

**CONTRACT DECLARATIONS & EXECUTION**

<b>Title of Contract:</b>		<b>RFP Number:</b>	<b>Contract Number:</b>
Weatherization Assistance Program		None	IPL-24-XX
<b>Project Description:</b>	A federal grant program established to help reduce the heating and cooling costs for low-income persons by improving the energy efficiency of their homes.		
This Contract is entered into by the following parties:			
<b>Agency of State (hereafter "Agency"):</b>		<b>Contractor (hereafter "Contractor"):</b>	
Iowa Department of Health and Human Services Community Action Agencies Unit			
<b>Agency Principal Address (Notice Address):</b>		<b>Contractor Principal Address (Notice Address):</b>	
Lucas State Office Building 321 East 12th Street Des Moines, Iowa 50319-0090			
<b>Awarding Official Contact Information</b>		<b>Unique Entity Identifier:</b>	
Christine Taylor, Program Manager - Weatherization Phone: 515-499-3163		<b>I-3 Vendor Number:</b>	
		<b>Tax ID Number:</b>	
<b>FAIN Number:</b>		<b>Indirect Cost Rate:</b>	
<b>Federal Award Date:</b>		<b>Federal Funds Involved:</b>	No
<b>Total Amount of Federal Award:</b>		<b>Contract Start Date:</b>	
<b>Amount Obligated this Action:</b>	\$ -	<b>Contract End Date:</b>	
<b>Award is R&amp;D:</b>	No	<b>Obligated to Contractor:</b>	
<b>CFDA Number and Name:</b>		<b>Maximum Contract Value:</b>	
NA		<b>Billing Frequency:</b>	Monthly
<b>Federal Awarding Agency:</b>		<b>Special Contract Attachments:</b>	
NA		None	
		<b>Amount of Insurance Coverage Required:</b>	
		See Section 25.00 of the Special Terms & Conditions	

The Contract consists of the above information, the attached Special Terms and Conditions, General Terms, Contingent Terms, and all Special Contract Attachments (hereafter "Contract"). In the event of a conflict between or among the provisions of the Contract, the conflict shall be resolved according to the following priority, ranked in descending order with the governing language from the Contract document listed first in the following list: (1) Written amendment mutually executed by the parties or as executed in accordance with Section 2.2, Duration of Contract, in the General Terms and Conditions for Service Contracts; (2) Special Terms; (3) General Terms and Conditions for Service Contracts; (4) Contingent Terms for Service Contracts; (5) Solicitation; (6) Bid Proposal.

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.

**CONTRACT SIGNATURES:**

<b>Agency, By:</b>	<b>Contractor, By:</b>
Signature:	Signature:
Printed Name: <b>Lorie Easter</b>	Printed Name:
Title: <b>Director, Community Action Agencies Unit</b>	Title: <b>Executive Director</b>
	<b>Contractor, By:</b>
	Signature:
	Printed Name:
	Title: <b>Board President/Chair</b>

ATTACHMENT A

Title of Contract	Contract Number
This Contract is entered into by the following parties:	IPL-24-XX

Agency	Contractor
Iowa Department of Health and Human Services Community Action Agencies Unit Lucas State Office Building 321 East 12th Street Des Moines, Iowa 50319-0090	

Project Budget	
Line Item	Budget
Administration	
Support	
Labor	
Materials	
<b>TOTAL</b>	\$ -

Funds may be transferred from Administration and Support to Labor and Materials and between Labor and Materials without prior approval.

Administration/Support cost may not exceed **15%** of labor and materials when final program expenditures are compiled and submitted to the AGENCY.

Service Area
The Contractor shall perform all the work and services required under this contract in connection with and respecting the following areas:

## SECTION 1 - SPECIAL TERMS AND CONDITIONS

### Contents

1.0 CONTRACT BUDGET .....	3
2.0 AREA COVERED .....	3
3.0 SIGNATORIES .....	3
3.1 Initial Contract .....	3
3.2 Contract Amendments.....	3
3.3 Monthly Funding Requests and Expenditure Reports .....	3
4.0 RESOLUTION OF CONFLICTING CONDITIONS .....	3
5.0 AMENDMENTS TO THE GENERAL TERMS AND TO THE CONTINGENT TERMS.....	3
6.0 DEFINITIONS .....	4
7.0 STATEMENT OF PURPOSE AND IDENTIFICATION OF PARTIES.....	4
8.0 STATEMENTS OF WORK AND SERVICES.....	5
9.0 PUBLICATIONS.....	6
10.0 COMPLIANCE WITH FEDERAL AND STATE LAWS, RULES, REGULATIONS, AND REQUIREMENTS	6
10.1 Statement of Federal Stewardship .....	7
10.2 Non-Compliance .....	7
11.0 SITE VISITS.....	7
12.0 RESOLUTION OF DISAGREEMENT.....	7
13.0 DECONTAMINATION and/or DECOMMISSIONING COSTS.....	7
14.0 INTEREST OF THE AGENCY AND CONTRACTOR OFFICIALS.....	8
14.1 Agency Officials .....	8
14.2 Contractor Officials.....	8
15.0 CONFLICT OF INTEREST .....	8
16.0 PERSONNEL.....	8
17.0 CUSTOMER CONFIDENTIALITY .....	8
18.0 FINANCIAL ACCOUNTS AND RECORDS .....	9
18.1 Accounts .....	9
18.2 Audit and Inspection.....	9
18.3 Retention of Records.....	9
18.4 Refunds Returned to Grant .....	9
19.0 PROGRAM DOCUMENTATION AND RECORDS.....	9
19.1 Documentation/Records.....	9
19.2 Retention of Records.....	9
20.0 AUDITS	
20.1 Audit Requirement.....	9
20.2 Audit Procurement.....	10
20.3 Audit Report Due Dates .....	10
20.4 Questioned Costs.....	10
20.5 Line Item Cost Category Breakout .....	10
20.6 Other Audits or Reviews.....	10
21.0 REVIEW OF WORK.....	10
22.0 ALLOWABLE COSTS.....	10
22.1 General .....	10
22.2 Cost Allocation Plan .....	10
22.3 Direct Costs.....	10
22.4 Administration and Support .....	10
22.5 Health and Safety.....	12
22.6 Labor.....	12
22.7 Materials.....	12
23.0 EXPENDITURE LIMITS AND OTHER EXPENDITURE REQUIREMENTS .....	12
23.1 Maximum Expenditure Limits .....	12
23.2 Average Expenditure per Unit Limit.....	13
23.3 Contract Priority .....	13
23.4 Contract Budget .....	13
23.5 Blended Funds.....	13

23.6	Completed Work.....	13
23.7	Re-Weatherization.....	14
23.8	Non-Weatherization Expenditures.....	14
23.9	Low-Cost/No-Cost Weatherization.....	14
23.11	Disallowed Expenditures.....	14
24.0	CONDITIONS OF PAYMENT.....	14
24.1	Availability of Funds.....	14
24.2	Maximum Payments.....	14
24.3	Advance Payments.....	14
24.4	Reimbursement for Work in Process.....	15
24.5	Thirty (30) Day Projected Expenses.....	15
24.6	Cash on Hand.....	15
24.7	Withholding Payments.....	15
25.0	RECEIPTS OF FUNDS.....	15
26.0	COSTS THAT ARE NOT ALLOWABLE.....	15
27.0	REBATES AND DISCOUNTS.....	15
27.1	Rebates.....	15
27.2	Cash Discounts.....	15
28.0	INTEREST EARNED.....	15
28.1	Interest Bearing Accounts.....	15
28.2	Disbursement of Funds.....	16
29.0	PURCHASE/LEASE/RENTAL AND DISPOSITION REQUIREMENTS.....	16
29.1	General Procurement Requirements.....	16
29.2	Special Procurement Requirements.....	16
30.0	INSURANCE.....	17
30.1	Commercial General Liability.....	17
30.2	Vehicle insurance.....	17
30.3	Worker's Compensation Insurance.....	17
31.0	REPORTING.....	17
31.1	Reporting Requirements.....	17
31.2	Weatherization Automated Management System (WAMS).....	17
31.3	Monthly Fiscal Reports.....	18
31.4	Monthly Completion File.....	18
31.5	Closeout Reports.....	18
32.0	CONTRACTING.....	18
33.0	FINAL INSPECTION OF WEATHERIZATION WORK.....	18
34.0	TRAINING.....	
35.0	ELIGIBLE DWELLING UNITS AND PRIORITY.....	19
35.1	Eligibility.....	19
35.2	Owner-Occupied Dwellings.....	19
35.3	Rental Dwellings.....	19
35.4	Multiple-Unit Dwellings.....	19
35.5	Vacant Dwellings and Shelters.....	20
35.6	Customer Priority.....	20
35.7	State Historic Preservation Office (SHPO).....	20
36.0	MONITORING.....	20
37.0	APPEAL AND HEARING PROCEDURES.....	21
37.1	Customer Appeal.....	21
37.2	Private Subcontractor Appeal.....	21
38.0	ADDITIONAL TERMS AND CONDITIONS.....	21

## **IPL-24 CONTRACT SPECIAL TERMS AND CONDITIONS**

### **1.0 CONTRACT BUDGET**

See Attachment A of this Contract for budget information.

