



**Sovereign
States
Drug
Consortium**

REQUEST-FOR-PROPOSALS

- FOR -

SERVICES TO PROCURE MEDICAID SUPPLEMENTAL DRUG REBATE BIDS

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

*Date of Issuance: Monday, April 30, 2007
Proposal Due Date: Friday, May 25, 2007*

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INTRODUCTION

The State of Vermont, Office of Vermont Health Access (OVHA) is issuing this Request-For-Proposal (RFP) on behalf of the Sovereign States Drug Consortium (SSDC) for services to solicit, negotiate, and procure Medicaid supplemental drug rebate bids on behalf of the states that are members of the SSDC. The document contains the following sections:

Background: This section 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 and Issuing Office: 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 the format and nature of the information they must provide in a proposal.

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 important portion of the RFP. Bidders shall use this section as a guideline for responding to the information required from Bidders identified in Section II.

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 contractual terms and conditions that shall be a part of any contract that results from this RFP.

Acronyms, Definitions, and Terms: Those used in the RFP are located at the end of this RFP.

Appendices: This section includes the appendices for this RFP.

BACKGROUND

History

Like all insurance programs, Medicaid has experienced rapidly rising prescription drug prices in recent years. 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 Center for Medicaid and State Operations (CMSO) of 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 OBRA 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 OBRA rebates.

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 present a large market in securing rebates.

The first pool was administered on behalf of its Member States by the pharmacy benefit administrator (PBA) that each state was using, 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 a pool administered by the PBA for its Member States, Provider Synergies.

In the fall of 2005, the states of Iowa, Maine, and Vermont concluded that they wished to form a state administered multi-state pooling arrangement, the Sovereign States Drug Consortium (SSDC). Unlike existing approved pools, the SSDC is state administered. The SSDC is not dependent on a single pharmacy benefit administrator but rather each member uses their internal and contractual resources to support their participation. Any state can potentially participate. Other states have expressed an interest in joining the SSDC and it is anticipated that membership will grow in time.

Supplemental Drug Rebate Activities

The SSDC Member States believe that components of their supplemental drug rebate program could be broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for presentation to manufacturers as part of the annual bid procurement.
- Rebate bid solicitation: Communication with manufacturers to obtain bids and the provision of the vehicle(s) for manufacturers to submit bids.
- Bid presentation: Compilation of offered bids for state review.
- Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
- Rebate bid negotiation: Negotiation that may occur at the request of a state or states after bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notification to manufacturer.
- General collective administrative functions: Including but not limited to 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 management.
- Contract finalization: Execution of contracts using each state's 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 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.

The SSDC believes that the **sole collective services** shared by Member States are supplemental drug rebate bid procurement and the services necessary to support them. These are:

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

While extensive interaction and collaboration with all parties in all activities is necessary, all other components, other than the listed collective services, are the responsibility of the individual Member States and their internal and contractual resources working independently and/or coordinating with other Member States and their resources.

SSDC RFP Objectives

The SSDC's primary objective in issuing this RFP is to secure a contractor to provide the six Medicaid supplemental drug rebate bid procurement services identified above while assuring the ability to interact and collaborate with Member States and their resources.

For calendar year 2006, its first year of operations, the SSDC secured agreements in an expedited time frame. Bids were solicited in November 2005 for contracts effective January 1, 2006. To meet that target date the SSDC opted to use Goold Health Systems (GHS), the pharmacy benefit administrator (PBA) for Iowa and Maine, for bid procurement services. All other activities were the responsibilities of Iowa and Maine staff using GHS' services and Vermont staff using the services of their PBA, MedMetrics Health Partners.

Iowa, Maine, and Vermont received approval letters from the Centers for Medicare and Medicaid Services (CMS) for participation in the SSDC in July of 2006. Maine required a bid review by September 2006 and Iowa required one by October 2006 to meet their administrative time frames to execute changes to their PDLs for calendar year 2007. As a result, the SSDC used GHS for bid procurement service in its second year of operation.

For calendar year 2008 and after, the SSDC wishes to secure a contractor competitively procured for the sole purpose of providing Medicaid supplemental drug rebate bid procurement services on behalf of the SSDC.

Covered Medicaid Lives and Drug Spend for Current SSDC Members Post Part D Implementation

	Time Period	Iowa	Maine	Vermont
Average monthly eligibility	July-Dec 2005	337,534	278,882	128,859
	Jan-June 2006	352,675	279,663	118,499
Paid amount	July-Dec 2005	\$217,249,216	\$156,037,163	\$97,067,106
	Jan-June 2006	\$124,623,107	\$97,977,931	\$54,141,169

Related Components Other Than Specific Medicaid Supplemental Drug Rebate Bid Procurement Services

The SSDC is not seeking services for supplemental drug rebate activity components other than the six specifically listed Medicaid supplemental drug rebate bid procurement services. However, any bidder may enumerate other services that may be available should existing or future Member States wish to pursue securing these services under their state specific contract procurement requirements. These additional services will not be considered in making the final decision on this RFP.

Should the Bidder offer these other supplemental drug rebate services, they should provide general information on the services in sufficient detail to provide the states with an understanding of what is offered, when it is offered, how it would be provided, and an estimation

of approximate costs. Proposals for these additional services should be provided as a separate document. These proposals will be retained by the SSDC as an inventory of options available to Member States.

Use of the Term "SSDC"

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

Designation of the SSDC'S Agent

The SSDC Member States have designated the State of Vermont, Office of Vermont Health Access (OVHA) as its agent in this procurement. OVHA is releasing this RFP.

Use of the Term "OVHA"

The term "OVHA" is used throughout this RFP. OVHA, the Office of Vermont Health Access, is an office 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 "OVHA" is used here to identify the entity in the State of Vermont that will be managing this procurement and its resulting contract.

SSDC Contract Agent

OVHA is the contract agent for the SSDC for the term of the contract specified in this RFP. At the point of release this RFP incorporates all the requirements necessary for the Member States of Iowa, Maine, and Vermont.

With OVHA 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 - 2006 Revision found at www.adm.state.vt.us/pdf/Bulletin-3.5-12-29-06.pdf State of Vermont contracting requirements particularly related can be found in Appendix A1-A4.

It is also in compliance with unique provisions of the contracting requirements of the states of Iowa and Maine as found in Appendices B and C respectively. A particular variation is that while 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) Iowa requires the same for a period of five years.

It is envisioned that by meeting the contracting procedures and provisions of the states of Iowa, Maine, and Vermont that other states may participate through a memorandum of understanding, an intergovernmental agreement, and/or other arrangements with OVHA, as the SSDC's contract agent, with little or no need for contract amendment. As noted below, bidders are asked to bid with the assumption that additional states may be added in the future.

SSDC Responsibilities in Contractor Selection

All Member States of the SSDC 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 bids from qualified contractors, one of which will be selected to be responsible for Medicaid supplemental drug rebate bid procurement services for the SSDC 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 II-H, Price 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 without any 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 price and technical 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, Office of Vermont Health Access (OVHA) 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.

Procurement or Issuing Officer

Ann Rugg
Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: 802-879-5911
E-mail: ann.rugg@ahs.state.vt.us

Alternate Procurement or Issuing Officer

Deborah Stempel, Contracts Administrator
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: (802) 879-5926
E-mail: deborah.stempel@ahs.state.vt.us

Please note that nothing within this requirement shall be interpreted to prevent the bidder from contacting OVHA 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, Office 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 all subsequent mailings related to the RFP, including answers to written questions submitted to the State and/or RFP amendments. Letters of intent will be received until 4:00 p.m. (EST) on **Monday, May 14, 2007**. Those Bidders not submitting a Letter of Intent are **not** permitted to bid on this RFP. Letters of Intent must include the name of the company, the name of the primary contact, the primary contact person's title, a telephone number and a fax number where this individual can be reached, and his/her mailing and e-mail addresses. Letters of Intent should also include an indication of whether or not the Bidder plans to participate in the Bidders' conference. Letters of intent may be mailed, e-mailed or faxed to:

Ann Rugg
Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: 802-879-5911
Fax: 802-879-5962
E-mail: ann.rugg@ahs.state.vt.us

- 3) Written Questions and Answers: Bidders may submit, in writing, programmatic and contractual questions raised by this RFP to:

Ann Rugg
Deputy Director
Office of Vermont Health Access

312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: 802-879-5911
Fax: 802-879-5962
E-mail: ann.rugg@ahs.state.vt.us

Written questions received later than 4:00 p.m. EST, **Monday, May 14, 2007** shall not be answered. OVHA may consolidate and/or paraphrase questions for clarity. The intention is to mail out answers to written questions by Friday, May 18, 2007. The questions can be submitted via fax or e-mail; however, OVHA assumes no liability for assuring accurate/complete fax/e-mail transmission/receipt and will not acknowledge receipt except by addressing the question.

- 4) Bidders' Conference: Bidders will have the opportunity to ask additional questions orally at the Conference. The Conference will be conducted by teleconference though interested bidders may attend in person if they wish. OVHA and Member States will make a reasonable attempt to answer questions. A written summary of the Conference, and answers to questions raised at the Conference will be sent to all potential Bidders who submitted a letter of intent, whether in attendance at the Conference or not. The State intends to mail out answers and the conference summary by Friday, May 18, 2007. Oral answers given at the conference will not be binding on OVHA. Participation in the Conference is strongly recommended, but it is not required. The Bidders who opt to attend are responsible for all costs associated with attending the Bidder's Conference.

The conference will be held:

Date: Friday, May 11, 2007
Time: 10 a.m. to 12 noon
Location: Conference Room, Office of Vermont Health Access
312 Hurricane Lane, Williston, VT
Teleconference number: 877-278-8686, Participant PIN 792635

Any bidder interested in providing information on supplemental drug rebate activity components other than the six specific Medicaid supplemental drug rebate procurement services subject to this procurement should submit them to:

Ann Rugg
Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: 802-879-5911
Fax: 802-879-5962
E-mail: ann.rugg@ahs.state.vt.us

I-B PROCUREMENT PROCESS

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 within Iowa, Maine, and Vermont 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 not be accepted and will be returned to the sender unopened.** Delivery of the proposals shall be at the Bidder's expense. The time of receipt at the designated office is the time-date stamp on the proposal wrapper or other documentation of receipt maintained by OVHA. OVHA 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 Technical/Programmatic Proposal and each Cost Proposal shall be enclosed in a separately sealed envelope or package.

