Appendix D: Contractual Terms

APPLICANTS ARE NOT REQUIRED TO RESPOND TO THESE SECTIONS.

A. Contractual Terms Generally

The contract that the Agency expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful vendor and this solicitation. The contract between the Agency and the successful vendor shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained herein, the offer of the vendor contained in the technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Agency.

The contract terms contained herein are not intended to be a complete listing of all contract terms but are provided only to enable vendors to better evaluate the costs associative with the RFA and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFA. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the vendor.

By submitting a proposal, each vendor acknowledges its acceptance of these specifications, terms, and conditions without change except as otherwise expressly stated in its proposal. If a vendor takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFA may be deemed non-responsive by the Agency, in its sole discretion, resulting in possible disqualification of the proposal. The Agency reserves the right to either award a contract without further negotiation with the successful vendor or to negotiate contract terms with the selected vendor if the best interests of the Agency would be served.

B. Terms and Conditions

B1. Nonexclusive Rights. The Contract will not be exclusive. The Department will reserve the right to select other Applicants to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

B2. Property Rights. Any products or processes developed under this project are the property of the Iowa Department of Education.

C. Compensation

C1. Compensation. The Department will reimburse contractor expenses on a quarterly basis. The contractor may be eligible for advance funding under special circumstances.

C2. Billings. The Contractor shall submit, on a **quarterly basis**, an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code section 421.40 and 701 Iowa Administrative Code 201.1(2). The Agency may pay in less than sixty (60) days, as provided in Iowa Code section 421.40. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 421.40.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses, and charges it incurs in connection with its performance under this Contract.

C3. Delay of Payment Due to Contractor's Failure. If the Agency in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Agency may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

C4. Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any lack the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

D. Termination

D1. Immediate Termination by the Agency. The Agency may terminate this Contract for any of the following reasons effective immediately without advance notice:

D1.1. In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate

termination of the Contract effective as of the date on which the license or certification is no longer in effect;

D1.2. The Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;

D1.3. The Contractor fails to comply with confidentiality laws or provisions;

D1.4. The Contractor furnished any statement, representation or certification in connection with this Contract or the RFA which is materially false, deceptive, incorrect or incomplete.

D2. Termination for Cause. The occurrence of or any one or more of the following events shall constitute cause for the Agency to declare the Contractor in default of its obligations under this Contract.

D2.1. The Contractor fails to perform, to the Agency's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

D2.2. The Agency determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

D2.3. The Contractor fails to make substantial and timely progress toward performance of the Contract;

D2.4. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Agency reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

D2.5. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or

D2.6. The Contractor has engaged in conduct that has or may expose the Agency to liability, as determined in the Agency's sole discretion.

D2.7. The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

D3. Notice of Default. If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Agency may either:

D3.1. Immediately terminate the Contract without additional written notice; or,

D3.2. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

D4. Termination Upon Notice. Following **10** days' written notice, the Agency may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Agency up to and including the date of termination.

D5. Termination Due to Lack of Funds or Change in Law. The Agency shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:

D5.1. Adequate funds are not appropriated or granted to allow the Agency to operate as required and to fulfill its obligations under this Contract;

D5.2. Funds are de-appropriated or not allocated or if funds needed by the Agency, at the Agency's sole discretion, are insufficient for any reason;

D5.3. The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency;

D5.4. The Agency's duties are substantially modified.

D6. Remedies of the Contractor in Event of Termination by the Agency. In the event of termination of this Contract for any reason by the Agency, the Agency shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Agency is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Agency under this Contract in the event of termination. However, the Agency shall not be liable for any of the following costs:

D6.1. The payment of unemployment compensation to the Contractor's employees;

D6.2. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

D6.3. Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

D6.4. Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

D7. The Contractor's Termination Duties. The Contractor, upon receipt of notice of termination or upon request of the Agency, shall:

D7.1. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within ten (10) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting there from, any other matters the Agency may require.

D7.2. Immediately cease using and return to the Agency any personal property or materials, whether tangible or intangible, provided by the Agency to the Contractor.

D7.3. Comply with the Agency's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

D7.4. Cooperate in good faith with the Agency, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

D7.5. Immediately return to the Agency any payments made by the Agency for services that were not rendered by the Contractor.

E. Indemnification

E1. By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Agency, 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 Agency, related to or raising from:

E1.1. Any breach of this contract;

E1.2. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

E1.3. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

E1.4. Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;

E1.5. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

E1.6. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

E1.7. Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

E2. Indemnification by the Agency

E2.1. The Agency shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the Agency while acting within the scope of the employee's office of employment in connection with the performance of this Contract.

E2.2. At the option of the Agency, the Contractor shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the Agency or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.

E2.3. If the Agency makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the Agency, without interest.

E3. Survives Termination. Indemnification obligation of the parties shall survive termination of this Contract.

