

## CONTRACT DECLARATIONS AND EXECUTION

<b>RFP #</b>	<b>Contract #</b>
N/A	MED-16-008

<b>Title of Contract</b>
Dental Care Coverage for the Healthy and Well Kids in Iowa ( <i>hawk-i</i> ) Program

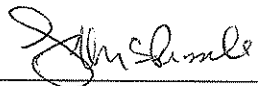

This Contract must be signed by all parties before the Contractor provides any Deliverables. The Agency is not obligated to make payment for any Deliverables provided by or on behalf of the Contractor before the Contract is signed by all parties. This Contract is entered into by the following parties:

<b>Agency of the State (hereafter "Agency")</b>	
<b>Name/Principal Address of Agency:</b> Iowa Department of Human Services 1305 E. Walnut Des Moines, IA 50319	<b>Agency Billing Contact Name / Address:</b> Anna Ruggle Iowa Medicaid Enterprise 100 Army Post Road Des Moines, IA 50315 <b>Phone:</b> (515) 974-3286
<b>Agency Contract Manager (hereafter "Contract Manager") /Address ("Notice Address"):</b> Anna Ruggle Iowa Medicaid Enterprise 100 Army Post Road Des Moines, IA 50315	<b>Agency Contract Owner (hereafter "Contract Owner") / Address:</b> Julie Lovelady Iowa Medicaid Enterprise 100 Army Post Road Des Moines, IA 50315
<b>E-Mail:</b> aruggle@dhs.state.ia.us.	<b>E-Mail:</b> jlovela@dhs.state.ia.us
<b>Phone:</b> (515) 974-3286	
<b>Contractor: (hereafter "Contractor")</b>	
<b>Legal Name:</b> Delta Dental of Iowa	<b>Contractor's Principal Address:</b> 9000 Northpark Drive Johnston, IA 50131
<b>Tax ID #:</b> [REDACTED]	<b>Organized under the laws of:</b> State of Iowa
<b>Contractor's Contract Manager Name/Address ("Notice Address"):</b> Lynh Patterson 9000 Northpark Drive Johnston, IA 50131	<b>Contractor's Billing Contact Name/Address:</b> Lynh Patterson 9000 Northpark Drive Johnston, IA 50131 <b>Phone:</b> (515) 261-5560
<b>Phone:</b> (515) 261-5560	
<b>E-Mail:</b> lpatterson@deltadentalia.com	

<b>Contract Information</b>	
Start Date: 07/01/15	End Date of Base Term of Contract: 06/30/16
Possible Extension(s): The Agency shall have the option to extend this Contract up to 1 additional 1-year extensions.	
Contractor a Business Associate? Yes	Contract Warranty Period (hereafter "Warranty Period"): The term of this Contract, including any extensions.
Contract Include Sharing SSA Data? No	Contract Payments include Federal Funds? Yes CFDA#: 93.767
Contractor subject to Iowa Code Chapter 8F? No	Contract Contingent on Approval of Another Agency: Yes
Contractor a Qualified Service Organization? No	Which Agency? The <i>hawk-i</i> Board

**Contract Execution**

This Contract consists of this Contract Declarations and Execution Section, the attached General Terms for Services Contracts, Special Terms, and all Special Contract Attachments. 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, Delta Dental of Iowa</b>		<b>Agency, Iowa Department of Human Services</b>	
Signature of Authorized Representative:	Date:	Signature of Authorized Representative:	Date:
	5/26/15		6/3/15 6-9-15
Printed Name: Jeffrey S. Russell		Printed Name: Charles M. Palmer	
Title: President and CEO		Title: Director	

## SECTION 1: SPECIAL TERMS

### *1.1 Special Terms Definitions.*

**Centers for Medicare and Medicaid Services (CMS)** – means the federal agency in the U.S. Department of Health and Human Services responsible for administration of the Medicaid (Title XIX) and the State Children’s Health Insurance (Title XXI) programs.

**Covered Services** – means those Dentally Necessary Services set forth under Section 1.3.1.4 and in Attachment 3.1.

**Day** - means calendar day, except where the term working day is expressly used.

**Dentally Necessary Services** - means a dental procedure or service as determined by the Plan, to either establish or maintain a patient’s oral health. Such determinations are based on the professional diagnostic judgment of the Plan and the standards of care that prevail in the professional community.

**Emergency Dental Condition** – means those dental services delivered to address relief of significant pain, infection, bleeding or traumatic injury to the oral cavity and supporting structures. Examples of traumatic injury are avulsed teeth (knocked out), extruded teeth (forced out of position and loosened) or extruded teeth (extruded) or fractured teeth. Oral injuries are often painful and should be treated by a dentist as soon as possible.

**Enrollee** - means a child who has been certified by the Agency as eligible for the *hawk-i* program in accordance with Iowa Administrative Code 441-86 and who is eligible to enroll in a participating Plan. Such child's name shall appear on the Plan enrollment information, which the Third Party Administrator for the Agency shall transmit, to the Plan in accordance with an established notification schedule.

**Enrollment Area** - means the county or counties or region or regions in which a Plan is licensed to operate by the State of Iowa and in which service capability exists as defined by the Agency and set forth in this Contract. An Enrollment Area shall not be less than an entire county but may be less than a region. The Agency shall establish regions.

***hawk-i*** - means Healthy And Well Kids in Iowa, the Iowa program to provide health care coverage for uninsured children of eligible families as authorized by Title XXI of the federal Social Security Act.

***hawk-i* Board** - means the seven-member board appointed by the Governor to make policy for and provide direction to the Agency for the administration of the *hawk-i* program.

**Identification Card** - means a card distributed by the Plan that identifies covered Enrollees as members of the *hawk-i* Plan.

**Medically Necessary Orthodontic Services** – means an orthodontic procedure that addresses a harmful habit, is an anatomical qualifying clinical condition, or is a limited, interceptive, or comprehensive orthodontic procedures that treats a handicapping malocclusion with a Salzmann score of 26 or greater.

**Non-Participating Provider** - means a dentist who has not entered into a contract with the Plan to provide Covered Services to Enrollees.

**Plan** - means the health maintenance organization, organized delivery system, preferred provider organization, dental carrier, or other managed care organization with a certificate of authority to do business in Iowa, which is obligated under this Contract.

### *1.2 Contract Purpose.*

The parties have entered into this Contract for the purpose of retaining the Contractor to provide dental care coverage for the Healthy and Well Kids in Iowa (*hawk-i*) Program.

### ***1.3 Scope of Work.***

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

The Contractor shall provide the following:

##### **1.3.1.1 Statutory Requirements**

- The Plan shall retain at all times during the period of this Contract a valid Certificate of Authority issued by the State of Iowa Office of the Commissioner of Insurance.

- Disclosure of Financial Records

The Plan shall make available to the Agency, the Agency's authorized agents and appropriate representatives of the U.S. Department of Health and Human Services, any financial records of the Plan, which relate to the Plan's capacity to bear the Risk of potential financial losses and records of the Contract Services performed and amounts paid or payable under this Contract. The Plan shall comply with applicable record keeping requirements as specified in Section 2.2(14) z. Records Retention and Access of this Contract.

##### **1.3.1.2 Enrollment in the *hawk-i* program**

###### **1.3.1.2.1 Eligibility Determination**

The Third Party Administrator (TPA) shall act as the agent for the Agency in the determination of eligibility and enrollment. The TPA shall determine eligibility of children to participate in the *hawk-i* program and shall notify the Plan of enrollment.

###### **1.3.1.2.2 Establishment of Effective Date of Coverage**

The TPA shall establish the effective date of coverage for the Enrollee.

###### **1.3.1.2.3 Choice of a Plan**

Enrollees shall have the right to choose a Plan in those counties where a choice is available.

###### **1.3.1.2.4 Plan Information**

The TPA shall provide the Enrollee with information about all Plans available to the Enrollee. Such information shall be provided to the Agency by the Plan. When requested, the TPA shall assist the Enrollee in the selection of a Plan. Such assistance shall be provided in an unbiased manner.

###### **1.3.1.2.5 12-Month Enrollment Period**

Unless this Contract is earlier terminated, upon selection of a Plan, the Enrollee shall remain enrolled in the selected Plan for a period of twelve (12) months as long as the Enrollee remains eligible for the *hawk-i* program, but subject to the following conditions:

- Enrollee shall have the right to terminate enrollment for cause in accordance with 42 U.S.C.A §1396u-2(a)(4)(A)(i) ; and
- Enrollee shall have the right to terminate without cause during the 90-day period beginning on the date the individual receives notice of such enrollment, and at least every 12 months thereafter in accordance with 42 U.S.C.A. §1396u-2(a)(4)(A)(ii).

###### **1.3.1.2.6 Enrollment File to the Plan**

The TPA shall transmit an enrollment files to the Plan as follows:

**1.3.1.2.6.1 Daily Enrollment File.** The daily enrollment file shall be in the HIPAA 834 eligibility format that:

- Lists all new, renewed or reinstated *hawk-i* Enrollees for each month of coverage:
- Lists all *hawk-i* Enrollees for whom a change has occurred (i.e., name change, address change, etc.); and

- Lists *hawk-i* Enrollees who have been disenrolled from the program; and the effective date of the disenrollment.

**1.3.1.2.6.2 Monthly Enrollment File.** A monthly file in the HIPAA 834 eligibility format, also known as a monthly full positive file that lists all *hawk-i* Enrollees eligible for coverage for the next month.

The Plan shall accept as Enrollees all persons who appear on the Plan enrollment file.

**1.3.1.2.7 Open Enrollment**

The Plan shall maintain a continuous open enrollment period during which the Plan shall accept Enrollees eligible for coverage under this Contract.

**1.3.1.2.8 Receipt of Enrollment Files**

The Plan shall download both the daily and the monthly enrollment files on a daily basis in the same order as transmitted by the TPA.

**1.3.1.2.9 Annual Reviews of Eligibility**

The TPA shall conduct a review of the Enrollee's circumstances annually to establish the Enrollee's continued eligibility to participate in the *hawk-i* program. Sixty (60) Days prior to the annual review of eligibility, the Agency shall notify Enrollees that they may disenroll from the Plan and choose another Plan, if available, effective the first day of the next twelve (12)-month enrollment cycle. Failure to indicate a change in the Plan during this period shall result in the Enrollee being enrolled for an additional twelve (12) months with the same Plan upon the determination that the Enrollee continues to qualify for participation in the *hawk-i* program.