### **2.0 AREA COVERED**

The Contractor shall perform all the work and services required under this Contract in connection with and respecting the area(s) as outlined in Attachment A of this Contract.

### **3.0 SIGNATORIES**

#### **3.1 Initial Contract**

##### **Agency**

The Community Action Agencies Unit Director is the official authorized to execute the administrative terms and conditions specified in this Contract for the Agency.

##### **Contractor**

The Chairperson of the Board of Directors and the Executive Director are the officials authorized to execute the administrative terms and conditions specified in this Contract. The Contract must be signed by both the Chairperson and the Executive Director.

#### **3.2 Contract Amendments**

##### **Agency**

The Community Action Agencies Unit Director is the official authorized to execute any amendments related to this Contract for the Agency.

##### **Contractor**

The Chairperson of the Board of Directors is the official authorized to execute any amendments related to this Contract. The signatures must be original signatures or electronic signatures using e-signature software. The Chairperson of the Board of Directors may designate the Executive Director or other Contractor official to execute amendments on behalf of the Chairperson. Any approved designees must be designated in writing using the Iowa Weatherization Program Designation of Additional Signatories form, and submitted to the Agency by the Chairperson of the Board of Directors.

#### **3.3 Monthly Funding Requests and Expenditure Reports**

The Executive Director is the official authorized to certify the Contractor's Monthly Funding Requests and Expenditure Reports. The Executive Director may designate another Contractor official to certify the Contractor's Monthly Funding Requests and Expenditure Reports on behalf of the Executive Director. Any approved designees must be designated in writing, using the "Iowa Weatherization Program – Designation of Additional Signatories" form, and submitted to the Agency by the Executive Director.

### **4.0 RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

Questions regarding this Contract are to be addressed to the Agency.

### **5.0 AMENDMENTS TO THE GENERAL TERMS AND TO THE CONTINGENT TERMS**

The General Terms are hereby amended as follows:

- 1) 2.1 Definitions "Equipment" shall follow the definition as provided in 2 CFR Part 200.2 Definitions – *Equipment* (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for U.S. Department of Health and Human Services (HHS) Awards), which includes information technology systems. (see further 2 CFR Part 200.2 Definitions – *Information technology systems*.)
- 2) 2.7.1 Insurance Requirements: Delete from the first sentence "at the Contractor's expense".

The Contingent Terms are hereby amended as follows:

- 1) Section 3.4 Certification Regarding Iowa Code chapter 8F: Add new "Section 3.4.4 The recipient entity will meet the requirement to provide a copy of the Internal Revenue Service Form 990 for all fiscal years in which service contract revenue are reported by maintaining for Agency inspection copies of the 990 Forms."

## **6.0 DEFINITIONS**

"Agency" means the Community Action Agencies Unit (CAA Unit), a subdivision within the Iowa Department of Health and Human Services, Division of Community Access and Eligibility. This definition applies only to the Special Terms and Conditions.

"Completed Home" means a home where all the requirements contained in Section 5.60 of the *Iowa Weatherization Policies and Procedures Manual* have been met.

"Contractor" means local administering agency of the Weatherization Program. This definition applies only to the Special Terms and Conditions.

"Day" all references to day or days mean calendar days unless otherwise specified.

"DOE" means the U.S. Department of Energy.

"DOE Contracts" and "DOE Funds" means regular DOE contract/funds.

"DOE-BIL22" means the Bipartisan Infrastructure Law funds for the Weatherization Assistance Program.

"HEAP" means funds received from the state's Low-Income Home Energy Assistance Program (LIHEAP) allocation. These funds are used for the Weatherization Program.

"Incomplete Home" means a home that has been traveled to by the Contractor to do weatherization work but where the work cannot start or be completed due to one or more of the factors described in Sections 3.30 of the *Iowa Weatherization Policies and Procedures Manual*.

"Subcontractor" means any private contractor performing energy audits, inspections, or weatherization work for the Contractor. This definition applies only to the Special Terms and Conditions.

"Weatherization Program" means the Iowa Low-Income Weatherization Assistance Program, administered by the Community Action Agencies Unit.

"IPL" means Interstate Power & Light, dba Alliant Energy.

"Utility" means funds received from Interstate Power & Light, dba Alliant Energy.

"Primary vendor" is defined as the vendor providing the fuel used to heat the house.

"Secondary Vendor" is defined as the vendor providing electricity to the house.

"Primary" for utility reporting purposes is defined as natural gas only. Any measure that uses natural gas to operate cannot be charged to the secondary utility.

"Secondary" for utility reporting purposes is defined as electric only. Any measure that used electric to operate cannot be charged to the primary utility.

## **7.0 STATEMENT OF PURPOSE AND IDENTIFICATION OF PARTIES**

WHEREAS, the Iowa Department of Health and Human Services, Division of Community Access and Eligibility, Community Action Agencies Unit has been designated by the Governor to administer the Weatherization

Assistance Program for Low-Income Persons under Public Law 94-385 (Energy Conservation and Production Act -- Title IV), and as amended by Public Law 95-619 (Human Services Reauthorization Bill -- part 2);

WHEREAS, these program funds shall be allocated to community action agencies or other public or non-profit entities that have successfully operated weatherization programs under the Department of Energy (DOE) rules and regulations;

WHEREAS, the Contractor has satisfactorily administered a weatherization program and has the necessary expertise to develop and operate such a program;

THEREFORE, the parties hereto agree as follows:

**8.0 STATEMENTS OF WORK AND SERVICES**

By affixing a signature to this contract, the Contractor agrees to administer the Weatherization Assistance Program to serve low-income households in their service area during the contract period. The Contractor acknowledges receipt of the items listed in this section. The Contractor also acknowledges responsibility to perform in a satisfactory manner, as determined by the Agency, the activities and services authorized by this agreement in accordance with the most current version of these documents:

- Contract,
- Iowa Weatherization Assistance Program State Plan as approved by the U.S. Department of Energy,
- *Iowa Weatherization Program’s Policies and Procedures Manual*,
- *Iowa Weatherization Work Standards Manual* (which reflects SWS requirements),
- *Iowa Weatherization General Appendix*,
- Weatherization Program Notices,
- Agency directives, and
- Federal, state, and local laws and regulations

Allowable measures under this contract include:

Measure <sup>1</sup>	Minimum Efficiency Level and Performance Criteria (if Applicable)	Reimbursement Limit
Clean and Tune Electric Furnace	May be performed on 1 existing electric furnace per house, regardless of efficiency level	\$300
Clean and Tune Natural Gas Furnace	May be performed on 1 existing natural gas furnace per house, regardless of efficiency level	\$300
Duct Sealing	Only applicable to ducts in unconditioned space	\$350
Exterior Doors	ENERGY STAR® certified, equivalent, or better, for exterior doors which are missing or severely deteriorated – max 2 doors per home	\$800 each
Faucet Aerators	1.5 GPM Brass with Chrome Finish – max 3 per house	\$5 each
Freezer	Replacement is indicated based on (BART) test – max 1 per house. Replacement must be ENERGY STAR certified	\$1,000
General Repairs	In support of successful application of efficiency measures	\$2,000
Heat Pump replacing Electric Furnace	Heat pumps must be a minimum 15 SEER and 8.2 HSPF	\$10,000
Heat Pump Water Heater	Heat pump water heaters must be ENERGY STAR® certified, equivalent, or better - max 1 per home	\$3,500

High Efficiency Light Bulbs	5 to 30 Watts ENERGY STAR® certified	\$7 each
High-Efficiency Furnace	95+% AFUE or 90%+ for mobile homes – max 1 per house	\$7,000
Infiltration Measures	Caulking and sealing of whole house as indicated by initial audit including attic bypass sealing	\$1,000
Insulation Measures	Includes wall, attic, floor or foundation, duct, underbelly and bandjoist insulation or a combination thereof <sup>2</sup>	\$8,000
Low-Flow Showerheads	2.0 GPM – max 2 per house	\$10 each
Pipe Insulation	Rigid 0.5” foam with 0.75” diameter – max 2 6-foot sections per house	\$20 each
Programmable Thermostat	Must be a 7-day, 5 + 2 day or 5-1-1-day program	\$100
Refrigerator	Replacement is indicated based on Baseload Appliance Rating Tool (BART) test – max 1 per house. Replacement must be ENERGY STAR certified	\$1,200
Smart Thermostat	ENERGY STAR® certified models – max 1 per house	\$120
Venting for Furnaces		\$500 each
Windows	ENERGY STAR® certified, equivalent, or better, for windows missing or severely deteriorated – max 6 per house	\$600 each

<sup>1</sup>Company must directly provide the energy (either natural gas or electricity) used by the weatherization measure being installed and the customer must be on a residential rate.

