

STATE OF ALASKA REQUEST FOR PROPOSALS



MEDICAID PAYMENT RATE, PAYMENT REFORM, AND ACTUARIAL CONSULTING & ANALYSIS SERVICES

RFP 170007270

ISSUED AUGUST 26, 2016

The Alaska Department of Health and Social Services is soliciting proposals for payment model consulting and analysis services, including actuarial consulting and cost analysis where appropriate, to support implementation of a series of Medicaid reform initiatives. The reform initiatives include a coordinated care demonstration project, a shared savings payment model for a hospital emergency department pilot project, an 1115 waiver application for a managed system of behavioral health care, and investigation of other innovative payment models such as bundled payment for episodes of care.

ISSUED BY:

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF FINANCE & MANAGEMENT SERVICES

PRIMARY CONTACT:

JON GESELLE
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JON.GESELLE@ALASKA.GOV

(907) 465-6264

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

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INTRODUCTION AND INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Health and Social Services is soliciting proposals for payment model consulting and analysis services, including actuarial consulting and cost analysis where appropriate, to support implementation of a series of Medicaid reform initiatives. The reform initiatives include a coordinated care demonstration project, a shared savings payment model for a hospital emergency department pilot project, an 1115 waiver application for a managed system of behavioral health care, and investigation of other innovative payment models such as bundled payment for episodes of care.

SEC. 1.02 BUDGET

Department of Health and Social Services estimates a budget not to exceed \$750,000 dollars for the initial period of performance and \$200,000 for each subsequent term for completion of this project. Proposals priced at more than \$1,350,000 for the project will be considered non-responsive.

Approval or continuation of a contract resulting from this is contingent upon legislative appropriation.

SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than 4:00 PM prevailing Alaska Time on September 23, 2016. Faxed or emailed proposals are acceptable but not encouraged. Oral proposals are not acceptable.

SEC. 1.04 MINIMUM QUALIFICATIONS

In order for offers to be considered responsive offerors must meet these minimum prior experience requirements:

- Completion of at least two (2) studies within the past five (5) years that evaluated Medicaid payment methodologies. At least one (1) study must have included financial analysis of Medicaid rate-setting for integrated delivery models, and/or development of value-based payment models. At least one (1) study must have included financial analysis of Medicaid payment methodologies for behavioral health services. Provision of references is required.
- Completion of financial analysis and consultation services provided in support of development of an 1115 waiver application to at least one (1) state Medicaid program within the past five (5) years. Provision of references is required.
- Lead actuarial staff assigned to this project must:
 - Be a certified member of the American Academy of Actuaries, and a certified Fellow or Associate of the Society of Actuaries (copies of the required certifications must be included in the proposal); and,
 - Have at least three (3) years of experience as a health care actuary within the past five (5) years.
- At least one of the actuarial staff assigned to this project must have experience supporting the development of at least one (1) 1115 waiver application for state Medicaid programs within the past five (5) years.
- Ownership or access to the necessary and relevant information technology and communications capability to receive, process and analyze Medicaid claims, encounters, eligibility, enrollment, and demographic data, including the ability to establish a File Transfer Protocol (FTP) site to exchange large data files with the Alaska Medicaid program in a HIPAA compliant manner.

An offeror's failure to meet these minimum requirements may cause their proposal to be considered non-responsive and their proposal may be rejected.

SEC. 1.05 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and objectionable material must be made in writing and received by the procurement officer at least ten days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, at least ten days before the deadline for receipt of proposals.

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing. Questions must be received no later than 4:00 PM on September 9, 2016.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make that decision.

PROCUREMENT OFFICER: **JON GESELLE** – PHONE **907-465-6264** - EMAIL **JON.GESELLE@ALASKA.GOV**

SEC. 1.07 RETURN INSTRUCTIONS

If you are submitting a response through IRIS Vendor Self-Service (VSS), you may ignore the following return instructions.

Offerors must submit one hard copy of their proposal, in writing, to the procurement officer in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified. The sealed proposal package(s) must be addressed as follows:

Department of **HEALTH AND SOCIAL SERVICES**
Division of **FINANCE AND MANAGEMENT SERVICES**
Attention: **JON GESELLE**

Request for Proposal (RFP) Number: **170007270**

RFP Title: **MEDICAID PAYMENT RATE, PAYMENT REFORM, AND ACTUARIAL CONSULTING & ANALYSIS SERVICES**

If using U.S. mail, please use the following address:

PO BOX 110650
JUNEAU, AK 99811-0650

If using a delivery service, please use the following address:

350 MAIN ST., SUITE 125
JUNEAU, AK 99801

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

SEC. 1.08 PROPOSAL CONTENTS

The following information must be included in all proposals.

(a) AUTHORIZED SIGNATURE

All proposals must be signed by an individual authorized to bind the offeror to the provisions of the RFP. Proposals must remain open and valid for at least 90-days from the date set as the deadline for receipt of proposals.

(b) OFFEROR'S CERTIFICATION

By signature on the proposal, offerors certify that they comply with the following:

- A. the laws of the State of Alaska;
- B. the applicable portion of the Federal Civil Rights Act of 1964;
- C. the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- D. the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- E. all terms and conditions set out in this RFP;
- F. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury;
- G. that the offers will remain open and valid for at least 90 days; and
- H. that programs, services, and activities provided to the general public under the resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.

If any offeror fails to comply with [a] through [h] of this paragraph, the state reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

(c) VENDOR TAX ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the state's request.

(d) CONFLICT OF INTEREST

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The Commissioner of the Department of Health and Social Services reserves the right to **consider a proposal non-responsive and reject it or** cancel the award if any interest disclosed from any source could either give the appearance of a conflict or

cause speculation as to the objectivity of the program to be developed by the offeror. The Commissioner's determination regarding any questions of conflict of interest shall be final.

(e) FEDERAL REQUIREMENTS

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

(f) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

Each proposal must include a signed certification form, see SECTION 8. EXHIBITS.

SEC. 1.09 ASSISTANCE TO OFFERORS WITH A DISABILITY

Offerors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the procurement officer no later than ten days prior to the deadline for receipt of proposals.

SEC. 1.10 AMENDMENTS TO PROPOSALS

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the state's request in accordance with 2 AAC 12.290.

SEC. 1.11 AMENDMENTS TO THE RFP

If an amendment is issued, it will be provided to all who were mailed a copy of the RFP and to those who have registered with the procurement officer after receiving the RFP from the State of Alaska Online Public Notice web site.