**1.3.1.2.10 Request for Enrollment Information**

Upon request, the Plan shall have the right to examine and inspect all information in the possession of the Agency regarding the enrollment process and the number of children enrolled.

**1.3.1.3 Enrollment Area**

**1.3.1.3.1 Regions**

The following county listing shall constitute regions:

<u>Region 1</u>	<u>Region 2</u>	<u>Region 3</u>	<u>Region 4</u>	<u>Region 5</u>	<u>Region 6</u>
Buena Vista	Boone	Allamakee	Audubon	Adair	Appanoose
Carroll	Calhoun	Black Hawk	Cass	Adams	Benton
Cherokee	Cerro Gordo	Bremer	Fremont	Clarke	Davis
Clay	Floyd	Buchanan	Harrison	Dallas	Des Moines
Crawford	Franklin	Butler	Mills	Decatur	Henry
Dickinson	Greene	Cedar	Montgomery	Guthrie	Iowa
Emmett	Hamilton	Chickasaw	Page	Jasper	Jefferson
Ida	Hancock	Clayton	Pottawattamie	Lucas	Johnson
Lyon	Hardin	Clinton	Shelby	Madison	Keokuk
Monona	Howard	Delaware		Marion	Lee
O'Brien	Humboldt	Dubuque		Polk	Linn
Osceola	Kossuth	Fayette		Ringgold	Louisa
Palo Alto	Marshall	Grundy		Taylor	Mahaska
Plymouth	Mitchell	Jackson		Union	Monroe
Sac	Pocahontas	Jones		Warren	Muscatine
Sioux	Story	Scott		Wayne	Poweshiek
Woodbury	Tama	Winneshiek			Van Buren
	Webster				Wapello
	Winnebago				Washington
	Worth				

Region 1    Region 2    Region 3    Region 4    Region 5    Region 6  
Wright

#### 1.3.1.3.2 Enrollment Area

For purposes of this Contract, the Plan agrees to arrange for the provision of Covered Services in all Iowa counties (the "Enrollment Area").

The Enrollment Area may be amended by mutual written consent of the parties to include counties not previously served by the Plan

#### 1.3.1.3.3 Multiple Plan Contracts

The Agency reserves the right to contract with more than one Plan in any given county.

#### 1.3.1.3.4 Disenrollment

The TPA shall make all decisions regarding the disenrollment of an Enrollee from the Plan and notify the Plan of the disenrollment in accordance with this Section.

An Enrollee may request disenrollment at any time for cause. An Enrollee may request disenrollment without cause during the 90 days following the date of the recipient's initial enrollment with the Plan, or the date the State sends the recipient notice of the enrollment, whichever is later, in accordance with Section 1.3.1.2.5. Any Enrollee who is disenrolled from a Plan shall be automatically re-enrolled with the same Plan upon reinstatement of eligibility if reinstatement occurs within the Enrollee's same twelve (12)-month enrollment cycle.

#### 1.3.1.4 Covered Services

The Plan shall provide or arrange for the provision of :

1. Dentally Necessary services and/or
2. Medically Necessary Orthodontic services required under Iowa Administrative Code 441--86, or as otherwise specified in Section 1.3.1.4.2 of this Contract.

The Agency shall provide the Plan with ninety (90) Days' advanced written notice preceding any change in Covered Services under this Contract unless such change is pursuant to a legislative, regulatory or *hawk-i* Board mandate, in which event, the Agency shall use best efforts to provide reasonable notice to the Plan. In the event the Agency provides less than ninety (90) Days' advanced written notice to the Contractor, the Contractor shall comply with the change in Covered Services within ninety (90) Days from the date the notice is given. The Agency shall work with the Plan to negotiate an additional administrative fee to the Plan for the communications expense to the Enrollees and/or the contracted Provider panels in the event to change in Covered Services.

The Plan shall not avoid costs for services covered in this Contract by referring Enrollees to publicly supported health care resources in accordance with 42 CFR 457.950(a)(4). The Plan is not required to provide, reimburse for, or provide coverage of, a counseling or referral service if the Plan objects to the service on moral or religious grounds.

#### 1.3.1.4.1 Effective Date of Coverage

The Plan shall assume responsibility for all Covered Services for each Enrollee as of the effective date of coverage as determined by the TPA.

#### 1.3.1.4.2 Required Covered Services

The Plan shall cover Dentally Necessary Services and Medically Necessary Orthodontic Services. This includes preventive and restorative services. See Attachment 3.1, The Iowa *hawk-i* Dental Plan.

#### 1.3.1.4.3 Additional Services

The Plan may provide services in addition to those identified in this Section. Any such services proposed to be provided by the Plan shall be approved by the Agency in writing, shall be subject to quality assurance, and may require implementation of utilization management guidelines by the Agency.

#### **1.3.1.4.4 Service Limits**

The Plan may impose limits on Covered Services. Such limits shall be identified by the Plan. Any changes in service limits, including, but not limited to authorization requirements, shall be submitted to the Agency for review and approval sixty (60) Days before the effective date. Examples of changes in service limits include but are not limited to implementing more restrictive prior authorization requirements or imposing additional limits on services. The Agency shall respond in writing to the submitted materials within thirty (30) Days of receipt of the materials.

#### **1.3.1.4.5 Pre-existing Conditions**

The Plan shall not deny reimbursement of Covered Services based on the presence of a pre-existing dental condition.

#### **1.3.1.4.6 Information to Enrollees and Potential Enrollees**

The Plan shall, upon request, make available to Enrollees and potential Enrollees in the Plan's service area information concerning the following:

- i. *Providers.* The identity, location, qualifications, and availability of dental care providers that participating with the Plan.
- ii. *Enrollee Rights and Responsibilities.* The rights and responsibilities of Enrollees.
- iii. *Grievance and appeal procedures.* The procedures available to an Enrollee and a dental care provider to challenge or appeal the failure of the Plan to cover a service.
- iv. *Information on covered items and services.* All items and services that are available to Enrollees under the Contract between the Agency and the Plan that are covered either directly or through a method of referral and prior authorization

The information required to be provided pursuant to this Section includes but is not limited to that listed in Section 1.3.1.5. The Plan shall provide all enrollment notices, informational materials, and instructional materials relating to enrollees and potential enrollees in a manner and format that may be easily understood.

### **1.3.1.5 Enrollee Information**

#### **1.3.1.5.1 Plan Information for Enrollees**

The Plan shall mail the Enrollee Identification cards within ten (10) working days and all other materials to Enrollees within twenty (20) working Days of Plan's notification by the Third Party Administrator that the Enrollee is eligible. At a minimum, the materials shall include:

- The phone number(s) that can be used for assistance to obtain information about emergency care, Prior Authorization, scheduling appointments, and standard benefit/service information;
- An electronic link to the current provider directory, which must include names, locations, telephone numbers of, and non-English languages spoken by current contracted providers in the enrollee's service area, including identification of providers that are not accepting new patients. This includes information on specialists; Members may receive a mailed directory for their geographic area by contacting DDIA customer service;
- Hours of service of the Plan;
- Grievance and appeal procedures;
- Policies on the use of emergency services;
- Limited Plan liability for services from Non-Participating Providers;
- Information on emergency care coverage, including the fact that prior authorization is not required for emergency services;
- Enrollee rights and responsibilities;
- Accessing out of area services;

- Procedures for notifying Enrollees affected by changes in Covered Services or their Delivery; and
- Procedures for recommending changes in policies and services.
- The amount, duration, and scope of benefits available under the Contract in sufficient detail to ensure that Enrollees understand the benefits to which they are entitled;

#### 1.3.1.5.2 Enrollee Rights

The Plan shall have written policies outlining Enrollee rights, including but not limited to the rights identified below. These policies shall be communicated to Enrollees and shall be available to the Agency and Providers.

##### A. Non-English Speaking Enrollees

The Plan shall assure that services are accessible to all Enrollees, including those with limited English proficiency or reading skills, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities. As appropriate, printed materials provided to Enrollees shall be written in no higher than a sixth grade reading level.

The Third Party Administrator shall notify the Plan in writing if ten (10) percent or more of the Plan's *hawk-i* Enrollees speak the same non-English language. Upon such notification, the Plan shall provide the identified Enrollees information written in the applicable language regarding access of Covered Services and the mechanism to obtain further information about the Plan in the Enrollee's native language.

Upon notification from the Third Party Administrator the Plan shall ensure that non-English speaking Enrollees are provided information on the benefits and restrictions associated with enrollment in the Plan in the non-English language.

##### B. Visually Impaired Enrollees

For Enrollees identified as visually impaired, the Plan shall provide basic Plan information in large print and Braille formats or through other devices, including information regarding how to access services.

##### C. Privacy and Confidentiality of Dental Records

The Plan shall assure confidentiality of Enrollee's dental, health and medical records and other information in the Plan's possession consistent with state and federal laws.

##### D. Disclosure of Treatment Options

- a. The Plan shall not limit Providers from disclosing all information about services available to the Enrollee related to their dental condition irrespective of the Plan's coverage or Provider network.
- b. *In General.* Subject to subparagraphs (b) of this section, the Plan (in relation to an individual enrolled under the Contract) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (c)) from advising such an individual who is a patient of the professional about the dental status of the individual or dental care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the Contract, if the professional is acting with the lawful scope of practice.
- c. *"Health care professional" defined.* For purposes of this Section 1.3.1.5.2, and all subparagraphs thereof, the term "health care professional" means a physician (as defined in 42 U.S.C.A. § 1395x(r)) or other health care professional if coverage for the professional's services is provided under the Contract for services of the professional. Such term may include a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.



E. Participation in Dental Care Decision Making

The Plan shall provide for Enrollee's participation in his or her treatment planning when appropriate.

F. Discrimination

The Plan shall not discriminate against persons based upon their status as Enrollees, their age, sex, race, religion, national origin, creed, color, physical or mental disability, political belief, sexual orientation, marital status, or health status.

**1.3.1.6 Provider Network and Access to Services**

**1.3.1.6.1 Provision of Services**

The Plan may provide Covered Services through its contracted Provider panel. The Plan shall notify the Agency in writing if there is a substantial change in the provider panel. The Agency reserves the right to terminate the Contract in the Enrollment Area Region where there has been a substantial change in the provider panel as described in this Contract.

The Plan shall meet and require its provider panel to meet Agency standards for timely access to care and services, taking into account the urgency of need for services.

