



Sovereign
States
Drug
Consortium

**SEALED BID
REQUEST-FOR-PROPOSAL**

- FOR -

**SERVICES IN SUPPORT OF THE SOVEREIGN STATES DRUG
CONSORTIUM AND ITS PROGRAMS FOR MEDICAID
SUPPLEMENTAL DRUG REBATES AND OTHER MEDICAID
PHARMACY BENEFIT REBATES**

**Agent:
State of Vermont
Department of Vermont Health Access**

VT REQUISITION NUMBER: 03410-162-16

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INTRODUCTION

The State of Vermont, Department of Vermont Health Access (DVHA) is issuing this Request-For-Proposal (RFP) on behalf of the Sovereign States Drug Consortium (SSDC) for services in support of its programs for Medicaid supplemental drug rebate and other Medicaid pharmacy benefit rebates. The document contains the following sections:

Background: This describes the background information regarding this RFP, including information specific to the SSDC's history, membership, and activities.

Section I – General Procurement Information and Procedures: This section is used to inform Bidders of the general procurement conditions under which the RFP is issued.

Section II – Information Required from Bidders: This section provides Bidders with instructions regarding information they must provide in a proposal and the format of its provision.

Section III – Work Statement: This section is a detailed description of the services to be provided through the contract based on this RFP. It is the most critical portion of the RFP.

Section IV – Evaluation Methodology: This section describes the methodology that will be used to evaluate the proposals submitted in response to this RFP.

Section V – Contract Terms and Conditions: This section describes the SSDC specific contractual terms and conditions that shall be a part of any contract that results from this RFP.

Acronyms, Definitions, and Terms: This is a list of those used in the RFP.

Appendices: These are the appendices for this RFP.

Response Template Listing: These are the templates that bidders *must* use to provide the responses and information required in Sections II, III, and V. The Template alpha/numeric identifiers indicate the RFP sections/subsections to which they apply.



SSDC BACKGROUND

History

Like all insurance programs, Medicaid has seen ever increasing prescription drug costs. The federal government and states have had a common interest in management options in this area of health care spending.

The national Medicaid Drug Rebate Program was created by the Omnibus Budget Reconciliation Act of 1990 (OBRA'90). It requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by the Centers for Medicare & Medicaid Services (CMS).

Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) provides the regulatory authority for the national Medicaid Drug Rebate Program. Rebates are paid to states and the federal government based on units utilized in each state. The terms and conditions of the setting of Medicaid Drug Rebate Program rebates and their payments are found in this section of law.

A number of states have obtained approval from the Centers for Medicare and Medicaid Services (CMS) to enter into Medicaid rebate agreements supplemental to the Medicaid Drug Rebate Program rebates under conditions found in Section 1927 of the Social Security Act (42 U.S.C. 1396r-8).

In April 2003, the first multi-state supplemental drug rebate pool was formed. With a multi-state pool, states combine their covered lives and drug utilization to demonstrate a large market in securing rebates.

The first pool was administered on behalf of its participating states by the pharmacy benefit administrator (PBA) that each state was using at the time, First Health Services Corporation. In April 2004, CMS approved this pool. In September 2004, CMS released a guidance letter on the formation of multi-state pooling arrangements. This letter is available at www.cms.hhs.gov/smdl/downloads/smd090904.pdf.

Since that time, CMS has approved another state pool that is administered by Provider Synergies, the PBA used by the states participating in that pool.

In 2009, Provider Synergies became a wholly owned subsidiary of Magellan Health Services and First Health Services Corporation was acquired by Magellan Health Services and became Magellan Medicaid Administration, Inc. The pools started by First Health and Provider Synergies continue to operate under the management of Magellan Medicaid Administration and Provider Synergies, respectively.



In the fall of 2005, the states of Iowa, Maine, and Vermont concluded that they wished to form the first state-administered multi-state pooling arrangement, the Sovereign States Drug Consortium (SSDC). Unlike the other CMS approved pools administered by pharmacy benefit management vendors, the SSDC is administered by its members. The SSDC is not dependent on a single pharmacy benefit administrator but rather each member state uses its internal and contractual resources to support its participation.

The States of Iowa, Maine, and Vermont constituted the SSDC membership for the first rebate calendar year of 2006. Since, it has become a national model for state collaboration growing to eleven states by January 2016 with the additions of Delaware, Mississippi, North Dakota, Oklahoma, Oregon, Utah, West Virginia, and Wyoming.

All SSDC Member States participate in the SSDC by memorandum of understanding. It may be assumed that additional states will be able to participate in this arrangement in the future.

As a Medicaid supplemental drug rebate initiative, the SSDC required approval from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) through individual Medicaid State Plan Amendments. Iowa, Maine, and Vermont received the first approval letters in July 2006. Utah, Wyoming, West Virginia, Oregon, Mississippi, and North Dakota have all received approval letters since joining the pool and Delaware and Oklahoma will be requesting approval. Any additional state will request approval in the first quarter they plan to collect supplemental drug rebates.

Since its founding, the SSDC has expanded the scope of the rebates it obtains to make it possible for its states to collect them on diabetic supply utilization in their individual state Medicaid programs.

With the SSDC's current operations, the SSDC Member States:

- benefit from a rebate program that covers all drug classes plus diabetic supplies;
- see a greater influence on rebate offers with the SSDC's 2.6 million covered lives and \$1.7 billion spend than they saw with any state-only programs;
- know with certainty the details of every offer from every manufacturer; and
- are able to make state-specific decisions based on those details.

The end result of the SSDC's efforts is that the SSDC Member States see a 4-5% return on their total pharmacy spend in supplemental drug and diabetic supply rebates.



Operations: Supplemental Drug Rebates and Rebates of Diabetic Supplies

The SSDC Member States believe that components of a rebate program can be broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for Member State information and use, for presentation to manufacturers as part of the annual rebate bid procurement, and for use in bid presentation and evaluation.
- Rebate bid solicitation for annual review and as needed: Creation of a bid solicitation process including the provision of the vehicles(s) for manufacturers to submit bids. Communication with manufacturers throughout the process including but not limited to the web posting of general requests for proposals, manufacturer specific requests for proposals, and responses to manufacturers' questions.
- Bid presentation at the SSDC annual meeting and as needed: Provision for state review of a compilation of offered rebate bids with pertinent related conditions, factors, and/or information.
- Bid review: Review of offered rebate bids by states collectively and individually to determine what best meets the needs of select and/or individual states.
- Rebate bid negotiation annually and as needed: Negotiation that may occur at the request of a state or states after any bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notifications to manufacturers.
- General collective administrative functions: Including but not limited to the creation and maintenance of a web page to provide manufacturers and others with pertinent information about the SSDC; general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting organization, coordination, support, and management.
- Contract finalization: Execution of contracts using each state's rebate contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed rebate contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.



Further, the Member States believe that these components apply to both a Medicaid supplemental drug rebate program and a Medicaid diabetic supply rebate program.

Under the SSDC, the Member States share six of the services for the components for both of their programs. These core collective services are:

1. Member States' utilization data compilation.
2. Rebate bid solicitation for annual review and as needed.
3. Bid presentation at the SSDC annual meeting and as needed.
4. Rebate bid negotiation annually and as needed.
5. Bid selection notification.
6. General collective administrative functions.

For all components other than the listed six core collective services, the individual Member States and their internal and contractual resources work independently and/or coordinate with other Member States and their resources.

Other Pharmacy Benefit Rebate Activities

The SSDC may at some future date consider rebate opportunities on other pharmacy available items. The extent to which the supplemental rebate terms and conditions apply to these will be established at that time.

Contractor Services:

Each SSDC Member State administers its own pharmacy benefit management (PBM) program and activities with its own staff and/or contracted resources. Each state may make changes in its PBM administrative operations and contracts with no impact on its participation in the SSDC.

Collectively, the Member States of the SSDC contract with a single vendor for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. The services are competitively procured and the states select the vendor. Currently, the State of Vermont executes and hosts the resulting contract on behalf of the SSDC. The contract is with Goid Health Systems (GHS), a Change Healthcare Company.

Collectively, the Member States of the SSDC contract for a variety of support services for the operations of the SSDC. It is for these services that the State of Vermont is releasing this Request for Proposal and will be executing and hosting a contract on behalf of the SSDC.



RFP Purpose and Objectives

The purpose of this RFP is to secure support services for the SSDC, its Member States, and their pharmacy benefit management programs.

**Covered Medicaid Lives and Drug Spend for the Medicaid Programs of the
SSDC Member States SFY 2014**

State	Total PDL Lives	Annual Medicaid Drug Spend (SFY 2014)
DE	230,000	\$208,000,000
IA	489,739	\$302,401,843
ME	316,100	\$214,875,471
MS	537,696	\$255,943,031
ND	66,041	\$39,215,361
OR	136,943	\$47,371,174
UT	120,565	\$107,430,000
VT	174,461	\$147,577,136
WV	445,796	\$377,700,000
WY	76,341	\$46,190,410
TOTAL	2,593,682	\$1,746,704,426

The services requested to include:

1. Support for the maintenance/development, review, and execution of the SSDC’s Memorandum of Understanding (MOU) including annual renewals.
2. Oversight of the SSDC rebate core collective services contract including:
 - a. Management of the contract.
 - b. Development of any Request for Proposals for any contract replacement that may occur.
 - c. Management of any related re-procurement activities that may take place.
 - d. Development of any resulting contract.
 - e. Management of any resulting contract.
3. Oversight of any other contracts that the SSDC Member States may collectively request in the term of the support services contract including:
 - a. Development of any necessary Request for Proposals.
 - b. Management of any related procurement activities that may take place.
 - c. Management of any resulting contract.
4. Incorporation and coordination of Member State requested services in any executed SSDC contract(s).



5. Assistance to states in the development of SSDC specific individual Medicaid State Plan Amendments (SPAs) including any CMS negotiations.
6. Assistance to the State of Vermont in the management of Member State billings/payments for rebate collective and/or other contract services.
7. Management activities in support of the SSDC including but not limited to:
 - a. State recruitment as directed by Member States, when contacted by states, as identified by SSDC contractor(s), as identified by the contractors of the Member States, or as otherwise identified.
 - b. Public information and relations for anyone interested in the SSDC, including those representing state legislative interests, non-Medicaid state agency representatives interested in the approach, and manufacturers. General public information documents available at the onset of the contract will be maintained; new materials will be developed as identified as necessary and as reviewed and approved by Member States. All materials must be available for general distribution and for posting on the SSDC web page managed by GHS.
 - c. Federal policy research, analysis, and reporting.
 - d. State operations research, analysis, and reporting.
 - e. Data analysis and reporting.
 - f. Other related needs as identified as necessary and reviewed and approved by Member States.
8. Administrative activities in support of the SSDC including but not limited to:
 - a. Meeting management and coordination including identifying and/or responding to the need for meetings; developing agendas; scheduling times and places; distributing materials; etc.
 - b. Coordination of telephone and mailing services.
 - c. Other related needs as identified as necessary and reviewed and approved by Member States.

Select services as described may be provided solely to individual Member States. Other support services shall be used by all Member States. Generally, the selected contract vendor shall support all Member States equally.

The SSDC's primary objective in issuing this RFP is to secure a competitively procured contractor to provide these services while assuring the ability to interact and collaborate with Member States and their resources.

Use of the Term "SSDC"

The term "SSDC" is used throughout this RFP. This term refers to the Sovereign States Drug Consortium.



Designation of the SSDC's Agent

The SSDC Member States have designated the State of Vermont, Agency of Human Services (AHS), Department of Vermont Health Access (DVHA) as its agent in this procurement. DVHA is releasing this RFP.

Use of the Term "DVHA"

The term "DVHA" is used throughout this RFP. DVHA, the Department of Vermont Health Access, is a department of the State of Vermont. The Contract procured with this RFP will be with the State of Vermont. While the term "State" is commonly used in State of Vermont contract procurements, this term will not be used here because of the multi-state membership of the SSDC. The term "DVHA" is used here to identify the entity in the State of Vermont that will be managing this procurement and its resulting contract.

SSDC Responsibilities in Contractor Selection

All Member States of the Sovereign States Drug Consortium (SSDC) share in all responsibilities in the selection of the Contract. All Member States shall review all proposals and collectively make the final contractor selection.



SECTION I

GENERAL PROCUREMENT INFORMATION AND PROCEDURES

This section presents general procurement information pertaining to the State of Vermont.

This Request-For-Proposal (RFP) is designed to elicit sealed bids from qualified contractors, one of which will be selected to be responsible for services in support of the SSDC for Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates as described in this RFP.

Prospective Contractors are expected to carefully examine all documentation, schedules, and requirements stipulated in this RFP and respond to each requirement in their proposals in the format prescribed.

The successful Bidder (Contractor) must provide all staffing, systems, and procedures required to perform the services described herein.

The Contract awarded as a result of this solicitation shall include the selected pricing methodology as detailed in Section II-G, Cost Proposal.

In addition to the provisions of this RFP and the winning proposal, which shall be incorporated by reference in the contract, any additional clauses or provisions required by federal or state law or regulation in effect at the time of execution of the contract will be included.

The SSDC reserves the right to make a contract award with little or no further discussion with potential Contractors regarding the proposals received. Therefore, proposals should be submitted initially on the most favorable terms available to the SSDC from a technical and price standpoint. The SSDC, however, reserves the right to conduct discussions with all responsible parties who submit proposals that pass the initial screening process described in Section IV of this RFP.

