

Draft Template for a Contracted Instructional Service Provider Agreement

This is not a legal document and should not be considered legal advice. Consult with your agency's counsel if you require legal advice. Many paragraphs have been taken from public documents on similar topics, and this sample is intended to cover several different types of programs. Delete sections that do not apply to the type of program being contracted.

CONTRACT AGREEMENT FOR THE INSTRUCTIONAL PROGRAM at XYZ site Located within the boundaries of the ABC Community School District

This Agreement between Area Education Agency _____ (hereafter "AEA"), and the ABC Community School District, fiscal agent, acting on behalf of the XYZ Consortium (hereafter "Consortium"), is to contract with the AEA for provision of the instructional program offered to students enrolled from Consortium member school districts in the XYZ program. *[If the contract is with a private licensed provider, use that name in place of the AEAs.]*

Whereas, the AEA is required to provide special education support services, media and instructional services to enrolled students within its boundaries without charge, and

Whereas, the Consortium has been established by public school districts to jointly administer the programs and activities at the XYZ site, and

Whereas, pursuant to the Consortium Agreement, ABC Community School District is the fiscal agent for the XYZ program, and is authorized to contract for the instructional program with the AEA, after approval of member districts, and

Whereas, the XYZ site is within the boundaries of the AEA, and

Whereas, the AEA provides special education support services and related services for students in grades pre-K through 12 as an Iowa AEA, and

Whereas, Iowa Code section 273.3, paragraph 5, in part, states the AEA is authorized, subject to rules of the State Board of Education, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and educational programs and services requested by the local boards of education including but not limited to contracts for the AEA to provide programs or services to the local school districts,

Therefore, the Consortium and AEA agree to the following terms and conditions:

PARTIES

The Participating Parties to this Agreement are as follows:

- A. The Consortium is a jointly administered program established by agreement of multiple Iowa public school districts organized and existing under the provisions of Iowa Code Chapter 274. The ABC Community School District is the duly

appointed fiscal agent acting on behalf of the Consortium. The ABC Community School District is located in the County of _____, state of Iowa, with its principal office at _____, _____, IA _____.

- B. The AEA is an Iowa Area Education Agency organized and existing under the provisions of Iowa Code Chapter 273. It is located in the County of _____, State of Iowa, with its principal office at _____, _____, IA _____.

PURPOSE

This Agreement describes the contractual arrangement between the Consortium and the AEA for the provision of instructional services for the Consortium program. Public school districts sending students to the XYZ site program become members of the Consortium and share costs as outlined in their Consortium Agreement.

PROGRAM DESCRIPTION

Modify this section as necessary to describe the program to be offered in your Consortium setting.

The XYZ program serves students grades Pre-K (at least age 3 with an instructional individualized education plan [IEP]) through 12 with significant IEP cognitive needs (modify this description to be as specific as possible to the students served by the program – i.e., behavioral vs. cognitive vs. physical, etc.) and students in grades K-12 who are identified as at-risk. The XYZ program serves students who have been placed for day programming by the IEP team in the student’s resident school district or placed by the resident district in the at-risk alternative program. Students attending the day program are transported to the XYZ campus by the resident district or by a contracted arrangement made by the resident district. Pursuant to this contract Agreement, instructional services will be provided by the AEA.

NAME/ORGANIZATION

To accomplish the purposes stated above and to carry out joint and cooperative activity associated with the program, the Consortium was created. This Consortium shall consist of the original member districts and host district, and shall include additional parties from time to time, but said Consortium shall not be considered a separate legal entity for purpose of Iowa Code Chapter 28E.

“Host district” means the district of location.

“Member district” means each public school district whose board has agreed to participate in the Consortium program, including the host district.

“Administrators” mean the superintendents of each public school district whose board has agreed to participate in the Consortium program, including the host district.

“Fiscal agent” means the district that is established within the terms of this Agreement to provide the administrative business services, including student, staff, and financial accounting/management on behalf of the Consortium.