**1.3.1.6.2 Accessible Services**

The Plan shall make reasonable efforts to pursue contracts with facilities and practitioners providing services to Enrollees that are sufficient in terms of geographic convenience to low-income areas, disabled accessibility and proximity to public transportation routes.

The Plan shall assure that Enrollees have adequate access to dentists. Adequate access to a dentist shall be defined as either thirty (30) miles or thirty (30) minutes for urban areas and sixty (60) miles or sixty (60) minutes in rural areas from the *hawk-i* Enrollee's place of residence.

**1.3.1.6.3 Emergency Services**

The Plan shall provide benefits for emergency services to treat an Emergency Dental Condition for Enrollees.

The Plan shall require prior authorization preceding treatment of an Emergency Dental Condition. Treatment of Emergency Dental Conditions are covered by participating and non-participating dentists inside and outside of the Plan's Enrollment Area. The Plan shall directly reimburse the Provider rendering emergency services to the Enrollee.

**1.3.1.6.4 Provider Performance Appraisal and Credentialing**

The Plan shall manage a credentialing, recredentialing, for contracted Providers which shall take into consideration, but not be limited to, the following: Enrollee complaints, quality reviews, utilization management information, The Plan agrees to verify qualifications of Providers in accordance with State licensing standards or accrediting standards to assure quality of services and to provide information to the Agency upon request.

The Plan shall submit a description of the process and criteria utilized to the Agency within thirty (30) Days from the execution of this Contract.

The Plan shall not discriminate against any Provider acting within the scope of that Provider's license or certification with respect to participation, reimbursement, or indemnification solely on the basis of the Provider's license or certification. This provision shall not be construed as imposing on the "any willing Provider" requirement. The Plan may limit Provider participation to meet the needs of the Enrollees. The Plan may establish measures that are designed to maintain quality and control costs.

The Plan shall not make payments to a Provider for any item or service furnished, ordered, or prescribed if the Provider is excluded from participating in the Medicare and Medicaid programs in accordance with 42 CFR 457.935(a). The Plan shall notify the Agency of any network Providers who have been excluded

from participating in Medicare and Medicaid and the date the Plan terminates the contract with the Provider.

### **1.3.1.7 Claims Processing**

#### **1.3.1.7.1 Coordination of Benefits**

The Plan shall ensure that benefits provided under the *hawk-i* program are coordinated with any other coverage the Enrollee may have available to pay for Covered Services. In the event a *hawk-i* eligible child is retroactively enrolled in Medicaid, *hawk-i* shall be the primary payor. In the event a *hawk-i* child is enrolled with other health or dental insurance coverage, the other insurance plan shall be the primary payor and *hawk-i* shall be the payor of last resort.

#### **1.3.1.7.2 Prohibited Enrollee Billing**

The Plan shall not hold any Enrollee liable:

- a. for the debts of the Plan, in the event of the Plan's insolvency,
- b. for services provided to the individual –
  - i. in the event of the Plan failing to receive payment from the Agency for such services; or
  - ii. in the event of a health care provider with a contractual, referral, or other arrangement with the Plan failing to receive payment from the Agency or the Plan for such services, or
- c. for payments to a provider that furnishes Covered Services under a contractual, referral, or other arrangement with the Plan in excess of the amount that would be owed by the individual if the organization had directly provided the services.

#### **1.3.1.7.3 Copayments and Cost Sharing**

The Plan shall not impose copayments or other cost sharing unless directed by the Agency.

#### **1.3.1.7.4 Claim Filing Time Limits**

The Plan may set reasonable notification and claim filing time limits for Non-Participating Providers. However, these limits shall not invalidate a claim if the Non-Participating Provider demonstrates that the claim could not have been reasonably filed within the limit or that the Non-Participating Provider was attempting to collect from a liable third-party payer.

#### **1.3.1.7.5 Appeal Procedure**

Enrollees in the *hawk-i* program may appeal any aspect of Covered Services provided through Providers. The Plan shall provide a written description of the Plan's appeal procedure, including expedited appeal procedures, to the Agency for approval, which at a minimum must comply with the requirements of Iowa Administrative Code 441--86.15(7). The Plan shall also inform the Enrollee if the Enrollee is dissatisfied with the resolution of the appeal through the Plan that the Enrollee may appeal to the State of Iowa Insurance Commissioner. Any subsequent changes to the Plan's appeal procedure shall be provided to the Agency in writing for approval.

##### **1.3.1.7.5.1 Written Appeal Procedure**

In accordance with Section 1.3.1.5.1, the Plan shall provide to each Enrollee a written procedure by which the Enrollee may appeal issues concerning the Covered Services provided through Providers.

##### **1.3.1.7.5.2 Expedited Appeal Procedures**

The Plan shall issue the final appeal decision on an enrollee appeal of a denial-of-care decision within 72 hours when the health Plan's adverse determination could seriously threaten the enrollee's life, health, or maximum recovery. Additionally, the Plan shall provide enrollees with written notice of expedited appeal rights, use denial forms that describe the expedited appeal rights, accept oral requests for appeals, and follow up verbal notification in writing within two working Days. The Plan is permitted a time extension of up to 10 working Days if additional information is necessary and the delay is in the interest of the enrollee.

Dentists, physicians and other health professionals may act on behalf of an enrollee who is appealing an adverse determination. The Plan shall accept the request of a dentist, regardless of whether the dentist is participating in the Plan network, to expedite the process for making an organizational determination or reconsideration.

#### **1.3.1.7.5.3 Right to External Review**

The Plan shall provide to each Enrollee a written procedure by which the Enrollee may request an external review of an adverse benefit determination for dental care services. The dental care service must be a covered service that was denied, reduced, or terminated in whole or in part because it does not meet the Plan's requirements for medical necessity or the service was experimental or investigational.

#### **1.3.1.7.5.4 Appeal to Insurance Commissioner**

Enrollee materials shall state that any grievance not satisfied through the Plan's grievance procedures established by the Plan may be submitted for review by the Office of the Iowa Commissioner of Insurance to the Insurance Commissioner pursuant to Section 505.8 of the Code of Iowa.

#### **1.3.1.7.5.5 Appeal Reports**

The Plan shall submit to the Agency a report summarizing each appeal and resolution at the end of each State Fiscal Year Quarter in accordance with Attachment 3.2.

### **1.3.1.8 Marketing**

The Plan shall submit Enrollee marketing materials and any plans for marketing activities associated with the *hawk-i* program to the Agency for written approval prior to the distribution of the materials or conducting the activities. The Plan shall not have any unsolicited contact with a potential Enrollee by an employee or agent of the Plan for the purpose of influencing the individual to enroll with the Plan. When conducting marketing activities, the Plan shall clearly identify that the Plan is not acting as a representative of the Agency, and is acting on behalf of the Plan.

The Plan shall not obtain enrollment through the offer of any compensation, reward or benefit to the Enrollee except for the offer of Covered Services in addition to those identified in Section 1.3.1.4.3 which have been approved by the Agency in accordance with the provisions of Section 1.3.1.4.

The Plan shall distribute any approved marketing materials to its entire service area. The Plan shall not seek to influence enrollment in the Plan in conjunction with the sale or offering of any private insurance. The Plan shall not directly or indirectly, engage in door-to-door, telephone, or other cold-call marketing activities.

### **1.3.1.9 Fraud and Abuse**

The Plan shall diligently safeguard against the potential for and promptly investigate reports of suspected fraud and abuse by employees, subcontractors, Providers and other entities.

The Plan shall provide the Agency with the Plan's policies and procedures on fraud and abuse within thirty (30) Days of execution of this Contract and whenever there is a change in the policy or procedure. This shall include the policy or procedure used to attest the accuracy, completeness and truthfulness of claims and payment data in accordance with 42 CFR 457.950(a)(2). The Plan shall notify the Agency, CMS, or the Office of the Inspector General, as appropriate, of all founded fraud and abuse cases within the Plan relevant to the *hawk-i* program. With respect to Enrollees, the reporting requirement applies to information on violations of the law that pertain to enrollment in the Plan, or the provision of, or payment for, health services.

The Plan shall comply with all applicable federal and state standards pertaining to fraud and abuse. The Agency may inspect, evaluate and audit the Plan at any time, as necessary, in instances where the Agency determines there is a reasonable possibility of fraudulent and abusive activity.

**1.3.1.10 Quality Improvement Program**

The Plan shall maintain a Quality Improvement (QI) program that achieves, through ongoing measurement and intervention, demonstrable and sustained improvement in projects concerning significant aspects of non-clinical services that can be expected to affect Enrollee satisfaction. Noted improvement shall be related to the QI projects rather than a random occurrence.

The Plan shall provide a description of the QI program, which shall evaluate, for the purpose of improvement, the overall quality of Plan services and processes to the Agency. These QI plans shall identify potential reasons for sub-optimal performance, opportunities for improvement, proposed activities to be performed within the scope of the QI program, and timeline for such activities.

A summary of the Plan's QI actions shall be submitted to the Agency no later than April 1, 2016, and April of each Contract year thereafter.

The Plan shall send a report in a format agreed upon by both parties to the Agency by November 1<sup>st</sup> of each Contract year on the following outcomes measures for the previous federal fiscal year (October 1 – September 30) using the most current version from CMS:

**1.3.1.10.1** Children's Health Insurance Program Reauthorization Act (CHIPRA) Measure 13: Total Eligibles Who Have Received Preventive Dental Services.

**1.3.1.10.2** CHIPRA Measure 17: Total Eligibles Who Received Dental Treatment Services.

**1.3.1.11 Dental Education and Prevention**

By April 1st of each Contract year thereafter, the Plan shall submit a description of its dental education and prevention program and record of related activities to the Agency for review. The Plan's dental education and prevention program shall be consistent with state licensure standards. The Plan shall provide to Enrollees recommended guidelines and information regarding preventive dental benefits and/or practices.

**1.3.1.12 Practice Guidelines and New Technology**

If a Plan adopts and enforces clinical practice guidelines, the Plan shall outline the mechanism for the adoption of the guidelines. Guidelines shall be based on reasonable medical evidence or a consensus of relevant practitioners and shall be reviewed and updated periodically. The guidelines shall be communicated to Providers and as necessary to Enrollees through manuals, newsletters or other communications.

The Plan shall have a written policy for review and adoption of new technologies and new uses of existing technologies. The policy shall be based on scientific evidence, review of findings by the Food and Drug Administration and other regulatory bodies, Title XXI coverage decisions and in consultation with medical professionals. The policy shall be communicated to Providers of services.