SEC. 1.12 RFP SCHEDULE

The RFP schedule set out herein represents the State of Alaska's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted by the same number of days.

- Issue RFP on August 26, 2016,
- Pre-proposal conference on September 6, 2016,
- Deadline for receipt of questions on September 9, 2016
- Deadline for Receipt of Proposals on September 23, 2106,
- Interviews conducted with qualifying offerors on September 29-30, 2016,
- Proposal Evaluation Committee complete evaluation by September 30, 2016,
- State of Alaska issues Notice of Intent to Award a Contract by October 4, 2016,
- State of Alaska issues contract by October 14, 2016.

This RFP does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Health and Social Services, or the Commissioner's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

SEC. 1.13 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held telephonically at 9:00 AM Alaska Prevailing Time on September 6, 2016. The teleconference number is 1.800.315.6338 and the participant code is 78002#. The purpose of the conference is to discuss the work to be performed with the prospective offerors and allow them to ask questions concerning the RFP. Questions and answers will be transcribed and sent to prospective offerors as soon as possible after the meeting.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for the pre-proposal conference so that reasonable accommodation can be made.

SEC. 1.14 ALTERNATE PROPOSALS

Offerors may only submit one proposal for evaluation.

In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

SEC. 1.15 NEWS RELEASES

News releases related to this RFP will not be made without prior approval of the project director.

SECTION 2. BACKGROUND INFORMATION

SEC. 2.01 BACKGROUND INFORMATION

Introduction

The mission of the State of Alaska Department of Health and Social Services (DHSS) is to promote and protect the health and well-being of Alaskans. In pursuit of its mission, the department has three service priorities:

- Health and wellness across the lifespan
- Health care access, delivery and value
- Safe and responsible individuals, families and communities

DHSS is an umbrella agency that administers or provides most of the state’s health and social services, including Medicaid, public health, senior and disability services, behavioral health services, public assistance, juvenile justice, and child protection services. The department also administers a number of residential facilities, including the Pioneer Homes (state-owned assisted living facilities), the state psychiatric institute, and secure juvenile detention and institutional treatment facilities.

Medicaid Reform

Senate Bill (SB) 74, passed by the Alaska legislature in April 2016 and signed into law by the Governor in June, requires DHSS to implement a series of provisions to redesign the state’s Medicaid program to improve quality, increase value, and contain cost growth. SB 74 requires the department to improve fraud and abuse prevention and detection, implement primary care case management, and reform the behavioral health system. The bill also directs the department to implement Coordinated Care Demonstration projects, participate in an emergency department improvement initiative by creating a shared savings model, and implement other payment reform measures. SB 74 includes authorization for the department to apply for 1115 waivers, and to add certain optional Medicaid services such as 1915(i) and (k) home and community based services and 1945 health home services.

DHSS requires payment model consulting and analysis services, including health care actuarial consulting and cost analysis services where appropriate, to support implementation of several of the provisions of SB 74, specifically the Coordinated Care Demonstration Project, the 1115 Waiver for a managed behavioral health system of care, the Emergency Department Improvement Project, and development of other innovative payment reform models.

- **Coordinated Care Demonstration Project**

SB 74 adds a provision to state Medicaid law, Alaska Statute (AS) 47.07.039, requiring the department to contract with one or more third parties to implement one or more coordinated care demonstration projects for Medicaid recipients identified by the department. The purpose of this program is to assess the efficacy of proposed health care delivery models with respect to cost, access, and quality of care. The department is permitted to contract for separate demonstration projects to coordinate care for different groups of Medicaid enrollees to achieve more effective care for recipients at greater cost savings for the Medicaid program.

SB 74 requires that proposals for demonstration projects include three or more of the following elements:

- 1) Comprehensive primary-care-based management for medical assistance services, including behavioral health services and coordination of long-term services and support;

- 2) Care coordination, including the assignment of a primary care provider located in the local geographic area of the recipient, to the extent practical;
- 3) Health promotion;
- 4) Comprehensive transitional care and follow-up care after inpatient treatment;
- 5) Referral to community and social support services, including career and education training services;
- 6) Sustainability and the ability to achieve similar results in other regions of the state;
- 7) Integration and coordination of benefits, services, and utilization management;
- 8) Local accountability for health and resource allocation;
- 9) An innovative payment process, including bundled payments or global payments.

Proposals for demonstration projects must also include information demonstrating how the project will implement additional cost-saving measures, including innovations to reduce the cost of care for Medicaid recipients through expanded use of telehealth for primary care, urgent care, and behavioral health services.

The department is permitted to contract with a managed care organization, primary care case manager, accountable care organization, prepaid ambulatory health plan, or provider-led entity to implement a demonstration project. The projects' fee structure may include global payments, bundled payments, capitated payments, shared savings and risk, or other payment structures.

The department is required to release a Request for Proposals (RFP) soliciting proposals for the coordinated care demonstration projects by December 31, 2016. The department intends to release a Request for Information (RFI) during September to solicit input on a number of key questions to inform the development of the RFP.

AS 47.07.039 requires the department to contract with a third-party actuary to review demonstration projects established under the bill. The actuary is to review each demonstration project after two years of implementation and make recommendations for the implementation of similar projects on a statewide basis. The actuary is to evaluate each project based on cost savings for the Medicaid program, health outcomes for participants in the project, and the ability to achieve similar results on a statewide basis. On or before December 31 of each year, starting in 2018, the actuary shall submit a final report to the department regarding any demonstration project that has been in operation for at least two years.

Finally, the department is required to prepare a plan for the legislature regarding regional or statewide implementation of a coordinated care project based on the results of these demonstration projects by November 15, 2019.

- **1115 Waiver: Behavioral Health Managed System of Care**

SB 74 adds AS 47.05.270(b) requiring the department to develop and manage a comprehensive and integrated behavioral health program that uses evidence-based, data-driven practices to achieve positive outcomes for people with mental health or substance abuse disorders and children with severe emotional disturbances. The program must include a plan for providing a continuum of community-based services to address housing, employment, criminal justice, and other relevant issues. It must also include services from a wide array of providers and disciplines, and efforts to reduce operational barriers that fragment services, minimize administrative burdens, and reduce the effectiveness and efficiency of the program.

SB 74 also adds AS 47.07.036(f) requiring the department to apply for a section 1115 waiver under 42 U.S.C. 1315(a) to establish one or more demonstration projects focused on improving the state's behavioral health system for Medicaid enrollees. The 1115 demonstration project must be consistent with the comprehensive

and integrated behavioral health program required under AS 47.05.270(b) and include continuing cooperation with the grant-funded community mental health clinics and drug and alcohol treatment centers that have historically provided care to recipients of behavioral health services.

