about and before any substantive settlement negotiations.

## **2.8 Ownership and Security of Agency Information.**

**2.8.1 Ownership and Disposition of Agency Information.** Any information, records, or data either supplied by the Agency to the Contractor, or collected by the Contractor, in the course of the performance of this Contract shall be considered the property of the Agency ("Agency Information"). The Contractor shall not use Agency Information for any purpose other than providing Services under the Contract. The Contractor shall not disclose, sell, assign, lease, or otherwise provide Agency Information to third parties, except as expressly authorized through this Contract, and the Contractor shall not allow commercial exploitation of Agency Information by or on behalf of the Contractor. The Agency shall own all Agency Information that may reside within the Contractor's hosting environment or equipment/media.

**2.8.2 Foreign Hosting and Storage Prohibited.** Confidential Information shall be hosted and stored within the continental United States only.

**2.8.3 Access to Agency Information that is Confidential Information.** The Contractor and its employees, agents, and subcontractors may have access to Agency Information that is Confidential Information only to the extent necessary to carry out responsibilities under the Contract. Access to such Confidential Information shall comply with the State's policies, procedures, and standards, and all restrictions, obligations, and responsibilities of the Contractor with regard to Confidential Information under this Contract shall also apply to the subcontractors, and the Contractor shall include in all of its subcontracts a clause that so states. The Contractor shall maintain written documentation of all agents and subcontractors with access to Agency Information that is also Confidential Information and provide this documentation to the Agency upon request. In all instances, access to Confidential Information from outside of the continental United States, either by the Contractor, including a foreign office or division of the Contractor or its affiliates or associates, or any subcontractor, is prohibited.

**2.8.4 No Disclosure of Confidential Information.** The Contractor shall maintain the confidentiality of and protect from unauthorized disclosure all Agency Information that is Confidential Information. The Contractor shall not disclose any Confidential Information collected, maintained, or used in the course of performance of the Contract only except as expressly permitted herein or required by law and this Contract. The Contractor shall not link any data provided by the Agency with any other data systems or data sets without prior written permission from the Agency. The Contractor may be held civilly or criminally liable for improper use or disclosure of Confidential Information.

**2.8.5 Contractor Breach Notification Obligations.** The Contractor shall immediately report to the Agency Contract Manager any unauthorized access or disclosure of Confidential Information. 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 or other event requiring notification under applicable law, 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.

**2.8.6 Compliance of Contractor Personnel.** The Contractor and the Contractor's personnel shall comply with 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 incidents and 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. By way of example only, see Iowa Code 8B.23, and <https://ocio.iowa.gov/home/standards>.

**2.8.7 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.

**2.8.8 Return and/or Destruction of Information.** Notwithstanding Contractor's obligations for maintaining records expressly contained herein, including 2.12.25.2, 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. The Contractor shall comply with these directives within thirty (30) days unless another timeframe is mutually agreed upon by the parties. 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 Intellectual Property.**

**2.9.1 Ownership and Assignment of Other Deliverables.** The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title, and interest in and to all Deliverables and all intellectual property and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. The Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any

purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by the Agency, upon completion or termination of this Contract, the Contractor will immediately turn over to the Agency all Deliverables not previously delivered to the Agency, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors, or affiliates, without the prior written consent of the Agency.

**2.9.2 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.

**2.9.3 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 2.9, Intellectual Property.

**2.9.4 Publications.** Unless expressly authorized by the Contract, the Contractor shall not publish in any format any final or interim report, document, form, presentation, or other material developed as a result of this Contract without the express written consent of the Agency as requested through the Contract Manager. Any publication containing Agency Information shall follow all Agency confidentially policies and procedures. 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 Warranties.**

**2.10.1 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 2.10.3, the provisions of this section apply during the Warranty Period as defined in the Special Terms.

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

**2.10.2.1** 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;

**2.10.2.2** 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

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

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

**2.10.3.1** The Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. 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 Subsection 2.10.3 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.

### **2.10.4 The Contractor represents and warrants that the Deliverables shall:**

**2.10.4.1** Be free from material Deficiencies; and

**2.10.4.2** Meet, conform to, and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. 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 Deliverables 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 Deliverables.

**2.10.5** 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.

**2.10.6** The Contractor represents and warrants that the Deliverables will comply with all Applicable Law.

**2.10.7 Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

## **2.11 Acceptance of Deliverables.**

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

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

## **2.12 Contract Administration.**

**2.12.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents, and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division, or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax

purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

**2.12.2 Incorporation of Documents.** To the extent this Contract arises out of a Solicitation, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the Solicitation and the Bid Proposal. The Solicitation and the Bid Proposal are incorporated into the Contract by reference. If the Contractor proposed exceptions or modifications to the Sample Contract attached to the Solicitation or to the Solicitation itself, these proposed exceptions or modifications shall not be incorporated into this Contract unless expressly set forth herein.

