

CONTRACT DECLARATIONS AND EXECUTION

Intergovernmental Contract: Non-State Agency

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| RFP or Informal Solicitation # | Contract # |
| N/A | MHDS 22-016 |

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| Title of Contract |
| Eastern Iowa MHDS Regional Contract |

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

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| Agency of the State (hereafter "Agency") | |
| Name/Principal Address of Agency: Iowa Department of Human Services 1305 E. Walnut Des Moines, IA 50319-0114 | Agency Billing Contact Name / Address: Don Gookin 1305 E. Walnut Street Des Moines, IA 50319 Phone: 515-669-8001 |
| Agency Contract Manager (hereafter "Contract Manager") / Address ("Notice Address"): Don Gookin 1305 E. Walnut Street Des Moines, IA 50319 Phone: 515-669-8001 E-Mail: dgookin@dhs.state.ia.us | Agency Contract Owner (hereafter "Contract Owner") / Address: Marissa Eyanson 1305 E. Walnut Street Des Moines, IA 50319 E-Mail: meyanso@dhs.state.ia.us |

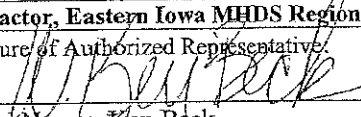
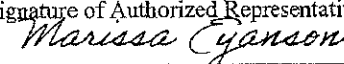
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| Contractor: (hereafter "Contractor") | |
| Legal Name: Eastern Iowa MHDS Region | Contractor's Principal Address: 600 W 4 th St Davenport, IA 52801 |
| Tax ID #: 426004465 | Organized under the laws of: Iowa |
| Contractor's Contract Manager Name/Address ("Notice Address"): Lori Elam 600 W 4 th St Davenport, IA 52801 Phone: (563) 326-8723 E-Mail: lori.elam@scottcountyiowa.com | Contractor's Billing Contact Name/Address: David Farmer 600 W 4 th St Davenport, IA 52801 Phone: (563) 326-8651 |

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| Contract Information | |
| Start Date: 01/01/22 | End Date of Base Term of Contract: 06/30/23 |
| Possible Extension(s): The Agency shall have the option to extend this Contract up to 2 additional 1-year extensions. | |
| Contract Contingent on Approval of Another Agency: No | ISPO Number: N/A |
| | DoIT Number: N/A |
| Contract Warranty Period (hereafter "Warranty Period"): The term of this Contract, including any extensions. | Contract Include Sharing SSA Data? No |
| Contractor a Business Associate? No | Contractor a Qualified Service Organization? No |
| Contractor subject to Iowa Code Chapter 8F? No | Contract Includes Software (modification, design, development, installation, or operation of software on behalf of the Agency)? No |
| Contract Payments include Federal Funds? No | |

Contract Execution

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

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

| | |
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| Contractor, Eastern Iowa MHDS Region | Agency, Iowa Department of Human Services |
| Signature of Authorized Representative:  | Signature of Authorized Representative:  |
| Printed Name: Ken Beck | Printed Name: Marissa Eyanson |
| Title: Chair, Governing Board | Title: Administrator, Division of Community Mental Health and Disability Services |
| Date: 12/20/21 | Date: 12/29/2021 |

DHS Director signature



Kelly Garcia (Dec 30, 2021 16:57 CST)

Printed name: Kelly Garcia

Date: Dec 30, 2021

SECTION 1: SPECIAL TERMS

1.1 Special Terms Definitions.

“Agency” means the Iowa Department of Human Services.

“Corrective Action Plan” or “CAP” means a formal documented action to address substandard performance of a Region by requiring development of a step-by-step plan of action to achieve targeted outcomes for resolution of identified issues in an effort to achieve measurable improvement in performance.

“Evidence Based Practices” means using interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial and effective and have established standards for fidelity of the practice.

“MHDS Region” or “Region” or “Contractor” means a mental health and disability service region that operates as the ‘regional administrator’ or ‘regional administrative entity’ as defined in administrative rule 441—25.11(331).