The department anticipates contracting with an Administrative Services Organization (ASO) to implement the behavioral health managed system of care required under the legislation. The ASO would be a third-party organization with special expertise in behavioral health systems management. The department would contract with the ASO through a competitive bidding process to provide certain specified administrative services necessary to manage the behavioral health system of care on the State's behalf.

- **Primary Care Case Management**

SB 74 amends AS 47.07.030(d), requiring the department to establish a primary care case management system (PCCM) or a managed care organization (MCO) contract to increase the use of appropriate primary and preventive care by Medicaid recipients and decrease the unnecessary use of specialty care and hospital emergency department services. The department is directed to require Medicaid recipients with multiple hospitalizations to enroll in the program. The department is required to integrate the PCCM system or MCO contract with the Coordinated Care Demonstration Projects established under AS 47.07.039.

- **Emergency Department Improvement Project**

SB 74 adds AS 47.07.038, which requires the department to collaborate with the state hospital association to establish a hospital-based project to reduce the use of emergency department services by Medicaid recipients. The statute stipulates that the hospital association will operate the project, and outlines a series of best practices for emergency departments that this project must address. The department is authorized to establish a shared savings mechanism with participating hospitals to help finance this project.

- **Innovative Payment Models**

SB 74 adds AS 47.05.270(a), requiring the department to implement a program for reforming the state Medicaid program and outlining a series of elements the program must include. One provision directs the department to redesign the payment process by implementing fee agreements that include: 1) premium payments for centers of excellence; 2) penalties for hospital-acquired infections, readmissions, and outcome failures; 3) bundled payments for specific episodes of care; and/or 4) global payments for contracted payers, primary care managers, and case managers for a recipient or for care related to a specific diagnosis.

- **General 1115 Waiver Authority**

SB 74 adds AS 47.07.036(e), authorizing the department to apply for a section 1115 waiver under 42 U.S.C. 1315(a) to establish one or more demonstration projects focused on innovative payment models for one or more groups of Medicaid enrollees in one or more specific geographic areas. The demonstration projects may include managed care organizations, community care organizations, patient-centered medical homes, or other innovative payment models that ensure access to health care without reducing the quality of care.

- **Other Services**

SB 74 adds AS 47.07.036(d), authorizing the department to implement home and community-based services and health home services authorized under sections 1915(i), 1915(k), and 1945 of the Social Security Act.

Additional Background Information

- Alaska Medicaid Program Annual Report:
 - <http://dhss.alaska.gov/dhcs/Documents/PDF/Alaska-Medicaid-Annual-Report-SFY2015.pdf>
- SB 74: <http://www.legis.state.ak.us/PDF/29/Bills/SB0074Z.PDF>

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

The contractor will provide the services described below. To the extent applicable, the contractor will ensure that rate evaluations and recommendations comply with current CMS managed care and other relevant federal regulations. All analyses will take into account various FMAP distributions by population served. All analyses will also take into account any impacts on current cost-based rates.

The analyses and evaluations described below will require an integrated approach across the various projects to ensure identified costs and savings are not duplicative based on implementation plans for the projects provided to the contractor by the department. As many of these implementation plans will be under development, analyses of multiple scenarios may be requested for each project, or for a suite of projects.

I. Coordinated Care Demonstration Project

- Request for Proposal (RFP) Development Consultation: Provide input for the development of the RFP for the Coordinated Care Demonstration Projects. Help to ensure sufficient information is required in project proposals to allow appropriate financial analysis to determine viability of the proposed projects, and to ensure project designs allow for the statutorily required actuarial evaluation of results. (October – November 2016)
- Analysis of Project Proposals: Conduct financial analysis of projects proposed in response to the RFP. Anticipate that a range of payment reform models may be proposed, including per member per month fees for a specific set of services, pay-for-performance, shared savings, and limited or full-risk managed care. (April – June 2017)
 - Review project proposals.
 - Compile baseline data required for analysis of the financial impact of the proposed project.
 - Identify gaps in information required for conducting the financial analysis, and develop questions for DHSS to send to offerors regarding clarification and additional information required.
 - Assess the proposed project's impact on the Medicaid program, including impact on existing rates, and potential for state cost savings.
- Payment Model Design: Support the department in the development of the innovative payment methodologies proposed in each Coordinated Care Demonstration Project selected for negotiation and award. (April – June 2017)
- Actuarial Analysis for Potential Waiver Applications: If a proposed and accepted project requires an 1115 waiver for implementation, the contractor will conduct the required actuarial analysis for the application process to ensure federal cost neutrality. (June 2017)

II. 1115 Waiver for Managed Behavioral Health System of Care

- Baseline Data: Compile baseline data required for preparation of the 1115 behavioral health (BH) system waiver application. (October 2016 – April 2017)
 - Behavioral health services to be included in the actuarial cost analysis will include:

- Inpatient hospital
 - Emergency services
 - Residential treatment
 - Ambulatory detoxification
 - Crisis stabilization
 - Medical evaluation
 - Psychotropic medications
 - Medication assisted treatment
 - Methadone
 - Outpatient professional
 - Group psychotherapy
 - Individual psychotherapy
 - Family psychotherapy
 - Screening, Brief Intervention, and Referral
 - Partial hospitalization
 - Case management
 - Psychological testing
 - Peer support
 - Daily behavioral health rehabilitation
 - Community and residential support
 - Assertive community treatment
- Consultation & Analysis for Waiver Development Teams: Support the 1115 BH waiver application development teams, particularly the Policy Team and the Cost Team, by developing rate setting systems and providing consultation on cost and rate setting questions, and by conducting financial analyses of potential payment models. (For the purpose of estimating workload associated with financial analyses, do not assume payment models will not be restricted to full capitation). (October 2016 – April 2017)
 - Payment Model Design: Support the department in the development of the innovative payment methodologies proposed in the 1115 BH waiver application. (December 2016 – April 2017)
 - Actuarial Analysis for Waiver Application: Conduct the actuarial analysis required for the 1115 BH waiver application to ensure federal cost neutrality. (December 2016– April 2017)

III. Emergency Department Improvement Project Shared Savings Model

- Baseline Data: Compile baseline data required for developing a shared savings payment model for the Emergency Department Improvement Project. (October – December 2016)
- Shared Savings Model: Support the department in the development of a shared savings payment methodology for the Emergency Department Improvement project. Ensure that the shared savings model takes into account the impacts of other demonstration projects. Advise the department on the potential impacts of the shared savings model on future hospital rates. (January – June 2017)

