

DHHS GENERAL TERMS – SERVICES CONTRACTS

GENERAL TERMS

1. ORDER OF PREFERENCE.

- 1.1. Unless otherwise specifically stated in an amendment to the Contract, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference:
 1. Amendments to the Contract, with the most recently dated amendment having highest priority;
 2. The Contract, excluding attachments, with the following addenda in order of preference: DHHS General Terms – Services Contracts; DHHS HIPAA Business Associate Agreement Provisions – Services Contracts (if included); DHHS Insurance Requirements – Services Contracts (if included); and
 3. Any attachments to the Contract.
- 1.2. These documents constitute the entirety of the Contract. Any ambiguity or conflict in the Contract discovered after its execution and not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

2. NOTICES. Notices shall be in writing and shall be effective upon mailing or e-mailing. All deliverables and required reports under any Scope of Work shall be sent to the DHHS Scope of Work Manager designated under the applicable Scope of Work or Statement of Work. Written notices, such as notices of termination or notice of breach, shall be mailed or e-mailed to the designated Scope of Work Manager, and to the DHHS Contracts Administrator.

NOTICES

DHHS	Contractor
Individual designated as Scope of Work Manager AND Contracts Administrator Nebraska Department of Health and Human Services 301 Centennial Mall South Lincoln, NE 68509-5026 DHHS.ContractAdmin@nebraska.gov	Unless otherwise provided in the Scope of Work or Statement of Work, the designated contact for the Contractor is the same individual executing the Contract on behalf of the Contractor.

The Contractor shall provide a Notices contact to DHHS in writing at the time the Contract is executed. Unless otherwise specified in writing to DHHS, the individual who executes the Contract on behalf of the Contractor shall be the Notices contact.

3. GOVERNING LAW.

- 3.1. Notwithstanding any other provision of the Contract, or any amendment or addendum entered into contemporaneously or at a later time, the parties understand and agree that: (1) the State of Nebraska is a sovereign state and DHHS' authority to contract is therefore subject to limitation by Nebraska's Constitution, statutes, common law, and regulations; (2) the Contract shall be interpreted and enforced under the laws of Nebraska; (3) any action to enforce the provisions of the Contract must be brought in Nebraska, per state law; (4) the person signing the Contract on behalf of DHHS does not have the authority to waive Nebraska's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the Contract, if any, are entered into subject to Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity; and (6) all terms of the Contract, including, but not limited to, any clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy, or other similar provisions of the Contract, are entered into specifically subject to Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity.

- 3.2. The parties shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations in the performance of the Contract.
4. AMENDMENT. The Contract may be modified only by written amendment executed by both parties. No alteration or variation of the terms of the Contract shall be valid unless made in writing and signed by the parties.
5. CONTRACT MANAGEMENT.
 - 5.1. *Deliverable Approval Process*. This subsection applies to applicable Scopes of Work or Statements of Work, but does not apply to Direct Services Standards.
 - 5.1.1. DHHS must review all deliverables submitted by Contractor. DHHS must approve a deliverable submitted by Contractor if it is of sufficient quality and meets the requirements in the Scope of Work or Statement of Work. Approval of a deliverable must be communicated by DHHS to Contractor in writing within a reasonable time period. DHHS shall not disburse payment for a deliverable until the deliverable is approved.
 - 5.1.2. DHHS must reject the deliverable submitted by Contractor if it is not of sufficient quality or does not meet the requirements in the Scope of Work or Statement of Work. Rejection of a deliverable must be communicated by DHHS to Contractor in writing within a reasonable time period, and DHHS' written communication must include its reasons for rejection.
 - 5.1.3. Within a reasonable time period established by DHHS, Contractor may correct the defects identified by DHHS and resubmit the rejected deliverable. Any corrections or improvements requested by DHHS are not changes in the scope of the Contract. If a rejected deliverable requires more than two corrections, DHHS may permanently reject the deliverable and deny payment for the deliverable. Nothing in this section limits any other remedies available to DHHS under the Contract or at law.
 - 5.2. *Corrective Action Plan*. If Contractor fails to meet the Scope of Work, Statement of Work, or Direct Services Standards, as set forth in the Contract, DHHS may require Contractor to complete a Corrective Action Plan (hereinafter, "CAP").
 - 5.2.1. DHHS shall set a deadline for the CAP to be provided to DHHS, but shall provide Contractor reasonable notice of said deadline. In its notice, DHHS shall identify each issue to be resolved.
 - 5.2.2. The CAP shall include, but is not limited to, a written response noting the steps being taken by Contractor to resolve each issue, including a date that the issue(s) will be resolved.
 - 5.2.3. If Contractor fails to provide a CAP by the deadline set by DHHS, or fails to provide DHHS with a CAP demonstrating how the issues regarding performance will be remedied, or fails to meet the deadline(s) set in the CAP for resolution of the issue(s), DHHS may withhold payments (for the work or deliverables) related to the issues identified by DHHS, or exercise any other remedy set forth in the Contract or available under law.
 - 5.3. *Suspension of Services*. DHHS may, at any time and without advance notice, require Contractor to suspend any or all activities provided or performed under the Contract. A suspension may be the result of a reduction in federal or state funds, budget freeze, emergency, contract compliance issues, investigation, or other reasons not stated here.
 - 5.3.1. In the event of such suspension, the DHHS Chief Operating Officer/Contracts Administrator or designee will issue a written Stop Work Order to Contractor. The Stop Work Order will specify which activities are to be immediately suspended, the reason(s) for the suspension, and, if possible, the known duration or period of the suspension.
 - 5.3.2. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms, and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Order during the period of suspension.
 - 5.3.3. The DHHS Chief Operating Officer/Contracts Administrator or designee may extend the duration of the suspension by issuing a modified Stop Work Order, which states the new end date of the suspension and the reason for the extension.
 - 5.3.4. The suspended activity may resume when: (i) the suspension period identified in the Stop Work Order has ended; or (ii) when the DHHS Chief Operating Officer/Contracts Administrator or designee has issued a formal written notice cancelling the Stop Work Order or directing Contractor to resume partial services.