The original and ten (10) paper copies of the Programmatic/Technical Proposal must be submitted under sealed cover and labeled on the outside as follows:

“SSDC MEDICAID SUPPLEMENTAL DRUG REBATE BID PROCUREMENT SERVICES PROGRAMMATIC/TECHNICAL PROPOSAL”

The original and ten (10) paper copies of the Cost Proposal must be submitted under separate sealed cover and labeled on the outside as follows:

“SSDC MEDICAID SUPPLEMENTAL DRUG REBATE BID PROCUREMENT SERVICES COST PROPOSAL”

One copy of each proposal shall be signed by an official authorized to legally bind the Contractor, and shall be marked:

“ORIGINAL”

The Programmatic/Technical Proposal must not contain any mention of the dollar amounts in the Cost Proposal. However, information such as labor hours and categories, materials, subcontracts, and so forth, shall be contained in the Programmatic/Technical Proposal so that the Contractor's understanding of the scope of the work may be evaluated. The Technical Proposal shall disclose the Contractor's technical approach in as much detail as possible, including, but not limited to, the information required by the Programmatic/Technical Proposal instructions.

The face of the package containing the original and copies, whether mailed or hand-delivered, shall bear the following legend:

“SSDC MEDICAID SUPPLEMENTAL DRUG REBATE BID PROCUREMENT SERVICES – CONFIDENTIAL – OPEN BY ADDRESSEE ONLY.”

A copy of the entire proposal must also be submitted in an electronic format. One CD should include the entire proposal (including the Technical/Programmatic proposal), but not the Cost Proposal. The Cost Proposal must be submitted on a separate CD. The CDs should use Microsoft Word and Excel as appropriate. The Technical/Programmatic Proposal should be as brief and concise as is possible. The Scope of Work Section should be as succinct as possible. It is requested that this be no more than twenty-five (25) pages, plus any attachments. Responses that are unduly lengthy or verbose will be scored less favorably than will those that are brief and concise. Bidders must use 12-point font, and line spacing must be 1.5. Any financial information provided on spreadsheets must be provided in Excel.

The format and content requirements for the Technical/Programmatic and Cost Proposals must adhere to the instructions contained in this section of the RFP. Failure to respond to a specific requirement may be used as a basis for rejection of the proposal from further consideration, or result in a score of zero or a fail for a particular item. Emphasis should be placed on conformance to the RFP instructions, responsiveness to requirements, and completeness and clarity of content. Elaborate proposals are neither necessary nor desired. If the Contractor’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. Bidders shall not include any personal use items with the bid.

Each proposal part (Technical/Programmatic and Cost) must be bound separately on standard 8 ½” by 11” paper, except that charts, diagrams, and the like may be on fold-outs which, when folded, fit into the 8 ½” by 11” format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

All proposals must be delivered no later than 4:00 p.m. EST on **Friday, May 25, 2007**, and only to the address below. At 4:30 p.m. the same day, there will be a public bid opening also at the address cited below. The public bid opening will be administered by two employees of the Office of Vermont Health Access. Note that only the names and addresses of Bidders shall be read at the public bid opening.

Deliver to:

**Ann Rugg
Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495**

Telephone: 802-879-5911
Fax: 802-879-5962
E-mail: ann.rugg@ahs.state.vt.us

IMPORTANT NOTE: Do not send proposals by U.S. mail as the Williston Post Office will not deliver packages to the OVHA location.

I-C PROPOSAL WITHDRAWAL

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal signed by the Bidder's authorized agent and sent to Ann Rugg, at the Office of Vermont Health Access, at the address cited in Subsection 3 of I-B.

I-D ACCEPTANCE OF PROPOSALS

OVHA 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, Office 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 OVHA. Any proposal submitted shall not be available for disclosure until a contract is executed between the successful bidder and OVHA 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 may be requested to provide demonstrations of their proposed systems as part of their presentations.

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

I-F SITE VISITS

While it is not anticipated that site visits will be necessary, at the SSDC's option, a site visit may be requested for the purpose of reviewing the Bidder's organizational structure, subcontracts, operations, policy and procedures, and any other aspect of the proposal that directly affects the provisions of the RFP/Contract. Any Bidder costs incidental to the site visit shall be borne by the Bidder.

A readiness review may also be conducted on-site at the selected Contractor's facilities following execution and implementation of the Contract.

I-G 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-H 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-I 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
<ul style="list-style-type: none">▪ Release of RFP▪ Bidders' Library Available	Monday, April 30, 2007
<ul style="list-style-type: none">▪ Web Postings▪ Member State Press Advertisements	Monday, April 30, 2007 – Monday, May 14, 2007
<ul style="list-style-type: none">▪ Letter of intent to Bid Due from Bidders (required)▪ Written Question Deadline	Monday, May 14, 2007, 4:00 pm
<ul style="list-style-type: none">▪ Bidder Conference	Friday, May 11, 2007, 10 a.m. to 12 noon
<ul style="list-style-type: none">▪ State Response to Q&A	Friday, May 18, 2007
<ul style="list-style-type: none">▪ Due Date for Submission of Proposals	Friday, May 25, 2007, 4:00 PM
<ul style="list-style-type: none">▪ Expected Date of Selection of Contractor	Friday, June 8, 2007
<ul style="list-style-type: none">▪ Negotiation and Execution of Contract	Friday, June 8, 2007 – Wednesday, August 1, 2007

▪ Conversion of Services Period	Wednesday, August 1, 2007 – Monday, December 31, 2007
▪ Beginning Date for New Contractor	August 1, 2007
▪ Effective Date of New Manufacturer Agreements	January 1, 2008

I-J 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 except during the Bidders' conference. **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 may be mailed, e-mailed, or faxed by the deadlines included herein to:

Ann Rugg, Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Fax: 802-879-5962
E-mail: ann.rugg@ahs.state.vt.us

Violation of this restriction may result in disqualification of the Bidder's proposal. The only *exceptions* to these restrictions are:

- Member State staff and/or Bidder's staff present at the Bidder's Conference for the purpose of addressing questions and
- Member State personnel involved in oral presentations by Bidders (SSDC option).

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

I-K LIBRARY LISTING

The Bidders' Library may be found with this RFP and its Appendices under Requests for Proposals at the home page of the Office of Vermont Health Access at <http://ovha.vermont.gov/>. The following documents are included in the Bidders' Library:

1. CMS Letter, Multi-State Medicaid Supplemental Rebate Pooling Arrangements, September 9, 2004
2. Iowa SSDC CMS Approval Letter
3. Maine SSDC CMS Approval Letter
4. Vermont SSDC CMS Approval Letter
5. Iowa's Preferred Drug List (PDL)
6. Maine's Preferred Drug List (PDL)

7. Vermont's Preferred Drug List (PDL)
8. SSDC request for bids 2007

I-L 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 an official authorized to bind the Offeror to the proposal's provisions. The letter must include a statement that the RFP and contract terms found in the Appendices are accepted. Bidders must also include a statement in the letter certifying that the price was arrived at without any conflict of interest.

A "Bidder information sheet" containing the following information must also accompany the transmittal letter:

- Name of company or individual
- Mailing address
- Street address (for FedEx or other mail delivery service)
- Company Federal ID Number (or if an individual, the bidder's social security number)
- Name and title of the person who would sign the contract
- Name and title of the company contact person (if different)
- For each key person: direct telephone number, fax number and e-mail address.

II-B BUSINESS ORGANIZATION

- State the full name and address of the bidder/bidder organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work described in the bid.
- Indicate whether the bidder operates as an individual, partnership, or corporation; if as a corporation, include the state in which it is incorporated.
- If appropriate, state whether it is licensed to operate in the SSDC states or agrees to be licensed in the event the bidder is selected as the prevailing bidder.
- List all subcontractors: include firm name and address, contact person, and complete description of work to be subcontracted. Include descriptive information concerning subcontractor's organization, abilities, and commitment to the contract period.
- Please provide annual audited financial reports for the past three (3) years for the Bidder and any subcontractor.
- Identify all owners and subsidiaries that own more than five (5) percent of the organization.
- If the Bidder is an affiliate of another organization, submit the financial information for the parent company and describe the relationship.
- Complete the required State of Vermont disclosure statement as found in Appendix A5.

II-C LOCATION

Indicate the site or sites from which the Bidder will perform the relevant tasks embodied in this proposal. It is possible that the Contractor may wish to change the site(s) for some of these tasks during the contract term. Please describe the Bidder time line in this regard if applicable.

Specifically identify where activities will take place.

II-D AFFILIATIONS

Describe all affiliations or ownership relationships with potential suppliers of pharmaceuticals or retail pharmacy services to any state or territory in the United States of America, including:

- Retail pharmacy services
- Mail order pharmacy services
- Drug manufacturing
- Drug distribution

Describe drug rebate activities performed on behalf of any other entity, including but not limited to states, insurers, and hospitals. Identify the entity or entities.

Describe all subcontractor relations that will pertain to work required by this contract. Please indicate whether all appropriate business agreements required by HIPAA are current and available for audit by the State of Vermont.

Explain how the Bidder can assure the SSDC that these relationships will not create a conflict of interest with the SSDC current or potential Member States and that the required State of Vermont disclosure will be met.

Explain how the Bidder can assure the SSDC that manufacturer specific pricing and rebate information obtained in the course of the delivery of SSDC Medicaid supplemental drug rebate bid procurement services will be kept confidential and will not be used in the course of any other activity in which the Bidder is engaged.