IV. Primary Care Case Management

- Evaluate the cost savings that have accrued to Alaska’s Medicaid Program from the Alaska Medicaid Coordinated Care Initiative (AMCCI) (the “Super Utilizer” project). (October – December 2016)

- Estimate the projected cost savings of the planned expansion of the existing AMCCI care coordination contracts for State Fiscal Years 2017 – 2018. (November – December 2016)
- Recommend approaches to integration or transition of current contracts with or to selected demonstration projects. (April – June 2017)
- Evaluate payment methodologies to ensure duplicate payment is not being paid for the same or similar services. (April – June 2017)

V. Innovative Payment Reform Models

Review and evaluate the payment reform models listed in AS 47.05.270(a)(8). Other innovative payment models that ensure access to health care without reducing quality of care may also be investigated. A stakeholder engagement process facilitated by the contractor to compile input from potentially affected providers should be included in the analysis. Each analysis should include:

- Development and analysis of the appropriate rate.
- Estimated fiscal impact of the payment model, including projected costs and savings.
- Estimated impact, if applicable, to current cost-based rate methodologies.
- Estimated time period required for development and implementation of the model.
- Analysis of the estimated impact on federal reports such as Upper Payment Limits.
- Recommendation regarding whether the payment systems should be implemented statewide, piloted in a region or piloted by a select number of providers.

Specific to the two following categories, the payment reform model analysis should also include:

A. Bundled Payments

- Identification of the care episodes, diagnoses, services and/or procedures best suited to this approach.
- Guidance on how payment should be distributed if two or more distinct providers are involved in the episode of care.
- Parameters that should be built into claims systems to ensure duplicate payment does not occur when certain services remain fee-for-service (FFS) and others are reimbursed under a bundled payment model, especially if bundled payments are not to be used statewide.

B. Penalties for Hospital Readmissions and Outcome Failures

- Proposed metrics and benchmarks for penalties.
- Information on which proposed metrics are currently reported on a national level, and guidance on data availability and reporting requirements associated with the metrics.
- Assessment of the readiness of providers to capture and report on the proposed metrics.
- Methodology for penalty assessment and collection.

SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

The length of the contract will be from the date of award, approximately October 10, 2016 through June 30, 2017, with three (3) one-year renewal options to be exercised at the sole discretion of the state.

It is anticipated that the primary focus of subsequent years' work will be on the on-going evaluation of the Coordinated Care Demonstration Projects and continuing work on the Innovative Payment Reform Models.

Unless otherwise provided in this RFP, the State and the successful offeror/contractor agree: (1) that any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least 30-days before the desired date of cancellation.

SEC. 3.03 DELIVERABLES

Based on the Scope of Work (Section 5.01 above), the contractor will be responsible for provision of the following deliverables:

I. Coordinated Care Demonstration Project

| Deliverables | Timeline |
|---|-------------------------|
| 1) Participate in-person or telephonically in meetings of the RFP Development Team | October – December 2016 |
| 2) Written recommendations for Draft RFP | Due November 30, 2016 |
| 3) Written financial analysis, including source materials, data tables and other essential information, of each project proposal submitted in response to the RFP (for maximum of five proposals) | April – June 2017 |
| 4) Consultation and written recommendations on payment methodologies for selected projects. | April – June 2017 |
| 5) For accepted projects that require an 1115 waiver for implementation: Prepare actuarial analysis for federal cost neutrality requirement for the 1115 waiver application. | April – June 2017 |

II. 1115 Waiver for Managed Behavioral Health System of Care

| Deliverables | Timeline |
|--|----------------------------|
| 1) Participate in-person or telephonically in meetings of the 1115 Behavioral Health Waiver application development Policy Team and Cost Team (one to two meetings per month for each Team). | October 2016 – April 2017 |
| 2) Provide consultation and written analysis required by Policy and Cost Teams, including rate setting systems and financial analyses of potential payment models. | October 2016 – April 2017 |
| 3) Baseline data compilation and analysis: Written summary report with summary data tables. | October 2016 – April 2017 |
| 4) Develop the payment methodologies for the department based on the 1115 waiver application. | December 2016 – April 2017 |
| 5) Actuarial analysis for federal cost neutrality requirement for the 1115 waiver application. | December 2016 – April 2017 |

III. Emergency Department Improvement Project Shared Savings Model

| Deliverables | Timeline |
|---|-------------------------|
| 1) Baseline data compilation and analysis for ED shared savings payment model: Written summary report with summary data tables. | October – December 2016 |
| 2) Develop the payment methodology for the ED shared savings payment model. | January – June 2017 |

IV. Primary Care Case Management

| Deliverables | Timeline |
|--|-------------------------|
| 1) Written report on evaluation of cost savings from the Alaska Medicaid Coordinated Care Initiative (AMCCI) to-date, and estimated cost savings of planned AMCCI contract expansion. | October – December 2016 |
| 2) Written report on recommendations for integration and transition of AMCCI contracts to selected demonstration projects, including evaluation of payment methodologies to avoid duplicate payment. | April – June 2017 |

V. Innovative Payment Reform Models

| Deliverables | Timeline |
|--|-------------------|
| 1) Review and evaluate potential new innovative payment methodologies; provide written report on analysis and recommendations related to innovative payment reform models. | Due June 30, 2017 |

VI. Periodic Consultation and Monthly Progress Reports

- Proposals submitted in response to this RFP should propose a process, frequency and timing for consultation with the Department at key points in the process. The final plan and approach to consultation will be negotiated with the Department and documented in the contract award.
- Proposals submitted in response to this RFP should also propose a process for providing the Department with monthly progress reports throughout the term of the contract. In addition to documenting progress made each month, the progress reports will identify unanticipated problems in implementing contract work and propose solutions. Material changes in project work or management will require preapproval by the department.

SEC. 3.04 CONTRACT TYPE

This contract is a Firm Fixed Rate contract.

SEC. 3.05 PROPOSED PAYMENT PROCEDURES

The state will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the project director.

SEC. 3.06 PROMPT PAYMENT FOR STATE PURCHASES

The state is eligible to receive a **5%** discount for all invoices paid within **15** business days from the date of receipt of the commodities or services and/or a correct invoice, whichever is later. The discount shall be taken on the full invoice amount. The state shall consider payment being made as either the date a printed warrant is issued or the date an electronic funds transfer (EFT) is initiated.