ADMINISTRATION

The Consortium shall be governed and administered by the superintendents of each participating school district (collectively, “The Administrators”). The host district will serve as the fiscal agent for purposes of all administrative business services associated with participation in the Consortium pursuant to the terms of the Consortium Agreement. The host district, as the fiscal agent, may contract with the AEA or private service provider for provision of instructional services and other school programs. The AEA or private service provider will provide fiscal data as needed to operate the program. *NOTE: Be mindful of the new or revised requirements coming with the omni-circular, such as the requirement for all non-federal entities (that includes school districts) to maintain written procurement procedures, requirement to perform cost or price analysis in connection with procurements to demonstrate the reasonableness, and limitations on noncompetitive proposals (sole-sourcing) to name a few.*

APPROVAL

However, if the fiscal agent is entering into a contract or Agreement on behalf of the Consortium, the governing boards of the member districts shall first approve the contract or Agreement. Contracts must be signed by the board president and board secretary, rather than the administrator.

ADMINISTRATORS’ POWERS AND RESPONSIBILITIES

If the fiscal agent is entering into a contract or Agreement on behalf of the Consortium, the governing boards of the member districts shall first approve the contract or Agreement. The participating member districts may at any time restrict the powers of the fiscal agent of the Consortium or designate a new fiscal agent. These powers and responsibilities of the administrators shall include general administrative duties which may arise from time to time, including, but are not limited to:

- A. Setting policy and directing administrative regulations for the Consortium.
- B. Evaluating and preparing required reports on the effectiveness of the Consortium and the XYZ program.
- C. Providing curriculum ideas for program offerings.
- D. Assessing the education needs and interests of the students within their respective districts.
- E. Providing long-range planning for the Consortium and XYZ program.
- F. Setting and evaluating program participation numbers and qualification guidelines.
- G. Discussing collective purchases for supplies, equipment, rental/leases, etc., on behalf of the Consortium.
- H. Meeting periodically, as needed, to discuss issues associated with the XYZ program and the Consortium.
- I. Other reasonable and necessary administrative duties.

JURISDICTION

The students attending the Consortium program shall be allowed to participate in the student activities in their districts of residence and will be subject to the eligibility rules of their resident districts. Students in the Consortium continue to be enrolled in their resident districts and are subject to the testing requirements, graduation requirements, and disciplinary procedures of their resident districts. The employer of the licensed teachers will administer required assessments and will forward the results of the individual assessments to each resident district. The resident districts remain responsible for the achievement of resident students pursuant to the provisions of the No Child Left Behind Act. Permanent school records shall be maintained at the student's resident district.

The resident districts, through the Consortium, must be actively involved in the management, direction, supervision, and evaluation of the program; evaluation of the students; staff development of teachers; and monitoring adherence to all pertinent state and federal laws, including, but not limited to: testing requirements, No Child Left Behind provisions, IDEA provisions, EDGAR provisions, OMB circular A-87 and A-133 provisions, FERPA provisions, teacher licensure, curriculum development, professional development and expectations, and core curriculum implementation.

Member district students shall be under the jurisdiction of, and be the responsibility of, the host district while in attendance at XYZ, except as set out in the Consortium Agreement. Member district students shall be subject to the same academic, disciplinary, and other additional requirements that apply to host district resident students. Member district students may also be subject to additional disciplinary action at their resident district. All disciplinary or other hearings, if any, will be conducted by the administration or board of education hosting the program with the exception of hearings regarding suspension of more than ten (10) days and expulsions, which will be held by the resident district. The board of the resident district will work with the board of the host district to determine an appropriate course of action to the extent of the Consortium program.

DISPUTE RESOLUTION AND ARBITRATION

In the event that the AEA and the Consortium are unable to agree to the interpretation or operation of this Agreement, the dispute shall be referred to a "Conflict Resolution Committee" made up of the president and vice-president of the board of directors of the host district and of the AEA in which the Consortium program is located. *[Substitute here the makeup of the Conflict Resolution Committee as determined by the administrators of the Consortium.]* The Committee shall meet to discuss the dispute and make recommendations to the administrators as to resolution of the dispute.