Issuing Office

The State of Vermont, Department of Vermont Health Access (DVHA) has issued this RFP. The following person is the point of contact from the date of release of the RFP, until the selection of the successful Bidder.

Issuing Officer

Meaghan Kelley
Contracts and Grants Administrator
Department of Vermont Health Access (DVHA)



NOB 1 South, 280 State Drive
Waterbury, VT 05671
Office: (802) 241-0393
Cell: (802) 585-0302
E-mail: Meaghan.Kelley@vermont.gov

As indicated in Subsection I-I below, from the issue date of this RFP until a Contractor is selected and announced, potential Bidders are not allowed to contact any Member State staff regarding this RFP. DVHA and the Member States will not accept verbal questions. Questions regarding this RFP must be submitted in writing as described below. Please note that nothing within this requirement shall be interpreted to prevent the Bidder from contacting DVHA regarding its general procurement process or with complaints. Contact with Member State personnel is also permitted in the performance of existing contracts or as allowed in response to other, non-related competitive solicitations.

I-A GENERAL INFORMATION

The following general information pertains to this procurement:

1. Issuing Authority: The State of Vermont, Department of Vermont Health Access is issuing this Request-For-Proposals (RFP).
2. Letter of Intent: A Letter of Intent to submit a proposal in response to this RFP **is** required. A letter of intent from the Bidders is necessary as only those prospective Bidders who have submitted a Letter of Intent will receive any subsequent notices related to the RFP, including notice of the web posting of answers to written questions submitted to the Issuing Officer and/or any RFP amendments. Letters of intent will be received until **4:00 p.m. EST on February 8, 2016**. A Bidder not submitting a timely Letter of Intent will **not** be permitted to bid on this RFP. Letters of Intent must include the name of the company or individual bidder (as applicable), the name of the primary contact, the primary contact person's title (if applicable), a telephone and/or cell number where this individual can be reached, and his/her mailing and e-mail addresses. Letters of intent must be e-mailed to Meaghan Kelley at:

Meaghan.Kelley@vermont.gov

and to the SSDC at:

ssdc@outlook.com

3. Written Questions and Answers: Bidders may submit, in writing, programmatic and contractual questions raised by this RFP. They will be received until **4:00 p.m. EST on February 9, 2016**. They may be e-mailed to Meaghan Kelley at:



Meaghan.Kelley@vermont.gov

and to the SSDC at:

ssdc@outlook.com

While the questions shall be submitted via e-mail, DVHA assumes no liability for assuring accurate/complete e-mail transmission/receipt. However, DVHA will acknowledge receipt of questions e-mailed to the Issuing Officer by the deadline on February 10, 2016.

Written questions received later than **4:00 p.m. EST on February 9, 2016** shall not be answered. The SSDC may consolidate and/or paraphrase questions for clarity. By **February 11, 2016**, the intention is to post answers to written questions the DVHA website (<http://dvha.vermont.gov/administration/2013-requests-for-proposals>) and on the Electronic Bulletin Board of the State of Vermont's procurement website (<http://vermontbusinessregistry.com/>).

4. Bidders' Conference or Call: No Bidders' Conference or Call will be held.

I-B PROCUREMENT PROCESS AND RESPONSE INSTRUCTIONS

The following subsections provide information on the process to be followed for various procurement events:

1. Legal Basis: The procurement process for this RFP shall be conducted in accordance with applicable procurement policies and procedures established by the State of Vermont.
2. RFP Issuance and Amendments: State officials of the Member States of the SSDC reviewed this RFP. The contents represent the best statement of the requirements and needs of the SSDC. Final approval of the contract rests with the SSDC, once all individual state requirements have been met.
3. Proposal Submission Requirements: **Late submissions shall not be accepted. Proposals that arrive late will be returned to the sender unopened.** Delivery of the proposals to the Issuing Officer shall be at the Bidder's expense.

The office of the Issuing Officer is the designated office for official receipt of any proposal. The time of receipt at the office of the Issuing Officer determines if the proposal is timely. The time of receipt at the office of the Issuing Officer is the time-date stamp on the proposal wrapper or other documentation of receipt maintained by the office of the Issuing Officer.



DVHA accepts no responsibility for mislabeled mail or misdirected delivery. Any and all damage that may occur due to shipping shall be the Bidder's responsibility.

Each Programmatic/Technical Proposal and each Cost Proposal shall be enclosed in a separately sealed envelope or package.

a. Submittal Requirements that Apply to the Programmatic/Technical Proposal:

One copy of the Programmatic/Technical Proposal must be submitted to the Issuing Officer in a paper form and an electronic format. The electronic format must be submitted on a CD or DVD.

Member States **do not** require paper and CD or DVD copies. Proposals will be transmitted to the Member States by the Issuing Officer or her agent.

The Programmatic/Technical Proposal submitted to the Issuing Officer in a paper form and an electronic format shall be labeled:

“SSDC SUPPORT SERVICES PROGRAMMATIC/TECHNICAL PROPOSAL”

and signed by whoever is authorized to legally bind the Contractor. The paper copy shall be marked:

“ORIGINAL”

and sent to the Issuing Officer's address with the electronic copy.

b. Submittal Requirements that Apply to the Cost Proposal:

The Cost Proposal must be submitted ONLY to the Issuing Officer. One (1) paper copy and one (1) CD or DVD containing an electronic copy must be submitted under separate sealed cover and labeled on the outside as follows:

“SSDC SUPPORT SERVICES COST PROPOSAL”

This copy of the Cost Proposal shall be signed by whoever is authorized to legally bind the Contractor and marked:

“ORIGINAL”

and sent to the Issuing Officer's address with the electronic copy.



c. Submittal Requirements and Related Information that Apply to the Programmatic/Technical Proposal and the Cost Proposal:

- The Programmatic/Technical Proposal must not contain any mention of the dollar amounts in the Cost Proposal. However, the Programmatic/Technical Proposal shall disclose the Contractor's programmatic and technical approach in as much detail as possible, including, but not limited to, the information required by the Programmatic/Technical Proposal instructions. Some cost related information may be contained in the Programmatic/Technical Proposal so that the Contractor's understanding of the scope of the work may be evaluated. Such cost related information would include labor hours and categories, materials, subcontracts, and so forth.
- The Programmatic/Technical Proposal should be as brief and concise as is possible. The Scope of Work Section should be as succinct as possible. Responses that are unduly lengthy or verbose will be scored less favorably than will those that are brief and concise.
- Elaborate proposals are neither necessary nor desired. The format and content responses for the Programmatic/Technical and Cost Proposals must adhere to the instructions contained in this section of the RFP and on the Response Templates. Emphasis should be placed on conformance to the RFP and Response Template instructions, responsiveness to requirements, and completeness and clarity of content. Bidders are encouraged to organize their response in the same order as the order found in the RFP/Response Templates so that reviewers can readily find the responses required. If the Bidder's proposal is presented in a fashion that makes evaluation difficult or overly time-consuming, it is likely that points will be lost in the evaluation process. If a Bidder fails to respond to a specific instruction or requirement or if it is difficult for a reviewer to find the response to the requirement; minimally, the result may be a score of zero or a fail for the particular item and, at worst, it may be used as a basis for rejection of the proposal from further consideration.
- The Response Templates provided must be used. Microsoft Word and Excel should be used where appropriate. In Word, Bidders must use a 12-point font, and line spacing of 1.5. Completed Response Templates must be on 8 ½" by 11" paper. Larger attachments (charts, diagrams, figures, tables, etc.) may be on fold-outs but, when folded, they must fit into the 8 ½" by 11" format. Response Template pages must be consecutively numbered. Attachments must be numbered and referenced in the text by that number. Attachments must be attached to the appropriate Response Template. If attachments are used with multiple Response Templates, they should be duplicated and attached to each Response Template. When reference attachments are submitted electronically, they may be provided in a Portable Document Format (PDF).



- The paper Cost proposal must be bound separately from Programmatic/Technical proposal when submitted to Issuing Officer.
- The face of any package containing copy and/or the original, whether mailed or hand-delivered, shall bear the following legend:

**“SSDC SUPPORT SERVICES –
CONFIDENTIAL – OPEN BY ADDRESSEE ONLY.”**

- Bidders shall not include any personal use items with the bid.
- As previously indicated, the paper form proposal delivered to the Issuing Officer shall be considered the official proposal. The designated number of paper and electronic form proposals identified below must be delivered to the Issuing Officer no later than **1:00 p.m. EST on February 17, 2016** and only to the address below.
- At **1:00 p.m. EST on February 17, 2016**, there will be a public bid opening at the DVHA address cited below. The public bid opening will be administered by the Issuing Officer designated within this RFP and one employee of the SSDC. Note that only the names and addresses of Bidders shall be read at the public bid opening.

d. Delivery Instructions:

For the Issuing Officer, deliver:

- 1. the Original Programmatic/Technical Proposal;**
- 2. one (1) CD or DVDs containing an electronic copy of the Programmatic/Technical Proposal;**
- 3. the Original Cost Proposal; and**
- 4. one (1) CD or DVDs containing an electronic copy of the Cost Proposal**

to:

**Meaghan Kelley
Contracts and Grants Administrator
Department of Vermont Health Access (DVHA)
NOB 1 South, 280 State Drive
Waterbury, VT 05671**

IMPORTANT VERMONT NOTE: Do not send any proposals by U.S. mail. Carriers that routinely deliver to this location include FedEx and UPS. Bidders are responsible for assuring that their selected carrier will deliver to this location by the specified deadline.



I-C PROPOSAL WITHDRAWAL

On or before the proposal due date, a letter of intent or a submitted proposal may be withdrawn by submitting a written request for withdrawal signed by whoever is the Bidder's authorized agent. The request should be e-mailed to Meaghan Kelley at:

Meaghan.Kelley@vermont.gov

and to the SSDC at:

ssdc@outlook.com

I-D ACCEPTANCE OF PROPOSALS

DVHA shall accept all proposals submitted according to the requirements and deadlines specified in this RFP. The SSDC reserves the right to reject any or all proposals received. It is understood that all proposals, whether rejected or not, will become the property of the SSDC. After receipt of proposals, the State of Vermont, Department of Vermont Health Access, on behalf of the SSDC, reserves the right to sign a contract, without negotiation, based on the terms, conditions, and premises of this RFP and the proposal of the selected Bidder.

All proposals must be responsive to all requirements in the RFP in order to be considered for a Contract award.

After the opening of proposals, the SSDC may ask any Bidder for written clarification of their proposal. In the event this clarification is requested, submission of the clarification shall be considered an amendment to the proposal.

The SSDC reserves the right to waive minor irregularities in proposals, providing such action is in the best interest of the SSDC. Where the SSDC may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the Bidder from full compliance with RFP specifications and other Contract requirements if the Bidder is awarded the Contract. The SSDC also reserves the right to reject any and all proposals received, or cancel this RFP, according to the best interest of the SSDC.

Proposals must be valid for 180 days following the close date of this RFP. This period may be extended by written mutual agreement between the Bidder and DVHA. Any proposal submitted shall not be available for disclosure until a contract is executed between the successful Bidder and DVHA on behalf of the SSDC.



I-E ORAL PRESENTATIONS

While it is not anticipated that oral presentations will be necessary, at the SSDC’s option, oral presentations by selected Bidders may be required. Bidders will be notified if an oral presentation is required. Any cost incidental to an oral presentation shall be borne entirely by the Bidder and the SSDC shall not compensate the Bidder.

The Bidders should present complete, comprehensive proposals without planning on oral presentations, because the State reserves the right to award a contract without further discussions.

I-F CONTRACT AWARD NOTICE

The notice of the intended contract award shall be sent to all Bidders who submitted a proposal. A contract award is contingent on approval by the SSDC.

I-G PROTEST OF INTENDED AWARD

Should there be any protests of the intended contract award, the appropriate requirements of the State of Vermont will be employed.

I-H PROCUREMENT TIMETABLE

The SSDC expects to adhere to the procurement schedule shown below. It should be noted, however, that dates are subject to change.

ACTIVITY	DATE
• Member State Press Announcements	Beginning February 1, 2016
• Release of RFP	February 3, 2016
• Web Postings	February 3, 2016
• Letter of Intent to Bid Due from Bidders (required)	February 8, 2016
• Written Question Deadline	February 9, 2016
• Response to Written Questions	February 11, 2016
• Deadline for Letter of Intent/Proposal Withdrawal	February 17, 2016
• Due Date for Submission of Proposals	February 17, 2016
• Bid Opening	February 17, 2016
• Expected Date of Contractor Selection	March 3, 2016
• Contract Start Date	April 18, 2016
• Conversion of Services Period	Monday, April 18, 2016 – Monday, May 9, 2016



I-I RESTRICTIONS ON COMMUNICATIONS WITH SSDC PERSONNEL

From the issue date of this RFP until a Contractor is selected and announced, Bidders are not allowed to communicate with any SSDC Member State staff regarding this RFP. **All communications related to this RFP are restricted to written communications except as set forth below and in the Section labeled “Issuing Office” above within Section I.** Letters of intent and written questions shall be e-mailed by the deadlines included herein to Meaghan Kelley at:

Meaghan.Kelley@vermont.gov

and to the SSDC at:

ssdc@outlook.com

Violation of this restriction may result in disqualification of the Bidder’s proposal.