SEC. 3.07 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Commissioner of the Department of Health and Social Services or the Commissioner's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract.

The state is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

SEC. 3.08 LOCATION OF WORK

In general the contractor must provide its own workspace. Access to state-owned workspace may be made available as necessary and mutually agreed upon.

The offeror should plan to attend a minimum of three one to two-day meetings in person in either Juneau or Anchorage, Alaska during the initial period of performance, but may budget more if the offeror's proposed methodology and management plan calls for it.

The contractor must include in their price proposal all costs related to transportation, lodging, and per diem costs sufficient to complete all work set out in this RFP.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the offeror cannot certify that all work will be performed in the United States, the offeror must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of proposals.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the proposal as non-responsive, or cancel the contract.

SEC. 3.09 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Subcontractor experience shall be considered in determining whether the offeror meets the requirements set forth in SEC. 1.04 PRIOR EXPERIENCE.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the state's request:

- complete name of the subcontractor;
- complete address of the subcontractor;
- type of work the subcontractor will be performing;
- percentage of work the subcontractor will be providing;
- evidence that the subcontractor holds a valid Alaska business license; and
- a written statement, signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the state to consider their proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director.

SEC. 3.10 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 3.11 RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, the state may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the state makes such an inspection, the contractor must provide reasonable assistance.

SEC. 3.12 CONTRACT PERSONNEL

Any change of the project team members or subcontractors named in the proposal must be approved, in advance and in writing, by the project director. Personnel changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 3.13 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The project director

may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the state to terminate the contract. In this event, the state may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

SEC. 3.14 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project director will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the project director has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Health and Social Services or the Commissioner's designee.

SEC. 3.15 NONDISCLOSURE AND CONFIDENTIALITY

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA see Appendix E in SECTION 8. EXHIBITS for the state's HIPAA Business Associate Agreement (BAA). The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time

after the contractor's receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

SEC. 3.16 INSURANCE REQUIREMENTS

The successful offeror must provide proof of workers' compensation insurance prior to contract approval.

The successful offeror must secure the insurance coverage required by the state. The coverage must be satisfactory to the Department of Administration Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

Offerors must review form Appendix B2 in SECTION 8. EXHIBITS, attached, for details on required coverage. No alteration of these requirements will be permitted without prior written approval from the Department of Administration, Division of Risk Management. Objections to any of the requirements in APPENDIX B2 must be set out in the offeror's proposal.

SEC. 3.17 TERMINATION FOR DEFAULT

If the project director determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the state may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in SECTION 8. EXHIBITS.

SEC. 3.18 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the project director. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 PROPOSAL FORMAT AND CONTENT

In preparing a proposal response, all narrative portions should be straightforward, detailed, and precise. Do not simply restate or paraphrase information in this RFP. The Department of Health and Social Services will determine the responsiveness of a proposal by its quality, not its volume or packaging.

Proposals will be limited to a total of **no more than 50 pages (with no smaller than 11 pt font)**, including attachments such as resumes of project staff. Examples of prior work that demonstrates the offeror's experience with projects similar to this RFP are not included in the page limit. The length of the Cost Proposal need not be included in the page limit.

SEC. 4.02 INTRODUCTION

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the state should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP; and, if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

SEC. 4.03 UNDERSTANDING OF THE PROJECT

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

SEC. 4.04 METHODOLOGY USED FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the methodology they intend to employ and illustrate how the methodology will serve to accomplish the work and meet the state's project schedule.

SEC. 4.05 MANAGEMENT PLAN FOR THE PROJECT

Offerors must provide comprehensive narrative statements that set out the management plan they intend to follow and illustrate how the plan will serve to accomplish the work and meet the state's project schedule.

SEC. 4.06 EXPERIENCE AND QUALIFICATIONS

Offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- title,
- resume,

- location(s) where work will be performed,
- itemize the total cost and the number of estimated hours for each individual named above.

Offerors must provide reference names and phone numbers for similar projects the offeror's firm has completed.

SEC. 4.07 COST PROPOSAL

Please complete the Cost Proposal template provided in SECTION 8, EXHIBITS.

The completed cost proposal, along with any reference to pricing, is to be **excluded** from the body of the offeror's proposal. Instead, it should accompany the proposal in a separate, sealed envelope if mailing proposal, or using the Pricing Attachment format if submitting via VSS. Failure to comply with this requirement may result in a proposal being rejected as non-responsive.

SEC. 4.08 EVALUATION CRITERIA

All proposals will be reviewed to determine if they are responsive. Proposals determined to be responsive will be evaluated using the criterion that is set out in SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION.

An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 1,000

SEC. 5.01 UNDERSTANDING OF THE PROJECT (5%)

Proposals will be evaluated against the questions set out below:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- 2) How well has the offeror identified pertinent issues and potential problems related to the project?
- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?
- 4) Has the offeror demonstrated an understanding of the state's time schedule and can meet it?

SEC. 5.02 METHODOLOGY USED FOR THE PROJECT (20%)

Proposals will be evaluated against the questions set out below:

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?
- 2) How well does the methodology match and achieve the objectives set out in the RFP?
- 3) Does the methodology interface with the time schedule in the RFP?

SEC. 5.03 MANAGEMENT PLAN FOR THE PROJECT (5%)

Proposals will be evaluated against the questions set out below:

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- 2) How well is accountability completely and clearly defined?
- 3) Is the organization of the project team clear?
- 4) How well does the management plan illustrate the lines of authority and communication?
- 5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?
- 6) Does it appear that the offeror can meet the schedule set out in the RFP?
- 7) Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- 8) To what degree is the proposal practical and feasible?
- 9) To what extent has the offeror identified potential problems?

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS (20%)

Proposals will be evaluated against the questions set out below:

1) *Questions regarding the personnel:*

- a) Do the individuals assigned to the project have experience on similar projects?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

2) *Questions regarding the firm and subcontractor (if used):*

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- b) How successful is the general history of the firm regarding timely and successful completion of projects?
- c) Has the firm provided letters of reference from previous clients?
- d) If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?

SEC. 5.05 INTERVIEWS (20%)

The state will conduct interviews with the Project Manager and up to two other key staff as identified in the proposal. Interviews will be held with those offerors determined to be within the competitive range after evaluations of technical proposals, cost, and preferences. In-person interviews are preferred, but accommodations may be made if this is not possible. Individuals who fail to attend the interview on the time/date specified will be given a “0” score, which may jeopardize the offeror’s competitiveness.