5.4. *Breach of Contract.* DHHS may terminate the Contract, in whole or in part, if Contractor fails to perform its obligations under the Contract in a timely and proper manner. DHHS may, by providing a written notice to Contractor, allow Contractor to cure a breach of contract within a period of thirty (30) days or longer at DHHS' discretion, upon considering the gravity and nature of the breach. Said notice shall be delivered by certified mail, return receipt requested; or in person, with proof of delivery. Allowing Contractor time to cure a breach of contract does not waive DHHS' right to immediately terminate the Contract for the same or a different breach at a different time.

5.4.1. DHHS may, at its discretion, contract for any services required to complete the Contract and hold Contractor liable for any excess cost caused by Contractor's default.

5.4.2. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

5.4.3. DHHS' failure to make payment shall not be a breach, and Contractor shall retain all available statutory remedies and protections.

6. SEVERABILITY. If any term or condition of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

7. INDEMNIFICATION.

7.1. Contractor shall defend, indemnify, hold, and save harmless DHHS and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims") sustained or asserted against DHHS, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of Contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of DHHS that directly and proximately contributed to the claims.

7.2. Contractor shall, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, DHHS gives Contractor prompt notice in writing of the claim. Contractor may not settle any infringement claim that will affect DHHS' use of the intellectual property used in the performance of the Contract without DHHS' prior written consent, which consent may be withheld for any reason.

7.2.1. If a judgment or settlement is obtained or reasonably anticipated against DHHS' use of any intellectual property for which Contractor has indemnified DHHS, Contractor shall, at Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to DHHS to eliminate the infringement, or provide DHHS with a non-infringing substitute that provides DHHS the same functionality. At DHHS' election, the actual or anticipated judgment may be treated as a breach of warranty by Contractor, and DHHS may receive the remedies provided under the Contract.

7.3. DHHS' liability is limited to the extent provided by the Nebraska State Tort Claims Act, Neb. Rev. Stat. §§ 81-8,209 to 81-8,235, the Nebraska State Contract Claims Act, Neb. Rev. Stat. §§ 81-8,302 to 81-8,306, the Nebraska State Miscellaneous Claims Act, Neb. Rev. Stat. §§ 81-8,294 to 81-8,301, and any other applicable provisions of law. DHHS does not assume liability for the actions of its contractors.

7.4. Contractor understands that the Nebraska Constitution, Article XIII, § 3, prohibits DHHS from indemnifying a private party. Any terms to the contrary set forth in any attachments included with the Contract regarding indemnification shall have no effect.