As described in this RFP, any clarification regarding the RFP will be issued in writing by DVHA. No statements, clarifications, or opinions regarding this RFP are valid or binding except those issued in writing by DVHA. **Under no circumstances will questions be entertained except in writing.**

I-J LIBRARY LISTING

Many materials that may be of interest can be found on the CMS web page found here:

<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Prescription-Drugs/State-Prescription-Drug-Resources.html>, the SSDC’s web page found here:

<https://www.rxssdc.org/>, and DVHA’s web page found here: <http://dvha.vermont.gov/>. Of particular interest may be the following:

1. CMS Letter, Multi-State Medicaid Supplemental Rebate Pooling Arrangements, September 9, 2004: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd090904.pdf>
2. The SSDC’s Fact Sheet: https://www.rxssdc.org/sites/default/files/uploaded_files/ssdc-fact-sheet.pdf
3. The SSDC Member States’ Medicaid State Plan (SPA) Approvals: <https://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/dynamic-list/MS-508.xml>
4. The SSDC Member States’ Supplemental Rebate Agreements (SRAs): <https://www.rxssdc.org/state-supplemental-rebate-agreements>
5. The SSDC Member States’ Preferred Drug Lists (PDLs) and Prior Authorization Criteria: <https://www.rxssdc.org/state-supplemental-rebate-agreements>



6. The SSDC's contract for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates:
<http://dvha.vermont.gov/administration/2ghs-2015-ssdc-final-contract-signed-and-executed.pdf>
7. SSDC 2015 notice to drug manufacturers requesting Rebate Calendar Year (RCY) 2016 rebate bids: https://www.rxssdc.org/sites/default/files/uploaded_files/ssdc-cy2016-supplemental-rebate-solicitation-letter.pdf
8. SSDC 2015 notice to diabetic supply manufacturers requesting Rebate Calendar Year (RCY) 2016 rebate bids: https://www.rxssdc.org/sites/default/files/uploaded_files/ssdc-cy2016-diabetic-supply-rebate-solicitation-letter.pdf
9. The SSDC's Electronic Rebate Offer Management System as provided by GHS:
<https://eroms.rxssdc.org/Account/LogOn?ReturnUrl=%2f>

I-K AWARD

The SSDC reserves the right to award the total proposal or to reject any and all proposals if the best interest of the SSDC shall be so served. In determination of awards, the qualification of the Bidder, the conformity with the specifications of services to be supplied, and the delivery terms shall be considered.



SECTION II

INFORMATION REQUIRED FROM BIDDERS

The Bidder's proposal must be submitted in the format outlined below. There should be no attachments, enclosures, or exhibits other than those considered by the Bidder to be essential to a complete understanding of the proposal submitted. **Each section of the proposal should be clearly identified with appropriate headings.**

II-A TRANSMITTAL LETTER

A transmittal letter must accompany the proposal, signed in ink by whoever is the person authorized to bind the Bidder to the proposal's provisions.

A Bidder responding to this RFP must complete the Response Template for Subsection II-A.

II-B BUSINESS ORGANIZATIONS AND LOCATIONS

A "Bidder information sheet" regarding the individual bidder or the Bidder's business organization itself, the business organization of any subcontractors, and the location(s) of the Bidder and any subcontractors must also accompany the transmittal letter.

A Bidder responding to this RFP must complete the Response Template for Subsection II-B.

II-C BUSINESS AFFILIATIONS

The State of Vermont and SSDC require that any Bidder report all affiliations that may affect the performance of its/his/her/their duties under its/his/her/their contract. This report shall occur when a Bidder submits a response to a RFP or as a Contractor enters into any such affiliation during any portion of the term of the Contract.

A Bidder responding to this RFP must complete the Response Template for Subsection II-C.

II-D RELEVANT EXPERIENCE AND REFERENCES

The Bidder should provide a list and description of the particular pharmacy benefit management services it provides to its/his/her/their clients including the SSDC states.

With the scope of work in this proposal particularly support services for drug and pharmacy benefit rebate services, the Bidder should describe its/his/her/their experience in drug and pharmacy benefit rebate services.



A Bidder responding to this RFP must complete the Response Template for Subsection II-D.

II-E CONTRACTOR ORGANIZATION AND STAFFING

The Contractor selected as a result of this RFP is responsible for providing all resources necessary to deliver the services as specified in this RFP in a timely fashion or according to the SSDC's rebate calendar. As a business or academic organization, the Contractor may provide them through its/his/her/their organizational structure. As an individuals or individuals, the contractor(s) may provide them personally or may subcontract for select services.

A Bidder responding to this RFP must complete the Response Template for Subsection II-E.

II-F METHODOLOGY AND APPROACH

Bidders will be scored, in part, on the methodology and approach proposed in the bid. Be as specific as possible in addressing all of the elements described in each section within Section III, Work Statement, of this RFP. Bidders should include any proposed transition and implementation timeline within the proposal submitted.

A Bidder responding to this RFP must complete the Response Template for Subsection II-F.

II-G COST PROPOSAL

In submitting a response to this RFP, the Bidder and all other parties to the response must certify that the prices in the cost proposal for the response were arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other Bidder or with any competitor; the prices were not and will not be knowingly disclosed by the Bidder prior to the award to any other Bidder or competitor; and no attempt has been made by the Bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

A Bidder responding to this RFP must complete the Response Template for Subsection II-G.



SECTION III

WORK STATEMENT

III-A BIDDER RESPONSE TO RFP – GENERAL REQUIREMENTS

Through this RFP, the SSDC is asking Bidders to describe capabilities in regard to each subsection of the Work Statement. Each subsection contains an “**Overview and Discussion**”. This area includes the SSDC’s understanding of the functions or goals of the section. The area entitled “**Transition/Implementation and Operations**” describes relevant issues that will impact the transition/implementation and resulting operations of functions.

A Bidder must respond to the Work Statement using the Response Template provided for each subsection. Absolute requirements and specific aspects of the section are articulated in each Template in the area labeled “**Requirements**”.

The Bidder is expected to describe its/his/her/their ability to meet the requirements, any unique or innovative method the Bidder proposes in meeting a requirement, applicable experience the Bidder has in performing the function in other settings, and any other information relevant to the section being described. If the Bidder is not able to meet a described requirement, it must describe in detail the limitations of its/his/her/their capacity and its/his/her/their plan to provide a conceptual equivalent to meet the SSDC’s needs. If the Bidder proposes to exceed a requirement, this should likewise be described in detail in the Bidder’s proposal response.

The Bidder is expected to describe its/his/her/their ability to meet any applicable transition/implementation schedule, identify the lead time to transition/implement a section, and describe the organizational structure and responsibilities for transition/implementation, including any relevant information that will allow the SSDC to judge the capacity of the Bidder to execute successfully the section under discussion.

III-B SUPPORT FOR THE MAINTENANCE/DEVELOPMENT, REVIEW, AND EXECUTION OF THE SSDC’S MEMORANDUM OF UNDERSTANDING (MOU) INCLUDING ANNUAL RENEWALS

Overview and Discussion

The SSDC’s MOU is the complete accounting of the agreement entered into by its Member States committing to the terms and conditions of the SSDC that makes it possible for the SSDC to function. It consists of:

- A description of the SSDC;
- Its history;



- Its basis for operations;
- Its purpose;
- Its duration;
- Its responsibilities;
- Its services,
- Its individual members' responsibilities; and
- its general terms and conditions.

Transition/Implementation and Operations

The Contractor selected by this RFP will be responsible for monitoring SSDC operations in relation to its MOU to identify areas where problems may occur and/or where options for additions, changes, or deletions should be presented to the Member States for consideration. The contractor will be fully responsible for this activity as of May 10, 2016. All records will be transitioned to the selected Contractor by that date.

A Bidder responding to this RFP must complete the Response Template for Subsection III-B.

III-C OVERSIGHT OF THE SSDC REBATE CORE COLLECTIVE SERVICES CONTRACT

Overview and Discussion

Collectively, the Member States of the SSDC contract with a single vendor for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. This is commonly referred to as the rebate services contract. The contract is competitively procured and the SSDC Member States select the vendor. Currently, the State of Vermont executes and hosts the resulting contract on behalf of the SSDC. The contract is with Goold Health Systems (GHS), a Change Healthcare Company.

At the direction of the Member States of the SSDC, the Contractor procured by this RFP is responsible for the day-to-day management of this rebate services contract. This includes all aspects of the contract. And this requires that the Member States are kept fully informed of any issues related to the terms and conditions of the contract and any performance matters.

The current rebate services contract was effective April 1, 2015. Its term is two (2) years, with the option for up to two (2) one year extensions. Thus, the rebate services contract may be re-procured during the term of the Contract procured by this RFP. The Contractor selected for the contract procured by this RFP shall be responsible for developing any necessary Request for Proposals for any rebate services contract replacement. The SSDC does have a template for such an RFP but it will be up to the Support Services Contractor to develop the final version at the direction of the SSDC Member States. The Support Services Contractor will also be expected to manage any necessary re-



procurement activities that may need to take place working with the Member States and the State of Vermont or any other state that may be hosting any future contract or serving in some other contracting capacity for the SSDC.

The Contractor procured through this RFP will be expected to work with the SSDC Member States on the contract development needs that result from any procurement. The Contractor will be expected to work with any state hosting the contract and any other state involved in that contract to assure that all state requirements are met in the resulting contract.

The Contractor procured through this RFP will continue to be expected to manage the contract that results from any re-procurement at the direction of the SSDC Member States.

Transition/Implementation and Operations

Oversight of the SSDC rebate services contract; that is, for the six core collective services contract will become the responsibility of the Contractor procured by this RFP for the period of the contract. This will be as of May 10, 2016 and continue for the term of the Contract. All related records will be transitioned to the Contractor by May 10, 2016.

Any re-procurement of the rebate services contract will be scheduled, planned, and executed at the direction of the Member States.

A Bidder responding to this RFP must complete the Response Template for Subsection III-C.

III-D OVERSIGHT OF ANY OTHER CONTRACTS THAT THE SSDC MEMBER STATES MAY COLLECTIVELY REQUEST IN THE TERM OF THE SUPPORT SERVICES CONTRACT

Overview and Discussion

The SSDC has never contracted for anything other than rebate and support services. However, as the SSDC grows there may be times and reasons for considering other contracts.

At the direction of the Member States of the SSDC, the Contractor procured by this RFP is responsible for the day-to-day management of this rebate services contract. This includes all aspects of the contract. And this requires that the Member States are kept fully informed of any issues related to the terms and conditions of the contract and any performance matters.

The Contractor procured by this RFP shall be responsible for any new contract that may be procured during the term of the contract procured by this RFP. The Contractor shall be responsible for developing any necessary Request for Proposals at the direction of the SSDC Member States. The Contractor will also be expected to manage any necessary procurement activities that may need to



take place working with the Member States and the State of Vermont or any other state that may be hosting any future contract or serving in some other contracting capacity for the SSDC. Procurement activities include but may not be limited to managing any bidder conferences, preparing responses to bidder questions, developing scoring instruments, scoring proposals for compliance with mandatory requirements, compiling Member State scores, and working with the state hosting the contract on any related public information inquiries or challenges.

The Contractor procured through this RFP will be expected to work with the SSDC Member States on the contract development needs that result from any procurement. The Contractor will be expected to work with any state hosting a contract and any other state involved in that contract to assure that all state requirements are met in the resulting contract.

The Contractor procured through this RFP shall be expected to manage the contract that results from any new contract procurement at the direction of the SSDC Member States.

Transition/Implementation and Operations

The Contractor procured by this RFP shall be responsible for any new contract procurement for the period of the contract. This will be as of May 10, 2016 and continue for the term of the Contract.

Any new contract procurement will be scheduled, planned, and executed at the direction of the Member States.

A Bidder responding to this RFP must complete the Response Template for Subsection III-D.

III-E INCORPORATION AND COORDINATION OF MEMBER STATE REQUESTED SERVICES IN ANY EXECUTED SSDC CONTRACT(S)

Overview and Discussion

The SSDC consists of Member States operating the federal Medicaid program within their boundaries. Beyond that, even with that, there are many differences in the Member States beyond geographical locations. The differences can include but not be limited to political and social policies, economic environments, census numbers, budgetary constraints, populations served, clinical service availability, clinical approaches, etc.

The operations of the SSDC are premised on serving all of its Member States equally. However, to do that with as many differences as there are between the states, it is necessary to note the differences and to determine how to meet every state's needs equally without advantaging or disadvantaging any other state. To do that, the Contractor procured with this RFP shall be responsible for noting the differences and assessing on an ongoing basis if every state's SSDC required needs are being met or



can be met under the terms and conditions of the SSDC’s MOU and/or contracts and, when they are not being met for a state, working with that state to determine what needs to be presented to all the Member States to determine if anything can be done.

Transition/Implementation and Operations

The Contractor selected by this RFP will be responsible for monitoring the needs of the Member States to incorporate and coordinate them in the SSDC’s executed contracts wherever possible. The Contractor will be fully responsible for this activity as of May 10, 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-E.