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

**2.12.4 Compliance with the Law; Nondiscrimination in Employment.** The Contractor, its employees, agents, and subcontractors shall comply with all Applicable Law. All such Applicable Law is incorporated into this Contract as of the effective date of the Applicable Law. The Contractor and Agency expressly reject any proposition that future changes to Applicable Law are inapplicable to this Contract and the Contractor's provision of Deliverables or performance in accordance with this Contract. When providing Deliverables pursuant to this Contract the Contractor, its employees, agents, and subcontractors shall comply with all Applicable Law.

**2.12.4.1** The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by Applicable Law. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding Services to clients as required under 11 Iowa Admin. Code chapter 121.

**2.12.4.2** The Contractor, its employees, agents, and subcontractors shall also comply with all Applicable Law regarding business permits and licenses that may be required to carry out the work performed under this Contract.

**2.12.4.3** In the event the Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in Section 2.12.9, Use of Third Parties, the Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

**2.12.4.4** Notwithstanding anything in this Contract to the contrary, the Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend in whole or in part this Contract. The State may further declare the Contractor ineligible for future State contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

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

**2.12.6 Non-Exclusive Rights.** This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the entire term of this Contract, which includes any extensions or renewals thereof.

**2.12.7 Amendments.** With the exception of the Contract end date, which may be extended in the Agency's sole discretion, this Contract may only be amended by mutual written consent of the parties. Amendments shall be executed on a form approved by the Agency that expressly states the intent of the parties to amend this Contract. This Contract shall not be amended in any way by use of terms and conditions in an Invoice or other ancillary transactional document. To the extent that language in a transactional document conflicts with the terms of this Contract, the terms of this Contract shall control.

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

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

**2.12.10 Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. All litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

**2.12.11 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. The Contractor shall submit a written agreement with a proposed assignee or designee, as directed by the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

**2.12.12 Integration and Order of Precedence.** This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract. In the event of a conflict between or among the provisions of the Contract, the conflict shall be resolved according to the following priority, ranked in descending order with the governing language from the Contract document listed first in the following list: (1) Written amendment mutually executed by the parties or as executed in accordance with Section 2.2, Duration of Contract; (2) Special Terms; (3) General Terms and Conditions for Service Contracts; (4) Contingent Terms for Service Contracts; (5) Solicitation; (6) Bid Proposal.

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

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

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

**2.12.16 Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, for any default of activities and obligations, and for any fiscal liabilities.

**2.12.17 Supersedes Former Contracts or Agreements.** This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.

**2.12.18 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**2.12.19 Notice.** Any notices required by the Contract shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party's Contract Manager as set forth in the Contract Declarations and Execution Section. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party. Each such notice shall be deemed to have been provided:

- At the time it is actually received in the case of hand delivery;
- Within one (1) day in the case of overnight delivery, courier or Services such as Federal Express with guaranteed next-day delivery; or
- Within five (5) days after it is deposited in the U.S. Mail.

**2.12.20 Cumulative Rights.** The various rights, powers, options, elections, and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of

the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.

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

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

**2.12.23 Authorization.** Each signatory to the Contract or subsequent Contract amendments and the Contractor represents and warrants that:

**2.12.23.1** The signatory has the right, power, and authority to enter into this Contract and to bind the party represented by the signatory to this Contract, and the Contractor has the right, power, and authority to perform its obligations under this Contract.

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

**2.12.24 Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

**2.12.25 Records Retention and Access.**

**2.12.25.1 Financial Records.** The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency during the entire term of this Contract, which includes any extensions or renewals thereof, and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the Contractor relating to orders, Invoices or payments, or any other Documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or other similar provision addressing proper use of government funds, the Contractor shall comply

with these additional records retention and access requirements:

**2.12.25.1.1** Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third-party in-kind (property or service) contributions, these funds must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

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

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

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

**2.12.25.2 Client Records.** The Contractor shall retain all non-medical and medical client records for a period of seven (7) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9), whichever is greater.

**2.12.25.3 Contractual Records.** The Contractor agrees to provide to the Agency, upon request, all records related to the Contract including but not limited to client records, statistical information, data, board and other administrative records, and financial records including budget, accounting activities, financial statements, and audit information. This includes records related to the Contract that may be in the possession of the Contractor's agents or subcontractors.

**2.12.25.4 Equipment Records.** The Contractor shall maintain inventory control records and maintenance procedures for all Equipment purchased in whole or in part with Agency funds or obtained from state surplus or the Agency. 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 the total cost of item paid for by Agency funds; and, if available, vendor name, manufacturer's serial number, purchase price, date of acquisition, date of disposition, disposition price, and type of disposition.

A control system (including an annual physical inventory) shall be implemented and maintained to ensure adequate safeguards to prevent loss, damage, or theft of Equipment. Any loss, damage, or theft shall be investigated, fully documented, and reported to the Agency. The Contractor shall also report suspected theft to local law enforcement. 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.

