

**GENERAL CONDITIONS FOR CONTRACTS
WITH STATE UNIVERSITIES**

Effective July 1, 2019

1. General

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

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

2. Definitions

a. "Contract" means the collective documentation memorializing the terms of the agreement between the Department and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Conditions, the RFP or other solicitation document, Contractor's approved proposal, these General Conditions, any Special Contract Attachments and Amendments, and all other attachments and amendments to the Contract Declarations & Execution Page(s).

b. "Contractor" means the state university contracting with the Department. The Contractor is governed by the state board of regents and is included as a regent institution in Iowa Code section 262.7.

c. "Department" means the Iowa Department of Public Health.

d. "Records" means all of the documents, papers, sound recordings or other material, regardless of physical form or characteristics and including electronic records, made, produced, executed or received pursuant to law in connection with the transaction of official business of state government.

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

f. "Special Conditions" means the Contract attachment entitled "Special Conditions" that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Conditions. If there is a conflict between the General Conditions and the Special Conditions, the Special Conditions shall prevail.

g. "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 RFP or other solicitation document, and the Proposal. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

h. "State" means the State of Iowa.

3. Accounts and Records

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

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

c. The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits.

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

e. The Contractor shall retain all accounting and financial records, programmatic records, supporting documents, statistical records and other records reasonably considered as pertinent to the contract, for a period of three (3) years from the day the Contractor submits its final expenditure report. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) 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 three (3) year period, whichever is later. Client records which are non-medical must be maintained for a period of three (3) years.

f. The Contractor shall retain all medical records for a period of six (6) 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 section 614.1(9).

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

4. Equipment

a. Definition of Equipment: Any item costing \$5000 or more and having an anticipated life of one year or more.

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

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

d. Control System: A control system (including a bi-annual physical inventory) shall be implemented to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated, fully documented, and reported to the Department. The Contractor shall report 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.

5. Procurement Standards and Subcontracting

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

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

- (1) A list of the work and services to be performed by the subcontractor.
- (2) The contract policies and requirements.
- (3) Provision for the Department, the Contractor, and any of their duly authorized representatives to have access, for the purpose of audit and examination, to any documents, papers, and records of the subcontractor pertinent to the subcontract.
- (4) The amount of the subcontract.
- (5) A line item budget of specific costs to be reimbursed under the subcontract or agreement or other cost basis for determining the amount of the subcontract as appropriate.
- (6) A statement that all provisions of this contract are included in the subcontract including audit requirements.
- (7) Period of performance.
- (8) Any additional subcontract conditions.

c. Any subcontract or other written agreement shall not affect the Contractor's overall responsibility and accountability to the Department for the overall direction of the project.

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

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

f. The Contractor shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of any subcontract. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists.

6. Program Income

a. Program income means gross income earned by the Contractor from sources other than the Department that is directly generated by a contract-supported activity or is earned as a result of the contract agreement during the contract or subcontract period. It includes, but is not limited to, income in the form of fees for services, proceeds from the sale of tangible personal or real property or equipment, usage or rental fees, and patent or copyright royalties. Program income will not be used to decrease funding provided by the Department under this agreement.

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

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

7. Non-Supplanting Requirement

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

8. Publications, Presentations, Copyrights and Rights in Data

a. Definitions. For purposes of this section, the following definitions shall apply:

"Day" means a working day as opposed to a calendar day.

"Deliverable" means a non-scholarly product identified in the description of work and services section of the contract as the work, or a portion of the work, to result from performance of that specific contract. "Deliverable" as distinguished from both "presentation" and "publication" includes such non-scholarly products as brochures, manuals, posters, videos, and technical reports providing data that are not intended for public dissemination as either a "presentation" or "publication."

"Department data" means data provided to the Contractor by the Department.

"Presentation" means a public dissemination of scholarly material or information at meetings of scientific organizations or other similar meetings or gatherings.