III-F ASSISTANCE TO MEMBER STATES IN THE DEVELOPMENT OF SSDC SPECIFIC INDIVIDUAL STATE PLAN AMENDMENTS (SPAs) INCLUDING ANY CMS NEGOTIATIONS

Overview and Discussion

Membership in the SSDC requires that states obtain approval from CMS for Medicaid State Plan Amendments (SPAs) that would permit them to collect drug rebates supplemental to federally required rebates through the SSDC. Once states are members of the SSDC, they may also need SPAs for specific aspects of the SSDC’s operations or their operations under the SSDC.

Transition/Implementation and Operations

Assistance with any SSDC related State Plan Amendments (SPAs) will be the responsibility of the Contractor procured by this RFP beginning May 10, 2016 through the term of the Contract.

A Bidder responding to this RFP must complete the Response Template for Subsection III-F.

III-G ASSISTANCE TO THE STATE OF VERMONT IN THE MANAGEMENT OF MEMBER STATE BILLINGS/PAYMENTS FOR REBATE COLLECTIVE AND/OR OTHER CONTRACT SERVICES

Overview and Discussion

The costs of the SSDC are shared by its Member States. Operationally, those costs are what produce rebates for any Rebate Calendar Year. A Rebate Calendar Year is equal to a calendar year, January 1 through December 31. And it is the period against which negotiated rebates are collected based on the utilization of the covered lives of the Member States during the period.

The current costs of the SSDC are the cost of its contracts: the rebate services contract with GHS that supports six core collective services related to Medicaid supplemental drug rebates and other



Medicaid pharmacy benefit rebates and the support services contract procured by this RFP. Since the six core collective services must be delivered to assure readiness for the Rebate Calendar Year, for SSDC funding purposes, the Contract Year of the rebate services contract that begins April 1 is the “effective contract year” for SSDC accounting purposes and the cost of the support services contract is applied to that same contract period as the rebate services contract. Since the support services contract procured with this RFP is not and will not be for the same period as the rebate services contract for the six core collective services, it must be possible to assign costs for the support services contract for the same period as the rebate services contract. For simplicity sake, historically this is done on a monthly basis. For example, for rebate calendar year 2017, the cost of SSDC services is the cost of the contract procured for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates from April 1, 2016 through March 31, 2017 plus the cost of the support services contract that expires on May 9, 2016 from April 1, 2016 through May 9, 2016 and the cost of the contract procured through this RFP from its onset date through March 31, 2017.

In apportioning costs to the Member States, the SSDC applies the “effective contract year” price for all contract services for a year beginning April 1 in relation to the months Member States collect rebates in the related Rebate Calendar Year. When all Member States collect rebates for all the months of the Rebate Calendar Year, then the monthly “effective contract year” price is shared by all Member States for all months of the Contract Year. When there is a change in the number of Member States that can collect rebates for a Rebate Calendar Year, the monthly “effective contract year” price is shared by all Member States on a month-by-month basis depending on the number of months that individual members can collect rebates in the Rebate Calendar Year.

Historically, bills to Member States have been produced for delivery at the SSDC Annual Meeting.

Transition/Implementation and Operations

Assistance with the management of Member State billings/payments will be the responsibility of the Contractor procured by this RFP beginning May 10, 2016 through the term of the Contract. The SSDC maintains a spreadsheet that is the record of the apportionment of SSDC costs since Rebate Calendar Year 2008. This spreadsheet will be provided to the Contractor selected as a result of this RFP no later than May 10, 2016. The Contractor will be responsible for producing the annual Member State bills for delivery at the Annual Meeting scheduled for June 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-G.



III-H MANAGEMENT ACTIVITIES IN SUPPORT OF THE SSDC

Overview and Discussion

The Contractor procured as a result of this RFP will be expected to support the SSDC in a variety of management activities including but not limited to:

1. State recruitment as directed by Member States, when contacted by states, as identified by SSDC contractor(s), as identified by the contractors of the Member States, or as otherwise identified.
2. Public information and relations for anyone interested in the SSDC, including those representing state legislative interests, non-Medicaid state agency representatives interested in the approach, and manufacturers. General public information documents available at the onset of the contract will be maintained; new materials will be developed as identified as necessary and as reviewed and approved by Member States. All materials must be available for general distribution and for posting on the SSDC web page managed by GHS.
3. Federal policy research, analysis, and reporting.
4. State operations research, analysis, and reporting
5. Data analysis and reporting.
6. Other related needs as identified as necessary and reviewed and approved by Member States.

Transition/Implementation and Operations

The Contractor will be responsible for all listed management activities as of May 10, 2016. All records will be transitioned to the Contractor by May 10, 2016. All activities will be the responsibility of the new Contractor effective May 10, 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-H.

III-I ADMINISTRATIVE ACTIVITIES IN SUPPORT OF THE SSDC

Overview and Discussion

The Contractor procured as a result of this RFP will be expected to support the SSDC in a variety of administrative activities including but not limited to:

1. Meeting management and coordination including identifying and/or responding to the need for meetings; developing agendas; scheduling times and places; distributing materials; etc.
2. Coordination of telephone and mailing services.
3. Other related needs as identified as necessary and reviewed and approved by Member States.



Transition/Implementation and Operations

The Contractor will be responsible for all administrative activities as of May 10, 2016. All records will be transitioned to the Contractor by May 10, 2016. All activities will be the responsibility of the new Contractor effective May 10, 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-I.

III-J STAFFING AND TIME REQUIREMENTS

Overview and Discussion

The SSDC does not require full-time dedicated staff to be assigned to this contract. The SSDC does require a single point of contact. Otherwise the Contractor is responsible for providing all staffing resources necessary to deliver the services as specified in this RFP.

The majority of the SSDC's Medicaid drug and other pharmacy benefit rebate services are required from the spring through the fall of a given year for agreements to be effective for the Rebate Calendar Year starting January 1 of the following year. As a matter of routine, most activities would generally occur over a period of six months, April through September, in preparation for the rebate calendar year bid year that follows, January through December. Activities from October through March provide routine support for the SSDC's rebates and rebate programs while finishing any remaining bid activities from the just completed bid procurement period and preparing for the next.

For the execution of this contract in April 2016, a Contractor may have to plan for an out-of-the-ordinary time commitment to address transition. Thereafter, there may be spells of relative inactivity between steps in the process throughout the six-month bid procurement period. Thereafter, the degree of activity until the next bid cycle will depend on "what's happening" then.

The SSDC shall not designate the specific qualifications of the staff that support this contract but shall require the assurance that the staff performing the work specified in this RFP have the qualifications and experience necessary. The SSDC requires that the qualifications of staff be described.

It is assumed that each Member State and its staff will have equal access to the Contractor for the support services described in this RFP. DVHA will coordinate that access if necessary.

Upon contract award and as changes occur, the Contractor shall provide the SSDC with a key contact list including any subcontractors: name, area of expertise/responsibility, telephone/cell phone number/extension, and e-mail address.



Transition/Implementation and Operations

The Contractor will be responsible for agreed upon staffing as of the onset of this Contract. All activities will be the responsibility of the new Contractor effective May 10, 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-J.

III-K POST IMPLEMENTATION

The Contractor shall be responsible for routine operations described in the Work Statement. Changes in operations that impact the contract procured by this RFP are subject to the review and approval of the SSDC Member States.

A Bidder responding to this RFP must complete the Response Template for Subsection III-K.

III-L DISASTER RECOVERY

In the event of a natural disaster and unnatural disasters, including but not limited to hacking and acts of terrorism, the Contractor must have a procedure for assuring that all pieces of work related to this Contract are stored in multiple manners so that it may be accessed in the event of such a disaster. For example, backup files should be created on all documents used in the operations of the SSDC.

A Bidder responding to this RFP must complete the Response Template for Subsection III-L.

III-M END OF CONTRACT TRANSITION PLAN

It shall be expected that in the final year of the contract established by this RFP, the SSDC will release a RFP to secure a new contract for services in support of its programs for Medicaid supplemental drug rebate and other Medicaid pharmacy benefit rebates. In the event that a new contractor is selected, the SSDC shall require that the Contractor be prepared to provide **all** notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this RFP's contract, that are related to specific deliverables under this RFP's contract, be transitioned to the new contractor.

To the extent possible, the details of the known terms and conditions of this transition will be established at the time of the finalization of the contract established by this RFP. These terms and conditions may be amended over the period of the contract.

A Bidder responding to this RFP must complete the Response Template for Subsection III-M.



III-N PERFORMANCE STANDARDS

Overview and Discussion

Performance Standards shall apply to this contract. Some standards shall apply at the onset of the contract. Others may be established over the course of the term of the contract.

Transition/Implementation and Operations

Performance standards will apply effective May 10, 2016.

A Bidder responding to this RFP must complete the Response Template for Subsection III-N.



SECTION IV

EVALUATION METHODOLOGY

Responses to this RFP shall be evaluated using a three-step process, as follows:

- Step I – Mandatory Proposal Requirements: The SSDC has established certain mandatory requirements. Failure to meet any one of these requirements shall result in disqualification.
- Step II – Merits of the Bidder and the Bidder’s Proposal: The Bidder shall be assigned a score based on its experience, the staffing approach planned for the project, and the proposed approach and methodology. This score shall comprise 75% of the overall scoring methodology.
- Step III – Cost Analysis: The Bidder shall be assigned a score based on the cost(s) provided by the Bidder. This score, combined with the score described in Step II will be used to evaluate each bid, and to determine the Bidder or Bidders with the highest overall score. The cost proposal shall comprise 25% of the overall scoring methodology.

These steps are described in more detail below.

Step I – Mandatory Proposal Requirements

THESE ARE ABSOLUTE REQUIREMENTS. FAILURE TO MEET ANY ONE OF THE REQUIREMENTS LISTED BELOW SHALL RESULT IN DISQUALIFICATION FROM BEING FURTHER CONSIDERED IN THIS BID PROCESS.

1. Minimum Capacity – The Bidder must describe and demonstrate that it has the capacity to fulfill the requirements and needs set forth in this RFP.
2. Minimum Experience – The Bidder must have at least one year of experience in the field of Medicaid pharmacy program operations and administration. The Bidder must have at least one year of experience administering comparative Medicaid pharmacy rebate programs.
3. Minimum Program Requirements –
 - Specified Services - Through its proposal, the Bidder must demonstrate a solution for all services identified.
 - Other - The Bidder must demonstrate that its proposal includes the capacity to interface with the Member States and their staff.
4. The Bidder must accept that performance standards are part of this RFP. The Bidder must accept the damages that shall apply for failures to meet the standards and take appropriate corrective actions.
5. The Bidder must identify all subcontractors and the scope of work for each subcontractor, as specified in Subsection II-B.
6. The Bidder must meet all other submission requirements.



7. The Bidder may not be sanctioned or convicted of a criminal offense related to Medicaid/Medicare or any other federal or state program.

Step II – Merits of the Bidder and the Bidder’s Proposed Project

Only proposals passing Step I shall be considered during Step II. The Step II review includes:

- Bidder Capability, Qualifications and Experience
- Qualified Staff
- Approach and Methodology
- Aptness and Brevity of Response

The Step II review will be performed by the Member States using a standardized scoring instrument based on this RFP. Each state will determine the number of people that will be part of its review. Scores for multiple reviewers in a state will be compiled to produce a single scoring instrument for each state.

The results of the Step II review will comprise 75% of the scoring methodology.

Step III – Cost Analysis

A description of how Bidders should structure the cost proposal is provided in Subsection II-G of this RFP.

The Step III review will be performed by the Member States upon completion of the review of the Programmatic/Technical Proposal. A standardized scoring instrument based on this RFP will be used for the Step III review. Each state will designate one person as its Step III reviewer.

The results of the Step III review shall comprise 25% of the overall scoring methodology.

Since there will be no opportunity for Bidders to revise the pricing, and there will not be a Best and Final Offer (BAFO) process, a Bidder should carefully calculate and propose its costs for the services requested herein.



SECTION V

CONTRACT TERMS AND CONDITIONS

This section describes the specific contractual terms and conditions that shall be a part of any contract that results from this RFP. They include the terms and conditions of the State of Vermont and the SSDC. In many cases they are the same. In no case are they in conflict. Both are referenced here to assure that Bidders have a complete understanding of the expectations of both the SSDC and the State of Vermont.

With DVHA the SSDC contract agent, this procurement is in compliance with all of the contracting procedures of the State of Vermont, Agency of Administration as outlined in Bulletin 3.5 Contracting Procedures - 2008 Revision found at http://aoa.vermont.gov/sites/aoa/files/pdf/AOA-Bulletin_3_5.pdf. State of Vermont contracting requirements particularly related can be found in Appendices A1 through A3: State of Vermont Attachment C Customary Provisions for Contracts and Grants, State of Vermont Attachment E Business Associate Agreement, and State of Vermont Attachment F Agency of Human Services' Customary Contract Provision.

At the point of release, it is believed that this RFP incorporates the general requirements necessary for all Member States of the SSDC. By request, and for reference, some or all of the contracting requirements of Iowa and Maine are attached to this RFP and can be found in Appendices B and C, respectively. The other Member States do not require such attachments.

There is one particular contracting variation between states. Vermont requires that a Contractor maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to costs incurred under an agreement for a minimum period of three years for audit purpose (see Appendix A1: State of Vermont Attachment C Customary State Contract Provisions) while Iowa requires the same for a period of five years. Other Member States have different expectations for periods of retention. In order to assure absolute compliance with all state retention requirements, Bidders shall be expected to retain specified materials indefinitely.