<sup>2</sup>CAAs may request a waiver from the utility when the size of the home requires additional insulation to achieve the required goal.

**9.0 PUBLICATIONS**

The Contractor is encouraged to publish, or make publicly available, the results of the work conducted under this award.

An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Disclaimer: "This report was prepared as an account of work sponsored by a Grantee of the United States Government. Neither the United States Government nor any Grantee thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any Grantee thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any Grantee thereof."

**10.0 COMPLIANCE WITH FEDERAL AND STATE LAWS, RULES, REGULATIONS, AND REQUIREMENTS**

The Contractor shall obtain any required permits and comply with all applicable federal and state laws, rules, regulations, and requirements, including, but not limited, to the following:

- Federal rules and regulations governing the Weatherization Assistance Program.
- Subcontractors must obtain any required permits and licenses and comply with applicable federal, state, and local laws, rules, regulations, and requirements.



- Pertinent Occupational Safety and Health Administration (OSHA) regulations and requirements.
- The Immigration and Nationality Act, Sections 245A and 210A, as amended.
- Environmental Protection Agency (EPA) rule, 40 CFR Part 745, titled: Lead; Requirements for Hazard Education Before Renovation of Target Housing and Chapter 69 of the Iowa Administrative Code (IAC) that require persons who perform work on target housing to provide lead paint information pamphlets to the occupants of the homes prior to commencing work on the homes.
- Iowa Administrative Code, Section 427-5.4(216A).
- Requirements described in the Weatherization Assistance Program Contract, the *Iowa Weatherization Policies and Procedures Manual*, the *Iowa Weatherization Work Standards*, the *Iowa Weatherization General Appendix*, and Iowa Weatherization Program Notices and other directives.

The Contractor or Subcontractor shall make the records required under this clause available for inspection, copying, or transcription by the Agency, a DOE representative, or the Department of Labor. The Contractor or Subcontractor shall permit Agency, DOE representative, or the Department of Labor to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, Agency may, after written notice to the Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

#### **10.1 Statement of Federal Stewardship**

Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

#### **10.2 Non-Compliance**

Upon discovery of any case of non-compliance, the Agency will send a written notice of non-compliance to the Contractor within thirty (30) calendar days. The notice will describe what corrective action the Contractor must follow to correct the issue. In some instances, the Agency will require the Contractor to develop a plan and timeline for corrective action. The Agency will monitor the Contractor to assure compliance with the stated corrective action. If compliance is not achieved by the established timeline, the Contractor's funds may be held in abeyance until the situation is resolved. Any egregious case of non-compliance may result in termination of the Contract.

The Contractor may appeal the notice of non-compliance to the Agency within seven (7) calendar days of receiving the notice. The Community Action Agencies Unit Director will rule on the validity of the appeal.

The Agency may, at its discretion, hold Contractor funds in abeyance, if the same findings are identified in consecutive years.

#### **11.0 SITE VISITS**

DOE authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Contractor must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and energy audits must be performed in a manner that does not unduly interfere with or delay the work.

#### **12.0 RESOLUTION OF DISAGREEMENT**

In the event of any disagreement between the Agency and the Contractor relating to the competence of the work and services being performed and its conformity to the requirements of this Contract, the decisions of the Agency shall prevail.

#### **13.0 DECONTAMINATION and/or DECOMMISSIONING COSTS**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any

obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

#### **14.0 INTEREST OF THE AGENCY AND CONTRACTOR OFFICIALS**

##### **14.1 Agency Officials**

No employee of the Agency shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; or have any interest, direct or indirect, in this Contract or the proceeds thereof.

##### **14.2 Contractor Officials**

The Contractor promises that no official, employee, or agent of the Contractor has any personal or financial interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further promises that in the performance of this Contract no person having such interest will be employed.

#### **15.0 CONFLICT OF INTEREST**

The Contractor or Subcontractor shall not permit any conflicts of interest involving staff, board, or council members and shall avoid any appearance of conflicts of interest in all transactions awarding of financial assistance or procurement of services or property using Contract funds. No member of any council, board, or staff associated with this Contract shall cast a vote on the provision of service by that member (or any organization directly represented by that member) or vote on any matter, which would provide direct financial benefit to that member. Detailed information about any conflict of interest situations, along with information on how they were resolved, shall promptly be reported to the Contractor and to the Agency.

#### **16.0 PERSONNEL**

The Contractor represents that it has, or will, secure all personnel required to perform the work and services under this Contract. The Contractor also agrees that it is its responsibility to ensure all personnel engaged in the work and services under this Contract shall be fully qualified.

The Contractor will notify the Agency regarding a change in the weatherization coordinator position.

#### **Contractor and Contractor Staff Expectations**

- Contractor and Contractor staff must behave in a professional manner at all times, as they function as weatherization representatives.
- Contractor and Contractor staff must use all required Protective Personal Equipment (PPE) and to comply with Federal, State or Agency Having Jurisdiction (AHJ) Codes or Program Policies; including, but not limited to OSHA and Lead Safe Weatherization.
- Prohibited Activities
  - Drinking, illegal drugs, or the inappropriate use of prescription drugs while on the job or in interactions with the customer;
  - Harassment, including but not limited to, sexual harassment;
  - Engaging in any discussion of work, or the performance of work, with the customer either at no-cost or at-cost of the customer outside of the scope of work with the customer;
  - Violence against self, other staff, or the customer;
  - Presence of weapon or firearms at the job site (weapon/firearm may be locked in vehicle); and
  - All other illegal activities not specified above.”

#### **17.0 CUSTOMER CONFIDENTIALITY**

The Contractor shall comply with the Iowa Department of Health and Human Services' policy on confidentiality of individual customer records as stated in Iowa Code, 216A.6.

## **18.0 FINANCIAL ACCOUNTS AND RECORDS**

### **18.1 Accounts**

The Contractor shall maintain books, records, documents, and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Contract to the extent and in such detail as will properly reflect all costs, direct and indirect, or labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature, for which payment is claimed under this Contract. The Contractor shall be prepared to support charges for salaries and wages by time, attendance, and payroll records.

### **18.2 Audit and Inspection**

At any time during normal business hours and as frequently as is deemed necessary the Contractor shall make available to the Agency, the State Auditor, the Comptroller General of the United States, the federal Agency providing funds, or any of their duly appointed representatives, for their examination, all of its records pertaining to all matters covered by this Contract and permit these agencies to audit, examine, make excerpts or transcripts from such records, contracts, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this Contract.

### **18.3 Retention of Records**

All records in the possession of the Contractor pertaining to this Contract shall be retained by the Contractor for a minimum of seven (7) years after the date the regular DOE and/or DOE-BIL22 grant period, to which the records are related, is closed out. (DOE grant periods usually run for multiple years.) Records retention procedures shall conform to the standards as described in Section 2 – General Terms and Conditions, and 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). Contractor must request and receive prior approval from the Agency before any records pertaining to this Contract may be destroyed.

### **18.4 Refunds Returned to Grant**

The Contractor, in maintaining Contract expenditure accounts and records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from any administrative reviews and audits by the United States or by the State of Iowa or by the Contractor. Such adjustments shall be set forth in the financial reports filed with Agency.

## **19.0 PROGRAM DOCUMENTATION AND RECORDS**

### **19.1 Documentation/Records**

The Contractor must maintain customer, Subcontractor, and procurement files containing documentation deemed necessary and appropriate by the Agency. At a minimum, the files must include the documentation listed in the *Iowa Weatherization Policies and Procedures Manual*, Section 6.00.

### **19.2 Retention of Records**

All records in the possession of the Contractor pertaining to this Contract shall be retained by the Contractor for a minimum of seven (7) years after the date the regular DOE and/or DOE-BIL22 grant period, to which the records are related, is closed out. (DOE grant periods usually run for multiple years.) Records retention procedures shall conform to the standards as described in Section 2 – General Terms and Conditions, and 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). The Contractor must request prior approval from the Agency before any records pertaining to this Contract may be destroyed.