Clinical practice guidelines and technology review policies shall not exclude any Dentally Necessary Covered Services as defined herein.

**1.3.1.13 Other Contracts**

The Plan shall reasonably cooperate with other contractors retained by the Agency.

**1.3.1.14 Periodic Reports**

The Plan agrees to furnish information, which may be required to administer this Contract to the Agency or the Agency's authorized agents.

Unless otherwise specified, the following periodic reports shall be submitted to the Agency within sixty (60) Days from the end of the time period for which the report is to cover. In the event that delays in periodic report submissions are caused by the Agency or the Third Party Administrator, the time frame for submission shall be extended by the length of the delay.

- a. Encounter data shall be submitted monthly in accordance with Addendum 3.
- b. Summaries of appeals and resolutions shall be submitted at the end of each State Fiscal Year Quarter in accordance with Addendum 4.
- c. Summaries of the Plan's QI and dental education and prevention programs shall be submitted to the Agency no later than April 1 of each Contract Year.
- d. To the extent not precluded by law or Plan's agreement with Provider, information regarding disciplinary actions taken by the Plan against participating Providers by the Plan shall be submitted to the Agency.
- e. A provider directory in the format agreed upon by both parties at least quarterly. This may be submitted monthly with the encounter data files. The Plan shall demonstrate to the Agency's satisfaction compliance with 42 U.S.C.A. § 1396u-2(b)(5)(B) by showing a sufficient number, mix and geographic distribution of providers of services.

#### **1.3.1.15 Access to Dental Records**

The Enrollees, their attorney or their responsible parent or guardian shall be provided timely access to the Enrollee's dental records maintained by the Plan in accordance with applicable federal and state laws.

The Plan shall provide dental records to the Agency for the purposes described in Section 1.3.1.16 of this Contract. The Plan shall obtain the necessary releases of information from the Enrollee, their attorney or their responsible parent or guardian to release the dental records to the Agency.

The Plan shall provide the Agency, CMS and/or the Health and Human Service Office of the Inspector General with access to *hawk-i* Enrollee's dental claims data, claim payment data and related records.

#### **1.3.1.16 Access to Premises, Audits and Inspections**

The Plan shall allow duly authorized and identified agents or representatives of the state and federal governments including CMS, the Office of Civil Rights, and the Health and Human Service Office of the Inspector General, access to the Plan's premises during normal business hours for the specific purpose of inspecting, auditing, monitoring, or otherwise evaluating the performance of the Plan pursuant to this Contract. The Plan agrees to produce records, including, but not limited to, medical records as referenced in Section 1.3.1.15, relevant to this Section. In the event access to Plan's requested under this Section, the Plan agrees to make staff available to assist in the audit or inspecting effort and to provide adequate space on the premises to reasonably accommodate the state or federal representatives conducting the audit or inspection.

The Agency shall use its best efforts to notify the Plan, in writing, thirty (30) Days in advance of any inspection or audit, but reserves the right, when necessary in the Agency's judgment, to conduct audits or inspections pursuant to advance written notice of less than thirty (30) Days.

All audits or inspections shall be limited to a reasonable duration and conducted in a manner that does not unduly interfere with the Plan's regular business activities.

The Plan shall be given thirty (30) Days to respond in writing to any audit or inspection findings preceding finalization of same. All information so obtained shall be accorded confidential treatment as provided under applicable law.

#### **1.3.1.17 Protections Against Fraud and Abuse**

For purposes of this subsection, an "Excluded Person" means a person who (i) is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order NO. 12349 or under guidelines implementing such order, or (ii) an affiliate (as defined in such Regulations) of a person described in section (i) of this definition.

The Plan shall not knowingly have: (a) an Excluded Person as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the Plan's equity, or (b) an employment, consulting, or other agreement with an Excluded Person of the provision of items and services that are significant and material to the Plan's obligations under this Contract.

If the Agency finds that the entity has violated this requirement, the Agency will notify the Secretary of Health and Human Services of the violation and the Secretary, in consultation with the State and the Inspector General, will decide if this Contract will continue or otherwise be terminated.

Federal Financial Participation is not available for amounts expended for providers excluded by Medicare, Medicaid, or SCHIP.

#### **1.3.1.18 Reporting Violations of Law**

The Plan shall report to the Agency, to CMS, or to the Office of Inspector General (OIG) as appropriate, information on violations of law by subcontractors or Enrollees of the Plan and other individuals.

#### **1.3.1.19 Disclosure of Ownership and Related Information**

(1) The Plan shall—

(A) supply the Agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 42 U.S.C.A. § 405(c)(2)(B)) of the Plan, each person with an ownership or control interest (as defined in subsection (a)(3)), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term “disclosing entity” means an entity which is—

(A) a provider of services (as defined in 42 U.S.C.A. § 1395x(u) other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in 42 U.S.C.A. § 1396u-2(a)(1)(B), or a health maintenance organization (as defined in 42 U.S.C.A. §300e(a)).

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to Title V or under a State plan approved under Title XIX; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of Title XVIII, or both, or for purposes of a State plan approved under Title XIX) pursuant to (i) an agreement under 42 U.S.C.A. § 1395h, (ii) a contract under 42 U.S.C.A. § 1395u, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under Title XIX.

(3) As used in this section, the term “person with an ownership or control interest” means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or (ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this Section with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

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

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

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

**1.3.2.2 Agency Review Clause.** The Contract Manager or designee will use the results of monitoring activities and other relevant data to assess the Contractor's overall performance and compliance with the Contract. At a minimum, 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 require one or more meetings to discuss the outcome of a review. Meetings may be held in person. During the review meetings, the parties will discuss the Deliverables that have been provided or are in process under this Contract, achievement of the performance measures, and any concerns identified through the Agency's contract monitoring activities.

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

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

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

### 1.3.3 Contract Payment Clause.

**1.3.3.1 Capitation Rates.** In consideration of the Contract Services rendered, The Agency shall make a payment to the Contractor with the terms set forth in Attachment 3.2.

The capitated payment shall be payment in full for the Plan's Contractual Services for the *hawk-i* Enrollees listed in the monthly HIPAA 820 capitation file. Retro-active adjustments to reflect the actual cost of Contract Services are prohibited.

The Plan shall reconcile the Plan's HIPAA 820 capitation file with the monthly HIPAA 834 file (full monthly positive file) on a monthly basis. Any discrepancies found between these two files shall be reported to the Agency

and the TPA within forty-five (45) days from the date the Plan receives the HIPAA 820 capitation file. No adjustment to the capitation payment shall be made for any discrepancies reported after the forty-five (45) days.

**1.3.3.2 Renegotiation.** The monthly capitation rate shall be subject to review annually during the Contract term or when the scope of Covered Services is changed by the parties a permitted in Section 1.3.1.4

If changes are made in the Covered Services, the parties shall renegotiate the capitation rate to take the changes into account.

If the Agency establishes new capitation rates, such rates shall be established at least forty-five (45) days prior to the effective date. The Plan shall notify the Agency thirty (30) days after receiving notice of the new rates regarding its intent to continue the Contract.

**1.3.3.3 Payment Schedule .** The Agency shall make payment to the Plan on or about the 10<sup>th</sup> day of each month.

**1.3.3.4 Recovery.** The Agency shall not recover from the Plan any capitation payments made for Enrollees who are determined to have been ineligible for the *hawk-i* coverage as a result of Agency error in any month(s) for which the Plan received a capitation payment.

Changes in Enrollee eligibility which become known subsequent to payment of a capitation payment shall not relieve the Plan for liability for provision of care for the period for which capitation payment has been made.

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

**1.3.3.6 Contract and Payment Requirements Including Certification of Payment-Related Information.**

The Plan shall provide:

- i. Enrollment information and other information required by the Agency;
- ii. An attestation to the accuracy, completeness, and truthfulness of claims and payment data, under penalty of perjury.
- iii. Access for the Agency, CMS, and the United States Department of Health and Human Services office of the Inspector General to Enrollee dental claims data and payment data, in conformance with appropriated privacy protections in the State; and
- iv. A guarantee that the Plan will not avoid costs for services covered by this Contract by referring Enrollees to publicly supported health care resources.

**1.4 Insurance Coverage.**

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

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million



	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers' Compensation and Employer Liability	As required by Iowa law	As Required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Professional Liability	Each Occurrence	\$1 Million
	Aggregate	\$3 Million

**1.5 Business Associate Agreement.** The Contractor, acting as the Agency's Business Associate, performs certain services on behalf of or for the Agency pursuant to this Contract that require the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 CFR part 160 and 164. The Business Associate agrees to comply with the Business Associate Agreement Addendum (BAA), and any amendments thereof, as posted to the Agency's website: <http://dhs.iowa.gov/HIPAA/baa>. 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. The Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://dhs.iowa.gov/HIPAA/baa>, 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.

## SECTION 2. GENERAL TERMS FOR SERVICES CONTRACTS

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

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

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

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

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

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

**“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 or applicants of Agency services and recipients of Contract services including Protected Health

Information (45 C.F.R. § 160.103) and Personal Information (Iowa Code § 715C.1(11)), 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; (6) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (7) 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 and includes the signed Contract Declarations and Execution Section, the General Terms for Services Contracts, the Special Terms, and any Special Contract Attachments, as these documents may be amended from time to time.

**“Deficiency”** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable,

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

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

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

**“Force Majeure”** means an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. Force Majeure does not include: financial difficulties 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; or supply chain disruptions.

**“Invoice”** means a Contractor’s claim for payment. At the Agency’s discretion, claims may be submitted on an original invoice from the Contractor or may be submitted on a claim form 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. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

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

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

**2.2 Duration of Contract.** The term of the Contract shall begin and end on the dates specified in the Contract Declarations and Execution Section, unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, 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 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.**

**2.5.1 Termination for Cause by the Agency.** The Agency may terminate this Contract upon written notice for the breach by the Contractor or any subcontractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to the Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

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

**2.5.1.2** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

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

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

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

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

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

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

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

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

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

insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- Making an assignment for the benefit of creditors;
- Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with the Contractor's performance of its obligations under this Contract; or
- Taking any action to authorize any of the foregoing.

