

**IOWA DEPARTMENT OF PUBLIC HEALTH  
GENERAL CONDITIONS  
Effective 07.01.2019**

**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 Contractor shall provide Deliverables that comply with and conform to the Specifications. 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 organization or individual contracting with the Department.

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

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

e. "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.

f. "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.

g. "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.

h. "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.

- i. "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 including but 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 their 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 five (5) 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 five (5) 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 five (5) year period, whichever is later. Client records which are non-medical must be maintained for a period of five (5) years.

f. The Contractor shall retain all medical records for a period of six (6) years from the day the Contractor submits its final expenditure report; or in the case of a minor patient or client, for a period of one (1) year after the patient or client attains the age of majority, whichever is later.

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 \$5,000 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, the Contractor, or 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 an 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 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.

## **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. It includes, but is not limited to, income in the form of fees for services performed during the contract or subcontract period, proceeds from the sale of tangible personal or real property or equipment, usage or rental fees, and patent or copyright royalties.

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.

d. Cash advances, whether permanent or in the form of working capital, must be maintained in interest bearing accounts. Interest earned by the Contractor on cash advances shall be allocated by the Contractor to the program for which the cash advance was received. All interest earned on cash advances shall be remitted to the Department on a quarterly basis, or more frequently if requested by the Department. Interest amounts up to \$250 per contract period in the aggregate for **all** federal funded programs may be retained by the Contractor for administrative expenses only.

## **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, Copyrights and Rights in Data, and Patents**

a. Publications. The Contractor shall not publish the results of contract activity without prior written approval by the Department. Such publication (written, visual, or audio) shall contain an acknowledgment of Department contract support. A copy of any such publication shall be furnished to the Department at no cost.

b. Rights in Data. Records and data provided by or collected on behalf of the Department pursuant to this contract shall remain the property of the Department at all times.

c. Ownership and Assignment of Other Deliverables. Contractor agrees that the State and Department shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Department all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Department 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 Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of 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 Department and the payment of such royalties or other compensation as the Department deems appropriate. Unless otherwise requested by Department, upon completion or termination of this Contract, Contractor will immediately turn over to Department all Deliverables not previously

delivered to Department, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Department. To the extent any of 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, 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.

c. Patents. If any patentable invention is developed by an employee of the Contractor in the course of employment related to this contract, such invention shall be reported to the Department. The Department shall be entitled to a share, proportionate to Department funding, of rights to said invention, including title to and license rights under any patent application or patent which may be issued.

d. 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 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 in accordance with Code of Federal Regulations, Title 45.

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 in connection with the performance of the contract are confidential and that such 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 the contract. The Contractor may 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 confidential 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 such data, 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 all records related to this contract in accordance with state and federal laws and regulations. The Contractor shall protect from unauthorized disclosure all confidential records and data, including but not limited to the names and other identifying information of persons receiving services pursuant to this contract, except for statistical information not identifying any client. 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. The Contractor's obligations under this section shall survive termination of this contract.

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

## **10. Confidentiality, IT Standards and Security**

a. The Contractor will comply with and adhere to the following Department and State information technology standards and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols as applicable.

- (1) Data Backup Standard: Applicable to Contractors which utilize data systems to process, store, transmit or monitor information essential to the performance of Department required services.
- (2) Data Stewardship Standard: Applicable to Contractors which utilize data systems to process, store, transmit or monitor information essential to the performance of Department required services.
- (3) Interconnectivity Standard: Applicable to Contractors which utilize data systems to process, store, transmit or monitor information essential to the performance of Department required services.
- (4) Laptop Data Protection Standard: Applicable to Contractors which utilize laptops to process, store, transmit or monitor data essential to the performance of Department required services or connects to state owned or managed network.
- (5) Removable Storage Encryption Standard: Applicable to Contractors which utilize removable storage devices to process, store, transmit or monitor information essential to the performance of Department required services.
- (6) Web Application Security Standard: Applicable to Contractors which develop, manage or utilize state resources including but not limited to websites, data systems, desktop applications and web based services.
- (7) Website Accessibility Standard: Applicable to Contractors which develop and maintain Department web pages.

Current state information technology standards are accessible online at. <https://ocio.iowa.gov/home/standards>

b. 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 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.

c. 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 and without affording Contractor any opportunity to cure.

### **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. 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. Private Consultation**

Employees of the Contractor whose salaries are paid by Department funds shall not engage in private consultation during the hours that are paid for by Department funds.