"Publication" means a scholarly manuscript or scholarly material intended for public dissemination in a peer-reviewed scientific journal or other similar medium for dissemination of printed scholarly material.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge in accordance with 45 C.F.R. 46.102.

b. Publications and Presentations: As peer agencies of the State of Iowa, the parties agree to work cooperatively to ensure work of the highest scientific quality that complies with all applicable legal and regulatory requirements.

i. Research publications and presentations which rely on Department data. For proposed publications or presentations which rely in whole or in part on Department data, the Contractor shall provide to the Department at no cost to the Department a copy of each proposed research publication at least (30) days in advance of the publication submission date and a copy of each proposed presentation at least five (5) days in advance of the scheduled presentation date. The Department may provide comments or objections within the applicable time frame and shall direct such comments or objections to the Contractor's Vice President/Provost for Research.

If the Department provides no objections within the applicable time frame, the Contractor shall have the right to proceed with the proposed publication or presentation.

If the Department raises an objection within the applicable time frame: (1) that the data used by the Contractor are not the original data provided by the Department, or (2) that the data are used or disseminated in a manner which violates applicable statutes, rules, or regulations which govern the use of the data, then the Contractor's Vice President/Provost for Research shall consult with the relevant academic dean or department chair to address the Department's objection and the Contractor shall delay publication or presentation until the objection is resolved to the satisfaction of both parties.

If the Department raises any other objection within the applicable time frame, the Contractor's Vice President/Provost for Research shall consult with the relevant academic dean or department chair and shall make a reasonable good faith effort to resolve the Department's objection; however if the Contractor is unable to resolve the Department's objection to the satisfaction of the Department, the Contractor shall not be required to delay the proposed publication or presentation beyond an additional thirty (30) day period from the time the objection is raised to a publication or beyond an additional five (5) day period from the time the objection is raised to a presentation.

ii. Research publications and presentations which do not rely on Department data. For proposed publications or presentations which do not rely on Department data but for which the work involved was supported by Department contract funding, the Contractor shall provide to the Department at no cost to the Department a copy of each proposed research publication at least (30) days in advance of the publication submission date and a copy of each proposed presentation at least five (5) days in advance of the scheduled presentation date. The Department may provide comments or objections within the applicable time frame and shall direct any such comments or objections to Contractor's Vice President/Provost for Research. If the Department provides no objections within the applicable time frame, the Contractor shall have the right to proceed with the proposed publication or presentation. If the Department raises an objection within the applicable time frame, the Contractor's Vice President/Provost for Research shall consult with the relevant academic dean or department chair and shall make a reasonable good faith effort to resolve the Department's objection; however if the Contractor is unable to resolve the Department's objection to the satisfaction of the Department, the Contractor shall not be required to delay the proposed publication or presentation beyond an additional thirty (30) day period from the time the objection is to a publication or beyond an additional five (5) day period from the time the objection is raised to a presentation.

c. Deliverables: The Contractor shall provide a copy of any deliverables to the Department at no cost to the Department at least thirty (30) days in advance of the proposed dissemination date. A deliverable shall not be disseminated in any format without prior written consent of the Department.

d. Publications under Iowa Code section 135.41: If the Contractor has collected patient identifying information on behalf of the Department pursuant to Iowa Code section 135.40, the Contractor shall not publish the results of the contract activity pursuant to Iowa Code section 135.41 without prior written approval by the Department. Prior written approval as required by this subsection shall be for the purposes of (1) ensuring that the publication is for the purpose of advancing medical research or medical education in

the interest of reducing morbidity or mortality and (2) ensuring that the publication does not identify any person whose condition or treatment has been studied.

e. 28E Agreements: Publications and presentations arising from 28E Agreements between the parties shall be subject to the publication and presentation provisions of those agreements and shall not be subject to these general conditions unless the 28E Agreement expressly specifies that the parties to the 28E Agreement are bound by these general conditions.

f. Each publication, presentation, or deliverable generated in whole or in part with Department funds shall contain an acknowledgment of Department contract support.