V-A TERM OF CONTRACT

The duration of the contract procured through this RFP is a period of twelve (12) months with an option to renew for two (2) additional twelve (12) month periods.



V-B CONTRACT ADMINISTRATION

Upon approval of a Contract, and following execution of said Contract, the State of Vermont, Department of Vermont Health Access, as the agent of the SSDC, shall direct the Bidder to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of any Contract resulting from this Request implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of such Contract. That authority is retained by the SSDC and DVHA.

A Contract Administrator and/or Project Manager for this project and any alternate(s) shall be designated by the SSDC in collaboration with DVHA.

V-C COST LIABILITY

The SSDC and the State of Vermont, Department of Vermont Health Access assume no responsibility or liability for costs incurred by the Contractor prior to the signing of any Contract resulting from this RFP. The total liability of the SSDC and the State of Vermont, Department of Vermont Health Access is limited to the terms and conditions of any Contract that results from this RFP.

V-D CONTRACTOR RESPONSIBILITIES

The Contractor shall be required to assume responsibility for all contractual activities offered in this proposal whether or not that Contractor performs them. Further, the SSDC and the State of Vermont shall consider the Primary Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, responses to this RFP should include a list of any planned subcontractors, including name and address; a contact person if different; a complete description of work to be subcontracted; and descriptive information concerning the subcontractor's organization (if applicable), abilities, and commitment to the contract period as described in Subsection II-B and affiliations as described in Subsection II-C. The SSDC reserves the right to approve subcontractors for this project at the onset of the Contract and during its term and to require the Primary Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract.

The Contractor must commit to the entire contract period stated within this RFP. A change of subcontractors is allowed but must be specifically agreed to by the SSDC and DVHA.

The Agreement between the Contractor and the State of Vermont, Department of Vermont Health Access will not be assignable to another party without prior written permission from the Sovereign States Drug Consortium and the State of Vermont, Department of Vermont Health Access. The Contractor shall provide advance notice to the SSDC and DVHA on any intended sale of any applicable



contracting entity. The SSDC and DVHA will have the option of terminating the Contract with the Contractor upon the sale of any applicable contracting entity.

V-E NEWS RELEASES

News releases pertaining to this document or the services, study, data, or project to which it relates, shall not be made without prior written SSDC approval and then only in accordance with the explicit written instructions from the SSDC. No results of the project are to be released without prior written approval of the SSDC and then only to persons designated.

Prior to tentative award, a Vendor may not issue a press release or provide any information for public consumption regarding its participation in the procurement. After tentative award, a Vendor must receive prior written approval from the SSDC before issuing a press release or providing information for public consumption regarding its participation in the procurement. Requests should be directed to the DVHA point of contact identified in Section I of the RFP.

This does not preclude business communications necessary for a Vendor to develop a Proposal, or required reporting to shareholders or governmental authorities.

V-F FREEDOM OF INFORMATION AND PRIVACY ACT / DISCLOSURE

All material submitted by Bidders becomes the irrevocable and sole property of the Member States of the SSDC. The SSDC reserves the right to use all concepts, data, ideas, or configurations, presented in any proposal, whether or not the proposal is selected.

All materials relating to this procurement are considered public records and are subject to the terms of the Freedom of Information Act, the Privacy Act, and all rules, regulations, and interpretations of these Acts, including those from the Offices of the Attorney General of the United States; Health and Human Services, Centers for Medicare and Medicaid Services; the Iowa Open Records Act, Iowa Code ch. 22; and the State of Vermont. The Bidder, by submitting a proposal, agrees that the Privacy Act of 1974, Public Law 93-579, and the Regulations and General Instructions issued pursuant thereto, are applicable to this contract, and to all subcontracts hereunder.

If a response to this RFP includes material that is considered by the Bidder to be proprietary and confidential under 1 V.S.A., Ch. 5 Sec. 317, the Bidder shall clearly designate the material as such in a letter accompanying the response. The Bidder must identify each page or section of the response that it believes is proprietary and confidential and provide a written explanation relating to each marked portion to justify the denial of a public record request should the State receive such a request. The letter must address the proprietary or confidential nature of each marked section, provide the legal authority relied on, and explain the harm that would occur should the material be disclosed. Under no circumstances can the entire response or price



information be marked confidential. Responses so marked may not be considered and will be returned to the Bidder.

The name of any Vendor submitting a response shall be a matter of public record.

All public records in the possession of DVHA may be disclosed. However, consistent with Vermont state law, DVHA will not disclose submitted bid documents or RFP records until execution of the contract(s). At that time or at a later date, the unsuccessful Bidders may request a copy of their own score sheets as well as request to view the apparently successful Bidder's proposal at the office of the Issuing Officer. Other persons or organizations may also make a request to review a proposal.

Upon receipt of a public records request, information about the competitive procurement may be subject to disclosure. DVHA will review the submitted bids and related materials and consider whether those portions specifically marked by a Bidder as falling within one of the exceptions of 1 V.S.A., Ch. 5 Sec. 317 are legally exempt. If in DVHA's judgment pages or sections marked as proprietary or confidential are not proprietary or confidential, DVHA will contact the Bidder to provide the Bidder with an opportunity to prevent the disclosure of those marked portions of its bid.

V-G GRATUITIES OR KICKBACKS

The State of Vermont prohibits Gratuities and Kickbacks.

V-H APPROPRIATIONS

Since the contract extends into more than one fiscal year (July 1 to June 30), if appropriations and Member State payments are insufficient to support the contract, the State of Vermont may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.

V-I OTHER PROVISIONS

The States of Iowa, Maine, and Vermont have specific contract language and requirements, as identified in the Appendices of this RFP. The successful Bidder will be expected to agree to all of these as a condition of the Contract procured by this RFP. The terms of Iowa and Maine supplement and are made a part of the Vermont Contract to which they will be attachments.

V-J PENALTIES/LIQUIDATED DAMAGES FOR PERFORMANCE STANDARD FAILURES

The Contractor must agree that time is of the essence for purposes of deliverables and tasks. As a result, the Bidder must agree to abide by the Performance Standards referenced in III-N. The Bidder must agree to Penalties/Liquidated Damages related to failures in performance on the services identified in the RFP.



At a minimum the Contractor must expect that performance standards will be established in the contract that results from this RFP.

Upon notification of unsatisfactory performance under the Contract, the State of Vermont, on behalf of the SSDC, will retain 10% from all invoice totals delivered until the corrective action is complete and, if applicable, any related work product is delivered to the satisfaction of the SSDC Member States.

The Contractor further agrees that this retainage process and the amount retained is a fair representation of the impairment of value of the contract created by late or inadequate performance on the part of the Contractor.

The release of retainage may take place after satisfactory conclusion of or performance towards a given task as determined by the SSDC. However, failure to meet timelines or to deliver required work products may result in forfeiture of retainage at the discretion of the SSDC.

A Bidder responding to this RFP must complete the Response Template for Subsection V-J.



ACRONYMS, DEFINITIONS, AND TERMS USED

ACRONYMS

AHS	Vermont Agency of Human Services
CMS	Centers for Medicare and Medicaid Services
NDC	National Drug Code
OBRA '90	Omnibus Budget Reconciliation Act of 1990
DVHA	Department of Vermont Health Access
PDL	Preferred Drug List
PA	Prior Authorization
SSDC	Sovereign States Drug Consortium

SSDC DEFINITIONS

Bid Year	The year against which rebate bids are solicited. In the SSDC, used interchangeably and in combination with the term Rebate Calendar Year. In other rebate programs, a Bid Year may be any months in a calendar year. In the SSDC, the Bid Year is equal to a calendar year, January through December.
Claim	A bill rendered by an enrolled Medicaid provider to a state Medicaid program for a product or service dispensed on behalf of a covered beneficiary.
Contract Year: Rebate Services	The 12 month period that begins on the anniversary of the start of the SSDC contract for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. The current anniversary date is April 1. In this SSDC, services are performed in a Contract Year to procure rebates in a Rebate Calendar Year. That Rebate Calendar Year is the January through December period that is the calendar year that starts after the annual anniversary of the start of the contract procured for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates.
Contract Year: Support Services	The 12 month period that begins on the anniversary of the start of the SSDC contract procured with this RFP. However, for SSDC funding



purposes, the cost of the support services contract is applied to the same contract period as the contract procured for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. For example, for rebate calendar year 2017, the cost of SSDC services is the cost of the contract procured for the six core collective services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates from April 1, 2016 through March 31, 2017 plus the cost of the support services contract that expires on May 9, 2016 from April 1, 2016 through May 9, 2016 and the cost of the contract procured through this RFP from its onset date through March 31, 2017.

Data Element	A specific unit of information having a unique meaning.
Mid-Year Bids	Bids developed between rebate calendar year bid year procurement cycles. Usually available as soon as administratively possible.
National Drug Code (NDC)	The unique code used to identify the specific drug on a claim.
Prior Authorization	The pre-claim submission approval that must be obtained from a designated professional for specified products/services for a specified client.
Rebate Calendar Year	In this RFP, the January through December calendar year against which rebate bids are solicited. In this RFP, used interchangeably and in combination with the term Bid Year.
Units	The specific quantity of a product on a claim.

TERMS

The terms Bidders and Contractors are used interchangeably throughout this RFP.



APPENDICES

These are the appendices for this RFP. They consist of the requirements of the State of Vermont and to those required by SSDC Member States Iowa and Maine.



Appendix A1: State of Vermont Attachment C Customary Provisions for Contracts and Grants

ATTACHMENT C CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- 4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.



The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$ TBD per occurrence, and \$ TBD aggregate.



8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

10. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:



- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared



ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- 20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions, State of Vermont – Attachment C - 9-1-2015_rev)



Appendix A2: State of Vermont Attachment E Business Associate Agreement

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS _____ [INSERT NAME OF AHS DEPARTMENT, OFFICE OR DIVISION] (“COVERED ENTITY”) AND [INSERT NAME OF CONTRACTOR/GRANTEE] (“BUSINESS ASSOCIATE”) AS OF _____ (“EFFECTIVE DATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT/GRANT TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.



“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate’s Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate’s proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate’s proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as



specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.



6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. Mitigation and Corrective Action. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. Providing Notice of Breaches.

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1.

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).



8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. Access to PHI. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. Amendment of PHI. Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and



procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those



purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties and Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

17. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.



18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a “Business Associate” of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual’s PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency’s or the affected individual’s written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)



Appendix A3: State of Vermont Attachment F Agency of Human Services' Customary Contract Provisions

ATTACHMENT F AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base**: The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of



Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.
5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.



Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.
10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.



If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:
1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
 2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the



grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** 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, child 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. 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 where Women, Infants, & Children (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 entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10



State of Iowa Contract Terms

SECTION 1: SPECIAL TERMS

1.1 to 1.3.2 Reserved.

1.3.3 Monitoring, Review, and Problem Reporting.

1.3.3.1 Agency Monitoring Clause. The Contract Manager or designee will:

- Verify Invoices and supporting documentation itemizing work performed prior to payment;
- Determine compliance with general contract terms, conditions, and requirements; and
- Assess compliance with Deliverables, performance measures, or other associated requirements based on the following:

1.3.3.2 Agency Review Clause. The Contract Manager or designee will use the results of monitoring activities and other relevant data to assess the Contractor's overall performance and compliance with the Contract. At a minimum, the Agency will conduct a review annually; however, reviews may occur more frequently at the Agency's discretion. As part of the review(s), the Agency may require the Contractor to provide additional data, may perform on-site reviews, and may consider information from other sources.

The Agency may require one or more meetings to discuss the outcome of a review. Meetings may be held in person. During the review meetings, the parties will discuss the Deliverables that have been provided or are in process under this Contract, achievement of the performance measures, and any concerns identified through the Agency's contract monitoring activities.

1.3.3.3 Problem Reporting. As stipulated by the Agency, the Contractor and/or Agency shall provide a report listing any problem or concern encountered. Records of such reports and other related communications issued in writing during the course of Contract performance shall be maintained by the parties. At the next scheduled meeting after a problem has been identified in writing, the party responsible for resolving the problem shall provide a report setting forth activities taken or to be taken to resolve the problem together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. The Contract Owner has final authority to approve problem-resolution activities.

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy. The Agency's inability to identify the extent of a problem or the extent of damages incurred because of a problem shall not act as a waiver of performance or damages under this Contract.



1.3.3.4 Addressing Deficiencies. To the extent that Deficiencies are identified in the Contractor's performance and notwithstanding other remedies available under this Contract, the Agency may require the Contractor to develop and comply with a plan acceptable to the Agency to resolve the Deficiencies.

1.3.4 Contract Payment Clause. *Reserved.*

1.3.4.1 Pricing. *Reserved.*

1.3.4.2 Payment Methodology. *Reserved.*

1.3.4.3 Timeframes for Regular Submission of Initial and Adjusted Invoices. The Contractor shall submit an Invoice for services rendered in accordance with this Contract. Invoice(s) shall be submitted monthly. Unless a longer timeframe is provided by federal law, and in the absence of the express written consent of the Agency, all Invoices shall be submitted within six months from the last day of the month in which the services were rendered. All adjustments made to Invoices shall be submitted to the Agency within ninety (90) days from the date of the Invoice being adjusted. Invoices shall comply with all applicable rules concerning payment of such claims.