### **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 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 and any extensions or renewals thereof. The Contractor's insurance shall, among other things, 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. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

### **15. Audit or Examination of Records**

a. Contractors 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 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. The contractor shall submit to the Department one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor.

b. Contractors that are independently audited but not required to submit the audit report per the criteria above, Article 15.a. shall submit one (1) copy of the audit report to the Department within thirty (30) working days of its issuance, unless specific exemption is granted in writing by the Department. To be submitted with the audit is a copy of the separate letter to management addressing non-material findings, if provided by the auditor

c. The Department 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 Department within thirty (30) working days of its issuance, unless specific exemption is granted in writing by the Department. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

d. The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Department. When the Department has agreed in writing to pay for the required audit services, the Department reserves the right to refuse payment for audit services which do not meet Federal or State requirements.

e. The Department may require a pre-award survey by the State Auditor for contractors.

f. The Contractor agrees that the Department, Auditor of the State 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 other documentation pertaining to this contract.

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

h. 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 sole right to monitor Contractor performance through site visits, reports, or other means deemed necessary by the Department. The Contractor agrees that the Department may conduct 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, agents, and board members in such efforts and provide all 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. 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.

(4) Failure of any Deliverable to meet or conform to any applicable Specifications.

b. Temporary withholding of funds does not constitute just cause for the Contractor to interrupt services to clients or to otherwise cease work under this Contract. No interest shall accrue or be paid to the Contractor on any amounts withheld or retained by the Department under this Contract.

## **19. Suspension**

a. When, as determined by the Department, a 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 sixty (60) days advance written notice only for the failure of the Department to comply with any material term, condition, or provision of this Contract, including but not limited to the failure to make timely payment for work performed on the Deliverables. 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 sixty 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 material 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) 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 ten (10) 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 up to and including the date of termination.

(3) Bankruptcy or Insolvency. Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:

i. 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;

i. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

ii. Making an assignment for the benefit of creditors;

iii. 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 Contractor's performance of its obligations under this Contract; or

iv. Taking any action to authorize any of the foregoing.

(4) Lack of Funds or Change in Law. Notwithstanding anything in this Contract to the contrary, the Department shall have the right to terminate this 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.

(5) 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 addition, the Department may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or other solicitation document or the Proposal that is false, deceptive, or materially incorrect or incomplete;

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

iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;

iv. Contractor terminates or suspends its business;

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

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

vii. The Department determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Department or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;

viii. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret or ;

ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy.

e. 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.

f. 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 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 contract with the Department and immediately terminate all other existing contracts between the Department and the Contractor. The Contractor shall cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider. The Contractor shall immediately return to the Department any payments made by the Department for Deliverables that were not rendered or provided by Contractor. The Contractor shall immediately deliver to the Department any and all Deliverables for which the Department 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 as that time.

g. Should this contract be terminated under subsection 20(c)(1) (“Default by the Contractor”) or subsection 20(c)(3) (“Bankruptcy or Insolvency” of the Contractor), or should the Contractor fail to ensure a smooth transition of services to clients as required by subsection 20(f), the Department may, at its sole discretion, place the Contractor on its list of contractors barred from entering into any contract with the Department. 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. The Department may also, at its sole discretion, immediately terminate all contracts between the Department and Contractor if the Contractor is placed on the barred list of contractors.

h. The Department shall not be liable for the following costs or expenses: unemployment compensation; the payment of workers’ compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates; any costs incurred by 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; 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; any taxes 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.

i. The Department reserves all administrative, contractual and legal remedies which are available in the event that the Contractor violates or breaches the terms of this contract.

j. In the event that Contractor owes the Department or 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 Department may, in its sole discretion, set off any such sum against: (1) any sum invoiced by, or owed to, Contractor under this Contract, or (2) any sum or amount owed by the State to Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

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

## **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**

The Contractor and its successors and assignees agree to indemnify and hold harmless the State of Iowa and the Department and its officers, employees, agents, and volunteers from any and all liabilities, damages, settlements, judgments, costs and expenses, including the reasonable value of time spent by the Attorney General's Office and the costs and expenses and reasonable attorney fees of other counsel required to defend the Department or the State of Iowa, related to or arising from any of the following:

- a. Any violation of this contract.
- b. Any negligent, intentional, or wrongful act or omission of the Contractor, its officers, employees, agents, board members, contractors or subcontractors, or any other person in connection with this project.
- c. Any infringement of any patent, trademark, trade dress, trade secret, copyright, or other intellectual property right.
- d. The Contractor's performance or attempted performance of this contract.
- e. Any failure by the Contractor to comply with all federal, state, and local laws and regulations.
- f. 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.
- g. The death, bodily injury or damage to property of any enrollee, agent, employee, business invitee or business visitor of the Contractor or any of its subcontractors.
- h. Any failure by the Contractor to adhere to the confidentiality provisions of this contract.

