

**GENERAL CONDITIONS for  
SMALL CONTRACTS UNDER \$5000.00**

**Section 6           TERMINATION**

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**6.1     Immediate Termination by the DNR.** The DNR may terminate this Contract immediately and without advance notice to the Contractor if the Contractor: breaches the Contract; becomes the subject of any bankruptcy or insolvency proceeding; has failed to comply with applicable state or federal laws, rules, ordinances, regulations or orders; has otherwise engaged in conduct that has or may expose the State or the DNR to liability, as determined in the DNR's sole discretion; has a license or certification that is revoked or otherwise lost if the Contractor is required to be certified or licensed as a condition precedent to providing services; or has furnished any statement, representation or certification in connection with this Contract which is materially false, deceptive, incorrect or incomplete. In addition, the DNR may terminate this Contract immediately and without advance notice to the Contractor if the DNR determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized. The DNR shall be liable to pay Contractor for services provided through the termination date of the Contract.

**6.2     Termination upon 30 Days' Notice.** The DNR may terminate this agreement, without penalty and for any reason, upon 30 days' notice to the Contractor. The DNR shall be liable to pay Contractor for services provided through the termination date of the Contract. In the event the DNR terminates this Contract, the Contractor upon receipt of notice of termination, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs; immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor; cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

**6.3     The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination or upon request of the DNR, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting therefrom, any other matters the DNR may require. The Contractor upon receipt of notice of termination or upon request of the DNR, shall immediately cease using and return to the DNR any personal property or materials, whether tangible or intangible, provided by the DNR to the Contractor; and shall comply with the DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

**Section 7           REPRESENTATIONS AND WARRANTIES**

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**7.1     Property, Concepts, Materials, and Works Produced.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the DNR is good and that transfer of title or license to the DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. The Contractor represents and warrants that all the concepts, materials and works produced, or provided to the DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works.

**7.2 Professional Practices.** The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**7.3 Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the DNR.

## **Section 8 DATA AND WORK PRODUCTS**

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**8.1 Rights in Data.** The DNR shall be and shall remain the owner of all data and records provided to the Contractor. The Contractor will not use the DNR's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

**8.2 Ownership of Work Product.** The DNR shall own all work products and deliverables developed or furnished in connection with the Contract by the Contractor or any subcontractor to the extent that any work products or deliverables are generated as a result of this Contract. The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the DNR, without additional consideration of all work products and deliverables of the subcontractors.

## **Section 9 INDEMNIFICATION**

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The Contractor agrees to indemnify and hold harmless the State of Iowa and the DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the DNR, related to or arising from its acts. Indemnification obligation of the Contractor shall survive termination of this Contract.

## **Section 10 LIMITATION OF LIABILITY**

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

## **Section 11 ADDITIONAL PROVISIONS**

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**11.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. 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. 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, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the DNR or the State

of Iowa for federal or state tax purposes. The DNR will not withhold taxes on behalf of the Contractor (unless required by law).

**11.2 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract.

**11.3 Conflict of Interest.** The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed. In addition, during the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract.

**11.4 Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

**11.5 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 choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought 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.

**11.6 Assignment and Delegation.** This Contract may not be assigned, transferred, conveyed, or delegated in whole or in part without the prior written consent of the other party.

**11.7 Supersedes Former Contracts or Agreements.** This Contract supersedes all prior contracts or agreements between the DNR and the Contractor for the services provided in connection with this Contract.

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

**11.9 Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested; by receipted hand delivery; or by Federal Express, courier or other similar and reliable carrier, and shall be addressed to each party as set forth as in Section 1 of this Contract. 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 and as provided herein.

**11.10 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.

**11.11 Public Records.** The Contractor shall comply with the requirements of Iowa Code Chapter 22 , including Iowa Code Section 22.7, which defines confidential records and prescribes confidential handling procedures and shall maintain all documents related to this Contract sufficiently and properly throughout the term of this Contract and for a period of at least five years following receipt of Contractor's final payment, whichever occurs last, and shall allow the DNR and any other representative of the state or federal government to access and examine, audit, excerpt and transcribe any directly pertinent documents at no cost to the state or federal government.

**11.12 Obligations beyond Contract Term.** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

**11.13 Additional Provisions.** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**11.14 Delay or Impossibility of Performance.** The Contractor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If 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 this Contract.

**11.15 Non-Exclusive Rights.** This Contract is not exclusive. The DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

**11.16 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 of from Contractor's and/or subcontractors' activities involving third parties arising from the Contract.

**11.17 Non-Supplanting Requirement.** To the extent required by state or federal law, 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.

**11.18 Nondiscrimination in Employment.** The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and 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, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. 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 accessibility plans and policies as required under 11 Iowa

Administrative Code chapter 121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

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.

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 State may cancel, terminate, or suspend, in whole or in part, this Contract. The State 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 or rule.

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.

**(REMOVE THIS SECTION AND ATTACHMENT "A" IF NO FEDERAL FUNDS ARE USED.)**

**11.19 Federal Funds.** The Contractor has read and understands the provisions of Attachment A, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

#### **Attachment A Additional Requirements for Federally-funded Agreements**

**A.1 Suspension and Debarment.** The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

**A.2 Lobbying Restrictions.** The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

**A.3 Pro-Children Act of 1994.** 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. Federal programs include grants, cooperative agreements, loans

or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where 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 party. The Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 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.

**A.4 Certified Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the DNR if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the DNR that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

**A.5 Drug Free Work Place.** The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.