## **2.12.26 Audits.**

**2.12.26.1** The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the separate letter to management addressing a deficiency in internal control and/or material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

**2.12.26.2** The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

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

**2.12.27 Staff Qualifications and Background Investigation.** 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 law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified, or accredited under applicable law or the Iowa Administrative Code.

The Agency reserves the right to conduct and/or request the disclosure of criminal history and other background investigation of the Contractor, its officers, directors, shareholders, partners, managerial, and supervisory personnel and the Contractor's staff, agents, or subcontractors retained by the Contractor for the performance of Contract Services. These background investigations may include but may not be limited to: Child Abuse Registry, Dependent Adult Abuse Registry, Sexual Offender Registry Checks, and DCI/FBI Criminal History Record checks for specific categories of persons who have direct contact with the Agency's clients or provide Services for the Agency's clients. By entering into this Contract, the Contractor explicitly authorizes the Agency to conduct background investigations. The Contractor shall fully cooperate with the Agency in obtaining authorization(s) on Agency forms and any required waivers or releases in a timely manner. Based on the results of these background investigations, the Agency may determine, in its sole discretion, to either not enter into a Contract, not extend a Contract, or to terminate the Contract in accordance with the Contract's termination provisions.

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

**2.12.29 Obligations Beyond Contract Term.** All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the expiration or termination of this Contract.

**2.12.30 Counterparts.** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together

constitute one and the same instrument.

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

**2.12.32 Delays or Impossibility of Performance Based on a Force Majeure.** Neither party shall be in default under the Contract if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a force majeure. The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of the Contractor; claims or court orders that restrict the Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; labor shortages; or supply chain disruptions.

If a delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a Force Majeure as defined in this Contract.

If a Force Majeure delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency.

The party seeking to exercise this provision and not perform or delay performance pursuant to a Force Majeure shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**2.12.33 Right to Address the Board of Directors or Other Managing Entity.** The Agency reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures, and any other issue the Agency deems appropriate.

**2.12.34 Repayment Obligation.** In the event that any State and/or federal funds are deferred

and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

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

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

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

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

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

**2.12.40 Conflict of Interest.** The Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer, or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code chapter 68B shall apply to this Contract. 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.

In the event the Contractor becomes aware of any circumstances that may create a conflict of interest the Contractor shall immediately take such actions to mitigate or eliminate the risk of harm caused by the conflict or appearance of conflict. The Contractor shall promptly, fully disclose and notify the Agency of any circumstances that may arise that may create a conflict of interest or an appearance of conflict of interest. Such notification shall be submitted to the Agency in writing within seven (7) Business Days after the conflict or appearance of conflict is discovered.

In the event the Agency determines that a conflict or appearance of a conflict exists, the Agency may take any action that the Agency determines is necessary to mitigate or eliminate the conflict or appearance of a conflict. Such actions may include, but are not limited to:

**2.12.40.1** Exercising any and all rights and remedies under the Contract, up to and including terminating the Contract with or without cause;

**2.12.40.2** Directing the Contractor to implement a corrective action plan within a specified time frame to mitigate, remedy and/or eliminate the circumstances which constitute the conflict of interest or appearance of conflict of interest; or

**2.12.40.3** Taking any other action the Agency determines is necessary and appropriate to ensure the integrity of the contractual relationship and the public interest.

The Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest.

**2.12.41 Certification Regarding Sales and Use Tax.** By executing this Contract, the Contractor certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code § 423.1(42) and (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

## IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES SECTION 3: CONTINGENT TERMS FOR SERVICE CONTRACTS

**3.1 Federal Funds.** HHS receives federal funding. As a recipient of federal funds, HHS and its subrecipients, contracting partners, and subcontractors must adhere to federal legislation passed by Congress, as well as codified regulations implemented through administrative requirements, executive orders, and other federal law when executing the funding and contract scope of work. Any revisions to applicable provisions of federal or state law and implementing regulations, and policy issuances and instructions, except as otherwise specified in this Contract, apply as of their effective date. If any terms of this Contract are determined to be inconsistent with rule or law, the applicable rule or law provision shall govern.

**3.1.1 Federal Terms. 2 C.F.R. Part 200.** Specific to the Code of Federal Regulations (C.F.R.) Title 2 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, specific language must be included in agreement articles, such as this Contract. Detailed in 2 C.F.R. Part 200, Appendix II, in addition to other provisions required by federal law, including but not limited to 45 C.F.R. Part 75, all contracts made by a non-federal entity under the federal awards must contain provisions covering the following, as applicable. The below provisions attempt to satisfy the requirements of 2 C.F.R. Part 200. This Contract does not encompass every federal law, regulation, or requirement that may apply to this Contract. By signing this Contract, the Contractor agrees to all applicable terms contained within 2 C.F.R. Part 200 and any other applicable federal requirement. If the Contractor or its Subcontractors violate this or any law, they may be subject to civil and/or criminal penalties, etc. as stated therein.