1.3.4.4 Submission of Invoices at the End of State Fiscal Year. Notwithstanding the timeframes above, and absent (1) longer timeframes established in federal law or (2) the express written consent of the Agency, the Contractor shall submit all Invoices to the Agency for payment by August 1st for all services performed in the preceding state fiscal year (the State fiscal year ends June 30).

1.3.4.5 Payment of Invoices. The Agency shall verify the Contractor's performance of the Deliverables and timeliness of Invoices before making payment. The Agency will not pay Invoices that are not considered timely as defined in this Contract. If the Contractor wishes for untimely Invoice(s) to be considered for payment, the Contractor may submit the Invoice(s) in accordance with instructions for the Long Appeal Board Process to the State Appeal Board for consideration. Instructions for this process may be found at: http://www.dom.state.ia.us/appeals/general_claims.html.

The Agency shall pay all approved Invoices in arrears. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa law.

1.3.4.6 Reimbursable Expenses. Unless otherwise agreed to by the parties in an amendment to the Contract that is executed by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor pursuant to 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.

1.3.4.7 Travel Expenses. If the Contract requires the Agency to reimburse the Contractor for costs associated with transportation, meals, and lodging incurred by the Contractor for travel, such reimbursement shall be limited to travel directly related to the services performed pursuant to this



Contract that has been approved in advance by the Agency in writing. Travel-related expenses shall not exceed the maximum reimbursement rates applicable to employees of the State of Iowa as set forth in the Department of Administrative Services' State Accounting Policy and Procedures Manual, Section 210, <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual> and must be consistent with all Iowa Executive Orders currently in effect. The Contractor agrees to use the most economical means of transportation available and shall comply with all travel policies of the State. The Contractor shall submit original, itemized receipts and any other supporting documentation required by Section 210 and Iowa Executive Orders to substantiate expenses submitted for reimbursement.

1.4 Insurance Coverage. The Contractor and any subcontractor shall obtain the following types of insurance for at least the minimum amounts listed below:

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers' Compensation and Employer Liability	As required by Iowa law	As Required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Professional Liability	Each Occurrence	\$2 Million
	Aggregate	\$2 Million

1.5 Business Associate Agreement. The Contractor, acting as the Agency's Business Associate, performs certain services on behalf of or for the Agency pursuant to this Contract that require the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 CFR part 160 and 164. The Business Associate agrees to comply with the Business Associate Agreement Addendum (BAA), and any



amendments thereof, as posted to the Agency's website: <http://dhs.iowa.gov/HIPAA/baa>. This BAA, and any amendments thereof, is incorporated into the Contract by reference.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. The Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://dhs.iowa.gov/HIPAA/baa>, and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer.

1.6 Qualified Service Organization. The Contractor acknowledges that it will be receiving, storing, processing, or otherwise dealing with confidential patient records from programs covered by 42 CFR part 2, and the Contractor acknowledges that it is fully bound by those regulations. The Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 CFR part 2. "Qualified Service Organization" as used in this Contract has the same meaning as the definition set forth in 42 CFR § 2.11.

State of Iowa Contract Terms

Section 1: SPECIAL TERMS

Form Date 1/21/16



SECTION 2. GENERAL TERMS FOR SERVICES CONTRACTS

2.1 Definitions. Definitions in this section correspond with capitalized terms in the Contract.

“Acceptance” means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews, and other activities that are performed by or on behalf of the Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

“Applicable Law” means all applicable federal, state, and local laws, rules, ordinances, regulations, orders, guidance, and policies in place at Contract execution as well as any and all future amendments, changes, and additions to such laws as of the effective date of such change. Applicable Law includes, without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services (e.g., Iowa Code ch. 216 and Iowa Code § 19B.7). For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors

of suppliers. The term Applicable Law also encompasses the applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Office of the Chief Information Officer.

“Bid Proposal” or “Proposal” means the Contractor’s proposal submitted in response to the Solicitation, if this Contract arises out of a competitive process.

“Business Days” means any day other than a Saturday, Sunday, or State holiday as specified by Iowa Code §1C.2.

“Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “Disclosing Party”) to the other party (a “Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that could be used to identify recipients or applicants of Agency services and recipients of Contract services including Protected Health Information (45 C.F.R. § 160.103) and Personal Information (Iowa Code § 715C.1(11)), Agency security protocols and procedures, Agency system architecture, information that could compromise the security of the Agency network or systems, and information about the Agency’s current or future competitive procurements,



including the evaluation process prior to the formal announcement of results.

Confidential Information does not include any information that: (1) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (2) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (3) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (4) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (5) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; or (6) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

“Contract” means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor and includes the signed Contract, the General Terms for Services Contracts, and the Special Terms, as these documents may be amended from time to time.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” means all of the services, goods, products, work, work product, data, items,

materials and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, the Contractor (or any agent, contractor or subcontractor of the Contractor) in connection with this Contract. This includes data that is collected on behalf of the Agency.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Force Majeure” means an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. Force Majeure does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of the Contractor; claims or court orders that restrict the Contractor’s ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions.

“Invoice” means a Contractor’s claim for payment. At the Agency’s discretion, claims may be submitted on an original invoice from the Contractor or may be submitted on a claim form acceptable to the Agency, such as a General Accounting Expenditure (GAX) form.

“Solicitation” means the formal or informal procurement (and any Addenda thereto)



identified in the Contracts that was issued to solicit the Bid Proposal leading to this Contract.

“Special Contract Attachments” means any attachment to this Contract.

“Special Terms” means the Section of the Contract entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work and contract payment terms. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

“Specifications” means all specifications, requirements, technical standards, performance standards, representations, and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the Solicitation, and the Bid Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards, or criteria stated or set forth in any applicable state, federal, foreign, and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

“State” means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

“Warranty Period” means the term of this Contract.

2.2 Duration of Contract. The term of the Contract shall begin and end on the dates specified in the Contract, unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, amend the end date of this Contract by exercising any applicable extension by giving the Contractor a

written extension at least sixty (60) days prior to the expiration of the initial term or renewal term.

2.3 Scope of Work. The Contractor shall provide Deliverables that comply with and conform to the Specifications. Deliverables shall be performed within the boundaries of the United States.

2.4 Compensation.

2.4.1 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to the Contractor, in whole or in part, without penalty to the Agency or work stoppage by the Contractor, in the event the Agency determines that: (1) the Contractor has failed to perform any of its duties or obligations as set forth in this Contract; (2) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency; or (3) the Contractor has failed to perform Close-Out Event(s). No interest shall accrue or be paid to the Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

2.4.2 Erroneous Payments and Credits. The Contractor shall promptly repay or refund the full amount of any overpayment or erroneous payment within thirty (30) Business Days after either discovery by the Contractor or notification by the Agency of the overpayment or erroneous payment.

2.4.3 Offset 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 or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, offset any such sum against: (1) any sum Invoiced by, or



owed to, the Contractor under this Contract, or (2) any sum or amount owed by the State to the Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing offset.

2.5 Termination.

2.5.1 Termination for Cause by the Agency.

The Agency may terminate this Contract upon written notice for the breach by the Contractor or any subcontractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to the Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

2.5.1.1 The Contractor furnished any statement, representation, warranty, or certification in connection with this Contract, the Solicitation, or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;

2.5.1.2 The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

2.5.1.3 The Contractor or any parent or affiliate of the Contractor owning a controlling interest in the Contractor dissolves;

2.5.1.4 The Contractor terminates or suspends its business;

2.5.1.5 The Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or

certification held by the Contractor related to the Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

2.5.1.6 The Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code Chapter 8F), or local laws, rules, ordinances, regulations, or orders when performing within the scope of this Contract;

2.5.1.7 The Agency determines or believes the Contractor has engaged in conduct that: (1) has or may expose the Agency or the State to material liability; or (2) has caused or may cause a person's life, health, or safety to be jeopardized;

2.5.1.8 The Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or the Contractor misappropriates or allegedly misappropriates a trade secret;

2.5.1.9 The Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

2.5.1.10 Any of the following has been engaged in by or occurred with respect to the Contractor or any corporation, shareholder or entity having or owning a controlling interest in the Contractor:

- Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking



liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- Making an assignment for the benefit of creditors;
- Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with the Contractor's performance of its obligations under this Contract; or
- Taking any action to authorize any of the foregoing.

2.5.2 Termination Upon Notice. Following a thirty (30) day written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to the Contractor. Termination can be for any reason or no reason at all.

2.5.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

2.5.3.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

2.5.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

2.5.3.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

2.5.3.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

2.5.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract.

The Agency shall provide the Contractor with written notice of termination pursuant to this section.

2.5.4 Other remedies. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

2.5.5 Limitation of the State's Payment Obligations. In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 2.5.1, *Termination for Cause by the Agency*) the Agency shall pay only those amounts, if any, due and owing to the



Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 2.5.3, *Termination Due to Lack of Funds or Change in Law*, the Agency's obligation to pay the Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of Invoices and proper proof of the Contractor's claim. Notwithstanding the foregoing, this section in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of the Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

2.5.5.1 The payment of unemployment compensation to the Contractor's employees;

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

2.5.5.3 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;

2.5.5.4 Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or commitments made in connection with this Contract; or

2.5.5.5 Any taxes the Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes, or property taxes.

2.5.6 Contractor's Contract Close-Out Duties. Upon receipt of notice of termination, at expiration of the Contract, or upon request of the Agency (hereafter, "Close-Out Event"), the Contractor shall:

2.5.6.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the Close-Out Event, describing the status of all work performed under the Contract and such other matters as the Agency may require.

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

2.5.6.3 Cooperate in good faith with the Agency and its employees, agents, and independent contractors during the transition period between the Close-Out Event and the substitution of any replacement service provider.

2.5.6.4 Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by the Contractor.

2.5.6.5 Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied at that time.

2.5.7 Termination for Cause by the Contractor. The Contractor may only terminate this Contract



for the breach by the Agency of any material term of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of the Contractor's written notice of breach.

2.6 Reserved. (Change Order Procedure)

2.7 Indemnification.

2.7.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers, and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements, and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office,) and the costs, expenses, and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

2.7.1.1 Any breach of this Contract;

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

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

2.7.1.4 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;

2.7.1.5 Any claim of misappropriation of a trade secret or infringement or violation of any

intellectual property rights, proprietary rights, or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

2.8 Insurance.

2.8.1 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, which includes any extensions or renewals thereof. The Contractor's insurance shall, among other things:

2.8.1.1 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.

2.8.1.2. Name the State of Iowa and the Agency as additional insureds or loss payees on the policies for all coverages required by this Contract, with the exception of Workers' Compensation, or the Contractor shall obtain an endorsement to the same effect; and

2.8.1.3 Provide a waiver of any subrogation rights that any of its insurance carriers might have against the State on the policies for all coverages required by this Contract, with the exception of Workers' Compensation.

The requirements set forth in this section shall be indicated on the certificates of insurance coverage supplied to the Agency.

2.8.2 Types and Amounts of Insurance Required. Unless otherwise requested by the



Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified in the Special Terms for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

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

2.9 Ownership and Security of Agency Information.

2.9.1 Ownership and Disposition of Agency Information. Any information either supplied by the Agency to the Contractor, or collected by the Contractor on the Agency's behalf in the course of the performance of this Contract, shall be considered the property of the Agency ("Agency Information"). The Contractor will not use the Agency Information for any purpose other than providing services under the

Contract, nor will any part of the information and records be disclosed, sold, assigned, leased, or otherwise provided to third parties or commercially exploited by or on behalf of the Contractor. The Agency shall own all Agency Information that may reside within the Contractor's hosting environment and/or equipment/media.

2.9.2 Foreign Hosting and Storage Prohibited. Agency Information shall be hosted and/or stored within the continental United States only.

2.9.3 Access to Agency Information that is Confidential Information. The Contractor's employees, agents, and subcontractors may have access to Agency Information that is Confidential Information to the extent necessary to carry out responsibilities under the Contract. Access to such Confidential Information shall comply with both the State's and the Agency's policies and procedures. In all instances, access to Agency Information from outside of the United States and its protectorates, either by the Contractor, including a foreign office or division of the Contractor or its affiliates or associates, or any subcontractor, is prohibited.

2.9.4 No Use or Disclosure of Confidential Information. Confidential Information collected, maintained, or used in the course of performance of the Contract shall only be used or disclosed by the Contractor as expressly authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. The Contractor shall immediately report to the Agency any unauthorized use or disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper use or disclosure of Confidential Information.

2.9.5 Contractor Breach Notification Obligations. The Contractor agrees to comply with all applicable laws that require the



notification of individuals in the event of unauthorized use or disclosure of Confidential Information or other event(s) requiring notification in accordance with applicable law. In the event of a breach of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to follow Agency directives, which may include assuming responsibility for informing all such individuals in accordance with applicable laws, and to indemnify, hold harmless, and defend the State of Iowa against any claims, damages, or other harm related to such breach.