Interviews may last approximately three to four hours. Interviewees may not bring notes or handouts. Interviewees will be prohibited from making any reference to their proposed cost proposal. The State may request additional information prior to interviews and may request to interview additional personnel.

SEC. 5.06 CONTRACT COST (20%)

Overall, 20% of the total evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the preferences referenced under Section 6.12.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 3.15.

SEC. 5.07 ALASKA OFFEROR PREFERENCE (10%)

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10% of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

SECTION 6. GENERAL PROCESS INFORMATION

SEC. 6.01 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, an offeror must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran and Alaska Offeror Preference, an offeror must hold a valid Alaska business license prior to the deadline for receipt of proposals. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- a canceled check for the Alaska business license fee;
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- a sworn and notarized statement that the offeror has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time proposals are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of proposals, all offerors must hold any other necessary applicable professional licenses required by Alaska Statute.

SEC. 6.02 SITE INSPECTION

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

SEC. 6.03 CLARIFICATION OF OFFERS

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee (PEC) are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the PEC may be adjusted as a result of a clarification under this section.

SEC. 6.04 DISCUSSIONS WITH OFFERORS

The state may conduct discussions with offerors in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the procurement officer or the PEC. If modifications are made as a result of these discussions they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions.

If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediate previous proposal is considered the offeror's best and final proposal.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made. Any oral modification of a proposal must be reduced to writing by the offeror.

SEC. 6.05 EVALUATION OF PROPOSALS

The procurement officer, or an evaluation committee made up of at least three state employees or public officials, will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

SEC. 6.06 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held telephonically or via video conference.

SEC. 6.07 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

the state may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

SEC. 6.08 OFFEROR NOTIFICATION OF SELECTION

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award (NIA) and send copies to all offerors. The NIA will set out the names of all offerors and identify the proposal selected for award.

SEC. 6.09 PROTEST

AS 36.30.560 provides that an interested party may protest the content of the RFP.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of proposals.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If an offeror wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing, by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a proposal in order to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;
- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. Fax copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All offerors will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

SEC. 6.10 APPLICATION OF PREFERENCES

Certain preferences apply to all contracts for professional services, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the RFP process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the **Department of Administration, Division of General Service's** web site:

<http://doa.alaska.gov/dgs/pdf/pref1.pdf>

- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)
- Alaska Veteran's Preference - AS 36.30.321(f)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Offerors must attach a copy of their certification letter to the proposal. **An offeror's failure to provide this certification letter with their proposal will cause the state to disallow the preference.**

Sec. 6.11 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the price in the proposal. The preference will be given to an offeror who:

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;
- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;

- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

Alaska Bidder Preference Statement

In order to receive the Alaska Bidder Preference, the proposal must include a statement certifying that the offeror is eligible to receive the Alaska Bidder Preference.

If the offeror is a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner and include a statement certifying that all members or partners are residents of the state.

If the offeror is a joint venture which includes a LLC or partnership as identified in (4) of this subsection, the statement must also identify each member or partner of each LLC or partnership that is included in the joint venture and include a statement certifying that all of those members or partners are residents of the state.

SEC. 6.12 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and is a:

- A. sole proprietorship owned by an Alaska veteran;
- B. partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- C. limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- D. corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans.

Alaska Veteran Preference Statement

In order to receive the Alaska Veteran Preference, the proposal must include a statement certifying that the offeror is eligible to receive the Alaska Veteran Preference.

SEC. 6.13 ALASKA OFFEROR PREFERENCE

2 AAC 12.260(e) provides Alaska offerors a 10% overall evaluation point preference. Alaska bidders, as defined in AS 36.30.990(2), are eligible for the preference. An Alaska offeror will receive 10 percent of the total available points added to their overall evaluation score as a preference.

SEC. 6.14 FORMULA USED TO CONVERT COST TO POINTS

The distribution of points based on cost will be determined as set out in 2 AAC 12.260(c). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined using the formula:

[(Price of Lowest Cost Proposal) x (Maximum Points for Cost)] ÷ (Cost of Each Higher Priced Proposal)

SEC. 6.15 EXAMPLES: CONVERTING COST TO POINTS & APPLYING PREFERENCES

(a) FORMULA USED TO CONVERT COST TO POINTS

STEP 1

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

| | |
|------------|----------|
| Offeror #1 | \$40,000 |
| Offeror #2 | \$42,750 |
| Offeror #3 | \$47,500 |

STEP 2

In this example, the RFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 40 points.

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

Offeror #2 receives 37.4 points.

\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$42,750 cost of Offeror #2's proposal = 37.4

Offeror #3 receives 33.7 points.

\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$47,500 cost of Offeror #3's proposal = 33.7

(b) ALASKA OFFEROR PREFERENCE

STEP 1

Determine the number of points available to qualifying offerors under this preference.

100 Total Points Available in RFP x 10% Alaska offerors preference = 10 Points for the Preference

STEP 2

Determine which offerors qualify as Alaska bidders and thus, are eligible for the Alaska offerors preference. For the purpose of this example, presume that all of the proposals have been completely evaluated based on the evaluation criteria in the RFP. The scores at this point are:

| | | | |
|------------|-----------|----------------------------|-----------|
| Offeror #1 | 83 points | No Preference | 0 points |
| Offeror #2 | 74 points | Alaska Offerors Preference | 10 points |
| Offeror #3 | 80 points | Alaska Offerors Preference | 10 points |

STEP 3

Add the applicable Alaska offerors preference amounts to the offeror's scores:

| | | |
|-------------------|------------------|--------------------------------|
| Offeror #1 | 83 points | |
| Offeror #2 | 84 points | (74 points + 10 points) |
| Offeror #3 | 90 points | (80 points + 10 points) |

STEP 4

Offeror #3 is the highest scoring offeror and would get the award, provided their proposal is responsible and responsive.

SECTION 7. GENERAL LEGAL INFORMATION

SEC. 7.01 STANDARD CONTRACT PROVISIONS

The contractor will be required to sign and submit the State's Standard Agreement Form for Professional Services Contracts (including all associated appendices). This form is attached in SECTION 8. EXHIBITS for your review. The contractor must comply with all contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. Objections to any of the provisions in SECTION 8. EXHIBITS must be set out in the offeror's proposal.

SEC. 7.02 PROPOSAL AS A PART OF THE CONTRACT

Part or all of this RFP and the successful proposal may be incorporated into the contract.