## **20.0 AUDITS**

### **20.1 Audit Requirement**

Each Contractor shall cause all funds expended under this Contract to be audited annually. The audit shall be arranged by and paid for by the Contractor. Audits shall be performed in accordance with generally accepted auditing standards, including the standards published by the General Accounting Office, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." The audit report shall conform to the audit format established for Community Action Agencies by the State Auditor. Audit procedures shall conform to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). In addition, the Agency may request more frequent audits or

examinations of financial records of the recipient in order to insure adequate financial controls are in place and operating.

### **20.2 Audit Procurement**

Procurement of audit services shall be conducted under the standards of procurement applicable to the Contractor in accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). The bid procedure shall be conducted at least once every five years.

### **20.3 Audit Report Due Dates**

The Contractor must comply with the audit due date and submittal requirements in 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

### **20.4 Questioned Costs**

All questioned costs are payable to the Agency thirty (30) calendar days after Contractor's receipt of the Agency request for repayment unless written exception is granted during the thirty-day period. Questioned costs may not be paid with federal funds. Where additional examination is required to resolve questioned costs, an extension of the deadline for repayment of questioned costs may be granted by the Agency.

### **20.5 Line Item Cost Category Breakout**

Audit reports shall be required to breakout budget line item cost data, by Contract, in accordance with the approved Contract budget.

### **20.6 Other Audits or Reviews**

Contractors shall inform the Agency of any program or financial audits or reviews performed by or on behalf of any federal, state, local, or other governmental unit that concern or involve Agency programs or staff providing services under any Agency program, and shall provide copies of the findings or results of such audits or reviews to the Agency within thirty (30) calendar days of receiving such findings or results. Contractors shall provide the Agency with copies of any plans or documents that they create to address any findings or issues identified in such audits or reviews within ten (10) calendar days of submitting such plans or documents.

## **21.0 REVIEW OF WORK**

The Agency shall have the right to review and observe, at any time, completed work, or work in progress on this Contract.

## **22.0 ALLOWABLE COSTS**

### **22.1 General**

Allowable costs are defined below. Allowable costs are subject to audit under the principles defined in 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

### **22.2 Cost Allocation Plan**

The Contractor shall possess and use a cost allocation plan that results in the fair distribution of costs to benefiting programs. The Contractor shall have available for inspection, by the Agency, a copy of the cost allocation plan in use during the term of this Contract. The Agency may review and approve portions of the cost allocation plan not reviewed and approved by the federal cognizant agency.

### **22.3 Direct Costs**

Weatherization Program-related costs may be directly charged to the following cost categories: Administration, Support, Labor, and Materials.

### **22.4 Administration and Support**

The amount of Administration and Support the Contractor allowed under the Utility Contracts is 15% of the total Labor and Material expenditures when final program expenditures are compiled and submitted to the

Agency, not to exceed the sum of the Administration and Support budget totals shown in the Contract Budget.

Allowable Administration costs include: salaries and fringe benefits of Contractor administrative staff (executive director, HR, IT, fiscal, etc.), office support staff (receptionist, etc.), office space and utilities, telephone, publicity and outreach, travel and per diem, audit costs, rental, purchase, and/or lease of equipment, supplies, photocopies, printing and postage and indirect costs. Although not an Agency-sponsored training, costs associated with the IWAC Training Retreat may be charged to this line item. Contractors may charge clothing for energy auditors, inspectors, or crew members to either Administration or Support. Clothing may not be charged for office staff. All persons for whom clothing is purchased must have direct contact with customers. Prior approval by the Agency for the purchase, rental, or lease of equipment is required in order to be an allowable cost.

Indirect costs shall be allowed and must be reported in the Administration budget line. Indirect cost rates, if applicable, shall be determined according to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

Allowable Support costs include:

- a. Salaries and fringe benefits of energy auditors, final inspectors, and weatherization supervisory personnel.
- b. Salaries and fringe benefits of weatherization office staff.
- c. Office space, utilities, telephone/IT costs, office supplies, office equipment, printing, photocopying, and postage related to the weatherization program.
- d. Insurance related to weatherization staff.
- e. Cost of transporting weatherization materials, tools, equipment, work crews, energy auditors/ inspectors, and other weatherization staff to a weatherization work site or a storage site.
- f. Travel cost (mileage and per diem) to attend Agency-sponsored weatherization training sessions and weatherization meetings. Although not an Agency-sponsored training, costs associated with the IWAC Training Retreat may be charged to this line item.
- g. Purchase or lease, maintenance, operation, and insurance of vehicles used to transport weatherization materials or personnel. (Vehicle insurance coverage is required).
- h. Purchase or lease and maintenance of tools and equipment used in the Weatherization Program.
- i. The purchase of building permits, when required.
- j. Purchase of health and safety supplies for use in a weatherization vehicle or on-site. This would include safety goggles, gloves, protective clothing, first aid kits, flares, fire extinguishers, HEPA vacuums, personal protective gear and clothing, signage, etc.
- k. Contractors may use program funds to provide clothing for energy auditors, inspectors, or crew members if it is a part of a Contractor required uniform. Clothing may not be charged for office staff. All persons for whom clothing is purchased must have direct contact with customers.
- l. Storage of weatherization materials, tools, and equipment. Costs must be pro-rated equally among weatherization programs operated by the Contractor and based on percent of materials charged to each program. Inventory maintenance costs, including personnel to secure and complete inventory control, may be charged as a support cost with documentation such as employment records and time sheets.

- m. Payments to Subcontractors who conduct energy audits and/or inspections of homes on behalf of the Contractor.
- n. Costs associated with pulmonary testing, pulmonary readings for the testing, and respirator fitting expenses for individuals required to wear protective gear in association with the Weatherization Program.
- o. Costs associated with Subgrantee staff Lead Renovator certification renewals, Subgrantee staff electrical licensing renewals, Subgrantee plumbing and mechanical licensing renewals, and Quality Control Inspector (QCI) certification renewals (training classes, registration, and travel to take exams for agency staff and private contractors serving as QCI).

## **22.5 Health and Safety**

Health and Safety costs are not allowed under Utility Contracts.

### **22.5.1 DOE and DOE-BIL22 Contracts**

DOE requires states to limit the amount of health and safety costs charged to regular DOE and DOE-BIL22. If a state intends to use regular DOE and/or DOE-BIL22 funds for health and safety purposes, DOE requires the state to specify what percentage of regular DOE and/or DOE-BIL22 funds will be spent for abatement activities. The Iowa Weatherization Program has specified that 35% of support, labor, and materials will be used for health and safety activities. The cost of health and safety in excess of the 35% is augmented with HEAP funds. The health and safety expenditure limit is "outside" the calculation of the average expenditure per home limit. This requirement applies only to regular DOE and DOE-BIL22.

### **22.5.2 HEAP Contract**

Actual Health and Safety costs may be charged to this contract. Health and Safety costs are those with a WAMS cost category of "H".

## **22.6 Labor**

Only actual expenditures for labor may be charged as Labor costs to this contract. Allowable labor costs include the following:

- a. Salaries and fringe benefits of Contractor crew staff involved in the installation of allowable weatherization measures/materials. This includes Contractor crew staff time spent traveling to and from a work site.
- b. Payments to Subcontractors for the installation of allowable weatherization measures/materials.
- c. Salaries and fringe benefits of Contractor energy auditors/inspectors only when installing weatherization measures/materials.

## **22.7 Materials**

Only actual expenditures for materials may be charged as a Material cost to this contract. Allowable material costs include the following:

- a. The purchase and delivery of all weatherization measures/materials needed to complete the weatherization work on an eligible dwelling based upon the current Iowa Weatherization Program's requirements and work standards. All weatherization materials shall meet the specifications described in Appendix A of the most current Code of Federal Register, 10 CFR Part 440.

## **23.0 EXPENDITURE LIMITS AND OTHER EXPENDITURE REQUIREMENTS**

### **23.1 Maximum Expenditure Limits**

The Iowa Weatherization Program has maximum spending limits for certain measures such as heating system and water heater repair and replacement. Contractor expenditures charged to this Contract shall not exceed those limits, unless approval is obtained from the Agency. The maximum spending limits are described in the Cost Limits and Allowances section of the *Iowa Weatherization General Appendix* as well as on the table shown in *8.0 Statements of Work and Services* of this contract

The Contractor must obtain prior approval from the Agency before weatherizing homes when the estimated cost of the work on a home, including health and safety, energy efficiency, and repair work support using regular DOE, DOE-BIL22, HEAP, ECIP and or utility funds, is greater than the maximum limit specified in the *Iowa Weatherization General Appendix* or as amended.

### **23.2 Average Expenditure per Unit Limit**

Utility contracts to not have an average expenditure per unit limit.