g. Rights in Data:

i. Records and data provided by the Department pursuant to this contract shall remain the property of the Department at all times.

ii. Except as stated in section (g)iii, records and data collected by Contractor on behalf of the Department pursuant to this contract shall remain the property of the Contractor at all times. The Contractor grants an irrevocable, perpetual, non-exclusive right to the Department to use, duplicate, and disclose such records and data for Department purposes.

iii. Notwithstanding the foregoing sections (g)i and ii, when the Contractor collects confidential records or data specifically under and in reliance upon the Department's legal authority, such confidential records or data shall be the property of the Department. Any such collection and the legal authority for the collection shall be expressly referenced in the contract Special Conditions. In those cases, the Department shall, when not prohibited by statute, rule or regulation, and to the extent permitted by and within the parameters of Sections 8(b), 8(d), 9(b)-(d), and 10 and the Department's data sharing and research policies, grant to the Contractor an irrevocable, perpetual, non-exclusive license to use, duplicate, and disclose such confidential records or data for non-commercial research and educational purposes. Any such license shall be expressly referenced in the contract Special Conditions or written amendment to the Contract prior to the Contractor using, duplicating, or disclosing any such confidential records or data for non-commercial research or educational purposes.

h. Copyrights: Where activities supported by this contract produce an original computer program (including executable computer programs and supporting data in any form), writing, sound recording, pictorial reproduction, drawing or other graphical representation or work of similar nature, the Contractor shall own copyright in such work. The Contractor grants to the Department an irrevocable, perpetual, non-exclusive right to its use, duplication, and disclosure, in whole or in part, for any authorized State activity.

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

9. Release of Contract Information and Confidentiality of Records and Data

a. Release of Contract Information to the Department: The Contractor agrees to provide to the Department, upon request, all records related to the contract including, but not limited to, Client Records, statistical information, data, board and other administrative records, and financial records, including budget, accounting activities, financial statements, and the annual audit conducted in accordance with Code of Federal Regulations.

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

regulations. The Contractor shall maintain all identifiable and personal indicators related to records and data as strictly confidential and shall not use or release such records or data for any purpose unless authorized by contract, law, regulation or an applicable informed consent form. The Contractor shall not link the data provided by the Department or collected by the Contractor with any other datasets without prior written permission from the Department.

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

d. Unauthorized Disclosure: The Contractor shall maintain the confidentiality of any information which either identifies an individual or could be used to identify an individual, including but not limited to Client Records, in accordance with state and federal laws and regulations. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract. The Contractor shall promptly transmit to the Department all requests for disclosure of such identifying information to anyone other than the Department and the Contractor shall not disseminate such information without prior written authorization from the Department. For purposes of this paragraph, the term "identifying" shall include, but not be limited to, name, identifying number, symbol, or other identifier particularly assigned to the individual. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

e. The Contractor's obligations under this section of the Contract shall survive termination or expiration of this Contract.

10. Confidentiality and Security

a. The Contractor will take all precautions and actions necessary to: (i) prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the Department's and the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability. Contractor agrees that it will not copy, reproduce, transmit, or remove any Department (or State) information or data without the prior written consent of the Department. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the Department or the State in accordance with Iowa Code chapter 669 and be limited to the amount of the authorized contract funding as a result of: (a) any breach of this section, or (b) any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to:

- (1) Disclosure of confidential or sensitive information;
- (2) Unauthorized access to Department or State systems;
- (3) Illegal technology transfer;
- (4) Sabotage or destruction of Department or State information or information systems;
- (5) Compromise or denial of Department or State information or information systems;
- (6) Damage to or loss of Department or State information or information systems; and
- (7) Theft.

b. The Contractor shall immediately report to the Department any such breach of security. In the event of a breach of this section or any breach of security as described herein, the Department may terminate this Agreement immediately without penalty or liability to the Department and the State provided that the Contractor may be given notice and an opportunity to cure such breach at the Department's discretion.

11. Conflict of Interest

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

b. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties.