7.5. Notwithstanding the above, if Contractor is a constitutional officer, state agency, local governmental agency, or political subdivision of the State of Nebraska, nothing in the Contract shall be construed as an indemnification by one party of the other for liabilities of a party or third parties for property loss or damage or death or personal injury arising out of and during the performance of the Contract. Any

liabilities or claims for property loss or damages or for death or personal injury by a party or its agents, employees, contractors, assigns, or by third persons shall be determined according to applicable law.

8. ASSIGNMENT. Contractor shall not assign or transfer any interest, rights, or duties under the Contract without prior written consent of DHHS. In the absence of such written consent, any assignment, or attempt to assign, shall constitute a breach of the Contract.
9. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the Contract due to a natural disaster or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under the Contract, which are reasonably related to the Force Majeure Event, shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees shall not be considered a Force Majeure Event, and shall not suspend performance requirements under the Contract.
10. CONFIDENTIALITY.
 - 10.1. Any and all information gathered in the performance of the Contract, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS. Contrary contract provisions set forth in the Contract shall be deemed to be authorized exceptions to this general confidentiality provision.
 - 10.2. Nothing in this section or the Contract shall relieve Contractor of the obligation to comply with all applicable statutes and regulations, current and as amended, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA).
11. OFFICE OF PUBLIC COUNSEL. In the event Contractor provides health and human services to individuals on behalf of DHHS under the terms of the Contract, Contractor shall submit to the jurisdiction of the Public Counsel under Neb. Rev. Stat. §§ 81-8,240 through 81-8,254 with respect to the provision of services under the Contract. Pursuant to Neb. Rev. Stat. § 73-401, this provision shall not apply to contracts between DHHS and long-term care facilities that are subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 to 81-2264.
12. LONG-TERM CARE OMBUDSMAN. As applicable, Contractor must comply with the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 to 81-2264.
13. EARLY TERMINATION.
 - 13.1. DHHS and Contractor, by mutual written agreement, may terminate the Contract at any time.
 - 13.2. DHHS, in its sole discretion, may terminate the Contract for any reason upon thirty (30) calendar days written notice to Contractor. Such termination shall not relieve Contractor of warranty or other service obligations incurred under the terms of the Contract. In the event of termination, Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
 - 13.3. Contractor may terminate the Contract for any reason, if expressly stated in the Service Contract Award, and only upon the notice provided therein.
 - 13.4. DHHS may terminate the Contract immediately for the following reasons:
 - 13.4.1. If directed to do so by statute;
 - 13.4.2. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - 13.4.3. A trustee or receiver of Contractor, or of any substantial part of Contractor's assets, has been appointed by a court;
 - 13.4.4. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Contract has been committed by Contractor, its employees, officers, directors, or shareholders;
 - 13.4.5. An involuntary proceeding has been commenced by any party against Contractor under any one of the chapters of Title 11 of the United States Code, and (i) the proceeding has been

pending for at least sixty (60) calendar days; or (ii) Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) Contractor has been decreed or adjudged a debtor;

13.4.6. A voluntary petition has been filed by Contractor under any of the chapters of Title 11 of the United States Code;

13.4.7. Contractor has intentionally disclosed confidential information; or

13.4.8. Contractor has discontinued (or announces it will discontinue) support of the deliverable.

13.5. In the event either party terminates the Contract for any reason, Contractor shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with the Contract immediately.

13.6. In the event of termination, Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

14. DOCUMENTS INCORPORATED BY REFERENCE. All references in the Contract to laws, rules, regulations, guidelines, directives, addenda, and attachments that set forth standards and procedures to be followed by Contractor in discharging its obligations under the Contract shall be deemed incorporated by reference and made a part of the Contract with the same force and effect as if set forth in full text herein.

15. CONTRACT CLOSEOUT. Upon Contract closeout for any reason, Contractor shall within thirty (30) days, unless stated otherwise herein:

15.1. Transfer all completed or partially completed deliverables to DHHS;

15.2. Transfer ownership and title to all completed or partially completed deliverables to DHHS;

15.3. Return to DHHS all information and data, unless Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;

15.4. Cooperate with any successor Contractor, person, or entity in the assumption of any or all of the obligations of the Contract;

15.5. Cooperate with any successor Contractor, person, or entity in the transfer of information or data related to the Contract;

15.6. Return or vacate any state-owned real or personal property; and

15.7. Return all data in a mutually acceptable format and manner.

Nothing in this section should be construed to require Contractor to surrender intellectual property, real or personal property, or information or data owned by Contractor for which DHHS has no legal claim.