**3.1.1.1 Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. By signing the Contract, the Contractor certifies, to the best of its knowledge, understanding, and belief, that:

**3.1.1.1.1 No Federal Funds Used.** No federal appropriated funds have been paid or will be paid in what the undersigned believes to be a violation of 31 U.S.C. 1352, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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, and the extension, continuation, renewal, amendment, the modification of any federal contract, grant, loan, or cooperative agreement, or in any activity designed to influence legislation or appropriations pending before Congress.

**3.1.1.1.2 Other Funds Used.** 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**3.1.1.1.3 Certification.** The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and will require that all sub-recipients certify and disclose accordingly. This certification is a material

representation of facts 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 31 U.S.C. 1352. 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.

**3.1.1.2 Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall comply with all applicable standards, orders, or requirements issued under 306 of the Clean Air Act (42 U.S.C. 1857(h)), 508 of the Clean Water Act (33 U.S.C. 1368), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15).

**3.1.1.3 Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. The Contractor shall comply with the Contract Work Hours and Safety Act, as applicable.

**3.1.1.4 Copeland "Anti-Kickback" Act** (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The Contractor shall comply with the Copeland "Anti-Kickback" Act, as applicable. If the Contractor or its Subcontractors violate this law, they may be subject to criminal penalties, etc. as stated therein.

**3.1.1.5 Davis-Bacon Act, as amended** (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage

determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The Contractor shall comply with the Davis-Bacon Act, as applicable.

**3.1.1.6 Debarment and Suspension** (Executive Orders 12549 and 12689). A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. By signing this Contract, the Contractor certifies that it and its principals and subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.

This certification is a material representation of fact upon which reliance was placed when the Agency determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the Agency may terminate this Contract.

The Contractor shall provide immediate written notice to the Agency if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency. The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this section, have the meanings set out in 2 C.F.R. part 180.

The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts.

**3.1.1.7 Domestic preferences for procurements.** As appropriate and to the extent consistent with law, as provided in 2 C.F.R. 200.322, Domestic Preference for Procurements, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. The Contractor shall comply with 2 C.F.R. 200.322, to the extent applicable.

**3.1.1.8 Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R.

Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The Contractor shall comply with Equal Employment Opportunity, to the extent applicable.

**3.1.1.9 Procurement of Recovered Materials.** In the performance of this Contract, in accordance with 2 C.F.R. 200.323, Procurement of Recovered Materials, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**3.1.1.10 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** Recipients and subrecipients, in accordance with 2 C.F.R. 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, Services, or systems that uses covered telecommunications equipment or Services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance Services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or Services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor certifies that it will comply with 2 C.F.R. 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, to the extent applicable.

**3.1.1.11 Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of "funding agreement" under 37 C.F.R. 401.2 (a) and the recipient or

subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. The Contractor certifies that it will comply with 37 C.F.R. Part 401, to the extent applicable to this Contract.

**3.1.2 Federal Financial Assistance Acknowledgment.** The Contractor acknowledges that federal financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, federal awarding policies, procedures, and directives.

The Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the federal awarding agency may reserve certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

In accordance with, but not limiting to, 45 C.F.R. 95.617, the Contractor shall ensure that the Agency has all ownership rights in software or modifications thereof and associated documentation designed, developed or installed pursuant to the Contract. 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.

**3.1.3 Federal Law Contractor Certifications.** By signing this Contract, the Contractor certifies its compliance, to the extent applicable, with the following:

- The Constitution of the United States.
- Medicaid Laws. Title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.), applicable provisions of 42 C.F.R. 431.200 et. seq. and 42 C.F.R. part 438; waivers or variances approved by CMS; and the Rehabilitation Act of 1973.
- Pro-Children Act of 1994.
- Drug-Free Workplace Act of 1988, and implemented at 28 C.F.R. Part 67, subpart F, for programs, as defined at 28 C.F.R. Part 67 sections 67.615 and 67.620.
- 2 C.F.R. 200 Subpart F—Audits of Federally-Funded Contracts: Audit of Non-Federal Entity.
- USDA’s regulation regarding nondiscrimination (7 C.F.R. parts 15, 15b), Title VI of the Civil Rights Act of 1964 (Public Law 83-352), section 11(c) of the Food Stamp Act of 1977, as amended, the Food Stamp Act of 1977, as amended, the Age Discrimination, Act of 1975 (Public Law 95-135) and the Rehabilitation Act of 1973 (Public Law 93-112, section 504) and all requirements imposed by regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of race, color, religion, age (except as provided by law), sex, marital status, sexual orientation, political affiliation, national origin, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

**3.1.4 Audits of Federally-Funded Contracts: Audit of Non-Federal Entity.** Non-federal entities, as that term is defined in 45 C.F.R. § 75.2, that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after the Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing material findings, if provided by the auditor, promptly following receipt by Contractor. The Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after the Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with 2 C.F.R. § 200.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

**3.1.5 Contractor Employee Whistleblower Protections.** The Contractor must comply with 41 U.S.C. 4712 which provides "employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal" for "whistleblowing." In addition, whistleblowing protections cannot be waived by any agreement, policy, form or condition of employment.