#### **23.2.1 DOE and DOE-BIL22 Contracts**

The total amount charged to the regular DOE and DOE-BIL22 Contracts for the total support, labor, and material cost may not exceed an average cost per dwelling unit as established annually by DOE, for all dwelling units charged to the contract. Contractors will be informed of the annual average costs by Program Notices. Costs in excess of the average expenditure per unit limit may be charged to the HEAP Contract. The average expenditure per unit limit does not apply to the HEAP Contract.

#### **23.2.2 HEAP Contract**

The HEAP Contract does not have an average expenditure per unit limit. Total expenditures for Support, Labor, and Materials charged to the HEAP Contract are not subject to an average expenditure per unit limit.

### **23.3 Contract Priority**

When the regular DOE Contract and/or the DOE-BIL22 Contract is in effect, all expenditures must first be charged to that contract until all regular DOE and/or DOE-BIL22 funds have been spent. The only exceptions to this are:

- When HEAP funds are used for expenses that exceed the average cost per home limit and health and safety expenditure limit of the DOE or DOE-BIL22 Contracts.
- When HEAP funds are used to charge measures not covered by the regular DOE or DOE-BIL22 Contracts or to do additional work on a home that has been closed complete (i.e. go-backs/reworks).
- When HEAP funds are used to augment Utility funds, when regular DOE or DOE-BIL22 funds are not available.
- When expenditures may be charged to a Utility Contract.

Once regular DOE and DOE-BIL22 funds have been spent, expenditures on homes may be charged to the HEAP Contract.

### **23.4 Contract Budget**

Contractor expenditures charged to this Contract may not exceed the total amount listed under "Contract Budget" in Attachment A of this Contract.

### **23.5 Blended Funds**

For costs allowable under the HEAP and/or Utility contracts, HEAP and Utility funds may be used to augment regular DOE and DOE-BIL22 Support, Health and Safety, Labor and Materials costs, as well as to pay for items not covered by the regular DOE and DOE-BIL22 grants (freezers, etc.).

### **23.6 Completed Work**

Weatherization work on homes, including final inspections, must be completed by the last day of this Contract in order that the homes may be charged to this Contract. Only the payment of expenses incurred during this Contract may take place after the last day of this Contract.

Expenditures on a home that was started under this contract and ended after the end of this contract must be charged to the weatherization contract that is in effect at the time the home is completed.

All homes reported to the Agency must be inspected by a Certified Quality Control Inspector.

### **23.7 Re-Weatherization**

Under certain conditions, program funds may be used to re-weatherize dwellings that were previously weatherized by federal programs. A dwelling which has been weatherized by any federal program in the past fifteen (15) years (based on date of completion) is not eligible for re-weatherization.

The re-weatherization of homes must be in accordance with current allowable expenditure limits and must be reported as re-weatherization on the monthly fiscal reports. Re-weatherized homes may only be considered as completed homes for purposes of computing the average cost per completed dwelling.

Homes completed in the past fifteen (15) years may be re-weatherized using HEAP funds if it is in an area declared a disaster area by federal or state authorities. All other sources of funding must be exhausted before utilizing HEAP funds (i.e. insurance, FEMA, state or federal disaster funds).

### **23.8 Non-Weatherization Expenditures**

Reimbursement will not be allowed for any cost attributable to a program other than the Weatherization Assistance Program administered by the Agency.

### **23.9 Low-Cost/No-Cost Weatherization**

Funds may not be used to install low-cost/no-cost weatherization, without prior written permission from the Agency.

### **23.11 Disallowed Expenditures**

Any expenditure exceeding the amount of this Contract and all disallowed expenses noted on audit reports shall be the responsibility of the Contractor.

## **24.0 CONDITIONS OF PAYMENT**

### **24.1 Availability of Funds**

Funding for the Weatherization Assistance Program is subject to the continued availability of funds. If funding is discontinued, this Contract may be terminated, in whole or in part, by the Agency. The Contractor will be notified immediately if this situation or its possibility arises. Additional Contract expenditures beyond the Contract termination date will be disallowed costs.

### **24.2 Maximum Payments**

It is expressly understood and agreed that the Agency shall reimburse to the Contractor actual program costs, not in excess of Contract totals, as described under "Contract Budget" in Attachment A.

### **24.3 Advance Payments**

#### **24.3.1 DOE, DOE-BIL22, and Utility Contracts**

Upon execution of this Contract, the Contractor may request an advance payment up to one-sixth (1/6<sup>th</sup>) of the contract amount for the initial sixty (60) days of the contract period. An advance payment request showing projected cash needs should be submitted with the signed Contract.

Upon receipt of the Contractor's monthly fiscal reports, the Agency will advance additional funds for actual expenses, work in process, and thirty (30) day projected expenses for the subsequent month, less unspent Contract funds on-hand. Total advances shall not exceed the Contract total. A list of weatherization file numbers and dollar amounts that support the work in process requests and the thirty (30) day projected expenses requests must be submitted with the monthly reports.

The Agency may adjust cash advances to the Contractor at any time during the Contract period. The Contractor may, at any time, submit supplemental requests for funds, as needed.

#### **24.3.2 HEAP Contract**

Upon execution of this Contract, the Contractor may request an advance payment up to one-twelfth (1/12<sup>th</sup>) of the contract amount for the initial thirty (30) days of the contract period. An advance payment request showing projected cash needs should be submitted with the signed Contract.



Upon receipt of the Contractor's monthly fiscal reports, the Agency will advance additional funds for actual expenses, work in process, and thirty (30) day projected expenses for the subsequent month, less unspent Contract funds on-hand. Total advances shall not exceed the Contract total. A list of weatherization file numbers and dollar amounts that support the work in process requests and the thirty (30) day projected expenses requests must be submitted with the monthly reports.

The Agency may adjust cash advances to the Contractor at any time during the Contract period. The Contractor may, at any time, submit supplemental requests for funds, as needed.

#### **24.4 Reimbursement for Work in Process**

Reimbursement is allowed for actual expenses paid by the Contractor for work that is done on a home before all work on the home is completed. This is defined as work in process. Reimbursement requests for work in process must be based on actual expenses paid by the Contractor. These expenses may include payments to Subcontractors, payment of salaries to Contractor crew workers and energy auditors, and payment for materials.

#### **24.5 Thirty (30) Day Projected Expenses**

The Contractor may request thirty (30) days projected support, health and safety, labor, and materials expenses.

#### **24.6 Cash on Hand**

If it is determined that the cash on hand exceeds actual expenses, work in process, and thirty (30) day projected expenses, less payments not yet received; future payments will be withheld, until cash on hand has been reduced.

#### **24.7 Withholding Payments**

The Agency may withhold payments to the Contractor in instances of noncompliance with the Contract, federal or state rules and regulations, and program requirements.

### **25.0 RECEIPTS OF FUNDS**

All payments shall be subject to the receipt of grant funds by the Agency. The termination, reduction, or delay of grant funds to the Agency shall, at the option of the Agency, be reflected in a corresponding modification to grants already made.

### **26.0 COSTS THAT ARE NOT ALLOWABLE**

Program funds cannot be used for costs that are not allowable. Non-allowable costs are defined in 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

### **27.0 REBATES AND DISCOUNTS**

#### **27.1 Rebates**

Rebates are to be taken when offered, except as noted below. When a rebate is used, the Contractor shall reduce the line item expenditure of the contract to which it was charged. Rebates offered by utilities for installing energy efficient equipment/materials should only be used when program funds (HEAP, regular DOE or DOE-BIL22) are used to pay for the cost of the equipment/materials. Rebates should not be used if the costs will be charged to Utility contracts.

#### **27.2 Cash Discounts**

Cash discounts are to be taken when offered by vendors or suppliers.

### **28.0 INTEREST EARNED – DOE, DOE-BIL22, and HEAP Contracts**

#### **28.1 Interest Bearing Accounts**

In accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), the Contractor shall maintain advances of federal funds in interest bearing accounts, unless the following apply:

1. The Contractor receives less than \$250,000 in federal awards per year.
2. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances.
3. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

Contractors not maintaining advances of federal funds in interest bearing accounts because of one or more of the conditions listed above, shall have available for Agency inspection, documentation supporting the Contractor's decision to not maintain advances of federal funds in interest bearing accounts.

In accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), any interest earned on advances of federal funds must be remitted annually to the U.S. Department of Health and Human Services. For further information, please refer to <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>. Interest amounts up to \$500 per year, based on the Contractor's fiscal year, may be retained for administrative expenses. Contractors with electronic fund transfer (EFT) capabilities should use the electronic medium to remit interest.