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

d. The Contractor represents and warrants that no relationship exists or will exist during the contract period between the Contractor and the Department that is a conflict of interest or if a conflict exists, it is reviewed and managed in accordance with the Contractor's Policy on Conflict of Interest. No employee, officer, or agent of the Contractor or a subcontractor shall participate in the selection, award, or administration of a contract or subcontract if a conflict of interest exists.

12. Outside Compensation

Employees of the Contractor whose salaries are paid by Department funds shall not accept compensation from another source for the performance of any service or work that the person is required or expected to perform as a part of this contract or during the hours which the person performs service or work for the Department.

13. Qualifications of Staff

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

14. Insurance

The Contractor and the Department are self-insured against all risks and hazards relating to this contract. No separate fund has been established to provide self-insurance, and neither the Contractor nor the Department are obligated to establish any such fund during the term of this contract.

15. Audit or Examination of Records

a. The Contractor agrees that the Auditor of the State, the Department, or any authorized representative of the State, and where Federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States Government, shall have access to, and the right to examine, audit, excerpt and transcribe any pertinent books, documents, paper, and records of the Contractor related to order, invoices, payments or any other documentation pertaining to this contract.

b. The Contractor agrees that the Department or its authorized representatives may have access to Client Records and quality assurance materials for purposes of an independent audit of quality assurance and quality of care.

c. The Contractor agrees that the Department or its authorized representatives shall have the right to access, review, and copy all records and work papers resulting from this contract. The Department shall be responsible for costs associated with copying records and work papers.

d. The Contractor shall not charge the Department a fee to audit, inspect or examine Contractor's records.

16. Contract Performance

a. The Department reserves the right to monitor Contractor performance through site visits, reports, or other reasonable means deemed necessary by the Department. The Contractor agrees that the Department may conduct during regular business hours site visits to review contract compliance, assess management controls, assess relevant services and activities, and provide technical assistance. The Contractor agrees to ensure the cooperation of the Contractor's employees and agents in such efforts and to provide all reasonably requested information to the Department in the manner determined by the Department.

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

17. Availability of Funds

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

18. Withholding of Support

a. With five (5) working days written notice, the Department may temporarily withhold payment of Department funds for the reasons listed in this section or for other good cause. The Contractor may be required to submit a corrective action plan for approval by the Department. Reasons for withholding payment of funds may include, but are not limited to:

- (1) Delinquency in submitting required reports.
- (2) Failure to show satisfactory progress in achieving the objectives of the project or failure to meet the terms and conditions of the contract.
- (3) Failure to provide adequate management of contract funds or equipment.

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

19. Suspension

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

b. The Department 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:

i. 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; or

ii. 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;

iii. The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;

iv. The Department's duties are substantially modified.

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

d. 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 Department. Necessary costs which the Contractor could not reasonably avoid during the suspension shall be allowed only if the Contractor had a prior obligation for those expenses.

20. Termination

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

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

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

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

(2) The Convenience of the Department. The Department may terminate this contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor whenever, for any reason, the Department shall determine that such termination is in the best interest of the State. In this

event, the Department shall issue a termination notice to the Contractor at least thirty (30) working days prior to the effective termination date. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this contract and non-cancelable obligations incurred up to and including the date of termination.

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

- i. 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; or
- ii. 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;
- iii. The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;
- iv. The Department's duties are substantially modified.

(4) Conflict of interest. In the event that the Contractor is proven to have a conflict of interest, as defined in section 11 of this contract, the Department shall immediately terminate this contract.