16. FEDERAL FINANCIAL ASSISTANCE. If the Contract involves federal funds, Contractor shall comply with all applicable provisions of 45 CFR §§ 87.1 and 87.2. Contractor shall not use direct federal financial assistance to engage in inherently religious activities, including, but not limited to, worship, religious instruction, or proselytization.

17. INTEGRATION. The written Contract, along with addenda and any attachments, represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, which are not incorporated herein, shall not serve to vary or contradict the terms set forth in the Contract.

18. SUBCONTRACTORS. Contractor shall not subcontract any portion of the Contract without notice to DHHS. DHHS reserves the right to reject a subcontractor; such rejection shall not be arbitrary or capricious. Contractor shall ensure that all subcontractors comply with all requirements of the Contract and applicable federal, state, county, and municipal laws, ordinances, rules, and regulations.

19. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of the Contract, including, but not limited to, the obligations in the Confidentiality section herein, shall survive the expiration or termination of the Contract.

20. TAXPAYER TRANSPARENCY ACT. Pursuant to Neb. Rev. Stat. § 84-602.04, all state contracts which include, at least in part, state funds, and that are in effect as of January 1, 2014, shall be posted on a public

DHHS GENERAL TERMS – SERVICES CONTRACTS

website. All non-proprietary and non-confidential information as defined by law will be posted for public viewing. Contractor hereby waives any copyrights for any material posted with the Contract, either as an attachment, schedule, or other subpart of the Contract, to the public website.

21. CLEAN AIR ACT AND CLEAN WATER ACT. If the Contract involves federal funds and the total value exceeds one hundred fifty thousand dollars (\$150,000), Contractor shall ensure that it is in compliance with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the Federal Water Pollution Control Act as amended (the Clean Water Act), 33 U.S.C. § 1251 *et seq.*
22. FEDERAL FUNDING AGENCY APPROVAL. If the Contract involves federal funds and requires pre-approval by the federal funding agency, said approval is a condition precedent to the Contract, and absent said approval, the Contract shall be considered void and unenforceable.
23. NO THIRD-PARTY BENEFICIARY RIGHTS. The Contract (including any and all terms and conditions thereof) shall not be enforceable by any individual or entity that is not a party to the Contract. No individual or entity that is not a party to the Contract is an intended beneficiary of the Contract.
24. TIME IS OF THE ESSENCE. Time is of the essence to Contractor's performance under the Contract. The acceptance of late performance, with or without objection or reservation by DHHS, shall not waive any rights of DHHS nor constitute a waiver of the requirement of timely performance of any obligations on the part of Contractor remaining to be performed.

CONTRACTOR DUTIES

25. INDEPENDENT CONTRACTOR. Contractor is an independent contractor, and neither Contractor nor any of its employees shall for any purpose be deemed employees of DHHS. Contractor shall employ and direct such personnel as it requires to perform its obligations under the Contract, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability, and other federal, state, county, and municipal laws, ordinances, rules, and regulations required of an employer providing services as contemplated by the Contract.
26. NEW EMPLOYEE WORK ELIGIBILITY STATUS. Contractor shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
 - 26.1. If Contractor is an individual or sole proprietorship, the following applies:
 - 26.1.1. Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website, at <https://das.nebraska.gov>;
 - 26.1.2. If Contractor indicates on such attestation form that he or she is a qualified alien, Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program; and
 - 26.1.3. Contractor understands and agrees that lawful presence in the United States is required, and Contractor may be disqualified, or the Contract terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §§ 4-108 through 4-114.
27. COMPLIANCE WITH CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY LAW.
 - 27.1. Contractor shall comply with all applicable local, state, and federal laws regarding civil rights, including, but not limited to, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et*

seq.; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125.

27.2. Contractor, by execution of the Contract, also understands and acknowledges that, to the extent it utilizes federal funds, the Contract is subject to the following regulations regarding nondiscrimination: 45 CFR Part 80 (nondiscrimination under programs receiving federal assistance through the U.S. Department of Health and Human Services (“HHS”) effectuation of Title VI of the Civil Rights Act of 1964); 45 CFR Part 84 (nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance); 45 CFR Part 85 (enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the HHS); 45 CFR Part 86 (nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance); 45 CFR Part 87 (equal treatment for faith-based organizations); and 45 CFR Part 91 (nondiscrimination on the basis of age programs or activities receiving federal financial assistance from HHS).