F. Insurance

F1. Insurance Requirements. The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to

the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Agency shall be named as additional insured's or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

F2. Types and Amounts of Insurance Required. Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued the insurance coverages set forth below:

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Product/Completed Operations Aggregate Personal Injury Each Occurrence	$2 Million $1 Million $1 Million $1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	$1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	$1 Million $1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence Aggregate	$1 Million $1 Million

F3. Certificates of Coverage. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

G. Project Management and Reporting

G1. Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

G2. Review Meetings. During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

H. Warranties

H1. Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law

only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

H2. Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and Works produced, or provided to the Agency 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. The Contractor represents and warrants that the concepts, materials and Works and the Agency's use of same and the exercise by the Agency of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

H3. 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.

H4. Conformity with Contractual Requirements. The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

H5. 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 Agency.

H6. Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

H7. Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Agency is good and that transfer of title or license to the Agency is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

H8. Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the Iowa Department of Education in the performance of this Contract.

H9. Technology Updates. The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

I. Contract Administration

I1. Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Agency or the State of Iowa for federal or state tax purposes. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

I2. Incorporation of Documents. The RFA, and amendments and written responses to bidders' questions (collectively RFA) and the Contractor's Proposal submitted in response to the RFA, form the Contract between the Contractor and the Agency and are incorporated herein by reference. The parties are obligated to perform all services described in the RFA and Proposal unless the Contract specifically directs otherwise.

I3. Order of Priority. In the event of a conflict between the Contract, the RFA and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFA; (3) Proposal.

I4. 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, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

I5. 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.

I6. Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Agency and the Contractor.

I7. 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 commended 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. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

I8. Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

I9. Use of Third Parties. The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. All subcontracts shall be subject to prior approval by the Agency. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

I10. Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

I11. Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

I12. Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

I13. Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

I14. Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the Agency and the Contractor for the services provided in connection with this Contract.

I15. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency 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.

I16. Notice

I16.1. 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, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the Agency: Chief, Bureau of Instructional Services
Iowa Department of Education
Grimes State Office Building
400 E 14th Street
Des Moines, IA 50319-0146

If to the Contractor **[name and address]**:

I16.2. Each such notice shall be deemed to have been provided:

I16.2.1. At the time it is actually received; or,

I16.2.2. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

I16.2.3. Within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail.

I16.3. 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.

I17. Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

I18. 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.

I19. Time is of the Essence. Time is of the essence with respect to the performance of the terms of this Contract.

I20. Authorization. Each party to this Contract represents and warrants to the other parties that:

I20.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

I20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

I21. Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

I22. Record Retention and Access. The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract for a period of at least **three (5)** years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

I23. Solicitation. The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

I24. 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 Agency 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.

I25. Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

I26. 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.

I27. Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

I28. Delay or Impossibility of Performance. The Contractor shall 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.

I29. 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. The Contractor shall execute the certification regarding debarment attached as Exhibit A.

I30. 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. The Contractor shall execute the certification regarding debarment attached as Exhibit B.

I31. Tobacco Smoke Prohibited

I31.1. 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.

I31.2. The Contractor certifies that it and its subcontractors 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. The Contractor shall execute the Certification of Compliance with the Pro-Children Act of 1994 attached as Exhibit C and provide the original certification when it executes this Contract.

I32. Certified Audits. Local governments and non-profit sub recipient entities that expend $300,000 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 Agency 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 Agency. If an audit report is not required to be submitted per the criteria above, the sub recipient must provide written notification to the Agency 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 Agency. See A-133 Section 21 for a discussion of sub recipient versus vendor relationships.

I33. 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. The Contractor shall execute the certification regarding a drug free workplace and provide the original certificate to the Agency when it executes this Contract. Contractor agrees to abide by the terms of the certification. The certification is a material representation of fact upon which the Agency relied when making or entering into this Contract and any extension or renewal thereof.

Exhibit A

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION--LOWER TIER COVERED TRANSACTIONS

By signing and submitting this Proposal, the bidder is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The bidder shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the bidder learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.

4. The bidder agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

5. The bidder further agrees by submitting this Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and No procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

(1) The bidder certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the bidder is unable to certify to any of the statements in this certification, such bidder shall attach an explanation to this Proposal.

_____
(Signature)

_____
(Title)

_____
(Company Name)

Exhibit B

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid on behalf of the Sub-Grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.

B. 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 federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Contractor shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Title: _____

Organization: _____

Date: _____

Exhibit C

CERTIFICATION OF COMPLIANCE WITH PRO-CHILDREN ACT OF 1994

The Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased on contracted by an entity and used routinely or regularly for the provision of health, day care, 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. 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.

The Contractor further agrees that the above language will be included in any sub awards that contain provisions for children's services and that all sub grantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to $1000 per day.

Signature: _____

Title: _____