2.9.6 Compliance of Contractor Personnel. The Contractor and the Contractor's personnel shall comply with the Agency's and the State's security and personnel policies, procedures, and rules, including any procedure which the Agency's personnel, contractors, and consultants are normally asked to follow. The Contractor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve the Contractor or the Contractor's personnel. All services shall be performed in accordance with State Information Technology security standards and policies as well as Agency security protocols and procedures. By way of example only, see Iowa Code 8B.23, <http://secureonline.iowa.gov/links/index.html>, and <https://ocio.iowa.gov/home/standards>.

2.9.7 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing Confidential Information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the Confidential Information.

2.9.8 Return and/or Destruction of Information. Upon expiration or termination of the Contract for any reason, the Contractor

agrees to comply with all Agency directives regarding the return or destruction of all Agency Information and any derivative work. Delivery of returned Agency Information must be through a secured electronic transmission or by parcel service that utilizes tracking numbers. Such information must be provided in a format useable by the Agency. Following the Agency's verified receipt of the Agency Information and any derivative work, the Contractor agrees to physically and/or electronically destroy or erase all residual Agency Information regardless of format from the entire Contractor's technology resources and any other storage media. This includes, but is not limited to, all production copies, test copies, backup copies and /or printed copies of information created on any other servers or media and at all other Contractor sites. Any permitted destruction of Agency Information must occur in such a manner as to render the information incapable of being reconstructed or recovered. The Contractor will provide a record of information destruction to the Agency for inspection and records retention no later than thirty (30) days after destruction.

2.9.9 Contractor's Inability to Return and/or Destroy Information. If for any reason the Agency Information cannot be returned and/or destroyed upon expiration or termination of the Contract, the Contractor agrees to notify the Agency with an explanation as to the conditions which make return and/or destruction not possible or feasible. Upon mutual agreement by both parties that the return and/or destruction of the information is not possible or feasible, the Contractor shall make the Agency Information inaccessible. The Contractor shall not use or disclose such retained Agency Information for any purposes other than those expressly permitted by the Agency. The Contractor shall



provide to the Agency a detailed description as to the procedures and methods used to make the Agency Information inaccessible no later than thirty (30) days after making the information inaccessible. If the Agency provides written permission for the Contractor to retain the Agency Information in the Contractor's information systems, the Contractor will extend the protections of this Contract to such information and limit any further uses or disclosures of such information.

2.9.10 Contractors that are Business Associates. If the Contractor is the Agency's Business Associate, and there is a conflict between the Business Associate Agreement and this Section 2.9, the provisions in the Business Associate Agreement shall control.

2.10 Intellectual Property.

2.10.1 Ownership and Assignment of Other Deliverables. The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. The Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the Contractor. The

Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by the Agency, upon completion or termination of this Contract, the Contractor will immediately turn over to the Agency all Deliverables not previously delivered to the Agency, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors, or affiliates, without the prior written consent of the Agency.

2.10.2 Waiver. To the extent any of the Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, the Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

2.10.3 Further Assurances. At the Agency's request, the Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect, or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 2.10, *Intellectual Property*.

2.10.4 Publications. Prior to completion of all services required by this Contract, the Contractor shall not publish in any format any final or interim report, document, form, or other material developed as a result of this Contract without the express written consent of the Agency. Upon completion of all services



required by this Contract, the Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Agency has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.

2.11 Warranties.

2.11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.

Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables 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 that arise through the 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 Deliverables provided by the Contractor. With the exception of Subsection 2.11.3, the provisions of this section apply during the term of this Contract.

2.11.2 Contractor represents and warrants that:

2.11.2.1 All Deliverables shall be wholly original with and prepared solely by the Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits,

licenses, and other rights assigned, granted, or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party;

2.11.2.2 The Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and

2.11.2.3 The Agency shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.

2.11.3 The Contractor represents and warrants that:

2.11.3.1 The Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and

2.11.3.2 The Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. The Contractor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. The Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a



claim or cause of action arises or is likely to arise, then the Contractor shall, at the Agency's request and at the Contractor's sole expense:

- Procure for the Agency the right or license to continue to use the Deliverable at issue;
- Replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation;
- Modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation; or
- Accept the return of the Deliverable at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency with respect to such Deliverable. In addition, the Contractor agrees to indemnify, defend, protect, and hold harmless the State and its officers, directors, employees, officials, and agents as provided in the Indemnification Section of this Contract, including for any breach of the representations and warranties made by the Contractor in this section.

The warranty provided in this Section 2.11.3 shall be perpetual, shall not be subject to the contractual Warranty Period, and shall survive termination of this Contract. The foregoing remedies provided in this subsection shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

2.11.4 The Contractor represents and warrants that the Deliverables shall:

- 2.11.4.1** Be free from material Deficiencies; and
- 2.11.4.2** Meet, conform to, and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contract. During the Warranty Period the Contractor shall, at its expense, repair, correct or replace any

Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) Business Days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event the Contractor is unable to repair, correct, or replace such Deliverable to the Agency's satisfaction, the Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. The Contractor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverables may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

2.11.5 The Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable Specification shall be the



generally accepted industry standard. So long as the Agency notifies the Contractor of any services performed in violation of this standard, the Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse the Agency any fees or compensation paid to the Contractor for the unsatisfactory services.

2.11.6 The Contractor represents and warrants that the Deliverables will comply with all Applicable Law.

2.11.7 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.

2.12 Acceptance of Deliverables.

2.12.1 Acceptance of Written Deliverables. For the purposes of this section, written Deliverables means documents including, but not limited to project plans, planning documents, reports, or instructional materials (“Written Deliverables”). Although the Agency determines what Written Deliverables are subject to formal Acceptance, this section generally does not apply to routine progress or financial reports. Absent more specific Acceptance Criteria in the Special Terms, following delivery of any Written Deliverable pursuant to the Contract, the Agency will notify the Contractor whether or not the Deliverable meets contractual specifications and requirements. Written Deliverables shall not be considered accepted by the Agency, nor does the Agency have an obligation to pay for such Deliverables, unless and until the Agency has

notified the Contractor of the Agency’s Final Acceptance of the Written Deliverables. In all cases, any statements included in such Written Deliverables that alter or conflict with any contractual requirements shall in no way be considered as changing the contractual requirements unless and until the parties formally amend the Contract.

2.12.2. Reserved. (Acceptance of Software Deliverables)

2.12.3 Notice of Acceptance and Future Deficiencies. The Contractor’s receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable shall not be construed as a waiver of any of the Agency’s rights to enforce the terms of this Contract or require performance in the event the Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable.

2.13 Contract Administration.

2.13.1 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 or any agency, division, or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

2.13.2 Incorporation of Documents. To the extent this Contract arises out of a Solicitation, the parties acknowledge that the Contract consists of these contract terms and conditions



as well as the Solicitation and the Bid Proposal. The Solicitation and the Bid Proposal are incorporated into the Contract by reference. If the Contractor proposed exceptions or modifications to the Sample Contract attached to the Solicitation or to the Solicitation itself, these proposed exceptions or modifications shall not be incorporated into this Contract unless expressly set forth herein. If there is a conflict between the Contract, the Solicitation, and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Solicitation; (3) the Bid Proposal.

2.13.3 Intent of References to Bid Documents.

To the extent this Contract arises out of a Solicitation, the references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the Solicitation and the Bid Proposal. The failure of the parties to make reference to the terms of the Solicitation or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the Solicitation and the Contractor's Bid Proposal. Terms offered in the Bid Proposal, which exceed the requirements of the Solicitation, shall not be construed as creating an inconsistency or conflict with the Solicitation or the Contract. The contractual obligations of the Agency are expressly stated in this document. The Bid Proposal does not create any express or implied obligations of the Agency.

2.13.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply at all times with all Applicable Law. All such Applicable Law is incorporated into this Contract as of the effective date of the Applicable Law. The

Contractor and Agency expressly reject any proposition that future changes to Applicable Law are inapplicable to this Contract and the Contractor's provision of Deliverables and/or performance in accordance with this Contract. When providing Deliverables pursuant to this Contract the Contractor, its employees, agents, and subcontractors shall comply with all Applicable Law.

2.13.4.1 The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by Applicable Law. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients as required under 11 Iowa Admin. Code chapter 121.

2.13.4.2 In the event the Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in Section 2.13.9, the Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this Section 2.13.4.

2.13.4.3 Notwithstanding anything in this Contract to the contrary, the Contractor's failure to fulfill any requirement set forth in this Section 2.13.4 shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend in whole or in part this Contract. The State may further declare the Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

2.13.4.4 The Contractor, its employees, agents, and subcontractors shall also comply with all Applicable Law regarding business permits and



licenses that may be required to carry out the work performed under this Contract.

2.13.4.5 If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

2.13.5 Procurement. The Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

2.13.6 Non-Exclusive Rights. This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the entire term of this Contract, which includes any extensions or renewals thereof.

2.13.7 Amendments. This Contract may only be amended by mutual written consent of the parties, with the exception of (1) the Contract end date, which may be extended under the Agency's sole discretion, and (2) the Business Associate Agreement, which may be modified or replaced on notice pursuant to Section 1.5, *Business Associate Agreement*. Amendments shall be executed on a form approved by the Agency that expressly states the intent of the parties to amend this Contract. This Contract shall not be amended in any way by use of terms and conditions in an Invoice or other ancillary transactional document. To the extent

that language in a transactional document conflicts with the terms of this Contract, the terms of this Contract shall control.

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

2.13.9 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. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations, and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

2.13.10 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 conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. 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.

2.13.11 Assignment and Delegation. The Contractor may not assign, transfer, or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

2.13.12 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.

2.13.13 No Drafter. No party to this Contract shall be considered the drafter of this Contract for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

2.13.14 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.

2.13.15 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. 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.

2.13.16 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, for any default of activities and obligations, and for any fiscal liabilities.

2.13.17 Supersedes Former Contracts or Agreements. This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.

2.13.18 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.

2.13.19 Notice. With the exception of the Business Associate Agreement, as set forth in Section 1.5, *Business Associate Agreement*, any notices required by the Contract 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's Contract Manager. 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.

Each such notice shall be deemed to have been provided:

- At the time it is actually received in the case of hand delivery;



- Within one (1) day in the case of overnight delivery, courier or services such as Federal Express with guaranteed next-day delivery; or
- Within five (5) days after it is deposited in the U.S. Mail.

2.13.20 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.

2.13.21 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.

2.13.22 Time is of the Essence. Time is of the essence with respect to the Contractor's performance of the terms of this Contract. The Contractor shall ensure that all personnel providing Deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.

2.13.23 Authorization. The Contractor represents and warrants that:

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

2.13.23.2 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.

2.13.24 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.

2.13.25 Records Retention and Access.

2.13.25.1 Financial Records. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency during the entire term of this Contract, which includes any extensions or renewals thereof, and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State of Iowa or any other 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. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and



expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

2.13.25.1.1 Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third-party in-kind (property or service) contributions, these funds must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

2.13.25.1.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

2.13.25.1.3 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

2.13.25.1.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring, and evaluating its program.

2.13.25.2 The Contractor shall retain all non-medical and medical client records for a period of seven (7) years from the last date of service

for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9).

2.13.26 Audits. Local governments and non-profit subrecipient entities that expend \$750,000 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 the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200. 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 subrecipient 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 the OMNI Circular, Section 200.330, Subrecipient and Contractor Determinations for a discussion of subrecipient versus contractor (vendor) relationships. The Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within two (2) Business Days following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

2.13.27 Reimbursement of Audit Costs. If the Auditor of the State of Iowa notifies the Agency of an issue or finding involving the Contractor's noncompliance with laws, rules, regulations, and/or contractual agreements governing the



funds distributed under this Contract, the Contractor shall bear the cost of the Auditor's review and any subsequent assistance provided by the Auditor to determine compliance. The Contractor shall reimburse the Agency for any costs the Agency pays to the Auditor for such review or audit.

2.13.28 Staff Qualifications and Background Checks. The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors, or anyone acting for or on behalf of the Contractor, are properly licensed, certified, or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified, or accredited under state law or the Iowa Administrative Code.

The Agency reserves the right to conduct and/or request the disclosure of criminal history and other background investigation of the Contractor, its officers, directors, shareholders, and the Contractor's staff, agents, or subcontractors retained by the Contractor for the performance of Contract services.

2.13.29 Solicitation. The Contractor represents and 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.

2.13.30 Obligations Beyond Contract Term. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the expiration or termination of this Contract. Contract sections that survive include, but are not necessarily limited to, the following: (1)

Section 2.4.2, *Erroneous Payments and Credits*; (2) Section 2.5.5, *Limitation of the State's Payment Obligations*; (3) Section 2.5.6, *Contractor's Contract Close-Out Duties*; (4) Section 2.7, *Indemnification*, and all subparts thereof; (5) Section 2.9, *Ownership and Security of Agency Information*, and all subparts thereof; (6) Section 2.10, *Intellectual Property*, and all subparts thereof; (7) Section 2.13.10, *Choice of Law and Forum*; (8) Section 2.13.16, *Joint and Several Liability*; (9) Section 2.13.20, *Cumulative Rights*; (10) Section 2.13.24 *Successors In Interest*; (11) Section 2.13.25, *Records Retention and Access*, and all subparts thereof; (12) Section 2.13.26, *Audits*; (13) Section 2.13.27, *Reimbursement of Audit Costs*; (14) Section 2.13.35, *Repayment Obligation*; and (15) Section 2.13.39, *Use of Name or Intellectual Property*.

2.13.31 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.