27.3. Violation of the above statutes and regulations shall constitute a material breach of the Contract.

27.4. Contractor shall insert an anti-discrimination provision similar to subsection 27.1 into all subcontracts.

28. **FREE ON BOARD (FOB) DESTINATION.** If goods or commodities are to be provided as part of the Contract, delivery charges to the goods or commodities’ destination are to be prepaid by the vendor or Contractor. No additional charges shall be allowed against DHHS for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price shall govern. Contractor is responsible for all claims associated with damages during delivery of any goods or commodities.

29. **DATA OWNERSHIP AND INTELLECTUAL PROPERTY.**

29.1. *Data.* All data collected as a result of the Contract shall be the property of DHHS. If the Contract involves federal funds, the federal funding agency reserves the right to obtain, reproduce, publish, or otherwise use the data produced under the Contract, and to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

29.2. *Copyright.* Contractor shall not copyright any material produced in conjunction with the performance required under the Contract without written consent from DHHS. DHHS, and any federal funding agency (if the Contract involves federal funds), hereby reserve a royalty-free, nonexclusive, and irrevocable right, for federal or state government purposes, to reproduce, publish, or otherwise use, and to authorize others to use, the material produced in conjunction with the performance required under the Contract.

29.3. *Software and Patent Rights.* If the Contract involves federal funds:

29.3.1. All software ownership rights shall be consistent with 45 CFR § 95.617, if applicable, and with all other applicable federal law; and

29.3.2. All patent rights under the Contract shall be as set forth in the clause contained in 37 CFR § 401.14, and consistent with all other applicable federal law.

30. **CONFLICTS OF INTEREST.** In the performance of the Contract, Contractor shall avoid all conflicts of interest and all appearances of conflicts of interest. Contractor shall immediately notify DHHS, in writing, of any such conflict.

31. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** Contractor shall review the Nebraska Technology Access Standards, available on the Nebraska Information Technology Commission website, at <https://nitc.nebraska.gov/>, and ensure that products and/or services provided under the Contract comply with the applicable standards. In the event such standards change during Contractor’s performance, DHHS may create an amendment to the Contract to request that Contractor comply with the changed standard at a cost mutually acceptable to the parties. This section shall apply only if, under Neb. Rev. Stat. § 73-205, the Contract involves the expenditure of state funds in the purchase of information technology or an automated information system.

32. **DRUG-FREE WORKPLACE.** Contractor certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Contractor shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.

33. **ACCESS TO RECORDS.**

- 33.1. All of Contractor's books, records, and documents, regardless of physical form, including data maintained in computer files or on magnetic, optical, or other media, relating to work performed or monies received under the Contract, shall be subject to audit by DHHS, or its authorized representative, at any reasonable time and upon the provision of reasonable notice.
- 33.2. Notwithstanding any other requirement in the Contract to maintain certain records (as identified in that requirement) for a longer period, Contractor shall maintain all records for five (5) years from the date of final payment. As required by law, records that fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA), and all associated rules and regulations, including, but not limited to, the policies and procedures identified in 45 CFR § 164.316, shall be maintained for six (6) years from the date of their creation or the date when the policy or procedures were last in effect.
- 33.3. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation, or other action are resolved to the satisfaction of DHHS.
- 33.4. All records shall be maintained in accordance with generally accepted business practices.

34. LOBBYING.

34.1. As set forth in 45 CFR Part 93:

- 34.1.1. No federal appropriated funds shall be paid by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Contract or any of the following actions: (a) the awarding of any federal contract; (b) the making of any federal grant; (c) the making of any federal loan; (d) the entering into of any cooperative agreement; and (e) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 34.1.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Contract, Contractor shall complete and submit Federal Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- 34.2. If the Contract involves federal funds, and if the below is consistent with the terms of the applicable federal funding source of the Contract, then:
 - 34.2.1. No funds under the Contract shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the executive branch of any state or local government itself. (See Pub. L. 113-235, Division G, Title V, Sec. 503(a)).
 - 34.2.2. No funds under the Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the Congress or any state government, state legislature or local legislature or legislative body, other than normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local or tribal government in policymaking and administrative processes within the executive branch of that government. (See Pub. L. 113-235, Division G, Title V, Sec. 503(b)).
 - 34.2.3. The prohibitions in the two preceding subsections shall include any activity to advocate or promote any proposed, pending, or future federal, state, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including, but not limited to, the advocacy or promotion of gun control. (See Pub. L. 113-235, Division G, Title V, Sec. 503(c)).

35. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency.