In the event that the dispute remains unresolved, the fiscal agent shall request that a mediator knowledgeable in Iowa school district matters be appointed by the chief administrator of the AEA in which the Consortium program is located to assist in a negotiated resolution to the

dispute. *Select a different person to appoint the mediator if the dispute is with the AEA rather than a private provider.*

In the event that mediation does not resolve the dispute, it will be submitted to arbitration by a single neutral arbitrator who is knowledgeable in Iowa school district matters appointed by the chief administrator of the AEA in which the Consortium program is located. *Select a different person to appoint the arbitrator if the dispute is with the AEA rather than a private provider.*

INSTRUCTIONAL SERVICES

Instructional services at XYZ will be provided by the AEA in accordance with this contract.

The AEA must provide its services at cost (no profit) and shall not use any AEA funding for the Consortium. Support services for special education, media services, and instructional services are the responsibility of the AEA, and shall be provided at no cost to the districts. The AEA is a purchased service and is not a member of the Consortium, is not a partner, and is not providing the program “in cooperation with” member districts. Purchased service providers shall not be paid prior to services being rendered or materials received. Contracting for a service does not re-characterize the nature of the costs. In other words, if the cost of an activity would not have been allowed from special education funding if the district were directly providing the program (such as operation and maintenance costs), those costs would still not be an allowable cost from special education funding if included in the billing from a private or AEA provider.

NOTE: a private provider that is not the AEA may include profit in the itemized costs, but the districts are responsible for evaluating the costs within their responsibilities for cost containment and stewardship of public funding.

The AEA shall directly provide the instructional services and shall not subcontract with another entity (wrap around contracts). *[Avoid all wraparound contracts.]*

SPECIAL EDUCATION

Each member district, as well as any other district sending students under a tuition arrangement to the Consortium, shall remain responsible for insuring the special education instructional and related services offered to its students at the Consortium program provide a free and appropriate public education (FAPE) pursuant to federal and state law.

Each resident district is to maintain a file on each resident student attending the Consortium program. For special education students, this file contains, at a minimum, the student’s current IEP and progress reports.

The resident district, working with the district or AEA employing the teacher and the fiscal agent district, is responsible for IEP development and review.

LIMITED ENGLISH PROFICIENT

If any student enrolled and served in the Consortium requires a limited English proficient (LEP) program, the resident district shall be billed for the cost of those services provided above the regular instructional program provided. This will be billed as an individualized cost.

AT-RISK AND DROPOUT PREVENTION

Students identified as at-risk or as potential or returning dropouts shall be provided appropriate additional instructional programming beyond the costs of instruction for students in a regular curriculum. Costs must be exclusively for identified at-risk students or potential or returning dropouts. Such costs will be billed as an individualized cost and may be paid from the at-risk supplementary weighting funding (257.11(4)) or the returning dropout/dropout prevention program funding (257.41), as appropriate.

PURCHASED SERVICES

Within fifteen (15) days after the end of each quarter, the AEA will provide to the fiscal agent appropriate special education and general program costs associated with providing instructional services at XYZ. There shall be no per pupil or per diem billing amounts.

Billings from any purchased service provider must be “itemized” in sufficient detail so that each member district can meet its legally-required fiscal responsibilities, including but not limited to, the ability to:

- Determine performance of the IEP requirements for each of its students.
- Report expenditures from the correct funding source in accordance with the permissive uses guidance document issued in December 2013.
- Ensure that costs are itemized for the purpose of submitting Medicaid claims or special education claims or determining that such claims have been filed and billed costs reduced by that amount, etc.
- Ensure that the costs are limited to actual costs of special education as defined by Iowa Code.
- Ensure that each item is an item on the student’s individual IEP so that re-billings are accurate.
- Ensure that items such as services of a nurse are identified and are linked only to students with services of a nurse included on the individual student’s IEP.
- Ensure that each item is paid from the correct fund.
- Ensure that each item is paid from the correct funding stream (special education weighted funding, IDEA Part B or Part C, LEP, Title 1, general purpose funding, etc.).
- Ensure that any administrative costs are allowable and itemized for the purpose of requesting permission from the School Budget Review Committee (SBRC) to pay those costs from special education weighted funding rather than general purpose funding.
- Ensure that costs that are not included within the definition of actual costs of special education instructional programs are separately identified so that they are not paid from any special education funding streams. For this purpose, at a minimum, this would require costs itemized to the function level, and sometimes object level, that districts are required to enter on the CAR-COA. There cannot be a single special education cost when that cost includes

non-instructional items. Therefore, there would be separate purchased services (even if in the same Agreement) for such things as instruction, support services, administration, operation & maintenance, if applicable, etc.