“Performance Improvement Plan” means a plan aimed at helping a Region improve its performance when issues have been identified by the Region or by the Agency, to analyze current practices and determine and implement the best organizational strategies to improve performance.

“Quarterly Report” means a report completed by the MHDS Region detailing the availability and accessibility of disability services to residents of the Region.

1.2 Contract Purpose.

To administer the regional mental health and disability services delivery system, and to measure performance of the MHDS Region. Recent legislative changes to the funding of these services are intended to achieve a more equitable mental health system and allow MHDS Regions to develop and maintain supports and services as well as to provide additional new and potentially innovative services.

1.3 Scope of Work.

1.3.1 Deliverables.

The Contractor shall provide the following:

1.3.1 Deliverables. The Contractor shall:

1.3.1.1 Fulfill all requirements for MHDS Regions as set forth in Iowa Code 331.388 through 331.399 and Iowa Administrative Code 441—Chapter 25, including:

- a. Provision of access to all core services under Iowa Code section 331.397;
- b. Submission of an annual service and budget plan under Iowa Code section 331.393 and work with the Department who will approve, deny, or consult with the Region to revise the annual service and budget plan; and
- c. Utilize all federal government funding, including Medicaid funding, third-party payment sources, and other nongovernmental funding prior to using regional service payments;

1.3.1.2 Partner with the Agency to develop an accountable mental health and disability services system. The Region will participate in a joint Agency-MHDS Region data analytics workgroup. Between January 1, 2022 and December 31, 2022 the Region and the Agency will work together to

- a. Standardize definitions, data elements, and processes for data collection;
- b. Develop tools for each service related to the system-wide outcome goals identified by the workgroup, that

will allow evaluation of outcomes consistently across Regions;

- c. Utilize common data systems and metrics to allow data validation and quality assurance processes
- d. Identify system-wide outcome goals to include reduced emergency department use, improved use of mobile crisis response, improved use of jail diversion services, employment outcomes, and other outcomes determined by the workgroup;
- e. As standards are finalized for each service and data systems are capable, the Region will begin collecting data using the standardized definitions and data elements, with standards for all services being implemented no later than December 31, 2022; and
- f. Between January 1, 2023 and June 30, 2023 the Region will utilize the standardized process to collect baseline data related to the system-wide outcome goals.

1.3.1.3 Partner with the Agency to improve service provision by promoting use of Evidence Based Practices (EBPs). The Region will participate in a joint Agency-MHDS Region EBP workgroup. Between January 1, 2022 and June 30, 2022 the Region and the Agency will work together to identify and develop resources, training, and expertise, acting as a partner with provider organizations to achieve fidelity to the applicable evidence based service model. The workgroup will review existing EBP requirements and when necessary, will make recommendations for amendment of related administrative rules.

1.3.1.4 Report administrative costs to the Agency annually for review.

- a. Between January 1, 2022 and June 30, 2022, the Region and the Agency will work together to standardize reporting of administrative costs.
- b. Beginning July 1, 2022, the Region will implement reporting using standardized definitions and procedures.
- c. The Agency will determine a goal for a maximum percentage of administrative costs for the Region beginning July 1, 2023.

1.3.2 Performance Measures.

The MHDS Region shall meet the following benchmarks during the Contract period:

1.3.2.1 Quarterly Reports will be submitted timely at least 75% of the time. Reports will be due on the 15th day of the month following the end of the quarter. When the 15th day falls on a weekend or holiday, the report will be due on the next business day.

1.3.2.2 Quarterly Report submissions will be complete and accurate. Complete means that all required fields contain the requested information. Accurate means that the information provided can be documented or supported by the Region. If clarification is needed, the Region will respond to the Agency within the requested timeframe.

1.3.2.3 The Region will participate in 90% of the scheduled meetings of the EBP workgroup steering committee. Any assigned work products will be completed by the assigned deadline.