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

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

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

**2.5.3.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

**2.5.3.3** If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

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

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

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

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

**2.5.4 Other remedies.** The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

**2.5.5 Limitation of the State's Payment Obligations.** In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 2.5.1, *Termination for Cause by the Agency*) the Agency shall pay only those amounts, if any, due and owing to the Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 2.5.3, *Termination Due to Lack of Funds or Change in Law*, the Agency's obligation to pay the Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of Invoices and proper proof of the Contractor's claim. Notwithstanding the foregoing, this section in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of the Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

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

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

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

**2.5.5.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or

commitments made in connection with this Contract;  
or

**2.5.5.5** Any taxes the Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes, or property taxes.

**2.5.6 Contractor's Contract Close-Out Duties.**

Upon receipt of notice of termination, at expiration of the Contract, or upon request of the Agency (hereafter, "Close-Out Event"), the Contractor shall:

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

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

**2.5.6.3** Cooperate in good faith with the Agency and its employees, agents, and independent contractors during the transition period between the Close-Out Event and the substitution of any replacement service provider.

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

**2.5.6.5** Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied at that time.

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

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

**2.6 Reserved. (Change Order Procedure)**

**2.7 Indemnification.**

**2.7.1 By the Contractor.** The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers, and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements, and judgments (including,

without limitation, the reasonable value of the time spent by the Attorney General's Office,) and the costs, expenses, and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

**2.7.1.1** Any breach of this Contract;

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

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

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

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

**2.8 Insurance.**

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

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

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

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

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

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

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

**2.8.3 Certificates of Coverage.** The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract, 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.

**2.9 Ownership and Security of Agency Information.**

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

Agency shall own all Agency Information that may reside within the Contractor's hosting environment and/or equipment/media.

**2.9.2 Foreign Hosting and Storage Prohibited.**

Agency Information shall be hosted and/or stored within the ~~continental~~ United States only.

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

**2.9.4 No Use or Disclosure of Confidential Information.** Confidential Information collected, maintained, or used in the course of performance of the Contract shall only be used or disclosed by the Contractor as expressly authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. The Contractor shall immediately report to the Agency any unauthorized use or disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper use or disclosure of Confidential Information.

**2.9.5 Contractor Breach Notification Obligations.** The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized use or disclosure of Confidential Information or other event(s) requiring notification in accordance with applicable law. In the event of a breach of the Contractor's security obligations 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.

**2.9.6 Compliance of Contractor Personnel.** The Contractor and the Contractor's personnel shall comply with the Agency's and the State's security and personnel policies, procedures, and rules, including any procedure which the Agency's

personnel, contractors, and consultants are normally asked to follow. The Contractor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve the Contractor or the Contractor's personnel. All services shall be performed in accordance with State Information Technology security standards and policies as well as Agency security protocols and procedures. By way of example only, see Iowa Code 8A.206, <http://secureonline.iowa.gov/links/index.html>, and <http://das.ite.iowa.gov/standards/index.html>.

**2.9.7 Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing Confidential Information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the Confidential Information.

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

**2.9.9 Contractor's Inability to Return and/or Destroy Information.** If for any reason the Agency Information cannot be returned and/or destroyed upon expiration or termination of the Contract, the Contractor agrees to notify the Agency with an explanation as to the conditions which make return and/or destruction not possible or feasible. Upon

mutual agreement by both parties that the return and/or destruction of the information is not possible or feasible, the Contractor shall make the Agency Information inaccessible. The Contractor shall not use or disclose such retained Agency Information for any purposes other than those expressly permitted by the Agency. The Contractor shall provide to the Agency a detailed description as to the procedures and methods used to make the Agency Information inaccessible no later than thirty (30) days after making the information inaccessible. If the Agency provides written permission for the Contractor to retain the Agency Information in the Contractor's information systems, the Contractor will extend the protections of this Contract to such information and limit any further uses or disclosures of such information.

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

## **2.10 Intellectual Property.**

**2.10.1 Ownership and Assignment of Other Deliverables.** The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. The Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the



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

**2.10.2 Waiver.** To the extent any of the Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, the Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

**2.10.3 Further Assurances.** At the Agency's request, the Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect, or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 2.10, *Intellectual Property*.

**2.10.4 Publications.** Prior to completion of all services required by this Contract, the Contractor shall not publish in any format any final or interim report, document, form, or other material developed as a result of this Contract without the express written consent of the Agency. Upon completion of all services required by this Contract, the Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Agency has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.

## **2.11 Warranties.**

**2.11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency,

shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through the course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. With the exception of Subsection 2.11.3, the provisions of this section apply during the Warranty Period as defined in the Contract Declarations and Execution Section.

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

**2.11.2.1** All Deliverables shall be wholly original with and prepared solely by the Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses, and other rights assigned, granted, or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party;

**2.11.2.2** The Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and

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

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

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

**2.11.3.2** The Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. The Contractor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. The Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential, or

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

- Procure for the Agency the right or license to continue to use the Deliverable at issue;
- Replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation;
- Modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation; or
- Accept the return of the Deliverable at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency with respect to such Deliverable. In addition, the Contractor agrees to indemnify, defend, protect, and hold harmless the State and its officers, directors, employees, officials, and agents as provided in the Indemnification Section of this Contract, including for any breach of the representations and warranties made by the Contractor in this section.

The warranty provided in this Section 2.11.3 shall be perpetual, shall not be subject to the contractual Warranty Period, and shall survive termination of this Contract. The foregoing remedies provided in this subsection shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

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

- 2.11.4.1** Be free from material Deficiencies; and
- 2.11.4.2** Meet, conform to, and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contract Declarations and Execution Section. During the Warranty Period the Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) Business Days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event the Contractor is unable to repair, correct, or replace such Deliverable to the Agency's satisfaction, the Contractor shall

refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. The Contractor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverables may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

**2.11.5** The Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable Specification shall be the generally accepted industry standard. So long as the Agency notifies the Contractor of any services performed in violation of this standard, the Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse the Agency any fees or compensation paid to the Contractor for the unsatisfactory services.

**2.11.6** The Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the entire term of this Contract, which includes any extensions or renewals thereof, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

**2.11.7 Obligations Owed to Third Parties.** The Contractor represents and warrants that all

obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

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

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

#### **2.12.2. Reserved. (Acceptance of Software Deliverables)**

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

### **2.13 Contract Administration.**

**2.13.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents, and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division, or department of the State simply by virtue of work performed pursuant to this Contract. Neither

the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

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

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

**2.13.4 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply at all times with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, guidance, and policies in place at Contract execution as well as any and all future amendments, changes, and additions to such laws (the "Applicable Law") as of the effective date of such change. 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 and/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.

Applicable Law includes, without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this Contract to be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents, and subcontractors shall also comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Administrative Code chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

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

**2.13.6 Non-Exclusive Rights.** This Contract is not exclusive. The Agency reserves the right to select

other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the entire term of this Contract, which includes any extensions or renewals thereof.

**2.13.7 Amendments.** This Contract may only be amended by mutual written consent of the parties, with the exception of (1) the Contract end date, which may be extended under the Agency's sole discretion, and (2) the Business Associate Agreement, which may be modified or replaced on notice pursuant to Section 1.5, *Business Associate Agreement*. 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.

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

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

**2.13.10 Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United

States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

**2.13.11 Assignment and Delegation.** The Contractor may not assign, transfer, or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.13.25 Records Retention and Access.**

**2.13.25.1 Financial Records.** The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency 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 OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

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

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

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

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

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

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

be submitted to the Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. The Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within two (2) Business Days following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

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

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

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

**2.13.29 Solicitation.** The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this

Contract upon an agreement or understanding for commission, percentage, brokerage, or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

**2.13.30 Obligations Beyond Contract Term.** 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. Contract sections that survive include, but are not necessarily limited to, the following: (1) Section 2.4.2, *Erroneous Payments and Credits*; (2) Section 2.5.5, *Limitation of the State's Payment Obligations*; (3) Section 2.5.6, *Contractor's Contract Close-Out Duties*; (4) Section 2.7, *Indemnification*, and all subparts thereof; (5) Section 2.9, *Ownership and Security of Agency Information*, and all subparts thereof; (6) Section 2.10, *Intellectual Property*, and all subparts thereof; (7) Section 2.13.10, *Choice of Law and Forum*; (8) Section 2.13.16, *Joint and Several Liability*; (9) Section 2.13.20, *Cumulative Rights*; (10) Section 2.13.24 *Successors In Interest*; (11) Section 2.13.25, *Records Retention and Access*, and all subparts thereof; (12) Section 2.13.26, *Audits*; (13) Section 2.13.27, *Reimbursement of Audit Costs*; (14) Section 2.13.35, *Repayment Obligation*; and (15) Section 2.13.39, *Use of Name or Intellectual Property*.

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

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

unless and until the Contractor provides notice pursuant to this provision.

**2.13.33 Delays or Impossibility of Performance Based on a Force Majeure.** Neither party shall be in default under the Contract if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a Force Majeure. If a 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.

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

**2.13.35 Repayment Obligation.** In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

**2.13.36 Reporting Requirements.** If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a

report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

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

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

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

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

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

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

**2.14.1 Certification of Compliance with Pro-Children Act of 1994.** The Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the Deliverables are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees,



and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where Women, Infants, and Children (WIC) coupons are redeemed.

The Contractor further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000.00 per day.

**2.14.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

By signing this Contract, the Contractor is providing the certification set out below:

**2.14.2.1** The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

**2.14.2.3** The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contact the Agency for assistance in obtaining a copy of those regulations.

**2.14.2.4** The Contractor agrees by signing this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared

ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency or agency with which this transaction originated.

**2.14.2.5** The Contractor further agrees by signing this Contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**2.14.2.6** A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

**2.14.2.7** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**2.14.2.8** Except for transactions authorized under Section 2.14.2.4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**2.14.2.9** The Contractor certifies, by signing this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

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

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

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

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

**2.14.3.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**2.14.4 Certification Regarding Drug Free Workplace**

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

**2.14.4.1.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's

workplace and specifying the actions that will be taken against employees for violations of such prohibition;

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

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

**2.14.4.1.3** Making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by Subsection 2.14.4.1.1;

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

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

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

**2.14.4.1.6** Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 703; and

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

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

**2.14.4.3 Notification Requirement.** The Contractor shall, within thirty (30) days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 701(a)(1)(D)(ii) or 41 U.S.C. § 702(a)(1)(D)(ii):

- 2.14.4.3.1** Take appropriate personnel action against such employee up to and including termination; or
- 2.14.4.3.2** Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation

program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

**2.14.5 Conflict of Interest.** The Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer, or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code chapter 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

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

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

**2.14.7.1** 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.

**2.14.7.2** 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.

**2.14.7.3** 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:

**2.14.7.3.1** 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.

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

**2.14.7.3.3** 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.

**2.14.7.3.4** 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.

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

**2.14.7.3.6** 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.

**2.14.7.3.7** 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.

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## SECTION 3: SPECIAL CONTRACT ATTACHMENTS

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

3.1

# *The Iowa hawk-i Dental Plan*

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## Covered Benefits

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## The Iowa *hawk-i* Dental Plan

### Section 1 - Basic Services

The following is a list of services that are payable under the Iowa *hawk-i* Dental Plan. The list includes those services most commonly provided to covered individuals. It is not an all-inclusive list of covered services.