### **28.2 Disbursement of Funds**

The Contractor shall maintain and follow written procedures that minimize the time elapsing between the transfer of Contract funds from the Agency and the disbursement of those funds by the Contractor.

## **29.0 PURCHASE/LEASE/RENTAL AND DISPOSITION REQUIREMENTS**

### **29.1 General Procurement Requirements**

All purchasing will be conducted according to Contractor's policies and procedures, Section 2 – General Terms and Conditions (as amended), and 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

### **29.2 Special Procurement Requirements**

The purchase, rental or lease of equipment must have prior approval by the Agency when the per unit acquisition cost is \$5,000 or more, or for any vehicle being charged to DOE or DOE-BIL22 funds regardless of cost. Equipment is defined in Section 2 – General Terms and Conditions, as amended. Additional requirements related to the purchasing, rental, lease, use, and disposal of equipment and vehicles can be found in Sections 8.56, 9.50, 9.60, 9.70 of the *Iowa Weatherization Policies and Procedures Manual*.

It is the sense of the Congress that, to the greatest extent practicable, all equipment, and products purchased with funds made available under this award should be American-made.

Priority will be given to suppliers of insulation materials that are supplied as recycled materials in accordance with DOE guidelines, as published in the Federal Register 40 CFR Part 248.

A vehicle must have a minimum mileage reading of 100,000 or be at least 10 years old before it can be traded in. The Agency may waive this requirement under special circumstances.

If a Contractor wishes to use equipment or vehicles that were purchased with program funds for non-weatherization activities it must set up a procedure whereby the Weatherization Program is fairly compensated for the use of the equipment and vehicles. The Contractor must describe how the "fair compensation" was determined. The procedure for compensation and the compensation amount must be prior approved by the Agency. Funds received, as a result of the compensation, must be used to reimburse the Weatherization Program for the use of the equipment.

Subcontractors cannot use equipment purchased with program funds unless the Contractors compensate the Weatherization Program fairly for the use of the equipment. If a Contractor wishes to rent equipment that was purchased with program funds, to Subcontractors, it must do the following:

Ensure all potential bidders are aware of the "rental" option and are allowed to rent the equipment if they are awarded the bid.

Set up a procedure by which the Contractor Contractors would provide fair compensation to the Weatherization Program for the use of the equipment. The Contractor must describe how the “fair compensation” amount was determined. The procedure for compensation and the compensation amount must be prior approved by Agency.

Proceeds received, as a result of the compensation, must be credited back to the Weatherization Program, pursuant to Section 8.55 of the *Iowa Weatherization Policies and Procedures Manual*.

### **30.0 INSURANCE**

#### **30.1 Commercial General Liability**

The Contractor must carry commercial general liability insurance coverage for the weatherization activities. The coverage must be for a minimum limit of \$500,000 per occurrence and \$1,000,000 annual aggregate. The Agency will reimburse the Contractor only for the portion of the general liability insurance that pertains to their operation of the weatherization program. A Contractor wishing to be reimbursed for the weatherization program portion of the general liability insurance by the Agency must send documentation to the Agency that includes a copy of the policy or a summary of the policy coverage and a copy of the insurance company invoice. The billing must be itemized in a way that identifies the cost that pertains only to the operation of the weatherization program. Reimbursement will be made through the regular DOE Contract, DOE-BIL22 Contract, or HEAP Contract.

Subcontractors performing weatherization, HVAC, plumbing, mechanical, and electrical work for the Contractor must carry commercial general liability insurance coverage for the activities, including any damages at the worksite and the actual work done. The coverage must be for a minimum limit of \$500,000 per occurrence and \$1,000,000 annual aggregate.

Subcontractors who deliver/remove refrigeration appliances for the Contractor must carry commercial general liability insurance in an amount deemed sufficient by the Contractor.

#### **30.2 Vehicle insurance**

The Contractor must carry sufficient vehicle insurance on all weatherization vehicles, in the minimum limits required by Iowa law. Insurance on vehicles is reimbursed as a Support cost.

The Contractor must ensure the Subcontractors it contracts with to perform energy audits, inspections, or weatherization work have vehicle insurance in an amount deemed sufficient by the Contractor, in the minimum limits required by Iowa law, and provide proof of the coverage.

#### **30.3 Worker's Compensation Insurance**

Subcontractors performing weatherization, HVAC, plumbing, mechanical and electrical work for the Contractor must carry worker's compensation coverage on their employees in the minimum limits required by Iowa law, unless exempt from the law. If the Subcontractor is waived from carrying Worker's Compensation Insurance, a statement of waiver needs to be signed by the Subcontractor and placed in the file.

### **31.0 REPORTING**

#### **31.1 Reporting Requirements**

The reporting requirements for this award are identified below. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

#### **31.2 Weatherization Automated Management System (WAMS)**

The Contractor must use the Iowa Weatherization Automated Management System (WAMS) for data and financial reporting to the Agency.

### **31.3 Monthly Fiscal Reports**

The Contractor must provide the Agency with an electronic copy of the monthly fiscal report (Forms 101, 101N, 101H, 102H, 101U, and 102U) detailing program and administration expenditures and other data, as required by the Agency.

The monthly reports must be received by the Agency no later than eight (8) calendar days following the last day of the month covered by the report and will be filed for each month covered by this Contract.

Monthly reports will be filed with the Agency for the months following the expiration of this Contract until the time the closeout report is submitted if fiscal activity relating to this Contract has occurred during the month following expiration.

### **31.4 Monthly Completion File**

The Contractor must submit the Monthly Completion Files (house data and material list information) in the required format via e-mail with the monthly 101, 102N, 103N, 101H, 102H, and 101U reports. The Agency may accept these files in other formats in special circumstances. The support, labor, and materials expenditures reported on the Monthly Completion File and the 101, 102N, 101H, 102H, 103H, 101U, and 102U reports must reconcile.

### **31.5 Closeout Reports**

The Contractor must submit to the Agency a closeout report documenting the final expenses charged to this contract. The closeout report forms will be provided by the Agency. The closeout report shall be submitted within forty-five (45) days of the Contract termination by emailing one (1) electronic copy. Any unexpended funds must be returned to the Agency with the final closeout report. If the funds are not returned, subsequent advances will be withheld until the prior year's unexpended funds are received by the Agency.

## **32.0 CONTRACTING**

The Contractor is required to obtain documentation from Subcontractors who perform weatherization and furnace work showing the Subcontractors are currently registered with the Iowa Division of Labor, within Chapter 91C of the Contractor Registration, and have the appropriate Iowa Electrical Specialty License and Iowa Plumbing & Mechanical License (as applicable).

## **33.0 FINAL INSPECTION OF WEATHERIZATION WORK**

A home cannot be considered complete or reported to the Agency as complete until the Contractor has verified the satisfactory completion of all work done on the home by completing a final inspection of the work. The final inspection must not be done until all work on the home has been completed. A final inspection form must be completed for all homes inspected. The inspection form must be signed and dated by the QCI who conducted the final inspection as well as the customer. The inspection form must not be signed until the final inspection has been conducted.

Every effort must be made to fully inspect all homes that receive weatherization. Repeated efforts to inspect a home must be made. If a customer or landlord refuses to allow the final inspector in the home to conduct the inspection, the Contractor must document the efforts made to conduct the inspection. This documentation must be filed in the customer file.

## **34.0 TRAINING**

Contractor weatherization staff must attend all training required by the Agency. The Contractor may use DOE-BIL22 T&TA (Training & Technical Assistance) funds, regular DOE T&TA funds, or HEAP Equipment/Training funds to attend required training. Training costs for Subcontractors are allowable to the HEAP Contract only, and only if the training is required by the Agency.

Subcontractors must meet all training requirements set forth by DOE and Agency. Training costs are the Subcontractor's responsibility unless specifically identified as an allowable training cost by Agency.

## **35.0 ELIGIBLE DWELLING UNITS AND PRIORITY**

### **35.1 Eligibility**

No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit, as provided in 10 CFR Part 440.22. A household is eligible for assistance under the Iowa Weatherization Assistance Program if:

- The household is receiving Supplemental Security Income (SSI), Family Investment Program (FIP) Assistance or HUD means-tested programs at or below 80% of area median income, regardless of income, or
- The household's annual income is at, or below, 200 percent of the poverty level, as established by the Office of Management and Budget, or
- The household is eligible for the Low-Income Home Energy Assistance Program (LIHEAP).

The definition of household income and methods used to determine annual income is the same that is used by the LIHEAP Program and described in the LIHEAP Program Procedures Manual. Income information used to determine program eligibility is only valid for twelve (12) months from the date the eligibility was determined. Weatherization work on a customer's house cannot begin if 12 months has elapsed since the customer's eligibility determination took place. Program eligibility must be re-determined based on more recent income information if the application is beyond that 12-month period. If the 12 months elapsed and eligibility was re-determined, a copy of the newer application must be placed in file as proof that proper procedure was followed.