1.3.2.4 The Region will participate in 90% of the scheduled meetings of the data analytics workgroup steering committee. Any assigned work products will be completed by the assigned deadline.

1.3.2.5 For the time period of January 1, 2022 through December 31, 2022, the Region will meet the access standards set forth in 441 IAC 25 for the following services for adults at an overall level of 85% based on information submitted in the Region's Quarterly Report:

- a. Twenty-four Hour Crisis Response
- b. Crisis Stabilization Community Based Services
- c. Crisis Stabilization Residential Services

- d. Mobile Response
- e. Twenty-three Hour Holding and Observation
- f. Outpatient Assessment and Evaluation
- g. Mental Health Inpatient Therapy
- h. Mental Health Outpatient Therapy
- i. Outpatient Medication Prescribing and Management
- j. Assessment and Evaluation After Inpatient Treatment
- k. Subacute Facility Based Services
- l. Support for Community Living
- m. Support for Employment
- n. Family Support and Peer Support
- o. Assertive Community Treatment
- p. Access Center
- q. Intensive Residential Services

1.3.2.6 For the time period of January 1, 2022 through December 31, 2022, the Region will meet the access standards set forth in 441 IAC 25 for the following services for children at an overall level of 85% based on information submitted in the Region's Quarterly Report:

- a. Assessment and Evaluation Related to Eligibility for Services
- b. Early Identification
- c. Early Intervention
- d. Crisis Stabilization Community Based Services
- e. Crisis Stabilization Residential Services
- f. Mobile Response
- g. Behavioral Health Outpatient Therapy
- h. Medication Prescribing and Management
- i. Behavioral Health Inpatient Therapy
- j. Education Services
- k. Prevention

1.3.2.7 Beginning January 1, 2023 the Region will submit access data to the Agency timely and accurately using the standardized definitions and data elements agreed upon by the Agency and the Data Analytics workgroup. The Agency will use the data to calculate performance under 1.3.2.5 and 1.3.2.6.

1.3.3 Agency Responsibilities.

1.3.3.1 The Agency will participate in scheduled meetings of the data analytics workgroup. Any assigned work products will be completed by the assigned deadline.

1.3.3.2 The Agency will participate in scheduled meetings of the EBP workgroup. Any assigned work products will be completed by the assigned deadline.

1.3.3.3 The Agency will provide the format and template for the Region's quarterly report.

1.3.3.4 The Agency will respond timely to requests for technical assistance from the MHDS Region.

1.3.3.5 The Agency will review reports timely and subject to the Agency's discretion, will allow the Region adequate time to make corrections or clarifications.

1.3.4 Monitoring, Review, and Problem Reporting.

1.3.4.1 Agency Monitoring Clause. The Contract Manager or designee will verify supporting documentation of work performed prior to payment; determine compliance with general contract terms, conditions, and requirements; and assess compliance with Deliverables, performance measures, or other associated requirements based on the following:

- a. If the Agency determines that the Region has not adequately fulfilled any of the requirements under this contract, the Agency may, with proper notice as described below, apply the following remedies to assure compliance.
- b. If at any time it appears that the Region may be at risk of noncompliance with a contract requirement, or if the Region's performance drops below the required level on a performance measure, the Agency may make an informal request for the Region to identify a plan to remediate the issue.
- c. If the Region does not improve performance to the required level in the subsequent quarter after an informal request for remediation, the Agency may request that the Region complete a Performance Improvement Plan (PIP) to proactively identify and mitigate barriers to reaching the desired performance level. The PIP will include goals and timelines designed to achieve improved performance. The Region will have 30 calendar days to submit the PIP to the Agency. The Agency will monitor progress toward goals following the timeline established in the PIP.
- d. If the Region does not improve performance to the required level following the timeline established in a PIP, the Agency will issue a written notice to the Region requiring the Region to submit a formal Corrective Action Plan (CAP). At its discretion the Agency may require a CAP without having previously made an informal request for remediation or a PIP.
 - (1) The Region will have 30 calendar days to submit the CAP to the Agency.
 - (2) Upon receipt of the CAP, the Agency will have 30 calendar days to either accept the CAP or request revisions.
 - (3) If revisions are required, the Region will have 15 calendar days to submit revisions, and the Agency will have 15 calendar days to respond.
 - (4) Additional time for submission or revision of a CAP may be granted upon request by the Region.
 - (5) The Agency will monitor progress toward remediation following the timeline established in the CAP.
 - (6) When the Region has remediated the performance issue, the Agency will issue a written notice of release from the CAP.
- e. If the Region fails to submit an acceptable CAP after three revisions or fails to remediate the performance issue as set out in the accepted CAP, the Agency may reduce the amount of the annual state funding provided for the Region, including incentive funds received under Iowa Code section 225C.7A. The reduction is not to exceed fifteen percent of the amount of annual state funding for the Region. The Agency will issue a written notice stating the reason for the reduction. The funding reduction will begin with the next scheduled quarterly state payment and will be reinstated with the next quarterly state payment after the Region corrects the performance issue.
- f. In the event of continued noncompliance despite previous attempts to remediate the performance issue through a CAP or funding reduction, and upon written notice, the Agency may withdraw approval for the Region.

1.3.4.2 Agency Review Clause. The Contract Manager or designee will use the results of monitoring activities and other relevant data to assess the Contractor's overall performance and compliance with the Contract. At a minimum, the Agency will conduct a review semi-annually; however, reviews may occur more frequently at the

Agency's discretion. As part of the review(s), the Agency may require the Contractor to provide additional data, may perform on-site reviews, and may consider information from other sources.

The Agency may require one or more meetings to discuss the outcome of a review. Meetings may be held in person. During the review meetings, the parties will discuss the Deliverables that have been provided or are in process under this Contract, achievement of the performance measures, and any concerns identified through the Agency's contract monitoring activities.

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

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

1.3.5 Contract Payment Clause.

1.3.5.1 Payments to Region. In accordance with the payment terms outlined in this section and the Contractor's completion of the Scope of Work as set forth in this Contract, the Contractor will be compensated as set forth in and pursuant to Iowa Code 225C.7A

SECTION 2. GENERAL TERMS FOR SERVICE CONTRACTS

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

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

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

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

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

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

"Confidential Information" means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a "Disclosing Party") to the other party (a "Receiving Party") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that could be used to identify recipients or applicants of Agency services and recipients of Contract services including Protected Health Information (45 C.F.R. § 160.103) and Personal Information (Iowa Code § 715C.1(11)), Agency security protocols and procedures, Agency system architecture, information that could compromise the security of the Agency network or systems, and information about the Agency's current or future competitive procurements, including the evaluation process prior to the formal announcement of results.

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

"Contract" means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified in the Contract Declarations and Execution Section and includes the signed Contract Declarations and Execution Section, the Special Terms, any Special Contract Attachments, the General Terms for Service Contracts, and the Contingent Terms for Service Contracts as these documents may be amended from time to time.

"Deficiency" means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to

conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

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

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

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

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

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

"Special Terms" means the Section of the Contract entitled "Special Terms" that contains terms specific to this Contract, including but not limited to the Scope of Work and contract payment terms. If there is a conflict between the General Terms for Services Contracts, the Contingent Terms for Service Contracts, and the Special Terms, the Special Terms shall prevail.

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

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

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

2.3 Scope of Work. The Contractor shall provide Deliverables that comply with and conform to the Specifications. Deliverables shall be performed within the boundaries of the United States.

2.4. Compensation.

2.4.1 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to the Contractor as described in 1.3.4.1(a-e). No interest shall accrue or be paid to the Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

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

2.5 Termination.

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

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

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

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

2.5.1.4 The Contractor terminates or suspends its business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.6 Indemnification.