- Ensure that no costs were paid from grants or other funding resources the private provider received or was entitled to receive to address the potential for any cost to be paid by the district which was properly paid from a different source. The IDEA provides that education agencies are payors of last resort.
- Ensure that any profit built in by a private for-profit service provider is reasonable. The district has a stewardship responsibility to look at those costs to evaluate the cost effectiveness of purchasing services versus providing the services directly as well as to have procedures in place to meet the coming requirements of the omni-circular related to procurement.
- Ensure that no costs are “per pupil rates.”
- Ensure that no costs are related to purchasing spaces or other phantom student models.
- Ensure time records are maintained when personnel are paid from multiple funding streams and costs are proportionate to time.
- If the contracted service provider is the AEA, ensure that no costs are related to AEA responsibilities and all costs are at cost without built-in profit.
- Ensure that if general purpose percentage [GPP] is part of the billing, that the GPP has been used to reduce the costs which are not defined by Code as special education instructional costs.

In addition to the actual costs of special education as defined in this contract, the following costs may be billed and paid from the appropriate funding source if itemized and clearly identified:

- The cost of teachers and aides that are not included in actual costs of special education (salaries, FICA, IPERS, health insurances [but not such things as early retirement incentives, TSAs, worker compensation payments or premiums, unemployment]), may be billed.
- Professional development and teacher travel that is specific and unique to the students served in the XYZ program may be billed.
- The cost of supplies and equipment that are not included in actual costs of special education may be billed.
- The cost of supervision of teachers and instruction by an appropriately licensed principal or special education administrator, if time records are maintained and the time records support a specific portion of the time of the principal or special education director was exclusively devoted to special education, and which was not, and exclusively devoted to the XYZ program (the fiscal agent shall provide such records to each member district). These costs are paid from the appropriate sources when administrative costs are not approved by the SBRC to be paid from special education funding.
- The cost of purchased treatment services (whether from the AEA or from a private provider licensed to provide that treatment) where that treatment is incidental to the instructional program and will enhance the special education student’s ability to benefit from the instructional program), may be billed.
- Support services for special education, media, and instructional services are responsibilities of the AEA, and shall be provided at no cost to the districts.
- *List specifically what other costs may be included in the billings here—no surprise and no purchased service provider discretion. For a thorough list of potential billable costs, see the*

guidance provided to districts on permissive and non-permissive uses released in December 2013. Costs not included in this Agreement shall not be billed.

FINANCIAL PROVISIONS

The fiscal agent member shall provide itemized billings for the costs set out in this Agreement within thirty (30) days of the end of each quarter. No billing shall be provided directly to resident districts from the AEA. Each member shall promptly pay its amount at its next board meeting but no later than thirty (30) days of receipt of the itemized bill. If any costs were estimated in the first three quarters, the final quarter's billing shall be adjusted to ensure that the costs are the actual costs for special education for the entire year and the correct share of costs pursuant to the Consortium Agreement. "Itemized" billing means a bill in sufficient detail that each member district can meet its legal fiscal responsibilities, including but not limited to, determining performance of the IEP requirements for each of its students, reporting expenditures from the correct funding source in accordance with the permissive uses guidance document issued in December 2013, filing Medicaid claims or special education claims or determining that such claims have been filed and that billed costs have been reduced by that amount, etc. [See listing above.]

Each resident district shall be billed for and pay the actual costs of the educational program for each of its resident students pursuant to the IEP. "Actual costs" is a term referring to the excess costs of providing instruction for children requiring special education, above the costs of instruction of pupils in a regular curriculum. "Actual costs" should not be confused with the common meaning of actual as 'all costs incurred' which might include non-instructional costs or costs of instruction that are substantially similar to the costs of instruction in regular curriculum. To the extent that the costs are directly related to the provision of special education services pursuant to the IEPs, these costs are special education costs in the member districts. In the case of a Consortium, the GPP would not be billed as a part of the actual costs, because the non-IEP costs are being allocated to member districts otherwise; billing for GPP would result in duplicated billing.

