

**REQUIREMENTS ADDENDUM FOR ALL CONTRACTS (Purchase of Service Agreement)
BETWEEN STATE OF NORTH DAKOTA ACTING THROUGH ITS
NORTH DAKOTA DEPARTMENT OF HEALTH (State) AND UNIVERSITY OF IOWA (Contractor)
FOR THE PERIOD JULY 1, 2013 THROUGH JUNE 30, 2015**

1. CONTRACTOR'S UNDERSTANDING OF TERM OF FUNDING

Contractor understands that this contract is a one-time contract, and acknowledges that it has received no assurances that this contract may be extended beyond its expiration date.

2. AUTHORITY TO CONTRACT

Contractor may not contract for or on behalf of, or incur obligations on behalf of, State. Contractor may subcontract with qualified providers of services, provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, together with its attachments as appropriate. Contractor agrees to be solely responsible for the performance of any subcontractor. Contractor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

3. INDEPENDENT ENTITY

Contractor shall perform as an independent entity under this contract. Contractor, its employees, agents or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. No part of this contract may be construed to represent the creation of an employer/employee relationship between State and Contractor. Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities under this contract.

4. STATE AUDIT REQUIREMENTS

All records, regardless of physical form, and the accounting practices and procedures of the Contractor relevant to this contract are subject to examination by the North Dakota Department of Health, North Dakota State Auditor or the Auditor's designee.

5. RETENTION OF RECORDS

Contractor agrees to retain financial records for three years from the date of submission of the final expenditure report or if subject to audit, from the date the audit is completed and closed, whichever occurs later. Contractor must provide the State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Contractor that are pertinent to the services provided under this contract. Program Records must be maintained for a period of six years or until an audit is completed and closed, whichever comes first.

6. TERMINATION FOR CAUSE

Failure by Contractor to perform the terms of this agreement constitutes a breach of contract and will result in the immediate termination of the agreement. In addition to any other legal remedies available to State, if there is a termination for breach by Contractor, State may retain any payment to be made under this agreement which remains unpaid at the time of the breach and may also recover from Contractor those amounts already paid for individual items of work which are incomplete at the time of the breach.

If a breach by Contractor renders the agreement impossible of performance by Contractor and is caused by circumstances beyond the control of Contractor, and through no fault of Contractor, the agreement will be terminated. In the event of a breach by Contractor in such circumstances, State may set off against any liability or obligations owed to Contractor under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach. If the agreement is terminated as

a result of a breach by Contractor, which is beyond the control of Contractor, State is not entitled to liquidated damages.

State shall give written notice of the termination to Contractor specifying the effective date of termination.

7. TERMINATION FOR LACK OF FUNDING OR AUTHORITY

State may terminate this contract effective upon delivery of written notice to Contractor or on any later date stated in the notice, if:

- 1) Funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
- 2) Federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) Any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any termination of this contract under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

8. TERMINATION WITHOUT CAUSE

This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.

9. CONTINGENT LIABILITY

During the term of this contract, and for three years after this contract expires or is terminated, Contractor agrees to reimburse State for any claims submitted by State for federal financial participation in the cost of this contract to the extent those claims are disallowed by any federal agency for failure on the part of Contractor to comply with this contract or any federal or state statutory or regulatory provisions which govern the source of funding. The State agrees to give Contractor prompt written notice of any disallowed claims subject to reimbursement by Contractor. Any amount disallowed as described is a debt owing to the State. Action may be brought by the State as allowed by law.

10. DELAY OR DEFAULT FORCE MAJEURE

Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond Contractor's reasonable control and Contractor gives notice to State immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

11. INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

12. INSURANCE

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 3) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
 - d) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e) cross liability/severability of interest for all policies and endorsements;
 - f) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - g) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

13. NOTICE

Any notice or other communication required under this contract must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

_____ North Dakota Department of Health
_____ Division of Accounting
_____ or 600 East Boulevard Ave-Dept 301
_____ Bismarck, ND 58505-0200

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at North Dakota Century Code § 32-12.2-04.

14. INTEGRATION, MODIFICATION, AND SEVERABILITY

This contract constitutes the entire agreement between the Contractor and State. There are no understandings, agreements, or representations, oral or written, not specified within this contract. No alteration, amendment, or modification of this contract is effective unless it is reduced to writing, signed by the parties, and attached to the contract. If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract does not contain the illegal or unenforceable item.

15. COLLATERAL CONTRACTS

If any inconsistency exists between this contract and other provisions of collateral contractual agreements that are made a part of this contract by reference or otherwise, the provisions of this contract control.

16. ASSIGNMENT

Neither party may assign this contract or the party's rights under this contract without the written approval of the other party. Approval to assign may not be unreasonably withheld. This contract is equally binding on the respective parties, and their successors and assigns.

17. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to the State at the State's request upon expiration or termination of this contract. Contractor agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to State all rights and interests Contractor may have in the materials it prepares under this contract, including any right to derivative use of the material. Contractor shall execute all necessary documents to enable State to protect its rights under this section. State must provide written approval of Contractor's use of work product or materials for purposes outside the scope of this contract.

18. COMPLIANCE WITH PUBLIC RECORDS LAWS

Contractor understands that, except for disclosures prohibited in this contract, State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this contract, except for records that are confidential under this contract, may be open to the public upon request under certain circumstances under North Dakota open records law. Contractor agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

19. CONFIDENTIALITY

Contractor agrees not to use or disclose any information it receives from State under this contract that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement, or as authorized by state or federal laws, or as authorized in advance by Contractor. State agrees not to disclose any information it receives from Contractor that Contractor has previously identified as confidential and that State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. Any protected health information subject to N.D.C.C. § 23-01.3 or personal health information subject to federal HIPAA regulations may only be released as authorized by those laws. The duty of Contractor and State to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

Contractor understands that, except for information that is confidential under state or federal law or otherwise exempt from the North Dakota open records law, State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by Contractor under this contract, except for records that are confidential or exempt may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

20. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this contract, and State is the prevailing party, Contractor shall pay Contractor's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by N.D.C.C. § 28-26-04.

21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

State does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

22. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

23. SPECIAL CONDITIONS

Contractor shall meet all applicable special conditions as specified in the contract.

24. NONDISCRIMINATION AND COMPLIANCE WITH LAWS)

Contractor shall comply with all laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. Contractor shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor also shall have and keep current at all times during the term of this contract all licenses and permits required by law.

25. LIMITATIONS ON APPROPRIATIONS AND SPENDING AUTHORITY

Continuation of this contract beyond June 30 of any odd numbered year is contingent on continued legislative appropriation of funds for the purposes of this contract. If those appropriations are not forthcoming, State will notify Contractor as soon as possible and the contract will terminate on June 30 of that year. State will neither be penalized nor incur any liability because of termination of the contract as provided above.

26. SPOILATION-NOTICE OF POTENTIAL CLAIMS

Contractor agrees to promptly notify State of all potential claims that arise or result from this contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

27. EVALUATION

State shall, throughout the effective dates on the contract, conduct an ongoing evaluation of Contractor's performance in carrying out the Scope of Service in the award. Compliance with Contract Requirements and Assurances will also be monitored. Such evaluation may include periodic site visits by State representatives to review progress made by Contractor in accomplishing stated goals and objectives.

28. CONTRACTOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, CONTRACTOR OR SUBCONTRACTOR with or receive funds to provided services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement including the following:

- a) Fair Labor Standards Act,
- b) Equal Pay Act of 1963,
- c) Titles VI and VII of the Civil Rights Act of 1964,
- d) Age Discrimination Employment Act of 1967,
- e) Age Discrimination Act of 1975,
- f) Drug-free Workplace Act of 1988,
- g) Americans with Disabilities Act of 1990,
- h) Pro-Children Act of 1994,
- i) Section 504 of the Rehabilitation Act of 1973.
- j) Executive Order 13279 Federal Leadership on Reducing Text Messaging while Driving,
- k) Executive Order 13043 Increasing Seat Belt Use in the United States,
- l) Section 106(g) of the Trafficking Victims Protection Act of 2000 (Applicable to Private Entity)

By signing this requirements addendum, Contractor certifies that neither Contractor, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by any Department or Agency of the State or Federal Government.

Contractor must be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by N.D.C.C. § 54-44.4-09.

29. SMOKE FREE

The Contractor will provide a smoke-free workplace and promote the nonuse of tobacco products in areas including office space, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias and other public space

30. RESOURCE CONSERVATION AND RECOVERY ACT

Section 6002 of the Resource Conservation and Recovery Act requires preference be given in procurement programs to the purchase of specific products containing recycled materials pursuant to the Environmental Protection Agency guidelines (40CFR Parts 247-253).

**CERTIFICATION FOR ALL PURCHASE OF SERVICE AGREEMENTS WITH
NORTH DAKOTA DEPARTMENT OF HEALTH
THE PERIOD JULY 1, 2013 THROUGH JUNE 30, 2015**

I hereby certify that our organization/agency has agreed upon the conditions of the Requirements Addendum applicable to funding received through all contracts issued by the State and will ensure all program managers are aware of and will comply with these requirements. I also certify that the person(s) responsible for authorizing, expending or accounting for contract funds will be provided access to the contract requirements.

If my organization/agency has contract(s) in place that extend past June 30, 2013, I agree that this requirement form will become a part of the contract.

Company/Agency/Organization (Contractor):		
Name and Title:		
Address:		
City:	State:	Zip:
DUNS Number:	Federal Taxpayer Identification Number/SSN:	
Signature:		Date:

Please return completed form with contract.