**3.1.5.1** Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of a law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract) or grant.

**3.1.5.2** To qualify under the statute, the employee's disclosure must be made to:

- A member of Congress, or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, grantee, or

subgrantee who has the responsibility to investigate, discover, or address misconduct.

The requirement to comply with and inform all employees of the “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections” is in effect for all grants, contracts, subgrants, and subcontracts.

**3.2 Business Associate Agreement.** If the Contractor performs certain Services on behalf of or for a designated HIPAA-covered component of the Agency and meets the definition of business associate in 45 CFR 160.103, then the Contractor is a business associate of the Agency for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 C.F.R. part 160 and 164. By signing this Contract, the Business Associate certifies it will comply with the Business Associate Agreement Addendum (“BAA”), and any amendments thereof, as posted to the Agency’s website: <https://hhs.iowa.gov/media/2904/download?inline=>. This BAA, and any amendments thereof, is incorporated into the Contract by reference.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. Notwithstanding anything to the contrary in the Contract, the Agency may amend the BAA by posting an updated version of the BAA on the Agency’s website at: <https://hhs.iowa.gov/media/2904/download?inline=> and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency’s notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer.

If there is a conflict between the BAA and provisions in Section 2.8, Ownership and Security of Agency Information, the provisions in the BAA shall control.

**3.3 Qualified Service Organization.** If the Contractor is or will be receiving, storing, processing, or otherwise dealing with confidential patient records from programs covered by 42 C.F.R. part 2, the Contractor is a Qualified Service Organization and the Contractor acknowledges that it is fully bound by those regulations. The Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 C.F.R. part 2. “Qualified Service Organization” as used in this Contract has the same meaning as the definition set forth in 42 C.F.R. 2.11.

**3.4 Certification Regarding Iowa Code Chapter 8F.** If the Contractor is or becomes subject to Iowa Code chapter 8F during the term of this Contract, which includes any extensions or renewals thereof, the Contractor shall comply with the following:

**3.4.1.** As a condition of entering into this Contract, the Contractor shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.

**3.4.2** The Contractor agrees that it will provide the information described in this section to the Agency or the Legislative Services Agency upon request. The Contractor shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.

**3.4.3** Pursuant to Iowa Code § 8F.4, the Contractor shall file an annual report with the Agency and the Legislative Services Agency within ten (10) months following the end of the Contractor's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:

**3.4.3.1** Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

**3.4.3.2** Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted Services.

**3.4.3.3** 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.

**3.4.3.4** 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.

**3.4.3.5** Any changes in the information submitted in accordance with Iowa Code § 8F.3

**3.4.3.6** A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, 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 Iowa Code chapter 8F.

**3.4.3.7** In addition, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

### **3.5 Software Contracts.**

**3.5.1 Software Funded with Federal Funds.** All software or modifications thereof and associated documentation designed, developed, or installed using federal funds is subject to 45 C.F.R. § 95.617.

**3.5.2 Change Order Procedure.** The Agency may at any time request a modification to Deliverables related to software using a change order. The following procedures for a change order shall be followed:

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

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

**3.5.2.3 Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the

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

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

**3.5.3 Acceptance of Software Deliverables.** Except as otherwise specified in the Scope of Work, all Deliverables pertaining to software and related hardware components ("Software Deliverables") shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Scope of Work. Upon completion of all work to be performed by the Contractor with respect to any Software Deliverable, the Contractor shall deliver a written notice to the Agency certifying that the Software Deliverable meets and conforms to applicable Specifications and is ready for the Agency to conduct Acceptance Testing; provided, however, that the Contractor shall pretest the Software Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, the Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide the Contractor with written notice of Acceptance or Non-acceptance with respect to each Software Deliverable that was evaluated during such Acceptance Testing. In the event the Agency provides notice of Non-acceptance to the Contractor with respect to any Software Deliverable, the Contractor shall correct and repair such Software Deliverable and submit it to the Agency within ten (10) days of the Contractor's receipt of notice of Nonacceptance so that the Agency may re-conduct its Acceptance Tests.