Specialized costs for identified at-risk students above the costs of providing instruction for students in a regular curriculum, may be billed to each resident district of such identified at-risk students in the proportion that each member's student FTE enrolled in the Consortium program and using that specialized at-risk instruction bears to the total of all members' student FTE enrolled and using that specialized at-risk instruction. Costs must be exclusively for identified at-risk students. Such costs will be billed as an individualized cost and may be paid from the at-risk supplementary weighting funding (257.11(4)) or from general fund general purpose funding.

Specialized costs for identified returning or potential dropout students above the costs of providing instruction for students in a regular curriculum, may be billed to each resident district of such identified potential or returning dropout students in the proportion that each member's student FTE enrolled in the Consortium program and using that specialized dropout prevention instruction bears to the total of all members' student FTE enrolled and using that specialized dropout prevention instruction. Costs must be exclusively for identified potential or returning dropout students. Such costs will be billed as an individualized cost and may be paid from the

returning dropout/dropout prevention program funding (257.41) or from general fund general purpose funding.

Specialized costs for identified limited English proficient students above the costs of providing instruction for students in a regular curriculum, may be billed to each resident district of such identified LEP students in the proportion that each member's student FTE enrolled in the Consortium program and using that specialized LEP instruction bears to the total of all members' student FTE enrolled and using that specialized LEP instruction. Costs must be exclusively for identified LEP students and must be related to LEP instruction above the regular curriculum. Such costs will be billed as an individualized cost and may be paid from the LEP weighted funding (280.4), from SBRC modified supplemental amount (257.31(5)''j''), or from general fund general purpose funding.

PROGRAM OPERATION

The fiscal agent, on behalf of the Consortium administrators, agrees as follows:

- A. The fiscal agent will provide a facility for the XYZ program which meets the state and federal requirements for a school site. This facility may be leased or owned by the fiscal agent and shall be located within the boundaries of the fiscal agent's district.
- B. The AEA will provide appropriate instructional textbooks, materials, supplies, and equipment for student instruction.
- C. The AEA will provide qualified staff to provide student instruction and related services. The AEA will provide documentation to the fiscal agent, no later than the first day of the school year, or for newly hired staff within five (5) days of the beginning of employment, copies of all licensure and endorsement of each instructor (regular and substitute) employed by the AEA for the XYZ program. Staff providing special education services will be considered employed by and providing special education services for all the member districts, but only the AEA shall be the employing district for purpose of Chapter 279, collective bargaining, individual contracts and assignments, and shall be responsible for the payment of salary and benefits.
- D. The AEA shall provide special education and related services to students enrolled in the XYZ program, pursuant to the terms of the students' IEPs.
- E. The Consortium may accept and serve students from other schools and school districts in the XYZ program. As students are added to the program, costs are distributed across the participating districts on a per student basis.
- F. Each resident school district, through the IEP process, shall assess the special education needs of their students and, following the procedures applicable to the provision of special education and related services, determine what students will be served in the XYZ program and how they will be served.
- G. The AEA shall submit all requested reports to the fiscal agent to utilize, transmit to resident districts, or to submit to the Iowa Department of Education (IDE) or SBRC for program, costs, or other data associated with operating the XYZ program.
- H. Food service would be provided by the host district in the same way that food service is provided to other students attending public school within the host district boundaries.

NON-MEMBERS DISTRICTS

Occasionally, a district which is not a member of the Consortium may want to assign students to the XYZ program through the IEP process, with the approval of the governing board of the resident district. The decision to allow a nonmember district to participate in the Consortium program, and the requirements of such participation, shall be determined by the provisions of the Consortium Agreement.

All students at the XYZ program site must have been assigned to that location by their resident district, whether or not the student has an IEP. The AEA shall not directly enroll any student who has not been assigned to the XYZ location by his/her resident district.