II-E RELEVANT EXPERIENCE

The scope of work in this proposal includes drug rebate services. Describe the Bidder's experience in this.

References

Proposals shall include at least two (2) business references that demonstrate the Bidders' prior experience in areas for which services are being offered. Each reference must include the name, address and phone number of the client, organization, and the responsible project administrator familiar with the firm's or organization's performance. Include a description of the services the Bidder is providing to these clients. If the Bidder is presently providing these or similar services

for other states, those references must be included. Additional references will need to be provided if requested by the SSDC.

II-F CONTRACTOR ORGANIZATION AND STAFFING

The Contractor is responsible for providing all resources necessary to deliver the services as specified in this RFP.

II-G 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 a proposed transition and implementation time line following execution of a contract within the proposal submitted.

II-H PRICE/COST PROPOSAL

Please do NOT include cost information in the technical proposal, but only in the price/cost proposal.

Independent Price Determination

1. By submission of a proposal, the Bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a) The prices in the proposal have been 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; and
 - b) Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Bidder and shall not knowingly be disclosed by the Bidder prior to award directly or indirectly to any other Bidder or to any competitor; and
 - c) No attempt has been made or shall be made by the Bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

2. Each person signing the proposal certifies that she/he:
 - a) Is the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and shall not participate) in any action contrary to 1. a., b., and c. above; or
 - b) Is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and shall not participate) in any action contrary to 1. a., b., and c. above.

3. Should a Bidder be awarded a Contract resulting from this RFP, and be found to have failed to abide by the provisions set forth in this Section, said entry shall be in default of the Contract. Consequences may include cancellation of the Contract.

Configuration of the Price/Cost Proposal

- This contract will be a fixed price contract regardless of the number of Member States involved.
- The fixed price will be shared proportionately by member states in quarterly increments.
- The SSDC will offer future Member States a discount in their inaugural year. The discount will depend on the state's period of coverage under the SSDC in the calendar year. The SSDC will expect cost participation on a quarterly basis to be applied beginning in the quarter in which the future Member State dispenses drugs on which SSDC supplemental rebates apply.
- The price quoted is the maximum for a period of four (4) years from the date that the Contract becomes effective. The price quoted shall be effective through the initial two (2) year base Contract period and two (2) extension years.
- The Bidder may propose an accretion fee in addition to the fixed fee to apply as each future Member States joins the SSDC to cover costs for incorporating that state into operations. This accretion fee can only be a one-time charge per additional member.
- The Bidder may propose a price increase or decrease based on added Member States.
- Requests for price changes shall be received in writing at least thirty (30) days prior to their effective date, and are subject to approval by the SSDC before becoming effective. Any price change request must document in full the rationale for the change. In the event new prices are not acceptable, the Contract may be canceled.
- It should be noted that price changes in any given fiscal year are contingent upon approval of the Member States and enactment of Member States' legislative appropriations.

Instructions

The successful bidder will be paid per "type of service". It is expected that the Bidder will propose per "type of service" prices on the identified basis of cost. Please provide the costs by filling in the shaded areas of the price proposal below.

The total of all "type of service" prices over the period of the contract will equal the total proposed contract amount. The Bidder may specify other individual types of services directly related to supplemental drug rebate bid procurement services but must clearly identify on the price proposal what those services are and what the basis of cost would be.

The total of all "type of service" costs submitted by the Bidder must factor in all related costs and overhead.

As indicated, the Bidder may propose discounts or additions to costs based on changes in the number of members in the SSDC. The Bidder may propose an accretion charge as new states become members of the SSDC. If the Bidder proposes discounts or additions to costs or accretion charges, a narrative of the proposal must be attached. The narrative must thoroughly outline the conditions under which this would happen and must enumerate all existing services

that would be affected in proposing the adjustment. In the case of added costs or accretion charges the narrative must enumerate additional services that would be required to justify the additional costs or charges. The outline and enumeration of services must be in sufficient detail for the reviewers to thoroughly understand the proposal.

The Bidder may propose annual inflation rates for years subsequent to the original two-year term of the Contract.

Sovereign States Drug Consortium Medicaid Supplemental Drug Rebate Bid Procurement Services Cost Proposal

<i>Type of Service</i>	<i>Basis of Cost</i>	<i>Proposed Cost</i>	<i>Membership Discount or Added Cost</i>	<i>Membership Level for Discount or Added Cost</i>
Member States' utilization data compilation	Per month cost			
Rebate bid solicitation for annual review and as needed	Per month cost			
Bid presentation at an annual meeting and as needed	Per month cost			
Rebate bid negotiation annually and as needed	Per month cost			
Bid selection notification.	Per month cost			
Administrative functions: general communications (mail, e-mail, fax, and telephone) with participating states, manufacturers, and others	Per month cost			
Administrative functions: notification to manufacturers of changes in Member State participation during agreement year(s)	Per month cost			
Administrative functions: data development, analysis and reporting with standard and decision support capabilities	Per month cost			

<i>Type of Service</i>	<i>Basis of Cost</i>	<i>Proposed Cost</i>	<i>Membership Discount or Added Cost</i>	<i>Membership Level for Discount or Added Cost</i>
Administrative functions: data compilation and distribution by paper and/or electronically including preparation and production	Per month cost			
Administrative functions: manufacturer participation tracking	Per month cost			
Administrative functions: drug representation tracking by state and collectively	Per month cost			
Administrative functions: meeting management	Per month cost			
Administrative functions: other				
Administrative functions: other				
Administrative functions: other				
Other: membership accretion	At accretion			
Other				
Other				
Other				

SECTION III

WORK STATEMENT

III-A BIDDER RESPONSE TO RFP – GENERAL REQUIREMENTS

Through this RFP, OVHA is asking Bidders to describe Bidder capabilities in regard to the requirements set out in each section of the Work Statement. If there are specific features of the module that the SSDC wishes Bidders to note or respond to, they are described in the section titled “**RFP Response**”. This section may also reflect the SSDC’s understanding of the functions or goals of the module. The requirements are articulated in the section labeled “**Requirements**”.

As applicable, the Bidder should describe their ability to meet the requirements, any unique or innovative method the Bidder proposes in meeting the requirement, applicable experience the Bidder has in performing the function in other settings, and any other information relevant to the module being described. If the Bidder is not able to meet the requirement, it should describe in detail the limitations of their system or capacity. If the Bidder’s proposes to exceed these requirements, this should likewise be described in detail in the Bidder’s proposal.

The Bidder should describe its ability to meet any applicable transition/implementation schedule, the lead time to transition/implement a module, and describe the organizational structure and responsibilities for transition/implementation, including key personnel, experience of these personnel with similar projects, organizational authority of these personnel, and other relevant information that will allow the State to judge the capacity of the Bidder to execute successfully the module under discussion.

III-B GENERAL SUPPLEMENTAL DRUG REBATE ACTIVITY REQUIREMENTS

1. Discussion and Overview

The SSDC believes that the multi-state Medicaid supplemental drug rebate process has developed as a key component in its members’ efforts to contain costs. The SSDC pool makes it possible to increase the leverage of individual participating states by increasing the number of lives covered by the process.

While rebate programs and preferred drug lists (PDLs) are commonly used in private sector or commercial drug programs and Medicaid managed care plans, they have only recently been implemented in Medicaid fee-for-service programs.

A state’s PDL is a list of preferred prescriptions developed with the state’s Pharmacy & Therapeutics (P&T) Committee. The PDL presents options for prescribers’ consideration for use in meeting the drug therapy needs of their patients. Medications are preferred if they meet clinical and therapeutic criteria established by the Committee and are cost-effective, including those medications where the manufacturers offered supplemental drug rebates.. Medications that are not preferred can be prescribed and reimbursed based on a clinical review of appropriateness for a particular patient situation. These reviews constitute prior authorization review protocols that are developed with the guidance of the state’s P&T Committee. The

SSDC believes that the preferred drug management systems implemented by its Member States have been effective tools in helping manage pharmacy costs and maintaining access to pharmacy benefits for vulnerable, low-income populations.

Under the SSDC pooling program, the purchasing power of multiple states is combined for the purposes of negotiating supplemental drug rebates with pharmaceutical manufacturers in connection with the Member States' Preferred Drug List management systems. Supplemental drug rebates are in addition to the baseline "standard CMS rebates" that all pharmaceutical manufacturers must pay states to participate in the Medicaid program under the provisions of OBRA '90. Under the SSDC pooling approach, flexibility and choice remains with the individual state and its P&T Committee to determine which classes to include on the PDL and which drugs to select as preferred.

The SSDC pool is a state administered pool. It is "owned" by the Member States it serves and not by the vendors/contractors who work with and for the SSDC or the Member States. Contracting with a particular vendor is never a condition of membership in the SSDC. And the SSDC's contracted bid procurement vendor may not characterize the pool as a service it offers states because the vendor does not "own" the pool. Any state may choose to participate in the SSDC.

Under the SSDC model, 100% of all rebate revenues are returned to the Member States. They are not shared with any contractor engaged in activities to support supplemental drug rebate activities.

The commitment and ability of a Bidder to establish good working relations with Pharmaceutical Manufacturers are key components of this Contractor selection process. This relationship is essential for the long-term success of the SSDC's multi-state rebate initiative and the negotiation and maintenance of favorable supplemental drug rebate agreements.

2. Transition/Implementation and Operations

The Contractor selected by this RFP will be responsible of SSDC operations as of August 1, 2007. GHS will transition all records to the Contractor by that date. The Contractor will be responsible for supporting rebate agreements for calendar year 2007 including those negotiated prior to August 1, 2007 and for all agreements for calendar year 2008 and later.

3. RFP Response

The Bidder should describe their experience and expertise with this type of process or comparative processes and/or the Bidder's related ability to meet the SSDC's needs to manage the supplemental drug rebate process effectively for the SSDC. Of particular general interest is the area of developing working relations with Pharmaceutical Manufacturers to meet the supplemental drug rebate procurement needs of the SSDC.