In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Software Deliverable that the Contractor has attempted to correct or repair pursuant to this section, that such Software Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to: (1) require the Contractor to correct and repair such Software Deliverable within such period of time as the Agency may specify in a written notice to the Contractor; (2) refuse to accept such Software Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Software Deliverable (or receive a refund of any fees or amounts already paid with respect to such Software Deliverable); (3) accept such Software Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Software Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or (4) terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 2.5.1, Termination for Cause by the Agency, of this Contract, the Agency may terminate this Contract pursuant to this section without providing the Contractor with any notice or opportunity to cure provided for in the termination provisions of this Contract. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided the Contractor with written notice of Final Acceptance.

**3.5.4 Notice of Acceptance and Future Deficiencies.** The Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in

the event the Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable.

## **SPECIAL CONTRACT ATTACHMENTS**

The Special Contract Attachments in this section are a part of the Contract.

**Attachment A – Drug Testing Fixed Site Collection Facilities List**

**Attachment B – Drug Testing Collection Price Schedule**

**Attachment C - Drug Testing Laboratory Price Schedule**

**Attachment A**  
**Drug Testing Fixed Site Collection Facilities List**

STATEWIDE FIXED SITE FACILITIES LOCATION LISTING			
Agency Service Area	County	Day/Wk	Hrs/Wk
1 - Western	Buena Vista	1	2
1 - Western	Carroll	1	1
1 - Western	Cass	1	1
1 - Western	Clarke	1	1
1 - Western	Crawford	1	1
1 - Western	Dickinson	1	1
1 - Western	Greene	1	1
1 - Western	Kossuth	1	1
1 - Western	Montgomery	1	1
1 - Western	Page	1	1
1 - Western	Pottawattamie	5	15
1 - Western	Sioux	1	1
1 - Western	Union	1	1
1 - Western	Woodbury	5	15
2 - Northern	Black Hawk	4	8
2 - Northern	Cerro Gordo	2	1
2 - Northern	Dallas	1	1
2 - Northern	Floyd	2	1
2 - Northern	Hardin	1	1
2 - Northern	Marshall	1	2
2 - Northern	Story	3	6
2 - Northern	Webster	1	2
3 - Eastern	Allamakee	1	1
3 - Eastern	Buchanan	1	1
3 - Eastern	Clayton	1	1
3 - Eastern	Clinton	2	4
3 - Eastern	Des Moines	2	4
3 - Eastern	Dubuque	2	4
3 - Eastern	Fayette	1	2
3 - Eastern	Lee	1	3
3 - Eastern	Muscatine	2	4
3 - Eastern	Scott	2	4
3 - Eastern	Winneshiek	1	1
4 - Cedar Rapids	Appanoose	1	1
4 - Cedar Rapids	Benton	1	1
4 - Cedar Rapids	Jasper	1	2
4 - Cedar Rapids	Johnson	1	2

STATEWIDE FIXED SITE FACILITIES LOCATION LISTING			
Agency Service Area	County	Day/Wk	Hrs/Wk
4 - Cedar Rapids	Jones	1	1
4 - Cedar Rapids	Linn	5	45
4 - Cedar Rapids	Mahaska	1	1
4 - Cedar Rapids	Poweshiek	1	1
4 - Cedar Rapids	Tama	1	2
4 - Cedar Rapids	Wapello	1	1
4 - Cedar Rapids	Washington	1	1
5 - Des Moines	Marion	1	1
5 - Des Moines	Polk	5	35
5 - Des Moines	Warren	1	1

**Attachment B**  
**Drug Testing Collection Price Schedule**

The Agency is guaranteeing a minimum of \$ 189,356.00 per month for Attempts + Collections + Refusals with minor variances in schedule below.

The Agency with approval of Contract Owner may utilize a GAX payment for Guaranteed minimum amounts if volume is below scheduled levels. The allotted amount for each Service Area will be determined by Central Office and GAX Payment will be handled by assigned Contract Specialist.