SEC. 7.03 ADDITIONAL TERMS AND CONDITIONS

The state reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

SEC. 7.04 HUMAN TRAFFICKING

By signature on their proposal, the offeror certifies that the offeror is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/j/tip/>

Failure to comply with this requirement will cause the state to reject the proposal as non-responsive, or cancel the contract.

SEC. 7.05 RIGHT OF REJECTION

Offerors must comply with all of the terms of the RFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement officer may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the state. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are trivial, negligible, or immaterial in nature;

- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it determines that to be in its best interest.

A proposal from a debarred or suspended offeror shall be rejected.

SEC. 7.06 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

SEC. 7.07 DISCLOSURE OF PROPOSAL CONTENTS

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

SEC. 7.08 ASSIGNMENT

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer.

SEC. 7.09 DISPUTES

A contract resulting from this RFP is governed by the laws of the State of Alaska. If the contractor has a claim arising in connection with the agreement that it cannot resolve with the state by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632. To the extent not otherwise governed by the preceding, the claim shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 7.10 SEVERABILITY

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

SEC. 7.11 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with SEC. 1.12 RIGHT OF REJECTION. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and

if the state's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

SEC. 7.12 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

SEC. 7.13 SOLICITATION ADVERTISING

Public notice has been provided in accordance with 2 AAC 12.220.

SECTION 8. EXHIBITS

Exhibits:

- 1) Cost Proposal
- 2) Certification Regarding Debarment
- 3) Proposal Evaluation Form
- 4) Standard Agreement Form - Appendices A - E

SEC. 8.01 EXHIBIT 1. COST PROPOSAL

COST PROPOSAL

Note: The purpose of the cost formula is to provide a mechanism for offerors to submit costs per each deliverable in a manner that DHSS can evaluate and score and then use to establish billing rates for the resultant contract. While total project cost is non-negotiable, DHSS may choose to reallocate the project funds based on the ongoing project needs.

Please enter your cost in the spaces provided below for completion of each deliverable.

I. Coordinated Care Demonstration Project

| Deliverables | Budgeted Cost |
|---|----------------------|
| 1) Participate in-person or telephonically in meetings of the RFP Development Team | |
| 2) Written recommendations for Draft RFP | |
| 3) Written financial analysis, including source materials, data tables and other essential information, of each project proposal submitted in response to RFP (for maximum of five proposals) | |
| 4) Consultation and written recommendations on payment methodologies for selected projects. | |
| 5) For accepted projects that require an 1115 waiver for implementation: Prepare actuarial analysis for federal cost neutrality requirement for the 1115 waiver application. | |

II. 1115 Waiver for Managed Behavioral Health System of Care

| Deliverables | Budgeted Cost |
|--|----------------------|
| 1) Participate in-person or telephonically in meetings of the 1115 Behavioral Health Waiver application development Policy Team and Cost Team (one to two meetings per month for each Team). | |
| 2) Provide consultation and written analysis required by Policy and Cost Teams, including rate setting systems and financial analyses of potential payment models. | |
| 3) Baseline data compilation and analysis: Written summary report with summary data tables. | |
| 4) Develop the payment methodologies for the department based on the 1115 waiver application. | |
| 5) Actuarial analysis for federal cost neutrality requirement for the 1115 waiver application. | |

III. Emergency Department Improvement Project Shared Savings Model

| Deliverables | Budgeted Cost |
|---|----------------------|
| 1) Baseline data compilation and analysis for ED shared savings payment model: Written summary report with summary data tables. | |
| 2) Develop the payment methodology for the ED shared savings payment model. | |

IV. Primary Care Case Management

| Deliverables | Budgeted Cost |
|--|---------------|
| 1) Written report on evaluation of cost savings from the Alaska Medicaid Coordinated Care Initiative (AMCCI) to-date, and estimated cost savings of planned AMCCI contract expansion. | |
| 2) Written report on recommendations for integration and transition of AMCCI contracts to selected demonstration projects, including evaluation of payment methodologies to avoid duplicate payment. | |

V. Innovative Payment Reform Models

| Deliverables | Budgeted Cost |
|--|---------------|
| 1) Review and evaluate potential new innovative payment methodologies; provide written report on analysis and recommendations related to innovative payment reform models. | |

VI. Periodic Consultation and Monthly Progress Reports

Budgeted Cost \$ _____

Travel Budget for Year One (per SECTION 3.08) \$ _____

TOTAL YEAR ONE COST (not to exceed \$750,000) \$ _____

For subsequent years, please provide costs for ongoing evaluation of the Coordinated Care Demonstration Projects and work on the Innovative Payment Reform Models:

TOTAL YEAR TWO COST (not to exceed \$200,000) \$ _____

TOTAL YEAR THREE COST (not to exceed \$200,000) \$ _____

TOTAL YEAR FOUR COST (not to exceed \$200,000) \$ _____

TOTAL PROJECT COST (not to exceed \$1,350,000) \$ _____

SEC. 8.02 EXHIBIT 2. CERTIFICATION REGARDING DEBARMENT**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

Expenditures from this contract may involve federal funds. The U.S. Department of Labor requires all state agencies that are expending federal funds to have a certification filed by the contractor that they have not been debarred or suspended from doing business with the federal government. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions must be signed along with the contract documents.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON THE FOLLOWING PAGE WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

(1) The prospective recipient of Federal assistance funds certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this Proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this Proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment

SEC. 8.03 EXHIBIT 1. PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

Person or Firm Name: _____

Name of Proposal Evaluation (PEC) Member: _____

Date of Review: _____

RFP Number: 170007270

EVALUATION CRITERIA AND SCORING

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS **1,000**

5.01 Understanding of the Project—5 Percent

Maximum Point Value for this Section - 50 Points

1,000 Points x 5 Percent = 50 Points

Proposals will be evaluated against the questions set out below.

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

NOTES

- 2) How well has the offeror identified pertinent issues and potential problems related to the project?

NOTES:

- 3) To what degree has the offeror demonstrated an understanding of the deliverables the state expects it to provide?

NOTES:

- 4) Has the offeror demonstrated an understanding of the state's time schedule and can meet it?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.01: _____

5.02 Methodology Used for the Project—20 Percent

Maximum Point Value for this Section - 200 Points

1,000 Points x 20 Percent = 200 Points

Proposals will be evaluated against the questions set out below.

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the RFP?

NOTES:

- 2) How well does the methodology match and achieve the objectives set out in the RFP?