4. Requirements

The Bidders should:

- Describe any rebate activity experience.
- Describe the entities that they are or have been a part of including any pooling or comparative program they manage or of which they are or have been a part.
- Where rebate activities are involved, bidders should describe in general the framework, conditions and processes used in negotiating rebates and/or in evaluating the rebate value in relation to the customer's or customers drug product utilization mix.
- Where comparative activities are involved, bidders should describe how those activities compare.

III-C MEMBER STATES' UTILIZATION DATA COMPILATION

1. Discussion and Overview

For each bid year, Member States provide drug utilization data for a prescribed period of time for Medicaid eligibles. That may be as little as six months of data or as much as twelve months of data. General data elements by NDC would be:

- Number of claims/scripts
- Number of units

The 2006 implementation of Medicare Part D resulted in the transition of the primary pharmacy benefit of many Medicaid beneficiaries to Part D. However some states have significant populations of elderly people not qualified for Medicare because they were self-employment prior to their retirement or their employers did not contribute to the Medicare system. Examples of such employment include farming and fishing. As a result, data for calendar year 2008 procurements and later will be provided for:

- those under the age of 65 and
- those ages 65 and over.

During any period Member States may require of the contractor a comparative compilation for their individual program operations purposes or for presentation to others including potential Member States. Member States shall require of the contractor the compilation of utilization data of potential Member States in the course of expanding SSDC membership.

2. Transition/Implementation and Operations

Compilation will become the responsibility of the Medicaid supplemental drug rebate bid procurement services' contractor secured by this RFP for the period of the contract. This will be as of July 1, 2007 and continue for the term of the contract. GHS will transition all related records to the Contractor by that date.

3. RFP Response

The Bidder should describe their experience and expertise with this type of process.

4. Requirements

The Bidders should:

- Describe their experience in compiling data sets of the sort described.
- Describe how that data would be compiled.
- Describe in what formats it would be made available for the review of Member States, manufacturers, and others that the Member States might specify.
- Describe how these formats will facilitate ready review.

III-D REBATE BID SOLICITATION

1. Discussion and Overview

For each bid year, the Contractor must communicate with all manufacturers to notify them that the bid procurement process is beginning and what is being requested. The Contractor must then provide the vehicle for manufacturers to submit bids and the instructions for the use of the vehicle. Generally the SSDC does not entertain bids between annual bid procurement periods. Some exceptions may occur, for example, with the release of new products. Any resulting related activities must be supported.

Prior to rebate bid solicitation, it is required that the Contractor meet with the SSDC Member States to discuss the strategy for the upcoming year. This includes any changes to the policy/process approved by the SSDC Member States. Meetings can be telephonic and/or electronic.

2. Transition/Implementation and Operations

Bid solicitation becomes the responsibility of the Medicaid supplemental drug rebate bid procurement services' contractor secured by this RFP for the period of the contract. GHS will transition all records to the Contractor by that date. The Contractor will be responsible for supporting rebate agreements for calendar year 2007 including those negotiated prior to August 1, 2007 and for all agreements for calendar year 2008 and later.

3. RFP Response

The Bidder should describe their experience and expertise with this type of process or their vision on how such a process should occur and their experience and expertise related to their vision.

4. Requirements

The Bidders should:

- Describe their experience in working with multiple different entities to develop a positive group strategy.
- Describe their experience in soliciting drug rebates.
- Describe their experience in working with drug manufacturers or other entities in securing concessions of this sort.

- Describe how they would notify manufacturers of the start of the bid procurement process.
- Describe what would be required of the manufacturers.
- Describe what vehicle(s) might be used to solicit bids.
- Describe how it is envisioned that any identified vehicle facilitates the process for the manufacturers.
- Describe how the Member States can access or will be provided information while the solicitation process is underway so that they can assess the progress of the solicitation process.
- Describe timeliness standards in making information available to SSDC Member States while the solicitation process is underway so that the states can assess the progress of the solicitation process and consider its potential impact on their PDLs.

III-E BID PRESENTATION

1. Discussion and Overview

For each bid year, bids solicited must be presented to Member States for review. The presentation must be in manner that is agreed upon by the Member States and that facilitates the review by Member States and their staff to the extent that they require.

Presentations may also be necessary during bid years. Examples include:

- to provide aggregate, non-bid specific data to potential Member States to allow them to assess the viability of the multi-state pooling approach in their operations;
- to facilitate new Member States' review of current year bids in their initial year of membership; or
- to present new product offerings to Member States.

2. Transition/Implementation and Operations

Presentation will be the responsibility of the Medicaid supplemental drug rebate bid procurement services' contractor secured by this RFP for the period of the contract. This will be for bid year 2007 for all procurements July 1, 2007 and after and for bid years beginning with 2008. GHS will transition all relevant past records to the Contractor by August 1, 2007.

3. RFP Response

The Bidder should describe their experience and expertise with this type of process.

4. Requirements

The Bidders should:

- Describe their experience in compiling data sets of the sort described.
- Describe how that data would be compiled.
- Describe in what formats it would be made available for the review.
- Describe how these formats will facilitate ready review.

- Describe how this data might be presented; for example, by meetings, by e-mail, by Internet meetings, or other means.
- Describe how this data may be made available to SSDC Member States in a timely fashion so that staff can adequately prepare for presentations.
- Describe what is believed to be the most effective means of presentation and why.
- Describe what is believed to be the least effective means of presentation and why.

III-F REBATE BID NEGOTIATION

1. Discussion and Overview

In the process of bid procurement, the terms and conditions of specific bids may need to be clarified. In addition, Member States may request that the Contractor negotiate with a manufacturer or manufacturers to refine bid offerings. Such a negotiation might be on behalf of all states or on behalf of an individual Member State to meet their particular needs. It is the responsibility of the Contractor to be the point on such negotiations. It is not the SSDC's intent to simply accept a rate submitted by the manufacturer, there must be active negotiation by the contractor.

2. Transition/Implementation and Operations

All negotiation will be the responsibility of the Medicaid supplemental drug rebate bid procurement services' contractor secured by this RFP beginning July 1, 2007 through the term of the contract.

3. RFP Response

The Bidder should describe their experience and expertise with this type of process or their vision on how such a process should occur and their experience and expertise related to their vision.

4. Requirements

The Bidders should:

- Describe in detail the framework, conditions and processes used in negotiating rebates in this specific sense including in evaluating the rebate value in relation to the Member States' drug product utilization mix.
- Describe how they would envision gathering information from Member States and their staff to perform the negotiations.
- Describe how they will identify, schedule, and coordinate all meetings with the designated manufacturers on behalf of the Member State(s).
- Describe how they will evaluate the results to determine what proposals are most appropriate clinically and financially for the Member State(s) and provide the Member State(s) with options.
- Describe how they would coordinate their activities with Member States and their staff.

- Describe timeliness standards in making information available to SSDC Member States while the negotiation process is underway so that the states can assess the progress of the process and consider its potential impact on their PDLs.
- Describe how they would communicate the results of the negotiations to the Member States.

III-G BID SELECTION NOTIFICATION

1. Discussion and Overview

At the conclusion of any procurement process, bid year or mid-year, manufacturers must be notified that their products have not been selected or have been selected. If the products have been selected they must be notified of what has been selected and any conditions that have been set in the negotiation process. They must be notified that each Member State or the agent of the Member State will complete the contracting and that all discussions thereafter are with the Member State or the state's agent.

2. Transition/Implementation and Operations

The SSDC believes that it is important to establish the contractor for Medicaid supplemental drug rebate bid procurement services' Contractor secured by this RFP as its agent as soon as reasonably possible. A notification must be sent to all manufacturers on behalf of the SSDC and its Member States. The drafting of this notification will be the responsibility of that Contractor. The language of this notification will be subject to the approval of the SSDC Member States. Bid procurement notifications for agreements secured beginning July 1, 2007 through the term of this contract will be the responsibility of the Contractor. The language of the bid procurement notifications to be used for the term of the contract will be subject to the approval of the SSDC Member States.

3. RFP Response

The Bidder should describe their experience and expertise with this type of notification process.

4. Requirements

The Bidders should:

- Describe their experience in compiling sensitive information for distribution.
- Describe in what formats this data will be presented to manufacturers.
- Describe how the notification materials will be available to the Member States or their agents.
- Describe how they will communicate the results of the final supplemental rebate agreements and the appropriate contacts to the Member States.
- Describe what safeguards will be utilized to assure that information is not inadvertently and inappropriately disseminated to parties that should not have access to it.

III-H GENERAL ADMINISTRATIVE FUNCTIONS

1. Discussion and Overview

The Contractor will be responsible for a variety of administrative functions in support of the SSDC.

The Contractor will be the point of contact for general communications between member states, with manufacturers, and with those with an interest in the SSDC including other states, insurers, the press, and other interested parties. These communications may involve telephones, fax machines, e-mail, and mail involving the U.S. Postal Service and other vendors; e.g., FedEx, UPS, etc.

Due to the nature of the SSDC, it is of the utmost importance that all communication to all Member States be both timely and accurate. This includes the ability to provide reports to Member States as identified in this RFP and otherwise, the expectations to be mutually agreed upon in the Contract negotiations.

The Contractor must handle all inquiries from manufacturers requesting information on or seeking answers to any questions on the SSDC and its supplemental rebate negotiations. This requires a point person to contact, a dedicated e-mail address, and a dedicated, interactive website.

The Contractor must be able to manage general inquiries from interested parties about the SSDC. This includes providing verbal and written information and assessing when inquiries must be managed by a Member State. At a minimum, this requires a dedicated e-mail address.

The Contractor will be responsible for notifying manufacturers of changes in Member State participation during agreement year(s).

The Contractor must be able to develop data for analysis and reporting and to compile it and distribute it to Member States and their staff.

The Contractor will be responsible for tracking manufacturer participation and drugs represented in the SSDC Member States' PDLs.

The Contractor must be able to organize and manage meetings of all types including annual bid year, mid-year, periodic, and as need meetings.