DHHS GENERAL TERMS – SERVICES CONTRACTS

36. RESEARCH. Contractor shall not engage in research utilizing the information obtained through the performance of the Contract without the express written consent of DHHS. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with the Contract.
37. WHISTLEBLOWER PROTECTIONS. If the Contract involves federal funds, Contractor shall comply with the provisions of 41 U.S.C. § 4712, which states that an employee of a contractor, subcontractor, grantee, or subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body (as defined therein) information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant – disclosures known as "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.
- 37.1. Contractor's employees are encouraged to report fraud, waste, and abuse. Contractor shall inform its employees, in writing, that they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.
- 37.2. Contractor shall include this requirement in any agreement made with a subcontractor.

PAYMENT

38. TAXES. DHHS is not required to pay taxes and assumes no such liability as a result of the Contract. Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13, for their records. Any property tax payable on Contractor's equipment, which may be installed in a state-owned facility, is the responsibility of Contractor.
39. INSPECTION AND APPROVAL. Final inspection and approval of all work required under the Contract shall be performed by the designated DHHS officials. DHHS and/or its authorized representatives shall have the right to enter any premises where Contractor or subcontractor duties under the Contract are being performed, and to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.
40. PAYMENT.
- 40.1. *Invoices*. DHHS shall not pay Contractor until Contractor has provided an invoice. Invoices for payments submitted by Contractor shall contain sufficient detail to support payment. Any term included in Contractor's invoice shall be deemed to be solely for the convenience of the parties. No payment shall be made for any deliverable or cost unless specifically authorized in the terms of the Contract.
- 40.2. *Provisions applicable to Scopes of Work, Statements of Work, or Direct Services Standards*.
- 40.2.1. For Deliverable-based Scopes of Work or Statements of Work, DHHS shall pay Contractor upon submission, receipt, and approval of the deliverables set forth in the associated Scope of Work or Statement of Work. Prices for the deliverables are set forth in the Scope of Work or Statement of Work, as applicable.
- 40.2.2. For Cost Reimbursement Scopes of Work or Statements of Work, DHHS shall reimburse Contractor for the costs set forth in the attached budget. Contractor shall submit an invoice to DHHS monthly unless a less frequent period of invoicing is otherwise agreed to by the parties.
- 40.2.3. For Milestone-based Scopes of Work or Statements of Work, DHHS shall pay the amount designated in the Scope of Work or Statement of Work to Contractor upon Contractor's achievement of the designated milestones.
- 40.2.4. For Time and Materials-based Scopes of Work or Statements of Work, DHHS shall pay Contractor for personnel hours actually worked by Contractor's staff or subcontractors, at the personnel rates set forth in the Scope of Work or Statement of Work. Only those material costs specifically set forth in the Scope of Work or Statement of Work shall be paid by DHHS, and only at costs defined therein.

DHHS GENERAL TERMS – SERVICES CONTRACTS

- 40.2.5. For Direct Services, DHHS shall pay Contractor upon provision of the service, as set forth in the applicable Direct Service Standards.
- 40.3. *Prompt Payment*. As applicable, payment shall be made in compliance with the Nebraska Prompt Payment Act, Neb. Rev. Stat. § 81-2401 *et seq.*
- 40.3.1. DHHS shall make payment in full for all goods delivered or services rendered on or before the forty-fifth (45th) calendar day after (i) the date of receipt by DHHS of the services, or (ii) the date of receipt by DHHS of the invoice for the services, whichever is later.
- 40.3.2. If DHHS is making payment for services provided for third parties, DHHS shall make payment in full for such services on or before the sixtieth (60th) calendar day after the date of receipt by DHHS of the invoice.
- 40.3.3. Unless otherwise provided herein, payment shall be made by electronic means.
- 40.3.4. **In no event shall DHHS be responsible or liable to pay for any goods and/or services provided by Contractor prior to the effective date of the Contract, and Contractor hereby waives any and all claims or causes of action for any such goods or services.**
- 40.4. *Automated Clearing House (ACH) Enrollment Form Requirements for Payment*. The vendor shall complete and sign the State of Nebraska ACH Enrollment Form and obtain the necessary information and signatures from its financial institution. The completed form must be submitted before payments to the vendor can be made. Download the ACH Form from the Nebraska Department of Administrative Services (DAS) website, at <https://das.nebraska.gov/>. Contractor must promptly notify DHHS of any changes to Contractor's ACH enrollment information.
- 40.5. *Interagency Billing Transaction*. Notwithstanding the paragraph immediately above, if Contractor is a state agency, payment may be made by Interagency Billing Transaction (IBT).
41. NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING. Contractor acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars (\$600) to any contractor who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six (6) months. This provision applies to individuals; to a corporation, if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services; and to a partnership or limited liability company, if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services.
- 41.1. The parties agree, when applicable, to properly complete the Nebraska Department of Revenue, Nebraska Income Tax Withholding Certificate for Nonresident Individuals, Form W-4NA, or its successor. The form is available at https://revenue.nebraska.gov/files/doc/tax-forms/f_w4na.pdf.
42. FUNDING AVAILABILITY. DHHS may terminate the Contract, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the Contract with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give Contractor written notice thirty calendar (30) days prior to the effective date of any termination. Contractor shall be entitled to receive just and equitable compensation for any authorized work that has been satisfactorily performed or provided as of the termination date. In no event shall Contractor be paid for a loss of anticipated profit.