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

e. In the event of termination, the Contractor agrees to deliver such information and items which are due as of the date of termination, including but not limited to partially completed plans, drawings, data, documents, surveys, maps, reports, and models. The Contractor shall use reasonable efforts to ensure a smooth transition of services to clients, regardless of whether this contract terminates prior to or upon the expiration date of the contract. If the Contractor fails to ensure a smooth transition of services to clients, the Department may, at its sole discretion, place the Contractor on its list of contractors barred from entering into any future contract with the Department program which was the subject of the terminated contract.

f. Should this contract be terminated under subsection 20(c)(1) ("Default by the Contractor") or should the Contractor fail to ensure a smooth transition of services to clients as required by subsection 20(c)(4)(b), the Department may, at its sole discretion, place the Contractor on its list of contractors barred from entering into any future contract with the Department program which was the subject of the terminated contract. Such placement may be permanent or for an indefinite period of time with no possibility of reinstatement for a fixed period of time, at the sole discretion of the Department.

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

21. Recovery of Funds

If the Department or any state or federal agency determines that the Contractor has been reimbursed for any cost that is unallowable, unallocable, or unreasonable under this contract, the Contractor shall repay those funds within thirty (30) business days of receiving written notice from the Department. The Department may additionally withhold any payment under this contract if the Contractor fails to repay those funds by the established deadline. The Contractor's obligation to repay funds survives the termination of this contract.

22. Indemnification

a. By the Contractor. The Contractor shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code chapter 669, indemnify and hold harmless the Department from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising out of the Contractor's negligence or wrongful acts or omissions in the performance of this agreement.

b. By the Department. The Department shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising out of the Department's negligence or wrongful acts or omissions in the performance of this agreement.

23. Changes of Key Personnel

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

24. Assignment

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

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

25. Changes in Location

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

26. Changes in Service

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

27. Contract Administration

a. Dispute Resolution. The parties to this agreement may attempt to mediate disputes which arise under this agreement by engaging in mediation with a mutually agreed upon mediator. Each party shall bear 50 % of the costs of hiring a mediator. If the mediation is unsuccessful, or if the parties do not attempt mediation the parties shall submit their dispute to binding arbitration by a board of arbitration as provided for in Iowa Code section 679A.19.

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

c. Not a Joint Venture. Nothing in this contract shall be construed as creating or constituting the relationship of a partnership or joint venture between the parties hereto. 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.

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

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

f. Supersedes former Contracts. This contract supersedes all prior contracts between the Department and the Contractor for work and services provided in connection with this contract.

g. 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.

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

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

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

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

28. Contractor's Certification regarding Suspension and Debarment

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

29. Contractor's Certification regarding Lobbying

The Contractor certifies that:

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

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

ii. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code of Federal Regulations. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$100,000 for each such failure.

b. 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.

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

30. Contractor's Certification regarding Brokering

The Contractor certifies that no person or selling agency has been employed or retained to solicit and secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingency excepting bona fide employees or selling agents maintained by the Contractor for the purpose of securing business. For breach or violation of this certification, the Department shall have the right to terminate this contract without liability, or in its discretion, to deduct from the contract price or to otherwise recover the full amount of such commission, percentage, brokerage, or contingency.

31. Contractor's Certification regarding a Drug Free Workplace

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

32. Contractor's Certification Regarding Environmental Tobacco Smoke

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

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

c. The Contractor agrees that it will require that the language of this certification be included in any subcontract or subaward that contains provisions for children's services and that all subrecipients shall certify accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$ 1,000 per day.

33. Tobacco Free Environment

The Contractor agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. The Contractor agrees that it shall comply with Iowa's Smokefree Air Act, contained at Iowa Code chapter 142D.

34. Compliance with Federal Funding Accountability and Transparency Act

If the Contract is subject to the provisions of 2 CFR Chapter 1 Part 170, the Contractor shall comply with 2 CFR Chapter 1 Part 170 with respect to any subcontracts it enters into pursuant to this Contract. The Contractor shall forward any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor to the Department.

35. Allowable Costs

The parties acknowledge that 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, applies to the Contractor's expenditures of federal funds received from the Department pursuant to this agreement, but does not govern the Contractor's expenditure of state funds received from the Department pursuant to this agreement.

36. Enhancement of Contractor Employee Whistleblower Protections

41 U.S.C. 4712 states, “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.

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).

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.