The Contractor may be asked to do other related duties of this type during the term of the contract. The Bidder is asked to suggest parameters.

The Contractor will be required to perform transition activities similar to those identified here at the time this contract terminates.

2. Transition/Implementation and Operations

The Contractor will be responsible for all administrative activities as of August 1, 2007. GHS will transition all records and transfer the SSDC website domain to the Contractor, effective the date of this Contract. At that time, all contacts will be the responsibility of the new Contractor effective the date of this contract and the Contractor will be responsible for the development and maintenance of the website, with approval from the SSDC Member States.

3. RFP Response

The Bidder should describe their experience and expertise with these types of processes or their vision on how such processes should occur and their experience and expertise related to their vision.

4. Requirements

The Bidders should:

- Describe what the communication vehicle will be with SSDC members to relay issues in an accurate manner.
- Describe timeliness standards in relaying issues to SSDC Member States.
- Describe their experience in operating a customer service support and managing and responding to telephonic, written, and e-mail inquiries timely and accurately.
- Describe their experience and standards in the use of varied “mailing” options.
- Describe their experience in developing and maintaining a website.
- Describe a process for accurate reporting and monitoring of negotiated supplemental rebates in an SSDC approved format.
- Describe their experience in providing various reports of the type which would be requested by SSDC Member States in an SSDC approved format.

III-I STAFFING AND TIME REQUIREMENTS

The SSDC does not require dedicated staff to be assigned to this contract. The majority of the SSDC’s Medicaid supplemental drug rebate bid procurement services are required in late summer into the fall of a given year for agreements to be effective January 1 of the following year. As a matter of routine, the majority of the activities would generally occur over a period of three months, August to October, to assure a calendar year bid year.

Upon implementation of this contract, a Contractor may have to build some of the procedures and systems. Thereafter, there may be spells of relative inactivity between steps in the process throughout the three-month bid procurement period.

The Contractor shall designate a Transition/Implementation Manager who will act as the single point of contact representing the Contractor during the transition and implementation phase. The Contractor shall designate a Project/Account Manager who will act as the point of contact for the Member States for the contract period. These managers may be the same person.

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 ready comparative access to the Contractor for the six Medicaid supplemental drug rebate bid procurement services identified in this RFP. OVHA will coordinate that access if necessary.

The SSDC will assure that appropriate Member State staff or their agents will be available to the Contractor under terms to be mutually defined.

The Contractor shall provide OVHA with a key contact list to include: name, area of expertise/responsibility, telephone/cell phone number/extension, and e-mail address.

III-J 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 such things as letter files, spreadsheets, web page source files, etc. The Contractor shall provide a disaster recovery and business continuity plan that must be approved as part of the implementation phase.

III-K POST IMPLEMENTATION

The Contractor shall be responsible for routine procedure and system maintenance in support of all aspects of operations described in the Work Statement.

III-L REQUIRED REPORTS

The Member States of the SSDC require standard reports and ad-hoc reports that support decision making. At a minimum, the Contractor must be able to provide:

1. Member State comparative utilization report
 - Compares utilization in Member States for the period of time prescribed for data compilation.
 - Produced at the time of bid year solicitation.
2. Manufacturer contact list
 - Identifies all manufacturers/labelers and for each:
 - a. The designated point of contact and his/her:
 - i. Phone number
 - ii. E-mail address
 - b. The designated mailing address, and
 - c. Any alternative contact information.
 - Produced at time of bid year solicitation
 - Produced at termination of contract.
3. Bid proposal report

- Identifies individual and collective proposals as received
 - Produced to provide Member States and their staff with notice of bids as received
 - Produced no less than weekly during the bid year negotiations
 - Produced no less than weekly if mid-year bids made
4. Bid presentation report
- Identifies collective proposals as finalized for presentation
 - Produced for Member States and their staff
 - Produced for Member States decisions
 - Produced for bid year
 - Produced if mid-year bids made
5. Bid selection report
- Identifies collective proposals as accepted
 - Produced for Member States and their staff
 - Produced for bid year
 - Produced if mid-year bids received and accepted

Additional reports may be expected.

The Bidder may propose other reports that might be useful to Member States.

III-M PERFORMANCE STANDARDS

The contractor must:

1. Appropriately represent the SSDC as a state administered supplemental rebate pool.
2. Establish and maintain good working relations with manufacturers and their representatives.
3. Accept no compensation of any type from manufacturers or their representatives in the course of SSDC dealings.
4. Produce compilations of potential member states utilization data for purposes of evaluating rebate opportunities within 2 work weeks of request.
5. Produce reports within agreed upon time frames.
6. Assure web page is available for general purposes during agreed upon normal business hours on normal business days. The web page may be unavailable while being serviced for agreed upon periods of time.
7. Provide telephone and e-mail point of contact for manufacturers during agreed upon normal business hours on normal business days.
8. Provide timely response to manufacturer contacts within 2 business days.
9. Produce Member State utilization report for bid year solicitation by agreed upon dates.
10. Initiate bid year rebate solicitation no later than August 1 of the previous year.
11. Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame.
12. Compile bid proposals during the bid year procurement period and make them available to Member States within agreed upon timeframes but at least weekly.

13. Compile complete bid proposals at the end of the bid year procurement period and make them available to Member States 10 days after the close of the bid solicitation period.
14. Compile bid proposals made mid-year and make them available to Member States within agreed upon timeframes but at least weekly.
15. Compile bids for formal presentation to Member States by agreed upon dates.
16. Complete negotiations no later than 14 days after the Member State bid presentation.
17. Compile bid selections for Member States and their staff by agreed upon dates.
18. Notify manufacturers of the final disposition of their supplemental rebate offers no later than 7 days after the Member State bid presentation.
19. Assure that manufacturer bid details are not disclosed to any individual/organization/company/manufacturer without the express permission of the Member States.
20. Manage all incoming and outgoing communications for the SSDC by telephone, electronically, and/or with varied “mailing” options.
21. Provide single point of contact to all Member States during agreed upon normal business hours on normal business days.
22. Provide timely response to Member States and their staffs within 2 business days.
23. Prepare a disaster recovery plan and business continuity plan during the implementation phase of the contract and maintain it. Assure backups of SSDC information and data no less than weekly.

SECTION IV

EVALUATION METHODOLOGY

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

- Step I – Mandatory Proposal Requirements: OVHA 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 the its experience, the personnel assigned to the project, and the proposed approach and methodology. This score shall comprise 75% of the overall scoring methodology.
- Step III – Price Analysis: The Bidder shall be assigned a score based on the prices 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 price 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 six months of experience in the field of pharmacy program operations and administration. The Bidder must have at least six months of experience administering comparative agreement negotiation projects.
3. Minimum Program Requirements –
 - Specified Services - The Bidder must demonstrate, through its proposal, a solution for all six of the Medicaid supplemental drug rebate bid procurement services identified.
 - Other - The Bidder must demonstrate that its proposal includes the following elements:
 - (a) An operational process that shall be in compliance with all Federal and State regulations and mandates, as described herein.
 - (b) The capacity to interface with the Member States and their staff.
 - (a) A proposed implementation timeline following execution of a contract with OVHA that meets the requirements as set out in this RFP.
4. The Bidder must accept the performance standards, corrective actions, and liquidated damages identified in this RFP. Performance standards are part of this RFP.
5. The Bidder must identify all owners and subsidiaries that own more than five percent (5%) of the Bidder.
6. The Bidder must identify all subcontractors and the scope of work for each subcontractor, as specified in Section II-B.

7. The Bidder must meet all other submission requirements and complete the required disclosure statement.

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 for Implementation and Continued Operations
- Aptness and Brevity of Response

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 Section II-H of this RFP.

The Price proposal 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, the Bidder should carefully calculate and propose its prices for the services requested herein.

SECTION V

CONTRACTUAL SERVICES TERMS AND CONDITIONS

In addition to the required provisions that relate to all contracts with the State of Vermont, this section sets out additional provisions the bidders should be aware of in preparing their response to the RFP.

V-A TERM OF CONTRACT

The duration of the contract is two (2) years. There may be a two (2) year extension at the discretion of OVHA acting on behalf of the SSDC. Thus, the maximum term of the contract is four (4) years.

V-B CONTRACT ADMINISTRATOR

Upon approval of a Contract, and following execution of said Contract, the State of Vermont, Office 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 State of Vermont, Office of Vermont Health Access on behalf of the SSDC.

The Contract Administrator and Project Manager for this project is:

Ann Rugg, Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Telephone: (802) 879-5911

An alternate project manager may be designated by OVHA in collaboration with the SSDC.

V-C COST LIABILITY

The State of Vermont, Office of Vermont Health Access and the SSDC 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 State of Vermont, Office of Vermont Health Access and the SSDC 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 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 subcontractors.

including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational abilities.

OVHA reserves the right to approve subcontractors for this project 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 and any subcontractors must commit to the entire contract period stated within this RFP, unless a change of subcontractors is specifically agreed to by OVHA.

The Agreement between the Contractor and the State of Vermont, Office of Vermont Health Access will not be assignable to another party without prior written permission from the State of Vermont, Office of Vermont Health Access. The Contractor shall provide advance notice to OVHA on any intended sale of the contracting entity. OVHA will have the option of terminating the Contract with the Contractor upon the sale of the 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 OVHA approval and then only in accordance with the explicit written instructions from OVHA. No results of the project are to be released without prior written approval of OVHA and then only to persons designated.

V-F FREEDOM OF INFORMATION AND PRIVACY ACT / DISCLOSURE

All material submitted by Bidders becomes the irrevocable and sole property of OVHA and the SSDC. OVHA and the SSDC reserve 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 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. Should the Bidder's proposal include any materials that are proprietary and are to be treated confidentially, those materials must be clearly and separately identified.

V-G GRATUITIES OR KICKBACKS

The State of Vermont prohibits Gratuities and Kickbacks.