2.13.32 Delays or Potential Delays of Performance. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this Contract, including but not limited to potential labor disputes, the Contractor shall immediately give notice thereof in writing to the Agency with all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Agency or the State of any rights or remedies to which either is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.



Furthermore, the Contractor will not be excused from failure to perform that is due to a Force Majeure unless and until the Contractor provides notice pursuant to this provision.

2.13.33 Delays or Impossibility of Performance Based on a Force Majeure. Neither party shall be in default under the Contract if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a Force Majeure. If a 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 the Contract unless the subcontractor or supplier is prevented from timely performance by a Force Majeure as defined in this Contract.

If a Force Majeure delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency.

The party seeking to exercise this provision and not perform or delay performance pursuant to a Force Majeure shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

2.13.34 Right to Address the Board of Directors or Other Managing Entity. The Agency reserves the right to address the Contractor's board of directors or other managing entity of the

Contractor regarding performance, expenditures, and any other issue the Agency deems appropriate.

2.13.35 Repayment Obligation. In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

2.13.36 Reporting Requirements. If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

2.13.37 Immunity from Liability. Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from the Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

2.13.38 Public Records. The laws of the State require procurement and contract records to be made public unless otherwise provided by law.

2.13.39 Use of Name or Intellectual Property. The Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial



advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

2.13.40 Taxes. The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on the Contractor's employees' wages. The State is exempt from State and local sales and use taxes on the Deliverables.

2.13.41 No Minimums Guaranteed. The Contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

2.14 Contract Certifications. The Contractor will fully comply with obligations herein. If any conditions within these certifications change, the Contractor will provide written notice to the Agency within twenty-four (24) hours from the date of discovery.

2.14.1 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 or 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 Deliverables 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 Women, Infants, and Children (WIC) coupons are redeemed.

The Contractor further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees 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 \$1,000.00 per day.

2.14.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

By signing this Contract, the Contractor is providing the certification set out below:

2.14.2.1 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 Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2.14.2.2 The Contractor shall provide immediate written notice to the Agency if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

2.14.2.3 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. Contact the Agency for



assistance in obtaining a copy of those regulations.

2.14.2.4 The Contractor agrees by signing this Contract 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 Agency or agency with which this transaction originated.

2.14.2.5 The Contractor further agrees by signing this Contract 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.

2.14.2.6 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 Nonprocurement Programs.

2.14.2.7 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.

2.14.2.8 Except for transactions authorized under Section 2.14.2.4 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 Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2.14.2.9 The Contractor certifies, by signing this Contract, 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.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Contract.

2.14.3 Certification Regarding Lobbying. The Contractor certifies, to the best of his or her knowledge and belief, that:

2.14.3.1 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.

2.14.3.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.

2.14.3.3 The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients 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 \$10,000.00 and not more than \$100,000.00 for each such failure.

2.14.4 Certification Regarding Drug Free Workplace

2.14.4.1 Requirements for Contractors Who are Not Individuals. If the Contractor is not an individual, the Contractor agrees to provide a drug-free workplace by:

2.14.4.1.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the

actions that will be taken against employees for violations of such prohibition;

2.14.4.1.2 Establishing a drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
- The Contractor's policy of maintaining a drug-free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations;

2.14.4.1.3 Making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by Subsection 2.14.4.1.1;

2.14.4.1.4 Notifying the employee in the statement required by Subsection 2.14.4.1.1 that as a condition of employment on such contract, the employee will:

- Abide by the terms of the statement; and
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

2.14.4.1.5 Notifying the contracting agency within ten (10) days after receiving notice under the second unnumbered bullet of Subsection 2.14.4.1.4 from an employee or otherwise receiving actual notice of such conviction;

2.14.4.1.6 Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 703; and

2.14.4.1.7 Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

2.14.4.2 Requirement for Individuals. If the Contractor is an individual, by signing the Contract, the Contractor agrees not to engage in the unlawful manufacture, distribution,



dispensation, possession, or use of a controlled substance in the performance of the Contract.

2.14.4.3 Notification Requirement. The Contractor shall, within thirty (30) days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 701(a)(1)(D)(ii) or 41 U.S.C. § 702(a)(1)(D)(ii):

2.14.4.3.1 Take appropriate personnel action against such employee up to and including termination; or

2.14.4.3.2 Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

2.14.5 Conflict of Interest. The Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer, or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code chapter 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

2.14.6 Certification Regarding Sales and Use Tax. By executing this Contract, the Contractor certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code § 423.1(42) and (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

2.14.7 Certification Regarding Iowa Code Chapter 8F. If the Contractor is or becomes subject to Iowa Code chapter 8F during the entire term of this Contract, which includes any extensions or renewals thereof, the Contractor shall comply with the following:

2.14.7.1 As a condition of entering into this Contract, the Contractor shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.

2.14.7.2 The Contractor agrees that it will provide the information described in this section to the Agency or the Legislative Services Agency upon request. The Contractor shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.

2.14.7.3 Pursuant to Iowa Code § 8F.4, the Contractor shall file an annual report with the Agency and the Legislative Services Agency within ten (10) months following the end of the Contractor’s fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:



2.14.7.3.1 Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

2.14.7.3.2 Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted services.

2.14.7.3.3 Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the Contractor covering the preceding year.

2.14.7.3.4 Corrective action taken or planned by the Contractor in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

2.14.7.3.5 Any changes in the information submitted in accordance with Iowa Code §8F.3

2.14.7.3.6 A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.

2.14.7.3.7 In addition, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

State of Iowa Contract Terms

Section 2. GENERAL TERMS FOR SERVICES CONTRACTS

Form Date 1/21/16



MAINE RIDER B
PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT: \$**

2. **INVOICES AND PAYMENT:**

3. **BENEFITS AND DEDUCTIONS.** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY.** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider, shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE.** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR.** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name and Title:
Address:
Telephone:
E-mail Address:

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

The following is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement.

Name and Title:



Address:
Telephone:
E-mail Address:

7. **CHANGES IN THE WORK**. The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS**. Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER**. The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY**. During the performance of this Agreement, the Provider agrees as follows:

- a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.



- b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
- c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Providers and subcontractors with Agreements in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. EMPLOYMENT AND PERSONNEL. The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 M.R.S.A. § 18 or 17 M.R.S.A. § 3104. The Provider shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. STATE EMPLOYEES NOT TO BENEFIT. No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 M.R.S.A. § 18 or 17 M.R.S.A. § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to



any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY.** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS.** As a condition of accepting an Agreement for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Agreement as public records under the freedom of access laws to the same extent as if the work were performed directly by the Department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Agreement and information concerning employee and Agreement oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION.** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to



compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS.** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS.** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, without limitation, the following: (i) claims suffered or incurred by any Provider, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS.** The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed that is related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL.** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE.** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy



includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991, may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY.** The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION.** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in the Exceptions Rider), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE.** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.



27. **ENTIRE AGREEMENT.** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties, which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

Maine Rider B
DHHS Version 2015.3



Appendix C2: State of Maine Business Associate Agreement

Maine Department of Health and Human Services

Business Associate Agreement

This Business Associate Agreement (“Agreement”) is made this ___ day of _____, 20___ (the “Effective Date”) by and between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the “Department”) and _____ (“Business Associate”), together (the “Parties”); and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, “PHI”) on behalf of the Department in connection with Business Associate’s performance of its obligations under the following agreement between the parties:

_____ dated _____, 20___ (the “Underlying Agreement”); and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department’s PHI as required by law, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or “HIPAA Rules”) as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the “HIPAA and HITECH Rules”); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the parties agree as follows:

Specific Definitions for the Purpose of this Agreement:

Breach means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such PHI. A security or privacy incident that involves PHI is presumed to be a breach requiring notification unless the Department proves, through specific risk analysis steps, that there is a low probability that the PHI was compromised or a) the incident



does not involved unsecured PHI, or b) the incident falls into another exception or safe harbor as set forth in the HIPAA and HITECH Rules.

Business Associate is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other than in the capacity of a workforce member.

Covered Entity is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

Designated Record Set means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

Individual means the person who is the subject of the PHI.

Protected Health Information means information that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and is transmitted or maintained in electronic or any other form or medium.

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system.

Subcontractor means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

Unsecured Protected Health Information means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services (“HHS”) in its guidance.

General Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.



1. Permitted Uses and Disclosures

- a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.
- b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that the confidentiality, privacy or security of the information has been actually or potentially breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

2. Obligations and Activities of the Business Associate

- a. *Compliance.* Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.
- b. *Safeguards.* In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.
- c. *Reporting.* Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected breaches of unsecured PHI, and any actual or potential security incident of which it becomes aware. Such report will be made to the



Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected incident or breach. In the event that a breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.

- d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, terms and conditions that apply to Business Associate under this Agreement.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.
- f. *Accounting of Disclosures.* To the extent required by the terms of this Agreement, Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department's obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual's request within 5 (five) business days of the request.
- h. *Amendment.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.



- i. *Restrictions.* Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.
- j. *Audit by the Department or the HHS Secretary.* The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.
- k. *Other Obligations:* To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation;

3. Obligations of the Department

- a. The Department shall notify Business Associate of a) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department.
- b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

4. Hold Harmless

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

5. Term of Agreement

- a. *Term.* This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for



cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.

- b. *Auto-renewal.* In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.
- c. *Termination for Cause.* Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:
 - i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and
 - ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.
- d. *Obligations of the Business Associate upon Termination.* Upon termination of this Agreement for any reason, Business Associate, shall
 - i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no copies in any format. Business Associate shall ensure that its Subcontractors do the same.
 - ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.
 - iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.



- iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement.

6. Qualified Service Organization Agreement

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

7. Survival of Business Associate Obligations

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

8. Miscellaneous

- a. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.
- b. *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without bond or other security being required and without the necessity of demonstrating actual damages.
- c. *Interpretation.* Any ambiguity in this Agreement shall be resolved to ensure that the Department is in compliance with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.
- d. *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.



IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

	Department		Business Associate
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	Chief Operating Officer	Title:	_____
Date:	_____	Date:	_____

State of Maine
Department of Health and Human Services
Business Associate Agreement



RESPONSE TEMPLATES

These are the templates that bidders **must** use to provide the responses and information required in Sections II, III, and V. The Template alpha/numeric identifiers indicate the RFP sections/subsections to which they apply.

SECTION II INFORMATION REQUIRED FROM BIDDERS

- TEMPLATE for Subsection II-A: TRANSMITTAL LETTER
- TEMPLATE for Subsection II-B: BUSINESS ORGANIZATIONS AND LOCATIONS
- TEMPLATE for Subsection II-C: BUSINESS AFFILIATIONS
- TEMPLATE for Subsection II-D: RELEVANT EXPERIENCE AND REFERENCES
- TEMPLATE for Subsection II-E: CONTRACTOR ORGANIZATION AND STAFFING
- TEMPLATE for Subsection II-F: METHODOLOGY AND APPROACH
- TEMPLATE for Subsection II-G: COST PROPOSAL

SECTION III WORK STATEMENT

- TEMPLATE for Subsection III-B: SUPPORT FOR THE MAINTENANCE/DEVELOPMENT, REVIEW, AND EXECUTION OF THE SSDC'S MEMORANDUM OF UNDERSTANDING (MOU) INCLUDING ANNUAL RENEWALS
- TEMPLATE for Subsection III-C: OVERSIGHT OF THE SSDC REBATE CORE COLLECTIVE SERVICES CONTRACT
- TEMPLATE for Subsection III-D: OVERSIGHT OF ANY OTHER CONTRACTS THAT THE SSDC MEMBER STATES MAY COLLECTIVELY REQUEST IN THE TERM OF THE SUPPORT SERVICES CONTRACT
- TEMPLATE for Subsection III-E: INCORPORATION AND COORDINATION OF MEMBER STATE REQUESTED SERVICES IN ANY EXECUTED SSDC CONTRACT(S)
- TEMPLATE for Subsection III-F: ASSISTANCE TO MEMBER STATES IN THE DEVELOPMENT OF SSDC SPECIFIC INDIVIDUAL STATE PLAN AMENDMENTS (SPAs) INCLUDING ANY CMS NEGOTIATIONS
- TEMPLATE for Subsection III-G: ASSISTANCE TO THE STATE OF VERMONT IN THE MANAGEMENT OF MEMBER STATE BILLINGS/PAYMENTS FOR REBATE COLLECTIVE AND/OR OTHER CONTRACT SERVICES
- TEMPLATE for Subsection III-H: MANAGEMENT ACTIVITIES IN SUPPORT OF THE SSDC
- TEMPLATE for Subsection III-I: ADMINISTRATIVE ACTIVITIES IN SUPPORT OF THE SSDC
- TEMPLATE for Subsection III-J: STAFFING AND TIME REQUIREMENTS
- TEMPLATE for Subsection III-K: POST IMPLEMENTATION
- TEMPLATE for Subsection III-L: DISASTER RECOVERY
- TEMPLATE for Subsection III-M: END OF CONTRACT TRANSITION PLAN
- TEMPLATE for Subsection III-N: PERFORMANCE STANDARDS

SECTION V CONTRACT TERMS AND CONDITIONS

- TEMPLATE for Subsection V-J: PENALTIES/LIQUIDATED DAMAGES FOR PERFORMANCE STANDARDS' FAILURES