ITEM	Yearly Totals	Monthly Volume Change	Monthly Volume FROM	Monthly Volume TO	Collection Price SFY 26	Monthly Billable FROM	Monthly Billable TO	Collection Price SFY 27	Collection Price SFY 28	Collection Price SFY 29	Collection Price SFY 30	Collection Price SFY 31
<b>Fixed Site Collections (includes attempts and refusals) &amp; In-Home Collections &amp; Emergency Collections (include collections only)</b>	32,844	630	2,737	and up	\$ 89.87	\$ 245,974	NA	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	31,584	525	2,632	2,736	\$ 89.87	\$ 236,538	\$ 245,884	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	30,324	420	2,527	2,631	\$ 89.87	\$ 227,101	\$ 236,448	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	29,064	315	2,422	2,526	\$ 89.87	\$ 217,665	\$ 227,012	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	27,804	210	2,317	2,421	\$ 89.87	\$ 208,229	\$ 217,575	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	26,544	105	2,212	2,316	\$ 89.87	\$ 198,792	\$ 208,139	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	25,289	0	2,107	2,211	\$ 89.87	\$ 189,356	\$ 198,703	\$ 92.75	\$ 95.71	\$ 98.78	\$ 101.94	\$ 105.20
	24,384	-75	2,032	2,106	\$ 93.19	\$ 189,356	\$ 196,252	\$ 95.98	\$ 98.86	\$ 101.83	\$ 104.88	\$ 108.03
	23,484	-150	1,957	2,031	\$ 96.76	\$ 189,356	\$ 196,516	\$ 99.66	\$ 102.65	\$ 105.73	\$ 108.90	\$ 112.17
	22,584	-225	1,882	1,956	\$ 100.61	\$ 189,356	\$ 196,801	\$ 103.63	\$ 106.74	\$ 109.94	\$ 113.24	\$ 116.64
	21,684	-300	1,807	1,881	\$ 104.79	\$ 189,356	\$ 197,110	\$ 107.93	\$ 111.17	\$ 114.51	\$ 117.94	\$ 121.48
	20,784	-375	1,732	1,806	\$ 109.33	\$ 189,356	\$ 197,446	\$ 112.61	\$ 115.99	\$ 119.47	\$ 123.05	\$ 126.74
	19,884	-450	1,657	1,731	\$ 114.28	\$ 189,356	\$ 197,812	\$ 117.70	\$ 121.24	\$ 124.87	\$ 128.62	\$ 132.48
	18,984	-525	1,582	1,656	\$ 119.69	\$ 189,356	\$ 198,213	\$ 123.28	\$ 126.98	\$ 130.79	\$ 134.72	\$ 138.76
	18,084	-600	1,507	1,581	\$ 125.65	\$ 189,356	\$ 198,654	\$ 129.42	\$ 133.30	\$ 137.30	\$ 141.42	\$ 145.66
	17,184	-675	1,432	1,506	\$ 132.23	\$ 189,356	\$ 199,141	\$ 136.20	\$ 140.28	\$ 144.49	\$ 148.83	\$ 153.29

The Agency is guaranteeing a minimum of \$ 30,294 per month for In-Home Trip Fees

<b>In-Home Trip Fees</b>	1,452	0	121	and up	\$ 250.36	\$ 30,294.00	NA	\$ 258.37	\$ 266.64	\$ 275.17	\$ 283.98	\$ 293.06
	1,392	-5	116	120	\$ 261.16	\$ 30,294.00	\$ 31,338.62	\$ 269.51	\$ 278.14	\$ 287.04	\$ 296.22	\$ 305.70
	1,332	-10	111	115	\$ 272.92	\$ 30,294.00	\$ 31,385.68	\$ 281.65	\$ 290.67	\$ 299.97	\$ 309.57	\$ 319.47
	1,272	-15	106	110	\$ 285.79	\$ 30,294.00	\$ 31,437.17	\$ 294.94	\$ 304.38	\$ 314.12	\$ 324.17	\$ 334.54
	1,212	-20	101	105	\$ 299.94	\$ 30,294.00	\$ 31,493.76	\$ 309.54	\$ 319.44	\$ 329.67	\$ 340.22	\$ 351.10
	1,152	-25	96	100	\$ 315.56	\$ 30,294.00	\$ 31,556.25	\$ 325.66	\$ 336.08	\$ 346.84	\$ 357.94	\$ 369.39
	1,092	-30	91	95	\$ 332.90	\$ 30,294.00	\$ 31,625.60	\$ 343.55	\$ 354.55	\$ 365.89	\$ 377.60	\$ 389.69
	1,032	-35	86	90	\$ 352.26	\$ 30,294.00	\$ 31,703.02	\$ 363.53	\$ 375.16	\$ 387.17	\$ 399.56	\$ 412.34

The Agency will pay for: Emergency Trip Fees & Court Testimony by Phone for actual testifying time in addition to the guaranteed minimum.

	# per YEAR	# per MONTH	SFY26	Monthly Bill	SFY27	SFY28	SFY29	SFY30	SFY31
Emergency Trip Fees	60	5	\$ 301.54	\$ 1,507.70	\$ 310.59	\$ 319.90	\$ 329.50	\$ 339.39	\$ 349.57
Court by Phone Fees	60	5	\$ 70.00	\$ 350.00	\$ 72.10	\$ 74.26	\$ 76.49	\$ 78.79	\$ 81.15
Instant Test Fees	NA	NA	\$ 6.47	NA	\$ 6.66	\$ 6.86	\$ 7.07	\$ 7.28	\$ 7.50