V-H RETAINAGE

The Bidder shall include an affirmative statement in the proposal agreeing to a retainage of ten percent (10%) of the total contract amount. Retainage may be made on each payment to the selected Bidder as described in this RFP.

Should the contract be terminated for any reason related to the Bidder’s failure to perform Bidder duties to the satisfaction of the State of Vermont, Office of Vermont Health Access, this retainage shall revert to the State of Vermont, Office of Vermont Health Access on behalf of the SSDC as liquidated damages in addition to the other penalties and/or damages stated in this RFP or contract.

V-I 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-J OTHER PROVISIONS

The States of Iowa, Maine, and Vermont have specific contract language and requirements, as identified in the Appendices of this RFP.

V-K PENALTIES FOR PERFORMANCE STANDARDS’ FAILURES

The Bidder must agree to abide by Performance Standards and Penalties.

The SSDC would propose that the Bidder put at risk 20% of its administrative fees identified in II-H. If the Bidder is unwilling to put at risk 20% of fees, the Bidder must indicate what percentage they would be willing to risk.

The Bidder should then describe the penalty that would apply to its risk pool for each listed performance standard should the Contract not meet the guarantee. The Bidder description should include the methodology for calculating the penalty and the frequency at which it would be applied.

In the case of Administrative Functions, the Bidder should describe other guarantee(s) as well as describe the penalty and frequency.

Service Performance Standards	Guarantee	Description of Penalty and Frequency
1. Member States’ utilization data compilation	Produce compilations within 2 work weeks of request	
2. Rebate bid solicitation	Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame	
3. Rebate bid presentation	Provide Member States with a bid presentation no later than: <ul style="list-style-type: none"> • weekly during bid year cycle • 10 days after the close of 	

Service Performance Standards	Guarantee	Description of Penalty and Frequency
	the bid solicitation <ul style="list-style-type: none"> • weekly for mid-year proposals 	
4. Rebate bid negotiation	Complete negotiations no later than 14 days after the Member State bid presentation	
5. Bid selection notification	Notify manufacturers of the final disposition of their supplemental rebate offers no later than 7 days after the Member State bid presentation	
6. General Administrative Functions	<ul style="list-style-type: none"> • Provide timely response to manufacturers contacts within 2 business days • Provide timely response to Member State contacts within 2 business days 	

ACRONYMS, DEFINITIONS AND TERMS USED

ACRONYMS

AHS	Vermont Agency of Human Services
CMS	Centers for Medicare and Medicaid Services
HIPAA	Health Insurance Portability and Accountability Act of 1996
NDC	National Drug Code
OBRA '90	Omnibus Budget Reconciliation Act of 1990
OVHA	Office of Vermont Health Access
P&T Committee	Pharmacy and Therapeutics Committee
PA	Prior Authorization
PBA	Pharmacy Benefits Administrator
PDL	Preferred Drug List
SSDC	Sovereign States Drug Consortium

DEFINITIONS

Bid Year	The year against which rebate bids are solicited.
Claim	A bill rendered by a provider to a state Medicaid program for a drug dispensed on behalf of a covered beneficiary.
Data Element	A specific unit of information having a unique meaning.
Mid-Year Bids	Bids developed between bid years. Usually available as soon as administratively possible.
National Drug Code (NDC)	The National Drug Code used to identify the specific drug on a claim.
Prior Authorization	The pre-claim submission approval that must be given to providers by a designated professional for specified services for a specified client.
Units	The specific quantity of a drug on a claim.

TERMS

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

APPENDICES (See Requests for Proposals at <http://ovha.vermont.gov/>)

Appendix A1:	State of Vermont Attachment C Customary State Contract Provisions
Appendix A2:	State of Vermont Attachment E Business Associates Agreement
Appendix A3:	State of Vermont Attachment F Other Contract Provisions
Appendix A4:	State of Vermont Agency of Human Services Rule 96-23
Appendix A5:	State of Vermont Disclosure Statement
Appendix B:	State of Iowa General Terms
Appendix C:	State of Maine Agreement to Purchase Services

ATTACHMENT C
CUSTOMARY STATE CONTRACT PROVISIONS

1. **Entire Agreement.** This contract 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 contract will be governed by the laws of the State of Vermont.
3. **Appropriations.** If this contract extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriations authority.
4. **No Employee Benefits for Contractors.** The contractor 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 contract. The contractor 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 contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability.** The contractor will act in an independent capacity and not as officers or employees of the State. The Contractor shall indemnify, defend, and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the contractor's acts and/or omissions in the performance of this contract. The contractor shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this contract.
6. **Insurance.** Before commencing work on this contract the contractor must provide certificates of insurance to show that the following minimum coverage is in effect. The contractor must notify the State no more than 10 days after receiving cancellation notice of any required insurance policy. It is the responsibility of the contractor to maintain current certificates of insurance on file with the State through the term of the contract. Failure to maintain the required insurance shall constitute a material breach of this contract.

Workers' Compensation: With respect to all operations performed, the contractor 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 contractor 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

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

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

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been established to protect the interests of the State.

7. **Reliance by the State on Representations:** All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the contractor, including but not limited to bills, invoices, progress reports and other proofs of work.
 8. **Records Available for Audit.** The contractor will maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the contract and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.
 9. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the contractor under this contract. Contractor further agrees to include this provision in all subcontracts.
 10. **Set Off:** The State may set off any sums which the contractor owes the State against any sums due the contractor under this contract; 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.
- II. **Taxes Due to the State:**
- a. Contractor 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. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the contractor 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. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the contractor 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. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the contractor has no further legal recourse to contest the amounts due.

12. **Child Support.** (Applicable if the contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract 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 and is in full compliance with that plan.

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

13. **Subcontractors.** Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.

Notwithstanding the foregoing, the State agrees that the contractor may assign this contract, including all of the contractor's rights and obligations hereunder, to any successor in interest to the contractor arising out of the sale of or reorganization of the contractor.

14. **No Gifts or Gratuities.** Contractor 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 contract.

15. **Copies.** All written reports prepared under this contract will be printed using both sides of the paper.

16. **Certification Regarding Debarment.** Contractor certifies under pains and penalties of perjury that, as of the date that this contract is signed, neither contractor nor contractor'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.

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 Department, Office, or Division of (_____Insert Department, Office, or Division)** (“Covered Entity”) and (**_____Insert Name of the Contractor**) (“Business Associate”) as of (**_____Insert Date**) (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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”).

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term “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.

The term “Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g). All references to “PHI” mean Protected Health Information. All references to “Electronic PHI” mean Electronic Protected Health Information.

2. **Permitted and Required Uses/Disclosures of PHI.**

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services provided that any use or disclosure would not violate the minimum necessary policies and procedures of Covered Entity. 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.

2.2 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 (including subcontractors) in accordance with Sections 6 and 14 or (b) as otherwise permitted by Section 3.

3. **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 (a) Business Associate obtains reasonable written assurances via a written contract 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 (b) the person promptly notifies Business

Associate (who in turn will promptly notify Covered Entity) in writing of any instances of which it is aware in which the confidentiality of the PHI has been breached. Uses and disclosures of PHI for the purposes identified in this Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.
5. **Reporting.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or its agents including its subcontractors. Business Associate shall provide this written report promptly after it becomes aware of such use or disclosure. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate the impermissible use or disclosure. Consistent with 45 CFR 164.502(j)(1) Business Associate may use PHI to report violations of law to federal and state authorities.
6. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 12. Business Associate must enter into the written contract before any use or disclosure of PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
7. **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. Business Associate shall promptly forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
8. **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. Business Associate shall promptly forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
9. **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. Business Associate shall promptly forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

10. 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 (without regard to the attorney-client or other applicable legal privileges) 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.

11. Termination.

11.1 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 15.11.

11.2 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 this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract 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 this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

12. Return/Destruction of PHI.

12.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract 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.

12.2 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.

13. Notice/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 information security awareness

training regarding the use, confidentiality, and security of PHI.

14. Security Rule Obligations. The following provisions of this Section 14 apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

14.1 Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of 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.

14.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written contract 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 contract before any use or disclosure of Electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.

14.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report promptly after it becomes aware of any such Security Incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

15. Miscellaneous.

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

15.2 Any reference to “promptly” in this Agreement shall mean no more than seven (7) business days after the circumstance or event at issue has transpired. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended or renumbered.

15.3 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI in violation of any provision of this Agreement.

15.4 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.

15.5 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.

- 15.6 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 15.7 This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.
- 15.8 Nothing express or implied in this Agreement is intended to confer upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services operating by and through its Department, Office, or Division of (_____ **Insert name of Department, Office, or Division**). Covered Entity and Business Associate agree that the term “Covered Entity” as used in this Agreement also means any other Department, Division or Office of the Agency of Human Services to the extent that such other Department, Division, or Office has a relationship with Business Associate that pursuant to the Privacy or Security Rules would require entry into an agreement of this type.
- 15.9 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.
- 15.10 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 under this Contract 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.
- 15.11 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 12.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 9 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.
- 15.12 This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect.

ATTACHMENT F:
AGENCY OF HUMAN SERVICES CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or 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 will ensure that relevant descriptive information regarding its agency, programs and/or contact information is contained in Vermont's 211 database and is accurate and up to date.

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 Office 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 Office 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.

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.

ATTACHMENT F:
AGENCY OF HUMAN SERVICES CUSTOMARY CONTRACT PROVISIONS

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 (HIPPA) 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. 96-23 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 who provides care, custody, treatment, services, 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 Abuse Registry. (See 33 V.S.A. §4919 & 33 V.S.A. §6911).
9. **Child Abuse Reporting.** Notwithstanding the provision of 33 V.S.A. §4913(a) any agent or employee of the contractor who has reasonable cause to believe that a child has been abused or neglected as defined in Chapter 49 of Title 33 V.S.A. shall report the suspected abuse or neglect to the Commissioner of the Department for Children and Families within one working day. The report shall contain the information required by 33 V.S.A. §4914.
10. **Work Product Ownership.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract - 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, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of Vermont and 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 developed for the State, 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 and/or source codes developed.
11. **Software Development.** Without exception or alternate options, it is the State's policy that any application software which is purchased to support a business, operational or service delivery, activity of state government must include the licensing or ownership of the source code. The source code must be delivered to, and reside in, the state agency or department that supports and/or maintains the application and must be available for modification and/or maintenance by state personnel at the sole discretion and option of the State. Source code held in escrow by a third party does not meet the requirement of this policy.