ACKNOWLEDGEMENTS

43. INDIVIDUAL ACKNOWLEDGEMENTS. If Contractor is an individual, Contractor acknowledges and agrees that Contractor is an independent contractor and is not a current employee of the State of Nebraska. With this Contract, the State of Nebraska, Department of Health and Human Services is not hiring Contractor as a temporary, part-time, or permanent employee. Contractor waives any current or future claim to employment, employee protections under contract, rule or regulation, health care benefits, retirement, or other benefits offered now or in the future by the State of Nebraska.
- 43.1. If, further, the value of the Contract is greater than two thousand dollars (\$2000), Contractor also acknowledges and represents that, under the Nebraska Political Accountability and Disclosure Act, Contractor is not a public employee or public official, nor is Contractor an immediate family member of, and/or represented by, a public employee or public official.

44. FOR-PROFIT ENTITY ACKNOWLEDGEMENT. If the total value of the Contract is greater than two thousand dollars (\$2000), and if Contractor is a for-profit entity, Contractor acknowledges and represents that, under the Nebraska Political Accountability and Disclosure Act, no individual representing, and/or associated with, Contractor is a public official or public employee, or an immediate family member of a public official or public employee.

DHHS INSURANCE REQUIREMENTS – SERVICES CONTRACTS

1. **General Requirement.** Contractor shall not commence work under the Contract until all the insurance required herein has been obtained and a copy of the certificate of insurance compliant with this Addendum has been submitted to the Contract Manager. Contractor shall maintain all required insurance for the life of the Contract and shall ensure that DHHS has the most current certificate of insurance throughout the life of the Contract.
 - 1.1. If by the terms of any insurance a mandatory deductible is required, or if Contractor elects to increase the mandatory deductible amount, Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.
 - 1.2. Insurance coverages shall function independent of all other clauses in the Contract, and in no instance shall the limits of recovery from the insurance be reduced below the limits required by this Addendum.
 - 1.3. Notice of cancellation of any required insurance policy must be submitted to the Contract Manager, as set forth in the Contract, when issued, and a new coverage binder shall be submitted immediately to ensure no break in coverage.

2. **Required Insurance.** Contractor shall take out and maintain during the life of the Contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by the Contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under the Contract, whether such operation be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter. The policy shall include DHHS, shall be primary, and any insurance or self-insurance carried by DHHS shall be considered excess and non-contributory.
 - 2.1. The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Abuse & Molestation, Personal Injury, and Contractual Liability coverage.
 - 2.2. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.
 - 2.3. Contractor shall maintain this insurance at the following amounts:

COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one person
Contractual	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include all Owned, Hired and Non-owned Automobile Liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$1,000,000
LIABILITY WAIVER	
"Commercial General Liability and Commercial Automobile Liability policies shall be primary, and any insurance or self-insurance carried by the State of Nebraska, Department of Health and Human Services shall be considered excess and non-contributory."	

DHHS INSURANCE REQUIREMENTS – SERVICES CONTRACTS

3. *Required Workers' Compensation Insurance.* If Contractor is subject to the Nebraska Workers' Compensation Act, Contractor shall take out and maintain during the life of the Contract the statutory Workers' Compensation and Employer's Liability Insurance for all of Contractor's employees to be engaged in work on the project under the Contract and, in case any such work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of DHHS. The amounts of such insurance shall not be less than the following limits:

WORKERS' COMPENSATION	
Employer's Liability Limits	\$500K/\$500K/\$500K
Statutory Limits - All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
SUBROGATION WAIVER	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska, Department of Health and Human Services."	

