11—119.4 (8,8A) Uniform terms and conditions for service contracts. All service contracts entered into by a department or establishment shall include, at a minimum, the following terms:

119.4(1) *Payment clause.* The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party's performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any postcontract review procedures. All payment clauses shall be consistent with 2003 Iowa Code Supplement section 8A.514. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable kinds of payment clauses include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

a. A payment clause in which the department or establishment describes the limit of the total fee to be paid, and the fee is divided between a base fee and an at-risk fee. The base fee is the amount of fee the service provider will earn for minimal performance in the completion of the contract. The at-risk portion of the fee is the incremental fee the service provider will earn as the service provider meets the performance criteria identified in the contract. The amount of the fee in both instances may be stated in terms of a percentage, an amount, or some other term. Incentives and disincentives may be used to affect the payment of the base fee and the at-risk portion of the fee. The amount of the incentive or disincentive may be stated in terms of a percentage, an amount, or some other term. The payment of the fee shall be based upon the outcomes or outputs achieved or the performance criteria satisfied.

b. A payment clause based on meeting minimum requirements for performance criteria, outcomes, or outputs with incentives and disincentives to achieve other desired outcomes, outputs or performance criteria. The incentives may be stated in terms of a percentage, a fixed amount, or some other term. Up to 100 percent of the incentive may be placed at risk in order to meet or exceed performance criteria or achieve desired outcomes or outputs. Disincentives may be employed to achieve performance criteria or outcomes. Disincentives may be stated in terms of a percentage, a fixed amount, or some other term. Disincentives may include payments to the department or establishment for performance failures up to 100 percent of the fee the service provider expects to earn from performance of the contract.

c. A payment clause based on a straight contingency fee with the entire fee at risk depending on outcomes achieved or outputs obtained or performance criteria satisfied.

d. A payment clause based on a base fee and an amount retained by a department or establishment to ensure performance criteria described in the contract are satisfied or outcomes are achieved or outputs are obtained. If the vendor meets the performance criteria or outcomes or outputs, then a department or establishment may pay some or all of the portions of the fee retained as an incentive or disincentive and as provided for in the contract.

e. A payment clause based on a base fee and a contingency fee depending on the outcomes achieved, outputs obtained, or performance criteria satisfied. The base fee may be stated in terms of an hourly fee, a fixed-price fee, or a not-to-exceed fee. The contingency fee may be stated in terms of a percentage of a recovery.

f. Any other payment clause determined by the department or establishment to be suitable and appropriate for the service contract that bases the amount or basis for paying consideration to the service provider based on the service provider's performance under the service contract.

119.4(2) *Monitoring clause.* The contract shall include a clause or clauses describing the methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable methods of monitoring may include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

a. One hundred percent inspection.

b. Random sampling.

c. Periodic inspection.

d. Customer input.

e. Invoices itemizing work performed.

f. A monitoring plan determined by the department or establishment to be appropriate for purposes of the service contract and that includes methods to effectively oversee the service provider's compliance with the service contract by the department or establishment.

119.4(3) *Review clause.* The contract shall include a clause or clauses describing the methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to Iowa Code chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples. The review clause for performance may include:

a. Outcome measures.

b. Output measures.

c. Efficiency measures.

d. Quality measures.

e. A review plan determined by the department or establishment to be appropriate for the purposes of the service contract and that includes methods to effectively review performance of a service contract.

119.4(4) *Other terms.* The contract shall include:

a. Where appropriate, a nonappropriation clause;

b. A clause describing the duration of the contract;

c. Clauses requiring the service provider to comply with all applicable laws;

d. Where appropriate, an insurance clause;

e. A clause, exhibit, or other document that describes the scope of services to be performed;

f. A termination clause;

g. A default clause, where appropriate;

h. An independent contractor clause;

i. Where appropriate, a clause prohibiting inappropriate conflicts of interest on behalf of the service provider;

j. Other clauses as deemed appropriate by the department or establishment entering into a service contract.

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