ATTACHMENT F:
AGENCY OF HUMAN SERVICES CUSTOMARY CONTRACT PROVISIONS

12. **Intellectual Property Ownership.** All work products and items delivered or produced under this agreement will be the exclusive property of the State of Vermont. This includes, but is not limited to, software, documentation, and development materials. The contractor shall not sell or copyright a work product or item produced under this contract without explicit permission from the State. The contractor shall not make information entered in the application available for uses by any other party than the State of Vermont without prior authorization by the State.
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.
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.

Revised AHS -4/24/07

Agency of Human Services Rule # 96-23
Final Adopted Rule for
Access to Information

I. Definition.

- 1.1 “Agency” means the Agency of Human Services or any of the offices, departments or programs that comprise the Agency.
- 1.2 “AHS” means the Vermont Agency of Human Services.
- 1.3 “Client” means an individual or family who is voluntarily served by a department, office, program, Contractor or grantee of the Agency of Human Services.
- 1.4 “Contractor” means an individual or entity with whom the Agency or any of its departments, offices, or programs has a contract to provide personal services.
- 1.5 “Employee” means any person who works in a full-time, part-time, temporary or contractual position for the Agency or any of its departments, offices, or programs.
- 1.6 “Grantee” means an individual or entity with whom the Agency or any part thereof has a grant to provide personal services.
- 1.7 “Program” means a set of services, (such as determining and processing ANFC benefits, verifying and setting up delivery for WIC foods) for which the Agency bears fiscal responsibility.
- 1.8 “Administrative Obligations” means activities pursuant to federal or state laws or regulations (such as verification of eligibility, verification of service delivery, detection of fraud, monitoring of quality assurance, audit of expenditure reports) which provide for accountability in the use of public funds.

II. Basic Principles

2.1 Presumption of Confidentiality

All information specific to, and identifying of, individuals and families is presumed to be confidential and subject to these standards. Employees shall not disclose the information unless a specific exception to the presumption applies or the disclosure is authorized by the client, a court or as otherwise authorized by law or rule.

2.2 Existing Statutes

These rules are not intended to expand or diminish current provisions in law relating to disclosure of confidential information.

2.3 Information Collection

Employees shall collect and record only that information needed to fulfill the goal of serving the client and meeting administrative or legal obligations.

2.4 Informing Clients

At the initial meeting with each client, or within two weeks, employees shall review and offer to provide the rules for access to information to the client.

III. Permissible Disclosures

3.1 Client consent

No information about a client shall be released without prior consent from the client, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

3.2 Sharing “Non-identifiable” Information

Information that does not identify a client may be used for statistical research, forecasting program needs, or other such purposes.

3.3 Public Information

Information defined as public by 1 VSA & 317 or other applicable statute is available to the public. The procedures in the public records statute shall be followed before public information is released.

3.4 Information Sharing for Administrative Purposes

Employees may share information which is necessary to satisfy the Agency’s administrative obligations. Departments will develop written agreements limiting the kinds of information to be shared when programs are jointly administered by different Departments. No information shall be released to a person or entity that is out of state, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

3.5 Disclosure Without Consent in Limited Circumstances

Employees must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and persons who are elderly or who have disabilities. Information may be released without consent when Vermont law creates a duty to warn identified individuals of potential harm to their person or property, in response to court orders, or to investigate or report criminal activity as required by federal or state law or regulation. Only information relevant to the situation shall be disclosed. The employee shall document the date, purpose and content of the report, the name, address and affiliation of the person to whom the information was released, and shall notify the client that the information was disclosed.

IV. Procedures Related to Consent

4.1 Obtaining Informed Consent

Prior to releasing confidential information the Agency shall obtain the client’s informed consent. This includes providing information about consent in a language and format understandable to the client. Reasonable accommodations shall be made for special needs based on the individual or family’s education, culture, or disability. Employees shall inform clients that granting consent is not a pre-requisite for receiving services, and shall explain that they may apply for services separately.

4.2 Consent of Minors to Release of Information

Employees shall obtain the consent of a minor client to release information concerning treatment for which parental consent is not required.

AHS Rule 96-23

4.3 Format for Consent to Share Information

Consent for the sharing or release of information shall ordinarily be in writing. If an emergency situation requires granting of verbal consent, written consent shall be obtained at the next office visit or within thirty days, whichever comes sooner. Required information will include:

1. Names of the people about whom information may be shared.
2. A checklist of the kinds of information to be shared.
3. A checklist of the departments within the Agency to receive the information.
4. A statement or date covering expiration of consent.
5. A statement about procedures for revoking consent.
6. Signature of individuals covered by the consent, or their parents or guardians.
7. Signature of the individual explaining the consent process with their position and job title.
8. A space to provide individualized instructions.

A copy of the consent form shall be provided to all signatories.

4.4 Client Access to Records

Unless prohibited by federal or state law or regulation, clients shall be permitted to view and obtain copies of their records. Each department within the Agency shall have written procedures which permit clients to verify personal information they have provided for accuracy and completeness and for placing amendments to the information in their files. Employees shall take reasonable steps to present records in a form accessible to the client, including but not limited to large type format or verbal review. A fee not to exceed the actual cost of copying may be charged for records exceeding 10 pages. This fee shall be waived if it would prohibit access.

V. Procedures to Protect Confidentiality

5.1 Staff Training

All AHS employees and all AHS volunteers and interns, shall be instructed in these rules. AHS shall train their Contractors and grantees who shall, in turn, provide the same instruction for their employees, interns, and volunteers.

5.2 Response to Requests for Information

An employee shall not respond to requests from outside the Agency for information about clients even to acknowledge that the person is a client, unless authorized. If a client has consented to or requests that information be released, the employee shall comply with the request.

5.3 Designated Individual

Each agency or department shall appoint one or more trained staff members to be responsible for responding to all requests for client information when there is no written consent to release, and no statutory or administrative authority permitting release of the requested information. These individuals shall be specially trained in maintaining confidentiality. A list of the designated individuals for each department and office shall be maintained in the Attorney General's Office, Human Services Division.

5.4 Affirmation of Understanding

Employees shall sign an affirmation that they will comply with these rules. This affirmation shall be part of their personnel files. Supervisors shall review this affirmation during annual evaluations. Violation of these rules shall result in disciplinary action.

AHS Rule 96-23

5.5 Written Agreements with Grantees or Contractors

The following assurance, or one similar to it, will be included in all AHS grants/contracts signed after these rules have been approved:

[Grantee/Contractor] agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The Contractor shall require all of its employees to sign the AHS Affirmation of Understanding or an equivalent statement.

5.6 Client Referrals

When referring a client to another agency for services, if the referral does not meet the criteria for permissible disclosures under Section 3.4, the initial agency shall obtain the consent of the client for the referral and alert the receiving agency that confidential client information accompanies the referral.

5.7 Documentation of Disclosure

Requests for disclosures of client information shall be maintained in the client's file if the request does not meet the definition of a permissible disclosure under Section 3.4. Employees shall document in writing any information actually disclosed, along with the name of the person/agency to whom it was disclosed and the date of the disclosure. When permissible disclosures are made under Section 3.4, documentation may be limited to the name of the department/agency/program to whom the disclosure was made.

VI. Information Systems

6.1 Computerized Information

When developing a computerized data system, the Agency shall:

1. Develop security procedures consistent with the rule;
2. Instruct staff in the security procedures;
3. Inform clients if a computerized system is being used;
4. Establish written agreements with participating agencies outlining procedures for sharing and protecting information.
5. Develop security procedures in relation to the transmission of information.

6.2 Security Procedures

The Agency shall develop a protocol which is consistent with the requirements of this rule to safeguard confidential client information. Contractors and grantees shall also develop a protocol or shall adopt the protocol of the Agency. The protocol shall be designed to safeguard written information, data in computer systems, and verbal exchange of information. The protocol shall prohibit unauthorized access to records and include an appropriate disciplinary process for violations of the security rules.

6.3 Procedures

Written procedures for implementing these rules shall be used as the basis for employee instruction and shall be available for review in the Agency Central Office.

**AGENCY OF HUMAN SERVICES
103 South Main Street
Waterbury, Vermont 05676**

AFFIRMATION OF UNDERSTANDING STATEMENT

As a Contractor for the State of Vermont, I affirm that I have read the Agency of Human Services (AHS) Rule No. 96-23 concerning Access to Information, and that I agree to comply with the requirements of AHS Rule No. 96-23.

I shall require all of my employees performing services under this contract, to sign an affirmation of understanding statement. Employee statements need not be sent to the State. However, they shall remain in Contractor's personnel records. The State can request copies of such documents if necessary.

Name of Company (Print or type)

Date

Authorized Signature

Title



State of Vermont Disclosure Statement

Pharmacy Benefit Administration and Related Services

V.S.A Title 33, Chapter 19, Subchapter V, § 2001 states that OVHA shall not enter into a contract with a pharmacy benefit manager where a bidder/contractor has entered into an agreement or engaged in a practice described in this disclosure unless the Director determines and certifies in a required fiscal report to the Vermont General Assembly, that such agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries. This requirement applies to any bidder/contractor that provides pharmacy benefit manager related services.

Please respond to the following disclosure requirements. Provide a written statement that addresses separately each of items A – F listed below. Identify any agreement entered into by the bidder/contractor related to each item and disclose the financial impact of such agreements on Vermont and on Vermont beneficiaries. This should be in the form of a letter addressed to the Contract Administrator and signed by an individual in the company authorized to provide this information. This should be provided in a manner that preserves the confidentiality of any proprietary information as determined by the Director of OVHA.