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

2.6.1.1 Any breach of this Contract;

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

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

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

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

2.7 Insurance.

2.7.1 Insurance Requirements. At the Contractor's expense, the Contractor and any subcontractor shall maintain insurance in full force and effect covering its work during the entire term of this Contract, which includes any extensions or renewals thereof. Insurance shall be provided through companies licensed by the State of Iowa, through statutorily authorized self-insurance programs, through local government risk pools, or through any combination of these. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy.

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

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

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

2.8 Ownership and Security of Agency Information.

2.8.1 Ownership and Disposition of Agency Information. Any information either supplied by the Agency to the Contractor, or collected by the Contractor on the Agency's behalf in the course of the performance of this Contract, shall be considered the joint property of the Agency and Contractor ("Information"). No part of the Information and records be disclosed, sold, assigned, leased, or otherwise provided to third parties for any reason other than the provision of health care services by the Region and its subcontractors or commercially exploited by or on behalf of the Contractor. The Agency and Contractor shall jointly own all Information that may reside within the Contractor's hosting environment and/or equipment/media.

2.8.2 Foreign Hosting and Storage Prohibited. Agency Information shall be hosted and/or stored within the continental United States only.

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

2.8.4 No Use or Disclosure of Confidential Information. Confidential Information collected, maintained, or used in the course of performance of the Contract shall only be used or disclosed by the Contractor as expressly authorized by law. The Contractor shall immediately report to the Agency any unauthorized use or disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper use or disclosure of Confidential Information.

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

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

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

2.9 Intellectual Property.

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

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

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

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

2.10 Warranties.

2.10.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.

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

2.10.2 Contractor represents and warrants that:

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

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

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

2.10.3 The Contractor represents and warrants that:

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

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

party. The Contractor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. The Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then the Contractor shall, at the Agency's request and at the Contractor's sole expense:

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

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

2.10.4 The Contractor represents and warrants that the Deliverables shall:

2.10.4.1 Be free from material Deficiencies; and

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

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

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

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

2.11 Acceptance of Deliverables.

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

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

2.12 Contract Administration.

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

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

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

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

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

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

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

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

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

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

2.12.9 Use of Third Parties. The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor may enter into contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations, and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

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

2.12.11 Assignment and Delegation. The Contractor may not assign, transfer, or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency.

The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

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

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

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

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

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

2.12.17 Supersedes Former Contracts or Agreements. This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract. The parties specifically agree this section shall have no effect on any existing DHS approved Annual Service and Budget Plan or Policy and Procedure Documents.

2.12.18 Waiver. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

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

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

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

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

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

2.12.23 Authorization. The Contractor represents and warrants that:

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

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

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

2.12.25 Records Retention and Access.

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

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

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

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

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

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

2.12.26 Audits.

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

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

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

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

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

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

2.12.29 Obligations Beyond Contract Term. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the expiration or termination of this Contract. Contract sections that survive include, but are not necessarily limited to, the following: (1) Section 2.4.2, Erroneous Payments and Credits; (2) Section 2.5.5, Limitation of the State's Payment Obligations; (3) Section 2.5.6, Contractor's Contract Close-Out Duties; 4) Section 2.6, Indemnification, and all subparts thereof; regardless of the date any potential claim is made or discovered by the Agency or any other

Identified Party; (5) Section 2.8, Ownership and Security of Agency Information, and all subparts thereof; (6) Section 2.9, Intellectual Property, and all subparts thereof; (7) Section 2.12.10, Choice of Law and Forum; (8) Section 2.12.16, Joint and Several Liability; (9) Section 2.12.20, Cumulative Rights; (10) Section 2.12.24 Successors In Interest; (11) Section 2.12.25, Records Retention and Access, and all subparts thereof; (12) Section 2.12.26, Audits; (13) Section 2.12.34, Repayment Obligation and (14) Section 2.12.37, Use of Name or Intellectual Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3: CONTINGENT TERMS FOR SERVICE CONTRACTS

3.2 Reserved. (*Business Associate Agreement*)

SPECIAL CONTRACT ATTACHMENTS

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