Customers may apply for weatherization assistance without applying for LIHEAP assistance.

### **35.2 Owner-Occupied Dwellings**

Prior approval must be obtained from the owner of a dwelling before the dwelling is weatherized.

### **35.3 Rental Dwellings**

Prior approval must be obtained from the landlord of a rental dwelling before the dwelling is weatherized. Landlords, or their authorized agent, must sign a Landlord Agreement providing written prior approval.

The Landlord Agreement will state the following:

- The rental property is not presently for sale.
- The rent will not be raised, due to weatherization, for a period of 12 months from the date the work is completed.
- The tenant will not be evicted without just cause.
- If the rental unit is vacant, it will be rented to a low-income household within 180 days after the weatherization work is completed.
- The materials and equipment installed in the dwelling, using weatherization program funds, will remain in the dwelling.
- If the dwelling is sold as a habitable dwelling, the materials and equipment installed, using weatherization program funds will remain in the dwelling.

In the event of a dispute between a tenant and a landlord regarding the previous issues, an attempt will be made by the Contractor to resolve the dispute. If that fails, the Contractor shall refer the tenant to legal aid.

If rental units will become eligible dwelling units within 180 days under a federal program for rehabilitating the units, the units may be weatherized, with prior approval from the Agency.

### **35.4 Multiple-Unit Dwellings**

In the case of multiple unit dwellings consisting of fewer than five (5) units, only those units that are income-eligible may be weatherized unless 50% or more of the residing households are income-eligible in which case, all units and common areas may be weatherized. The cost of work in common areas must be pro-

rated among the units. The average expenditure per unit limit must not be exceeded for any of the units weatherized.

In the case of multiple unit dwellings consisting of five (5) or more units, only those units that are income-eligible may be served unless 66% or more of the households residing in the complex are income-eligible, in which case all units and common areas may be weatherized. The cost of work in common areas must be pro-rated among the units. The average expenditure per unit limit must not be exceeded for any of the units weatherized. Agency approval is required before any work may be completed on dwellings consisting of five (5) or more dwellings.

### **35.5 Vacant Dwellings and Shelters**

A vacant dwelling may be weatherized if there are assurances that an eligible household will inhabit the dwelling within 180 days of the date the weatherization service is completed.

Shelters, such as homeless shelters and domestic abuse shelters, may be weatherized. Contractors must get state approval to weatherize any shelter that cannot be insulated, has a heating system that would be expensive to replace, or is unusual in its size, structure, or configuration. For the purpose of determining how many dwelling units exist in a shelter, Contractors may count each 800 square feet of the shelter as a dwelling unit or they may count each floor of the shelter as a dwelling unit.

### **35.6 Customer Priority**

Customer priority for service is based on a priority point method that is based on household fuel consumption with additional priority if the household contains young children or elderly or disabled persons. Contractors must use the customer priority program in WAMS to assign priority points to customers and must follow the customer priority policies and procedures described in the *Iowa Weatherization Policies and Procedures Manual*.

The Contractor must obtain primary data from municipal utilities, rural electric cooperatives (RECs), and deliverable fuel vendors. The Contractor should also attempt to obtain secondary fuel consumption data the same entities for the customers who are customers of those fuel providers and must use this data to calculate priority numbers for those customers. Secondary fuel consumption data should be collected in order to calculate a more accurate priority number.

If fuel consumption cannot be obtained, Contractors may use dwelling square footage to calculate priority points for customers. Square footage should be obtained from the county assessor.

### **35.7 State Historic Preservation Office (SHPO)**

Prior to the expenditure of Federal funds to alter any structure or site, the Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Contractor must complete either the Exempt from SHPO Review Form or the Request for SHPO Comment form as applicable.

## **36.0 MONITORING**

The Contractor shall cooperate with monitoring visits by the Agency and other state personnel and federal personnel. Agency monitoring includes, but is not limited to:

Inspection of weatherized homes, including review of the following:

- Compliance with work completion requirements and standards
- Work quality
- Quality of final inspections

Review of program operations, including review of the following:

- Compliance with program requirements, rules and regulations
- Bid procedures and process
- General management and administrative practices

Review of financial operations, including review of the following:

- Internal financial control procedures
- Indirect cost pools
- Reconciliation between financial reports and journals

The Agency will send a written report on the outcome of the monitoring to the Contractor within thirty (30) work days of the review. The report will include any findings, recommendations, or corrective action that needs to be taken by the Contractor. If the report requires a response, the Contractor must respond, in writing, within 45 work days of receiving the report.

If the housing inspection report requires corrective work be done by the Contractor, the corrective work shall be completed within forty-five (45) work days of receiving the report. The Contractor shall send a written response to the Agency documenting that the corrective work was completed or reasons why it could not be completed.

Failure by the Contractor to provide a written response to a fiscal, house inspection, or program monitoring report or to complete required corrective work on a house within designated timelines is considered a case of non-compliance.

### **37.0 APPEAL AND HEARING PROCEDURES**

#### **37.1 Customer Appeal**

The Contractor must have an appeal and hearing procedure concerning Weatherization Program customer complaints that is in accordance with the appeal and hearing procedures described in Iowa Administrative Code, Section 427-5.4(216A).

#### **37.2 Private Subcontractor Appeal**

The Contractor must have an appeal and hearing procedure concerning Subcontractor complaints as they relate to bid/contract issues.

### **38.0 ADDITIONAL TERMS AND CONDITIONS**

#### **38.1 Grants Terminated for Cause**

The Contractor is required to notify the Agency within 30 calendar days after receiving notice of programs having federal, state, or local grants terminated for cause.

#### **38.2 Incentive and Other Special Pay**

Program funds may be used for incentive pay or other additional compensation to employees with prior approval from the Agency. Any such special pay shall be explicitly agreed to by the Agency and shall be accompanied by a written justification for the special pay, the Contractor's special pay policies, and the exact additional compensation to be paid.

Special pay policies shall conform to 45 CFR Part 75.430(f) *Incentive compensation* (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for U.S. Department of Health and Human Services (HHS) Awards).

#### **38.3 Legislative Changes**

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

# IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES

## SECTION 2. GENERAL TERMS FOR SERVICE CONTRACTS

### August 1, 2023

**2.0 Contractor Registration.** The Contractor shall register with the Iowa Secretary of State prior to execution of the Contract. Only properly registered contractors will be entitled to payment. Registration can be performed electronically at the Iowa Secretary of State's website at <https://sos.iowa.gov/>. Contractors are responsible for maintaining current and accurate registration information during the term of the Contract.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2.4 Compensation.**

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

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

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

## **2.5 Termination or Suspension.**

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

**2.5.1.1** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors furnished any statement, representation, warranty, or certification in connection with this Contract, the Solicitation, or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;

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

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

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

**2.5.1.5** The Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by the Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors related to the Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

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

**2.5.1.7** The Agency determines or believes the Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has engaged in conduct that: (1) has or may expose the Agency or the State to material liability; or (2) has caused or may cause a person's life, health, or safety to be jeopardized;

**2.5.1.8** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or the Contractor misappropriates or allegedly misappropriates a trade secret related to work under this Contract;

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

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

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

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

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

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

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

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

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

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

**2.5.3.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract.

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

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

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

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

**2.5.5.3** Any costs incurred by the Contractor in its performance of the Contract, including, but

not limited to, startup costs, overhead, or other costs associated with the performance of the Contract;

**2.5.5.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or commitments made in connection with this Contract;

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

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

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

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

**2.5.6.2** Immediately cease using and return to the Agency or otherwise maintain or provide any property or data, records, or materials, whether tangible or intangible, provided by the Agency to the Contractor, as directed by the Agency.

**2.5.6.3** Cooperate in good faith with the Agency and its employees, agents, and independent contractors during the transition period between the Close-Out Event and the substitution of any replacement service provider. The Contractor shall ensure a smooth transition of services to clients, regardless of whether this Contract terminates prior to or upon the expiration date of the Contract. If the Contractor fails to ensure a smooth transition of services to clients, the Agency may, at its sole discretion, place the Contractor on a publicly available list of contractors barred from entering into any contract with the Agency.

**2.5.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by the Contractor or that the Agency determines do not satisfy its Acceptance Tests.

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

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

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

**2.5.8 Suspension.** When, as determined by the Agency, a Contractor has materially failed to comply with the terms and conditions of the Contract, the Agency may suspend the Contract, in

whole or in part, upon written notice. The notice of suspension will state the reason(s) for the suspension, any corrective action required, and the effective date.