- (A) Any agreement with a pharmaceutical manufacturer to favor the manufacturer's products over a competitor's products, or to place the manufacturer's drug on the pharmacy benefit manager's preferred list or formulary, or to switch the drug prescribed by the patient's health care provider with a drug agreed to by the pharmacy benefit manager and the manufacturer;
- (B) Any agreement with a pharmaceutical manufacturer to share manufacturer rebates and discounts with the pharmacy benefit manager, or to pay "soft money" or other economic benefits to the pharmacy benefit manager;
- (C) Any agreement or practice to bill Vermont health benefit plans for prescription drugs at a cost higher than the pharmacy benefit manager pays the pharmacy;
- (D) Any agreement to share revenue with a mail order or internet pharmacy company;
- (E) Any agreement to sell prescription drug data concerning Vermont beneficiaries, or data concerning the prescribing practices of the health care providers of Vermont beneficiaries; or
- (F) Any other agreement of the pharmacy benefit manager with a pharmaceutical manufacturer, or with wholesale and retail pharmacies affecting the cost of pharmacy benefits provided to Vermont beneficiaries.

STATE OF IOWA GENERAL TERMS

Section 1. Compensation

1.1 Pricing. The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.

The Contractor shall submit, on a frequency established on the Contract Declarations & Execution page(s) an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code § 8A.514. The Department 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 Code § 8A.514.

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

1.2 Payment Clause. The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.

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

1.4 Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any other debt subject to the law of set off, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this

provision constitutes proper and timely notice under the law of setoff.

Section 2. Termination.

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

2.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

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

2.1.3 The Contractor fails to comply with confidentiality laws or provisions;

2.1.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP that is materially false, deceptive, incorrect or incomplete.

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

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

2.2.2 The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

2.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract,

2.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or

suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law,

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

2.2.6 The Contractor has engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion,

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

2.2.8 The Contractor fails to comply with any provision of Iowa Code chapter 8F, or

2.2.9 The Contractor has failed to comply with a material term of any Business Associate Agreement, if included as an Addendum hereto.

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

2.3.1 Immediately terminate the Contract without additional written notice; or,

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

2.4 Termination Upon Notice. Following 30 days' written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.

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

2.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as

required and to fulfill its obligations under this Contract;

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

2.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;

2.5.4 The Department's duties are substantially modified.

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

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

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

2.6.3 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;

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

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

2.7.1 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 date of notice of termination, describing the status of all work

under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Department may require.

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

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

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

2.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

Section 3. Confidential Information.

3.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.

3.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be

considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department. The Contractor may be held civilly or criminally liable for improper disclosure of confidential data.

3.3 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 Department and cooperate with the Department in any lawful effort to protect the confidential information.

3.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

3.5 Survives Termination. The Contractor's obligation under this Contract shall survive termination of this Contract.

Section 4. Indemnification.

4.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

4.1.1 Any breach of this Contract;

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

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

4.1.4 Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;

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

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

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

4.2 Survives Termination. Indemnification obligation of the Contractor shall survive termination of this Contract.

Section 5. Insurance.

5.1 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 and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

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

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$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

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

Section 6. Project Management & Reporting.

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

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

6.3 Reports. At the next scheduled meeting after which any party has identified in writing a

problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, 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. For as long as a problem remains unresolved, written reports shall identify:

6.3.1 Any event not within the control of the Contractor or the Department that accounts for the problem;

6.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

6.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

6.3.4 Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

6.4 Problem Reporting Omissions. The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

6.5 Change Order Procedure. The Department may at any time request a modification to the Scope of Work using a Change Order. The following procedures for a change order shall be followed:

6.5.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

6.5.2 The Contractor's Response. The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

6.5.3 Acceptance of the Contractor Estimate. If the Department accepts the estimate

presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

6.5.4 Adjustment to Compensation. The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

Section 7. Limitation of Liability.

The Contractor expressly acknowledges that the contracted services and underlying program are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

Section 8. Intellectual Property, Patent & Copyright.

8.1 Rights in Data. The Department shall be and shall remain the owner of all data and records provided to the contractor. The Contractor will not use the Department's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

8.2 Ownership of Work Product. The Department shall own all work products developed or furnished in connection with the Contract by the Contractor or any subcontractor (the "Work Product"). The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the Department, without additional consideration of all Work Products of the subcontractors. The Contractor shall give the Department all assistance reasonably requested by

the Department to perfect the Department's ownership of all Work Products, including the execution and delivery of documents assigning title to such Work Product to the Department. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the Work Product shall be the property of the Department. The Department shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the Work Product for the purposes of complying with this Agreement or any relevant provision of state or federal law.

8.3 Publications. Prior to completion of all services required by this Contract, 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 Department. Upon completion of all services required by this Contract, Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Department 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 Department and that it does not necessarily reflect the opinions, findings and conclusions of the Department.

Section 9. Warranties.

9.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

9.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and Works produced, or

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

9.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

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

9.5 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 Department will not have any obligations with respect thereto.

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

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

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

Section 10. Contract Administration.

10.1 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 of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

10.2 Incorporation of Documents. To the extent this Contract arises out of an RFP, the RFP, RFP amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, and this Contract form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

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

10.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and

accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

10.5 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

10.6 Procurement and Subcontracting. Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations. All obligations imposed on Contractor through the terms of this Contract apply to any and all subcontractors and shall be included in all subcontracts.

10.7 Non-Exclusive Rights. This Contract is not exclusive. The Department reserves the right to select other contractors to provide services similar or identical to the Scope of Work described in this Contract during the term of this Contract.

10.8 Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

10.9 Compliance with Iowa Code ch. 8F. The Contractor shall comply with Iowa Code ch. 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 Department.

10.10 Amendments. This Contract may be amended in writing from time to time by mutual

consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, the same shall be deemed incorporated herein by reference. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

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

10.12 Use of Third Parties. The Department 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 Department in writing of all subcontracts relating to services to be performed under this contract prior to the time the subcontract(s) become effective. The Department 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 services performed 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 Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

10.13 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, 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 Department or the State of Iowa.

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

10.15 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.

10.16 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.

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

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

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

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

10.21 Notice. Any and all notices, designations, consents, offers, acceptances or any other

communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth on the Contract Declarations & Execution page(s). Each such notice shall be deemed to have been provided:

10.21.1 At the time it is actually received; or,

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

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

From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

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

10.23 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.

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

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

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

10.25.2 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.

10.26 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.

10.27 Records Retention and Access

10.27.1 The Contractor shall maintain accurate, current, and complete records of the financial activity of this contract, including records that adequately identify the source and application of funds throughout the term of this Contract and for a period of at least five (5) 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 five (5) 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 five (5) year period, whichever is later. Cash contributions made by the Contractor and third party in-kind (property or service) contributions shall 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.

10.27.2 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.

10.27.3 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 Department.

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

10.27.5 The Contractor shall permit the Department of Human Services, 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 Department reserves the right to address the board or other managing entity regarding performance and expenditures.

10.27.6 The Contractor shall retain all medical records for a period of six (6) 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 section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

10.28 Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department 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 Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department 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 Department. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The

requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

10.29 Qualifications of Staff. 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.

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

10.31 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

10.32 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.

10.33 Delays or Impossibility of Performance. 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." The term "force majeure" as used in this Contract includes 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, such as acts of God, war, civil disturbance and other similar causes. 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 Contractor; claims or court

orders that restrict Contractor's ability to deliver the goods or services contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of 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 Department. 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 services 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.

10.34 Suspensions and Debarment. The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. The Contractor shall execute the certification regarding debarment, which is attached to this Contract.

10.35 Lobbying Restrictions. The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. § 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements. The Contractor shall execute the certification regarding lobbying restrictions, which is attached to this Contract.

10.36 Tobacco Smoke Prohibited. The Contractor certifies that it and its subcontractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The Contractor shall execute the Certification of

Compliance with the Pro-Children Act of 1994, attached to this Contract.

10.37 Conflict of Interest. No relationship exists or will exist during the contract period between the contractor and the Department 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 ch. 68B shall apply to this Contract. In the event a conflict of interest is proven to the Department, the Department shall terminate the contract, and the Contractor shall be liable for any excess costs to the Department as a result of contract default. 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 related party transaction to the Department. Written approval from the Department shall be required prior to such transaction.

10.38 Drug Free Work Place. The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

10.39 Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Department may declare the contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

10.40 Right to Address the Board of Directors or Other Managing Entity. The Department reserves the right to address the board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Department determines appropriateness.

10.41 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 Department 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.

STATE OF MAINE
DEPARTMENT OF _____
Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, _____, hereinafter called "Department," and _____, located at _____, telephone number _____, hereinafter called "Provider", for the period of _____ to _____.

The Employer Identification Number of the Provider is _____

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C – Exceptions to Rider B
- Rider D, E, and/or F – (At Department’s Discretion)
- Rider G – Provision of Contract Services by Foreign Nationals

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in _____ original copies.

DEPARTMENT OF _____

By: _____
Name and Title, Department Representative

and

By: _____
Name and Title, Provider Representative

Total Agreement Amount: \$ _____

Approved: _____
Chair, State Purchases Review Committee

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

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: _____
Title: _____
Address: _____

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

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. Contractors and subcontractors with contracts 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 MRSA § 18 or 17 MRSA § 3104. The Contractor 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 therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 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 therefrom 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** 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.

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, but without limitation, the following: (i) claims suffered or incurred by any contractor, 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 Contract Administrator immediate notice in writing of any legal action or suit filed 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 Rider C), 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.

RIDER C
EXCEPTIONS TO RIDER B

RIDER D

Not Required: For use at Department's Discretion

RIDER E

Not Required: For use at Department's Discretion

RIDER F

Not Required: For use at Department's Discretion

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

- United States. Please identify state:** _____
- Other. Please identify country:** _____

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.