## **23. Changes of Key Personnel**

The Contractor's personnel specified by name and title in Article IV of 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 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. Warranties**

a. Construction of Warranties Expressed in this Contract with Warranties Implied by Law. Warranties made by the Contractor in this Contract, whether: (a) this Contract specifically denominates the Contractor's promise as a warranty; or (b) 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 Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through 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. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

b. The Contractor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by 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 Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder or under any license agreement related hereto without violating any rights of any third party; (ii) 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 Department herein; and (iii) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

c. The Contractor represents and warrants that: (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Department'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. 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. Contractor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or 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 Contractor shall, at the Department's request and at the Contractor's sole expense: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace

such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) 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 (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department with respect to such Deliverable. In addition, 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 Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Contract.

d. The Contractor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) 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 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 Department or within such other period as the Department specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, 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 Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department 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 Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected Deliverable.

e. 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 Department notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Department any fees or compensation paid to Contractor for the unsatisfactory services.

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

g. 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 Department will not have any obligations with respect thereto.

## **28. Contract Administration**

a. Invalidity. If any provision of this contract is in conflict with any state or federal law or shall be declared to be invalid by any state or federal court of record, such invalidity shall affect only such portions as are declared invalid or in conflict with the law. Any remaining portion shall continue to be in effect.

b. Status of Contractor. The Contractor shall at all times be deemed an independent contractor. The Contractor, its employees, agents, and any subcontractors performing under this contract are not employees or agents of the State of Iowa or any agency, Department, or division of the state. The Contractor shall be responsible for all its withholding taxes, social security, unemployment, worker's compensation and other taxes and shall hold the Department harmless for any claims for same. If the Contractor is a non-profit organization or affiliated with a government organization, the Contractor shall file all required state and federal reports to maintain such status.

c. Compliance with the law.

i. The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, or rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, executive orders, and orders when performing the work and services under this Contract, including without limitation the following: all laws applicable to the prevention of discrimination in employment (including Iowa Code section 19B.7 and chapter 216), 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.

ii. The Contractor, its employees, agents, and subcontractors shall also comply with all federal, state, and local laws regarding permits and licenses that may be required to carry out the work and services to be performed under this Contract.

iii. The Contractor may be required to submit its affirmative action plan, containing goals and time specifications and accessibility plans and policies, to the State to comply with the requirements of 11 IAC chapter 121.

iv. In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

v. The Contractor agrees that compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the Department of Administrative Services prior to the execution of the Contract shall be a condition of the Contract binding upon the Contractor, its successors, and assignees. Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the Department may cancel, terminate, or suspend, in whole or in part, this Contract. The Department may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law.

vi. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables. Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

d. 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. Each party shall be deemed to be an independent contractor acting toward the mutual benefits expected to be derived herefrom. 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.

e. Joint Entity. 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, and for any default of such activities and obligations.

f. Choice of Law and Forum. The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in the Iowa District Court in and for Polk County, Iowa. If, however, jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability that may be available to the Department or the State of Iowa.

g. 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.

h. 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.

i. 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.

j. 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.

k. 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.

l. 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.

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

n. 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.

o. Authorization. Each signatory to this Contract or subsequent Contract amendments represents and warrants to the other parties that:

i. The signatory has the right, power, and authority to enter into this agreement and to bind the party represented by the signatory to this agreement

ii. The party has the right, power, and authority to perform its obligations under the agreement;

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

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

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

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

s. 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 Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days written notice to the Contractor of any legislative change. During the thirty (30) day time period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative changes. Nothing in this subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

t. Right to Address Board of Directors or Other Managing Entity. The Department reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding Contract performance, expenditures, or any other issue as deemed appropriate by the Department.

### **29. 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.

### **30. 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.

### **31. 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.

### **32. 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.

### **33. 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 \$ 1000 per day.

#### **34. 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.

#### **35. Compliance with Iowa Code chapter 8F.**

If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor certifies it will comply with the requirements of the Iowa Code chapter 8F. The Contractor shall forward any compliance documentation, including but not limited to certifications, and any compliance documentation received from subcontractors by the Contractor to the Department.

#### **36. 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 certifies it will comply with the requirements of this Act. The Contractor shall forward any required documentation, including but not limited to certifications to the Department.

#### **37. 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.