<b><i>Diagnostic and Treatment Services</i></b>
D0120 Periodic oral evaluation - Limited to twice per benefit period.*
D0140 Limited oral evaluation - problem focused - Limited to twice per benefit period.*
D0150 Comprehensive oral evaluation – Limited to twice per benefit period.* Also limited to once per dentist in a three-year period when the recipient has not seen that dentist during the previous three years
D0160 Detailed and extensive oral evaluation – Limited to twice per benefit period.*
D0180 Comprehensive periodontal evaluation – Limited to twice per benefit period.* Also limited to once per dentist in a three-year period when the recipient has not seen that dentist during the previous three years
D0210 Intraoral – complete series (including bitewings) 1 every 5 consecutive years.**
D0220 Intraoral - periapical first film
D0230 Intraoral - periapical - each additional film
D0240 Intraoral – occlusal film
D0270 Bitewing - single film - 1 set per benefit period; 2 sets for “At High Risk” Members***
D0272 Bitewings - two films - 1 set per benefit period; 2 sets for “At High Risk” Members***
D0273 Bitewings - three films - 1 set per benefit period; 2 sets for “At High Risk” Members***
D0274 Bitewings – four films – 1 set per benefit period; 2 sets for “At High Risk” Members***
D0277 Vertical bitewings – 7 to 8 films – 1 set per benefit period; 2 sets for “At High Risk” Members***
D0330 Panoramic film – 1 every 5 consecutive years.**
D0484 Consultation on slides prepared elsewhere – Limited to twice per benefit period
<b><i>Preventive Services</i></b>
D1120 Prophylaxis – Child - Limited to twice per benefit period.
D1110 Prophylaxis – Adult – Limited to twice per benefit period.
D1206 Topical fluoride varnish – Limited to twice per benefit period; additional application for “At High Risk” Members***
D1208 Topical fluoride application; excluding varnish – Limited to twice per benefit period: additional application for “At High Risk” Members***
D1351 Sealant - per tooth - unrestored permanent molars - 1 sealant per tooth every 3 consecutive years.
D1353 Sealant repair – per tooth – previously sealed permanent molars – 1 sealant repair per tooth every 3 years (benefit starts 2 years after the initial sealant is placed)
D1352 Preventive resin restoration in moderate to high caries risk children – permanent tooth. Limited to permanent unrestored molars and not paid in conjunction with a sealant
D1510 Space maintainer – fixed – unilateral
D1515 Space maintainer – fixed – bilateral
D1520 Space maintainer - removable – unilateral
D1525 Space maintainer - removable – bilateral
D1550 Re-cementation or re-bond space maintainer
D1555 Removal of fixed space maintainer

**Additional Procedures covered as Basic Services**

**D9110 Palliative treatment of dental pain – minor procedure**

- \* The twice per benefit period frequency limitation is inclusive for all oral evaluations, including consultations.
- \*\*The once every 5 consecutive year frequency limitation is inclusive for complete series x-ray and/or panoramic films.
- \*\*\*\*“At Risk” Members –will be identified through provider documentation using a caries risk assessment form

## Section 2 - Intermediate Services

The following is a list of services that are payable under the Iowa *hawk-i* Dental Plan. The list includes those services most commonly provided to covered individuals. It is not an all-inclusive list of covered services.

**Minor Restorative Services**

- D2140 Amalgam - one surface, primary or permanent
- D2150 Amalgam - two surfaces, primary or permanent
- D2160 Amalgam - three surfaces, primary or permanent
- D2161 Amalgam - four or more surfaces, primary or permanent
- D2330 Resin-based composite - one surface, anterior
- D2331 Resin-based composite - two surfaces, anterior
- D2332 Resin-based composite - three surfaces,
- D2335 Resin-based composite - four or more surfaces or involving incisal angle (anterior)
- D2910 Re-cement or re-bond inlay or onlay
- D2920 Re-cement or re-bond crown
- D2930 Prefabricated stainless steel crown - primary tooth
- D2931 Prefabricated stainless steel crown - permanent tooth
- D2951 Pin retention - per tooth, in addition to restoration

**Endodontic Services**

- D3220 Therapeutic pulpotomy (excluding final restoration) - If a root canal is within 45 days of the pulpotomy, total benefit for the root canal will include the allowance given for the pulpotomy.
- D3222 Partial pulpotomy for apexogenesis - permanent tooth with incomplete root development  
If a root canal is within 45 days of the pulpotomy, total benefit for the root canal will include the allowance given for the partial pulpotomy.
- D3230 Pulpal therapy (resorbable filling) - anterior, primary tooth (excluding final restoration)
- D3240 Pulpal therapy (resorbable filling) - posterior, primary tooth excluding final restoration

**Periodontal Services**

- D4341 Periodontal scaling and root planning-four or more teeth per quadrant – Limited to 1 per quadrant every 24 consecutive months
- D4342 Periodontal scaling and root planning-one to three teeth, per quadrant – Limited to 1 per quadrant every 24 consecutive months
- D4910 Periodontal maintenance – Limited to no more than 4 in the first benefit period, combined with adult prophylaxis, after the completion of active periodontal therapy. Limited to twice per benefit period thereafter.

**Prosthodontic Services**

- D5410 Adjust complete denture – maxillary – Limited to twice per denture per benefit period after 6 months have elapsed since initial placement.
- D5411 Adjust complete denture – mandibular – Limited to twice per denture per benefit period

after 6 months have elapsed since initial placement.

D5421 Adjust partial denture – maxillary – Limited to twice per denture per benefit period after 6 months have elapsed since initial placement.

D5422 Adjust partial denture - mandibular – Limited to twice per denture per benefit period after 6 months have elapsed since initial placement.

D5510 Repair broken complete denture base

D5520 Replace missing or broken teeth - complete denture (each tooth)

D5610 Repair resin denture base

D5620 Repair cast framework

D5630 Repair or replace broken clasp

D5640 Replace broken teeth - per tooth

D5650 Add tooth to existing partial denture

D5660 Add clasp to existing partial denture

D5710 Rebase complete maxillary denture

D5711 Rebase complete mandibular denture.

D5720 Rebase maxillary partial

D5721 Rebase mandibular partial denture

D5730 Reline complete maxillary denture (chairside) -

D5731 Reline complete mandibular denture (chairside) -

D5740 Reline maxillary partial denture (chairside)

D5741 Reline mandibular partial denture (chairside)

D5750 Reline complete maxillary denture (laboratory) -

D5751 Reline complete mandibular denture (laboratory) -

D5760 Reline maxillary partial denture (laboratory)

D5761 Reline mandibular partial denture (laboratory)

D5850 Tissue conditioning (maxillary) - Limited to twice per denture every 36 consecutive months.

D5851 Tissue conditioning (mandibular) – Limited to twice per denture every 36 consecutive months.

D6930 Recement or re-bond fixed partial denture

D6980 Fixed partial denture repair, by report

### **Oral Surgery**

D7140 Extraction, erupted tooth or exposed root (elevation and/or forceps removal)

D7210 Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth

D7220 Removal of impacted tooth - soft tissue

D7230 Removal of impacted tooth – partially bony

D7240 Removal of impacted tooth - completely bony

D7241 Removal of impacted tooth - completely bony with unusual surgical complications

D7250 Surgical removal of residual tooth roots (cutting procedure)

D7270 Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth

D7280 Surgical access of an unerupted tooth

D7285 Incisional biopsy of oral tissue – hard (bone, tooth)

D7286 Incisional biopsy of oral tissue – soft

D7310 Alveoloplasty in conjunction with extractions - per quadrant

D7311 Alveoloplasty in conjunction with extractions-1-3 teeth or tooth spaces, per quadrant

D7320 Alveoloplasty not in conjunction with extractions - per quadrant

D7321 Alveoloplasty not in conjunction with extractions-1-3 three teeth or tooth spaces, per quad

D7471 Removal of exostosis

D7530 Removal of foreign body



D7971 Excision of pericoronal gingiva  
 D9951 Occlusal adjustment – limited – Limited to twice every 12 consecutive months

### Section 3 - Major Services

The following is a list of services that are payable under the Iowa *hawk-i* Dental Plan. The list includes those services most commonly provided to covered individuals. It is not an all-inclusive list of covered services.