<b>FY 26 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	189,356	\$	2,272,272	
In-Home Trip Fees=	\$	30,294	\$	363,528.00	
Emergency Trip Fees=	\$	1,508	\$	18,092	
<b>Totals=</b>	<b>\$</b>	<b>221,158</b>	<b>\$</b>	<b>2,653,892.40</b>	
<b>FY 27 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	195,415	\$	2,344,986	
In-Home Trip Fees=	\$	31,263	\$	375,155.45	
Emergency Trip Fees=	\$	1,553	\$	18,635	
<b>Totals=</b>	<b>\$</b>	<b>228,231</b>	<b>\$</b>	<b>2,738,776.44</b>	
<b>FY 28 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	200,888	\$	2,410,653	
In-Home Trip Fees=	\$	32,263	\$	387,160.42	
Emergency Trip Fees=	\$	1,600	\$	19,194	
<b>Totals=</b>	<b>\$</b>	<b>234,751</b>	<b>\$</b>	<b>2,817,008.01</b>	
<b>FY 29 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	208,122	\$	2,497,466	
In-Home Trip Fees=	\$	33,296	\$	399,549.55	
Emergency Trip Fees=	\$	1,648	\$	19,770	
<b>Totals=</b>	<b>\$</b>	<b>243,065</b>	<b>\$</b>	<b>2,916,785.79</b>	
<b>FY 30 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	214,782	\$	2,577,385	
In-Home Trip Fees=	\$	34,361	\$	412,335.14	
Emergency Trip Fees=	\$	1,697	\$	20,363	
<b>Totals=</b>	<b>\$</b>	<b>250,840</b>	<b>\$</b>	<b>3,010,083.39</b>	
<b>FY 31 Recap of Guaranteed Payments</b>		<b>Monthly</b>	<b>Annual</b>		
Attempts + Collections + Refusals=	\$	221,655	\$	2,659,861	
In-Home Trip Fees=	\$	35,461	\$	425,529.87	
Emergency Trip Fees=	\$	1,748	\$	20,974	
<b>Totals=</b>	<b>\$</b>	<b>258,864</b>	<b>\$</b>	<b>3,106,365.33</b>	

**Attachment C**  
**Drug Testing Laboratory Price Schedule**

ITEM	Price per Test (1) SFY26	Price per Test (1) SFY27	Price per Test (1) SFY28	Price per Test (1) SFY29	Price per Test (1) SFY30	Price per Test (1) SFY31
UA Instant Test Kit - 10 Panel + Alcohol	\$ 6.23	\$ 6.42	\$ 6.61	\$ 6.81	\$ 7.01	\$ 7.22
UA - 9 Panel	\$ 16.94	\$ 17.45	\$ 17.97	\$ 18.51	\$ 19.07	\$ 19.64
UA - 9 Panel + Alcohol	\$ 19.18	\$ 19.76	\$ 20.35	\$ 20.96	\$ 21.59	\$ 22.23
UA - 14 Panel	\$ 33.72	\$ 34.73	\$ 35.77	\$ 36.85	\$ 37.95	\$ 39.09
Oral Fluid 7 Panel + Fentanyl	\$ 42.12	\$ 43.38	\$ 44.69	\$ 46.03	\$ 47.41	\$ 48.83
Hair - 5 Panel	\$ 76.93	\$ 79.24	\$ 81.62	\$ 84.06	\$ 86.59	\$ 89.18
Sweat Patch - 5 Panel (2)	\$ 47.97	\$ 49.41	\$ 50.89	\$ 52.42	\$ 53.99	\$ 55.61
MRO Non-Negative Result Review	\$ 29.83	\$ 30.72	\$ 31.65	\$ 32.60	\$ 33.57	\$ 34.58
Canceled or Rejected Specimen for analysis	\$ 15.00	\$ 15.45	\$ 15.91	\$ 16.39	\$ 16.88	\$ 17.39
Cost per additional drug added to existing panel	Pricing for drugs beyond standard panel testing provided at the time of request.					

Training	Price (1) SFY26	Price (1) SFY27	Price (1) SFY28	Price (1) SFY29	Price (1) SFY30	Price (1) SFY31
Initial Training	\$ 480.00	NA	NA	NA	NA	NA
Annual Training	\$ 480.00	\$ 494.40	\$ 509.23	\$ 524.51	\$ 540.24	\$ 556.45

Expert Court Testimony	Price per Hour (1) SFY26	Price per Hour (1) SFY27	Price per Hour (1) SFY28	Price per Hour (1) SFY29	Price per Hour (1) SFY30	Price per Hour (1) SFY31
Preparation or Consult Time	\$ 275.00	\$ 283.25	\$ 291.75	\$ 300.50	\$ 309.51	\$ 318.80
Wait Time on Phone to Testify	\$ 275.00	\$ 283.25	\$ 291.75	\$ 300.50	\$ 309.51	\$ 318.80
Actual Testimony Time	\$ 275.00	\$ 283.25	\$ 291.75	\$ 300.50	\$ 309.51	\$ 318.80

1) The actual number of tests and hours and resulting total cost may vary from year to year. Yearly cost will vary according to the number of tests performed or hours provided.

2) The price of the Sweat Patch shall include the patch, overlay, and cost for laboratory analysis.