PROPERTY

It is not contemplated that the Consortium will acquire, hold or dispose of any real property as part of this undertaking. However, the fiscal agent in the Consortium may enter into leases or sublease arrangements for a building to house the program, with approval of the member districts. That lease or sublease arrangements may be payable from the Physical Plant and Equipment Levy Fund or other legally authorized funds.

Existing equipment, supplies, furniture, and textbooks of each member district may be used in the Consortium program. Such use will be determined by the administrators based upon the appropriate need for the item. An inventory of exchanged items will be maintained.

Upon termination of this Consortium Agreement, identifiable exchanged items shall be returned to the district of original ownership. All items purchased separately by each member district during the term of this Agreement shall remain the property of that member district.

AMENDMENTS

The provisions of this Contract Agreement may be added to, amended or modified by the AEA and the fiscal agent upon unanimous vote of the administrators of all member districts and approved by their respective school boards. Votes must be cast at a duly called meeting by all administrators physically present.

DURATION AND TERMINATION

Subject to the rights of amendment, modification or termination, this Agreement shall be in full force and in effect from the date of execution until June 30, 2015, and shall automatically renew every July 1 for one-year periods unless participation is terminated by the Consortium or the AEA by providing written notice to the other on or before March 1 or terminated by mutual agreement of the Consortium and AEA.

The contract Agreement will be reviewed annually by the administrators in the Consortium beginning in January 2015.

CROSS INDEMNIFICATION

If any claim for damage, injury or other loss (hereinafter "loss") is made by or on behalf of a student, the district or AEA transporting or supervising the student at the time of the loss shall be responsible for any payment of claims, damages, or judgments arising out of the loss, and that transporting or supervising district or AEA shall indemnify, defend and hold harmless the non-transporting or non-supervising district or AEA if a claim is made against the non-transporting or non-supervising district or AEA for a loss which occurred while the student was under the supervision and control of the transporting or supervising district or AEA. Both member districts and the AEA agree to carry liability insurance or otherwise contract for coverage of claims consistent with this Contract Agreement.

Otherwise, to the extent permitted by law, each of the member districts and the AEA shall protect, defend, hold harmless, and indemnify the other member districts from and against any and all claims, losses, costs, damages, and expenses including attorneys' fees and expenses, which the other districts may incur by reason of the indemnifying party's negligence, breach of this Agreement, or violation of law or right of a third party, or that of the indemnifying party's officers, employees, or agents.

APPLICATION OF LAWS, RULES AND REGULATIONS

This Agreement and all policies, rules, and regulations adopted by the administrators and AEA to govern the operation of the program shall comply with the laws of the state of Iowa, with rules and regulations of the IDE, and with federal laws and regulations. Any provisions of this Agreement in conflict therewith shall be null and void and the remainder of the Agreement shall be binding upon all members and the AEA.

All member districts and the AEA shall refrain from any action which would violate any law, rule, policy, or regulation of any governmental body or agency having jurisdiction over this Agreement.

All member districts and the AEA agree to cooperate as needed to assure that all required services and responsibilities are provided by the members and the AEA and that the educational programs and activities are operated in compliance with all applicable laws.

BINDING EFFECT

This Agreement shall be binding upon, and inure to the benefit of, the Consortium and AEA hereto and their successors and assigns.

SEVERABILITY

If any clause, provision or section of this Agreement shall, for any reason, be held illegal or invalid by a court or state or federal agency, the illegality or invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not be contained herein. In case any agreement or obligation contained in this

Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the members, to the full extent permitted by law. Failure of a member to enter into this Agreement in accordance with Iowa law or inability of a member to be a party to this Agreement shall not affect the validity or enforceability of this Agreement as to all other members.

In commemoration of this Consortium Agreement, the presidents and secretaries of the respective fiscal agent and AEA boards of education sign this Agreement on the dates set below, the Agreement having been passed by a majority roll call vote of each member board. This Agreement shall become effective upon approval and execution by the Consortium's fiscal agent and the AEA.

Fiscal Agent for the XYZ Consortium

Board President _____ Dated _____

Board Secretary _____ Dated _____

Area Education Agency

Board President _____ Dated _____

Board Secretary _____ Dated _____