<b><u>Major Restorative Services</u></b>
* Limited to once per tooth every 5 consecutive years, unless otherwise noted
D2410 Gold Foil - one surface – An alternate benefit will be provided.
D2420 Gold Foil – two surfaces – An alternate benefit will be provided.
D2430 Gold Foil – three surfaces – An alternate benefit will be provided.
D2510 Inlay - metallic – one surface – An alternate benefit will be provided
D2520 Inlay - metallic – two surfaces – An alternate benefit will be provided
D2530 Inlay - metallic – three surfaces – An alternate benefit will be provided
D2542 Onlay - metallic - two surfaces
D2543 Onlay - metallic - three surfaces
D2544 Onlay - metallic - four or more surfaces
D2740 Crown - porcelain/ceramic substrate
D2750 Crown - porcelain fused to high noble metal
D2751 Crown - porcelain fused to predominately base metal
D2752 Crown - porcelain fused to noble metal
D2780 Crown - 3/4 cast high noble metal
D2781 Crown - 3/4 cast predominately base metal
D2783 Crown - 3/4 porcelain/ceramic
D2790 Crown - full cast high noble metal
D2791 Crown - full cast predominately base metal
D2792 Crown - full cast noble metal
D2794 Crown – titanium
D2950 Core buildup, including any pins
D2954 Prefabricated post and core, in addition to crown
D2955 Post removal
D2980 Crown repair, by report
<b><u>Endodontic Services</u></b>
D3310 Anterior root canal (excluding final restoration)
D3320 Bicuspid root canal (excluding final restoration)
D3330 Molar root canal (excluding final restoration)
D3346 Retreatment of previous root canal therapy-anterior
D3347 Retreatment of previous root canal therapy-bicuspid
D3348 Retreatment of previous root canal therapy-molar
D3351 Apexification/recalcification – initial visit (apical closure/calcific repair of perforations, root resorption, etc.)
D3352 Apexification/recalcification – interim medication replacement (apical closure/calcific repair of perforations, root resorption, etc.)
D3353 Apexification/recalcification - final visit (includes completed root canal therapy, apical closure/calcific repair of perforations, root resorption, etc.)
D3410 Apicoectomy/periradicular surgery - anterior

D3421 Apicoectomy/periradicular surgery - bicuspid (first root)
D3425 Apicoectomy/periradicular surgery - molar (first root)
D3426 Apicoectomy/periradicular surgery (each additional root)
D3450 Root amputation - per root
D3920 Hemisection (including any root removal) - not including root canal therapy
D3950 Canal preparation
<b><i>Periodontal Services</i></b>
D4210 Gingivectomy or gingivoplasty – four or more teeth Limited to 1 per quadrant per benefit period.
D4211 Gingivectomy or gingivoplasty – one to three teeth – Limited to 1 per quadrant per benefit period.
D4240 Gingival flap procedure, four or more teeth – Limited to 1 per quadrant per benefit period.
D4241 Gingival flap procedure, one to three teeth – Limited to 1 per quadrant per benefit period.
D4249 Clinical crown lengthening-hard tissue
D4260 Osseous surgery (including flap entry and closure), four or more contiguous teeth or bounded teeth spaces per quadrant – Limited to 1 per quadrant per benefit period.
D4261 Osseous surgery (including flap entry and closure) – one to three teeth – Limited to 1 per quadrant per benefit period.
D4270 Pedicle soft tissue graft procedure
D4271 Free soft tissue graft procedure (including donor site surgery)
D4273 Subepithelial connective tissue graft procedures (including donor site surgery)
D4355 Full mouth debridement to enable comprehensive evaluation and diagnosis – Limited to 1 per lifetime after 36 months have elapsed since last dental cleaning (prophylaxis).
<b><i>Prosthodontic Services</i></b>
* Limited to once every 5 consecutive years, unless otherwise noted
D5110 Complete denture - maxillary
D5120 Complete denture - mandibular
D5130 Immediate denture - maxillary
D5140 Immediate denture - mandibular
D5211 Maxillary partial denture - resin base (including any conventional clasps, rests and teeth)
D5212 Mandibular partial denture - resin base (including any conventional clasps, rests and teeth)
D5213 Maxillary partial denture - cast metal framework with resin denture base (including any conventional clasps, rests and teeth)
D5214 Mandibular partial denture - cast metal framework with resin denture base (including any conventional clasps, rests and teeth)
D5281 Removable unilateral partial denture-one piece cast metal (including clasps and teeth)
D5862 Precision attachment
D6241 Pontic - porcelain fused to predominately base metal
D6242 Pontic - porcelain fused to noble metal
D6245 Pontic - porcelain/ceramic
D6519 Inlay/onlay – porcelain/ceramic
D6520 Inlay – metallic – two surfaces
D6530 Inlay – metallic – three or more surfaces
D6543 Onlay – metallic – three surfaces
D6544 Onlay – metallic – four or more surfaces
D6545 Retainer - cast metal for resin bonded fixed prosthesis
D6548 Retainer - porcelain/ceramic for resin bonded fixed prosthesis
D6740 Crown - porcelain/ceramic

D6750 Crown - porcelain fused to high noble metal
D6751 Crown - porcelain fused to predominately base metal -
D6752 Crown - porcelain fused to noble metal
D6780 Crown - 3/4 cast high noble metal
D6781 Crown - 3/4 cast predominately base metal
D6782 Crown - 3/4 cast noble metal
D6783 Crown - 3/4 porcelain/ceramic
D6790 Crown - full cast high noble metal
D6791 Crown - full cast predominately base metal
D6792 Crown - full cast noble metal
D6920 Connector bar
D6940 Stress breaker
D6950 Precision attachment
D6973 Core buildup for retainer, including any pins

<b><u>Emergency Dental Services</u></b>	
D2940 – Protective Restoration	
D4320 Provisional splinting – intracoronal – benefit is subject to review as an emergency dental service.	
D4321 Provisional splinting – extracoronal – benefit is subject to review as an emergency dental service.	
D7910 Suture of recent small wounds up to 5 cm. Benefit is subject to review as an emergency dental service.	
D2970 Temporary crown (fractured tooth) – benefit subject to review as an emergency dental service.	
D5810 Complete denture upper (interim) ) – benefit subject to review as an emergency dental service.	
D5811 Complete denture lower (interim) ) – benefit subject to review as an emergency dental service.	
D5820 Partial denture upper (interim) ) – benefit subject to review as an emergency dental service.	
D5821 Partial denture lower (interim) ) – benefit subject to review as an emergency dental service.	
D7510 Incision and drainage of abscess - intraoral soft tissue – benefit subject to review as an emergency dental service.	
D7911 Complicated sutures up to 5 cm. - benefit subject to review as an emergency dental service.	
D7912 Complicated sutures greater than 5 cm.- benefit subject to review as an emergency dental service.	

**Section 4 - Orthodontic Coverage**

Orthodontic procedures require prior authorization and will be approved when “medically necessary” as defined below. A “handicapping” malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the recipient by causing:

- Impaired mastication,
- Dysfunction of the temporomandibular articulation,
- Susceptibility to periodontal disease,
- Susceptibility to dental caries, and
- Impaired speech due to malpositions of the teeth.

Medically necessary orthodontic service is an orthodontic procedure that addresses a harmful habit (e.g. tongue thrust) that is causing deformative changes to the teeth and/or jaw structure, or is one of the automatically qualifying clinical conditions (cleft palate or craniofacial deformity), or is a limited, interceptive, or comprehensive orthodontic treatment that treats a handicapping malocclusion with a

Salzmann score of 26 or greater. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of mal-alignment, missing teeth, angle classification, overjet and overbite, open bite, and crossbite. A Salzmann Index score of 26 or greater will be used as criteria for "medically necessary" orthodontic benefits.

Approval for treatment will be assessed in a manner consistent with "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, DDS, American Journal of Orthodontics, October 1968. Approval may be made for a complete comprehensive case of active orthodontic treatment.

Provider's request for prior authorization shall be accompanied by:

- An interpreted cephalometric radiograph (either a full series of radiographs or panograph film).
- Study models trimmed so that the models simulate centric occlusion of the recipient when the models are placed on their heels.
- A written plan of treatment.

Post treatment records or a randomized record audit may be requested.

#### **MINOR TREATMENT TO CONTROL HARMFUL HABITS**

D8210 Removable appliance therapy. Requires prior authorization.

D8220 Fixed appliance therapy. Requires prior authorization.

- These procedures will be approved for a finger, lip, or tongue habit that has deformative impact on the teeth and/or jaw structures. Requests for approval shall be accompanied by documentation of the nature and scope of the deleterious habit.

#### **LIMITED OR INTERCEPTIVE TREATMENT**

D8020 Limited orthodontic treatment of the transitional dentition

D8060 Interceptive orthodontic treatment of the transitional dentition

- These procedures will be approved for certain limited and interceptive cases that are associated with handicapping malocclusions. Requests for approval should demonstrate an overjet of 6mm or greater, an ANB angle of 4 degrees or more, or an ANB angle of 0 degrees or less.

#### **COMPREHENSIVE ORTHODONTIC TREATMENT OF PERMANENT DENTITION**

D8070 / D8080 / D8680 / D8999

These procedures require prior authorization. Orthodontic procedures will be approved for handicapping malocclusions that meet a Salzmann Index score of 26 or greater. The request for prior authorization shall be accompanied by:

- An interpreted cephalometric radiograph (either a full series of radiographs or pantograph film),
- Study models trimmed so that the models simulate centric occlusion of the recipient when the models are placed on their heels, and
- A written plan of treatment.

#### **Code Procedure Comment**

D0140 Limited oral evaluation – problem focused

D8020 Limited orthodontic treatment of the transitional dentition

D8060 Interceptive orthodontic treatment of the transitional dentition

\*\*D8070 Comprehensive treatment of transitional dentition

\*\*D8080 Comprehensive treatment of adolescent dentition

D8210 Removable Appliance Therapy – harmful habit

D8220 Fixed Appliance Therapy – harmful habit

- \*D8660 Pre-orthodontic treatment visit
- D8680 Orthodontic retention
- D8690 Active treatment, transfers (Use when recipient transfers from one provider to another).
- D8999 Unspecified orthodontic procedure

\* Code used for diagnostic records (radiographs, casts, photos, etc)

\*\* Inclusive of D0140, D8660, and D8680 procedures when provided by the same dentist in the same course of treatment.

### Section 5 – Emergency Dental Services Beyond the Annual Benefit Maximum

Dental services delivered to address an Emergency Dental Condition are covered even if the *hawk-i* plan member has exceeded their annual benefit maximum. For applicable instances, services will be Dentally Necessary and prior authorization is required. Treatment of Emergency Dental Conditions beyond the annual benefit maximum are covered by participating and non-participating dentists inside and outside of the Plan's Enrollment Area. The Plan shall directly reimburse the Provider rendering emergency services to the Enrollee.

Funding is intended to address urgent clinical problems to allow a member to return to normal, pain and infection-free oral functioning and not to provide for definitive therapy.

Covered services must meet one or more of the following emergent/urgent criteria:

- Services related to the relief of significant pain or to eliminate acute infection
- Services to treat traumatic clinical conditions
- Services that allow a patient to attain the basic human functions (eg eating, speech, etc )
- Services that prevent a condition from seriously jeopardizing one's health/functioning or deteriorating in an imminent time frame to a more serious and costly dental problem

### Section 6 – Services Not Covered

The following is a list of services that are *not payable* under the Iowa *hawk-i* Dental Plan.

**Please Note:** Even if a service is not specifically listed as an exclusion, it may not be covered under this plan. Contact the dental carrier if you are unsure a certain service is covered. Experimental or investigational services are not a covered benefit of the Plan.