1. BUSINESS ASSOCIATE. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to the Contract, shall mean Contractor.
2. COVERED ENTITY. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to the Contract, shall mean DHHS.
3. HIPAA RULES. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
4. SECURITY INCIDENT. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system.
5. OTHER TERMS. The following terms shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
6. THE CONTRACTOR shall do the following:
 - 6.1. Not use or disclose Protected Health Information other than as permitted or required by the Contract or as required by law. Contractor may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under the Contract. Use or disclosure must be consistent with DHHS’ minimum necessary policies and procedures.
 - 6.2. Implement and maintain appropriate administrative, physical, and technical safeguards to prevent access to, and the unauthorized use and disclosure of Protected Health Information. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for in the Contract, and assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement, and maintain reasonable security measures.
 - 6.3. To the extent Contractor is to carry out one or more of the DHHS’ obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to DHHS in the performance of such obligations. Contractor may not use or disclosure Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by DHHS.
 - 6.4. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit Protected Health Information received from DHHS, or created by or received from Contractor on behalf of DHHS, agree in writing to the same restrictions, conditions, and requirements relating to the confidentiality, care, custody, and minimum use of Protected Health Information that apply to the Contractor with respect to such information.
 - 6.5. Obtain reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and that the person shall notify Contractor of any instances of which the person is aware that the confidentiality of the information has been breached.
 - 6.6. Contractor shall maintain and make available within fifteen (15) days in a commonly used electronic format:
 - 6.6.1. Protected Health Information to DHHS, as necessary to satisfy DHHS’ obligations under 45 CFR § 164.524;
 - 6.6.2. Any amendment(s) to Protected Health Information, as directed or agreed to by DHHS, pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy DHHS’ obligations under 45 CFR § 164.526;
 - 6.6.3. The information required to provide an accounting of disclosures to DHHS, as necessary to satisfy DHHS’ obligations under 45 CFR § 164.528.
 - 6.7. Make its internal practices, books, and records relating to the use and disclosure of Protected

Health Information received from, or created or received by Contractor on behalf of DHHS available to the Secretary or DHHS for purposes of determining compliance with the HIPAA Rules. Contractor shall provide DHHS with copies of the information it has made available to the Secretary at the same time as it was made available to the Secretary.

- 6.8. Report to DHHS within fifteen (15) days of when Contractor becomes aware, any unauthorized use or disclosure of Protected Health Information made in violation of the Contract or the HIPAA Rules, including any security incident that may put electronic Protected Health Information at risk. Contractor shall, as instructed by DHHS, take immediate steps to mitigate any harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of the Contract through the preparation and completion of a written Corrective Action Plan that is subject to review and approval by DHHS. Contractor shall be responsible for all breach notifications in accordance with HIPAA rules and regulations, and all costs associated with security incident investigations and breach notification procedures.
- 6.9. Business Associate shall indemnify, defend, and hold harmless DHHS for any financial loss as a result of claims brought by third parties and which are caused by the failure of Contractor, its officers, directors, agents, or subcontractors to comply with the terms of the Contract, or for penalties imposed by the HHS Office of Civil Rights for any violations of the HIPAA Rules caused by Contractor, its officers, directors, agents, or subcontractors. Additionally, Contractor shall indemnify DHHS for any time and expenses it may incur from breach notifications that are necessary under the HIPAA Breach Notification Rule, which are caused by a failure of Contractor, its officers, directors, agents, or subcontractors to comply with the terms of the Contract.

7. TERMINATION.

- 7.1. DHHS may immediately terminate the Contract, and any and all associated contracts, if DHHS determines that Contractor has violated a material term of the Contract.
- 7.2. Within thirty (30) days of expiration or termination of the Contract, or as agreed, unless Contractor requests and DHHS authorizes a longer period of time, Contractor shall return, or at the written direction of DHHS, destroy all Protected Health Information received from DHHS (or created or received by Contractor on behalf of DHHS) that Contractor still maintains in any form, and shall retain no copies of such Protected Health Information. Contractor shall provide a written certification to DHHS that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by DHHS to be infeasible, Contractor shall use such Protected Health Information only for purposes that makes such return or destruction infeasible, and the provisions of the Contract shall survive with respect to such Protected Health Information.
- 7.3. The obligations of the Contractor under this Termination section shall survive the termination of the Contract.