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

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

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

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

## **2.6 Indemnification.**

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

**2.6.1.1** Any breach of this Contract;

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

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

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

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

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

trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

## **2.7 Insurance.**

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

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

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

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

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

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

**2.7.3 Certificates of Coverage.** The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract, which includes any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least a thirty (30) day prior written notice to the Agency. The certificates shall be subject to approval by the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

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

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

**2.8.1 Ownership and Disposition of Agency Information.** Any information, records, or data either supplied by the Agency to the Contractor, or collected by the Contractor, in the course of the performance of this Contract shall be considered the property of the Agency ("Agency Information"). The Contractor shall not use Agency Information for any purpose other than providing services under the Contract. The Contractor shall not disclose, sell, assign, lease, or

otherwise provide Agency Information to third parties, except as expressly authorized through this Contract, and the Contractor shall not allow commercial exploitation of Agency Information by or on behalf of the Contractor. The Agency shall own all Agency Information that may reside within the Contractor's hosting environment or equipment/media.

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

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

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

**2.8.5 Contractor Breach Notification Obligations.** The Contractor shall immediately report to the Agency Contract Manager any unauthorized access or disclosure of Confidential Information. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized use or disclosure of Confidential Information or other event(s) requiring notification in accordance with applicable law. In the event of a breach of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to follow Agency directives, which may include assuming responsibility for informing all such individuals in accordance with applicable laws, and to indemnify, hold harmless, and defend the State of Iowa against any claims, damages, or other harm related to such breach.

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

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

**2.8.8 Return and/or Destruction of Information.** Notwithstanding Contractor's obligations for



maintaining records expressly contained herein, including 2.12.25.2, upon expiration or termination of the Contract for any reason, the Contractor agrees to comply with all Agency directives regarding the return or destruction of all Agency Information and any derivative work. The Contractor shall comply with these directives within thirty (30) days unless another timeframe is mutually agreed upon by the parties. Delivery of returned Agency Information must be through a secured electronic transmission or by parcel service that utilizes tracking numbers. Such information must be provided in a format useable by the Agency. Following the Agency's verified receipt of the Agency Information and any derivative work, the Contractor agrees to physically and/or electronically destroy or erase all residual Agency Information regardless of format from the entire Contractor's technology resources and any other storage media. This includes, but is not limited to, all production copies, test copies, backup copies and /or printed copies of information created on any other servers or media and at all other Contractor sites. Any permitted destruction of Agency Information must occur in such a manner as to render the information incapable of being reconstructed or recovered. The Contractor will provide a record of information destruction to the Agency for inspection and records retention no later than thirty (30) days after destruction.

## **2.9 Intellectual Property.**

**2.9.1 Ownership and Assignment of Other Deliverables.** The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title, and interest in and to all Deliverables and all intellectual property and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. The Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by the Agency, upon completion or termination of this Contract, the Contractor will immediately turn over to the Agency all Deliverables not previously delivered to the Agency, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors, or affiliates, without the prior written consent of the Agency.

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

**2.9.3 Further Assurances.** At the Agency's request, the Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect, or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 2.9, Intellectual Property.

**2.9.4 Publications.** Unless expressly authorized by the Contract, the Contractor shall not publish in any format any final or interim report, document, form, presentation, or other material developed as a result of this Contract without the express written consent of the Agency as requested through the Contract Manager. Any publication containing Agency Information shall follow all Agency confidentially policies and procedures. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.

## **2.10 Warranties.**

**2.10.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through the course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. With the exception of Subsection 2.10.3, the provisions of this section apply during the Warranty Period as defined in the Special Terms.

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

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

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

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

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

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

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

Contractor in this section.

The warranty provided in this Subsection 2.10.3 shall be perpetual, shall not be subject to the contractual Warranty Period, and shall survive termination of this Contract. The foregoing remedies provided in this subsection shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

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

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

**2.10.4.2** Meet, conform to, and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period the Contractor shall—at its expense—repair, correct, or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to, or operate in accordance with Specifications within five (5) Business Days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event the Contractor is unable to repair, correct, or replace such Deliverables to the Agency’s satisfaction, the Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. The Contractor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract—notwithstanding that such Deliverables may have been accepted by the Agency—and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverables.

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

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

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

**2.11 Acceptance of Deliverables.**

**2.11.1 Acceptance of Written Deliverables.** For the purposes of this section, written Deliverables means documents including, but not limited to project plans, planning documents, reports, or instructional materials (“Written Deliverables”). Although the Agency determines what Written Deliverables are subject to formal Acceptance, this section generally does not apply to routine progress or financial reports. Absent more specific Acceptance Criteria in the Special Terms, following delivery of any Written Deliverable pursuant to the Contract, the Agency will

notify the Contractor whether the Deliverable meets contractual specifications and requirements. Written Deliverables shall not be considered accepted by the Agency, nor does the Agency have an obligation to pay for such Deliverables, unless and until the Agency has notified the Contractor of the Agency's Final Acceptance of the Written Deliverables. In all cases, any statements included in such Written Deliverables that alter or conflict with any contractual requirements shall in no way be considered as changing the contractual requirements unless and until the parties formally amend the Contract.

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

## **2.12 Contract Administration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

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

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

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

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

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

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

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

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

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

been provided:

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

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

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

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

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

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

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

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

**2.12.25 Records Retention and Access.**

**2.12.25.1 Financial Records.** The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency during the entire term of this Contract, which includes any extensions or renewals thereof, and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the Contractor relating to orders, Invoices or payments, or any other Documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of

the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

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

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

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

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

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

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

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

A control system (including an annual physical inventory) shall be implemented and maintained to ensure adequate safeguards to prevent loss, damage, or theft of Equipment. Any loss, damage, or theft shall be investigated, fully documented, and reported to the Agency. The Contractor shall also report suspected theft to local law enforcement. Where the Contractor is authorized to sell the Equipment, sale procedures shall provide for competition to the extent practicable and result in the highest possible disposition price.



**2.12.26 Audits.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.12.35 Immunity from Liability.** Every person who is a party to the Contract is hereby notified

and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from the Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

**2.12.42 No State Funds for Lobbyists.** No State appropriated funds or Other funds originating as State appropriated funds shall be used for the compensation of a lobbyist. For purposes of this section, “lobbyist” means the same as defined in Iowa Code Section 68B.2; however, “lobbyist” does not include a person employed by a state agency of the executive branch of state government who represents the agency relative to the passage, defeat, approval, or modification of legislation that is being considered by the general assembly.

**IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
(HHS)  
SECTION 3: CONTINGENT TERMS FOR SERVICE  
CONTRACTS  
August 1, 2023**

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

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

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

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

**3.1.1.1.2 Other Funds Used.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan,

or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**3.1.1.1.3 Certification.** The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and will require that all sub-recipients certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

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

**3.1.1.5 Davis-Bacon Act, as amended** (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.

3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The Contractor shall comply with the Davis-Bacon Act, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

**3.1.1.11 Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of "funding agreement" under 37 C.F.R. 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by



Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. The Contractor certifies that it will comply with 37 C.F.R. Part 401, to the extent applicable to this Contract.

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

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

In accordance with, but not limiting to, 45 C.F.R. 95.617, the Contractor shall ensure that the Agency has all ownership rights in software or modifications thereof and associated documentation designed, developed or installed pursuant to the Contract. The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, software and associated documentation designed, developed or installed in whole or in part with federal funds pursuant to this Contract.

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

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

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

following receipt by Contractor. The Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after the Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

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

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

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

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

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

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

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

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

**3.2 Business Associate Agreement.** If the Contractor performs certain services on behalf of or for a designated HIPAA-covered component of the Agency and meets the definition of business associate in 45 CFR 160.103, then the Contractor is a business associate of the Agency for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 C.F.R. part 160 and 164. By signing this Contract, the Business Associate certifies it will comply with the Business Associate Agreement Addendum ("BAA"), and any amendments thereof, as posted to the Agency's website: <http://hhs.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. Notwithstanding anything to the contrary in the Contract, the Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://hhs.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.

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

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

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

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

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

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

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

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

**3.4.3.3** Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the Contractor covering the preceding year.

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

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

**3.4.3.6** A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.

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

### **3.5 Software Contracts.**

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

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

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

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

**3.5.2.3 Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified Deliverables shall be governed by the terms and conditions of this Contract.

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

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

was evaluated during such Acceptance Testing. In the event the Agency provides notice of Non-acceptance to the Contractor with respect to any Software Deliverable, the Contractor shall correct and repair such Software Deliverable and submit it to the Agency within ten (10) days of the Contractor's receipt of notice of Nonacceptance so that the Agency may re-conduct its Acceptance Tests.

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

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