Services Not Covered
D0320 TMJ arthrogram
D0321 Other TMJ films
D0322 Tomographic survey
D0351 3D photographic image
D0360 Cone Beam CT
D0362 Cone Beam multiple images 2 dim.
D0363 Cone Beam multiple images 3 dim.
D0416 Viral culture
D0418 Analysis of saliva example chemical or biological analysis of saliva for diagnostic purposes.
D0425 Caries test
D0431 Adjunctive pre-diagnostic test
D0475 Declassification procedure
D0476 Special stains for microorganisms

D0477 Special stains not for microorganisms
D0478 Immunohistochemical stains
D0479 Tissue in-situ-hybridization
D0481 Electron microscopy
D0482 Direct immunofluorescence
D0483 In-direct immunofluorescence
D0485 Consultation including preparation of slides
D0486 Brush biopsy sample
D1310 Nutritional counseling
D1320 Tobacco counseling
D1330 Oral Hygiene Instruction
D7292 Surgical replacement screw retained
D7293 Surgical replacement w/surgical flap
D7294 Surgical replacement without the surgical flap
D7880 TMJ Appliance
D7899 TMJ Therapy
D7997 Appliance Removal
D7998 Intraoral placement of a fixation device
D2799 Provisional Crown
D2975 Coping
D3460 Endodontic Implant
D3470 Intentional reimplantation
D3910 Surgical procedure for isolation of tooth
D4230 Anatomical crown exposure 4 or more teeth
D4231 Anatomical crown exposure 1-3 teeth
D5867 Replacement Precision Attachment
D5986 Fluoride Gel Carrier
D6057 Custom abutment
D6253 Provisional Pontic
D6975 Coping – metal
D9210 Local Anesthesia not in conjunction with operative or surgical procedures
D9211 Regional Block Anesthesia
D9212 Trigeminal Division Block Anesthesia
D9215 Local Anesthesia
D9219 Evaluation for deep sedation or general anesthesia
D9230 Analgesia, anxiolysis, inhalation of nitrous oxide
D9248 Non-intravenous conscious sedation
D9410 House / extended care facility call
D9420 Hospital Call
D9450 Case presentation
D9630 Other drugs and or medicaments
D9920 Behavior Management
D9940 Occlusal guard, by report
D9941 Fabrication of athletic mouthguard
D9950 Occlusion analysis - mounted case
D9952 Occlusal adjustment - complete
D9970 Enamel microabrasion
D9971 Odontoplasty 1-2 teeth
D9972 External bleaching - per arch
D9973 External bleaching - per tooth
D9974 Internal bleaching - per tooth

D0310 Sialography
D0472 Oral Pathology lab
D0473 Oral Pathology lab
D0474 Oral Pathology lab
D0480 Oral Pathology lab
D0502 Oral Pathology lab
D5911 Facial Moulage (sectional)
D5912 Facial Moulage (complete)
D5913 Nasal Prosthesis
D5914 Auricular Prosthesis
D5915 Orbital Prosthesis
D5916 Ocular Prosthesis
D5919 Facial Prosthesis
D5922 Nasal Septal Prosthesis
D5923 Ocular Prosthesis (interim)
D5924 Cranial Prosthesis
D5925 Facial Augmentation implant
D5926 Nasal Prosthesis (replacement)
D5927 Auricular Prosthesis (replacement)
D5928 Orbital Prosthesis (replacement)
D5929 Facial Prosthesis (replacement)
D5931 Obturator Prosthesis (surgical)
D5932 Obturator Prosthesis (definitive)
D5933 Obturator Prosthesis (modification)
D5934 Mandibular resection Prosthesis w/guide flange
D5935 Mandibular resection Prosthesis w/out guide flange
D5936 Obturator Prosthesis (interim)
D5937 Trismus Appliance
D5951 Feeding Aid
D5952 Speech Aid prosthesis (pediatric)
D5953 Speech Aid prosthesis (adult)
D5954 Palatal Augmentation Prosthesis
D5955 Palatal Lift Prosthesis (definitive)
D5958 Palatal Lift Prosthesis (interim)
D5959 Palatal Lift Prosthesis (modification)
D5960 Speech Aid Prosthesis (modification)
D5982 Surgical Stent
D5983 Radiation Carrier
D5984 Radiation Shield
D5985 Radiation Cone locator
D5987 Commissure Splint
D5988 Surgical Splint
D7410 Lesion up to 1.25 (benign)
D7411 Lesion greater than 1.25 (benign)
D7412 Complicated lesion (benign)
D7413 Lesion up to 1.25 (malignant)
D7414 Lesion greater than 1.25 (malignant)
D7415 Complicated lesion (malignant)
D7440 Lesion diameter up to 1.25 (malignant)
D7441 Lesion diameter greater than 1.25 (malignant)
D7460 Removal of Benign lesion up to 1.25

D7461 Removal of Benign lesion greater than 1.25
D7465 Destruction of lesion (by report)
D7490 Radical resection upper/lower
D7540 Removal of reaction producing the foreign body
D7550 Partial Osteotomy
D7560 Maxillary Sinusotomy
D7610 Upper open reduction
D7620 Upper closed reduction
D7630 Lower open reduction (simple)
D7640 Lower closed reduction (simple)
D7650 Open reduction (simple)
D7660 Closed reduction (simple)
D7670 Alveolus closed reduction (simple)
D7671 Alveolus open reduction (simple)
D7680 Facial bones (simple)
D7710 Upper open reduction (compound)
D7720 Upper closed reduction (compound)
D7730 Lower open reduction (compound)
D7740 Lower closed reduction (compound)
D7750 Malar and/or zygomatic arch open red.(compound)
D7760 Malar and/or zygomatic arch closed red.(compound)
D7770 Alveolus open red.(compound - stabilization of teeth)
D7771 Alveolus closed red. (compound – stabilization of teeth)
D7780 Facial bones (compound)
D7810 TMJ open reduction
D7820 TMJ closed reduction
D7830 TMJ manipulation
D7840 Condylectomy
D7850 Surgical discectomy
D7852 Disc repair
D7854 Synovectomy
D7856 Myotomy
D7858 Joint reconstruction
D7860 Arthrotomy
D7865 Arthroplasty
D7870 Arthrocentesis
D7871 Non-Arthroscopic
D7872 Arthroscopy with or without a biopsy
D7873 Arthroscopy surgical adhesions
D7874 Arthroscopy surgical disc
D7875 Arthroscopy surgical synovectomy
D7876 Arthroscopy surgical discectomy
D7877 Arthroscopy surgical debridement
D7920 Skin graft
D7940 Osteoplasty deformities
D7941 Osteotomy lower rami
D7943 Osteotomy lower rami with bone graft
D7944 Osteotomy segmented
D7945 Osteotomy body of mandible
D7946 Lefort I upper total
D7947 Lefort I upper segmented



D7948 Lefort II or Lefort III without bone graft
D7949 Lefort II or Lefort III with bone graft
D7950 Bone graft - mandible or face
D7955 Repair of Maxillofacial soft or hard tissue
D7980 Sialolithotomy
D7981 Excision of salivary gland
D7982 Sialodochoplasty
D7983 Closure of salivary fistula
D7990 Emergency tracheotomy
D7991 Coronoidectomy
D7995 Synthetic graft
D7996 Implant lower for augmentation purposes

3.2 Complaint/Appeal Reporting Form

**COMPLAINT/APEAL REPORTING FORM**

(Use to record each complaint/appeal)

<b>Date</b>		
<i>hawk-i</i> Id		
Last name, First name		
City, zip code		
Gender M- male F- female		
A- Appeal C- Complaint		
Date of Appeal or Complaint		
Problem as described by the Enrollee:		
<b>PROBLEM</b> (date/how)	<b>FINAL</b>	<b>RESOLUTION</b>
		Enter date (mm/dd/yy)
		Enter: 1- if to Enrollee's satisfaction 2 - if not to Enrollee's satisfaction
Administrative resolution/system error		
Contacting physician/provider in question		
Other		
<b>DENIAL OF PAYMENT (reason)</b>		
Enter: 1 - if denial upheld 2 - if denial reversed		
System error		
Emergency room utilization		
Did not obtain prior authorization for services utilized		
Other		
<b>QUALITY OF CARE</b>		
Quality of care received		
Poor health education		
Poor communication of treatment needs by health providers		
Poor provider/patient relationship		
Other		
<b>ACCESS TO SERVICES</b>		
Could not find a physician to provide care		
Difficulty getting an appointment		
Long office wait times for the scheduled appt.		
Provider too far/travel time too long		

Problems obtaining services outside regular hours		
Denied services thought needed		
Cannot obtain services recommended by the PCP through the program		
Cannot get referral to a specialist thought needed		
Afraid to access emergency care for fear of having to pay for it		
Other		
<b>COMMUNICATION</b>		
Lack of respect since joining the program (culturally specific)		
Lack of respect since joining the program		
Cannot understand how to get services through the program		
Getting services process too complicated		
Difficulties communicating with health care providers (language problem)		
Difficulties communicating with health care providers (general)		
Other		

### 3.3. Capitation Payment

For the time period of July 1, 2015 through June 30, 2016

The Contractor shall be paid a monthly capitation payment of \$22.99 per member per month.

#### For Orthodontic Services

The Contractor shall submit a monthly invoice to the Agency for payment of approved orthodontic services. The invoice should include a summary listing the services and the amount to be paid. Payment for covered services shall be the lesser of the amount billed or the maximum allowed amount in accordance with the following schedule:

CPT Code	Nomenclature	Maximum Allowed Amount
D0140	Limited oral evaluation – problem focused	\$35.00
D8020	Limited orthodontic treatment of the transitional dentition	\$250.00
D8060	Interceptive orthodontic treatment of the transitional dentition	\$375.00
D8070*	Comprehensive orthodontic treatment of the transitional dentition	\$4,300.00
D8080*	Comprehensive orthodontic treatment of the adolescent dentition	\$4,300.00
D8210	Removable appliance therapy	\$400.00
D8220	Fixed appliance therapy	\$450.00
D8660**	Pre-orthodontic treatment visit	\$200.00
D8690	Orthodontic treatment (alternative billing to a contract fee)	Prorated Allowed Amount#
D8999	Unspecified orthodontic procedure, by report	\$125.00
	Administrative fee for each approved treatment	\$180.00

\*The maximum allowed amount of \$4,300.00 includes D0140, D8660, D8680 procedures when provided by the same dentist in the same course of treatment.

\*\*Use this procedure code for diagnostic procedures (radiographs, films, photos, casts, etc.).

#The maximum allowed amount is determined by the Contractor. This is used when a child transfers from one dentist/orthodontist during the treatment phase.