NOTES:

- 3) How well does the methodology interface with the time schedule in the proposal?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.02: _____

5.03 Management Plan for the Project—5 Percent

Maximum Point Value for this Section - 50 Points

1,000 Points x 5 Percent = 50 Points

Proposals will be evaluated against the questions set out below.

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?

NOTES:

- 2) How well is accountability completely and clearly defined?

NOTES:

- 3) Is the organization of the project team clear?

NOTES:

- 4) How well does the management plan illustrate the lines of authority and communication?

NOTES:

- 5) To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

NOTES:

6) Does it appear that offeror can meet the schedule set out in the RFP?

NOTES:

7) Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?

NOTES:

8) To what degree is the proposal practical and feasible?

NOTES:

9) To what extent has the offeror identified potential problems?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.03: _____

5.04 Experience and Qualifications—20 Percent

Maximum Point Value for this Section - 200 Points

1,000 Points x 20 Percent = 200 Points

Proposals will be evaluated against the questions set out below.

1) Questions regarding the personnel.

- a) Do the individuals assigned to the project have experience on similar projects?

NOTES:

- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

NOTES:

- c) How extensive is the applicable education and experience of the personnel designated to work on the project?

NOTES:

2) Questions regarding the firm.

- a) Has the firm demonstrated experience in completing similar projects on time and within budget?

NOTES:

- b) How successful is the general history of the firm regarding timely and successful completion of projects?

NOTES:

- c) Has the firm provided letters of reference from previous clients?

NOTES:

- d) If a subcontractor will perform work on the project, how well do they measure up to the evaluation used for the offeror?

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.04: _____

5.05 Interview — 20 Percent (If Applicable)

Point Value for this Section — 200 Points

1,000 Points x 20 Percent = 200 Points

NOTES:

EVALUATOR'S POINT TOTAL FOR 5.05: _____

EVALUATOR'S COMBINED POINT TOTAL FOR ALL EVALUATED SECTIONS: _____

5.06 Contract Cost — 20 Percent**Maximum Point Value for this Section — 20 Points****1,000 Points x 20 PERCENT = 200 Points**

Overall, 20 percent of the total evaluation points will be assigned to cost. The cost amount used for evaluation may be affected by one or more of the preferences referenced under SECTION 6.11.

Converting Cost to Points

The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in SECTION 6.15.

5.07 Alaska Offeror Preference — 10 Percent**Point Value for this Section — 100 Points****1,000 Points x 10 Percent = 100 Points**

If an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10 percent of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

SEC. 8.04 EXHIBIT 3. STANDARD AGREEMENT FORM (WITH APPENDICES)

| | | | |
|--|------------------------|---|---------------------------------------|
| 1. Agency Contract Number | 2. Solicitation Number | 3. Financial Coding | 4. Agency Assigned Encumbrance Number |
| 5. Vendor Number | 6. Project/Case Number | | 7. Alaska Business License Number |
| This contract is between the State of Alaska, | | | |
| 8. Department of Health and Social Services | | Division | hereafter the State, and |
| 9. Contractor | | | hereafter the Contractor |
| Mailing Address | Street or P.O. Box | City | State ZIP+4 |
| <p>10.</p> <p>ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract</p> <p>2.2 Appendix B (Indemnity and Insurance) sets forth the liability and insurance provisions of this contract</p> <p>2.3 Appendix C (Description of Services) sets forth the services to be performed by the Contractor</p> <p>2.4 Appendix D (Payment for Services) sets forth the provision for payment</p> <p>2.5 Appendix E (Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Business Associate Agreement) governs the use of Protected Health Information under this contract</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends on _____</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed \$0,000.00 in accordance with the provisions of Appendix D.</p> | | | |
| 11. Department of Health and Social Services | | Attention: Contracts Support Team | |
| Mailing Address P.O. Box 110650, Juneau, Alaska 99811-0650 | | Attention: Contracts Section | |
| 12. CONTRACTOR | | 14. CERTIFICATION | |
| Name of Firm | | I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal. | |
| Signature of Authorized Representative | Date | | |
| Typed or Printed Name of Authorized Representative | | | |
| Title | | | |
| 13. CONTRACTING AGENCY | | Signature of Head of Contracting Agency or Designee | Date |
| Department/Division Health & Social Services / | | Typed or Printed Name | |
| Signature of Project Director | Date | | |
| Typed or Printed Name of Project Director | | | |
| Title | | | |

**APPENDIX A
GENERAL PROVISIONS**

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure:

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not);

revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

APPENDIX B² INDEMNITY AND INSURANCE

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. “Contractor” and “Contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the Contracting agency’s selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor’s work.

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount Minimum Required Limits

| | |
|---------------------|--|
| Under \$100,000 | \$300,000 per Claim / Annual Aggregate |
| \$100,000-\$499,999 | \$500,000 per Claim / Annual Aggregate |
| \$500,000-\$999,999 | \$1,000,000 per Claim / Annual Aggregate |
| \$1,000,000 or over | Refer to Risk Management |

APPENDIX E
STATE OF ALASKA
DEPARTMENT OF HEALTH & SOCIAL SERVICES
HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 ("HIPAA")
BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health and Social Services (“Covered Entity” or “CE”) and _____ (“Business Associate” or “BA”).

RECITALS

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information (“PHI”);
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the “Privacy and Security Rule”), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the “HITECH Act”), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement (“BAA”) is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;

Therefore, in consideration of mutual promises below and the exchange of information pursuant to the BAA, CE and BA agree as follows:

1. Definitions.

- a. General: As used in this BAA, the terms "Protected Health Information," "Health Care Operations," and other capitalized terms have the same meaning given to those terms by HIPAA, the HITECH Act and the Privacy and Security Rule. In the event of any conflict between the mandatory provisions of HIPAA, the HITECH Act or the Privacy and Security Rule, and the provisions of this BAA, HIPAA, the HITECH Act or the Privacy and Security Rule shall control. Where the provisions of this BAA differ from those mandated by HIPAA, the HITECH Act or the Privacy and Security Rule but are nonetheless permitted by HIPAA, the HITECH Act or the Privacy and Security Rule, the provisions of the BAA shall control.
- b. Specific:
 - 1) Business Associate: “Business Associate” or “BA” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103.
 - 2) Covered Entity: “Covered Entity” or “CE” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103.
 - 3) Privacy and Security Rule: “Privacy and Security Rule” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

2. Permitted Uses and Disclosures by Business Associate.

- a. BA may only use or disclose PHI for the following purposes: in the rendering of services as described in Appendix C of this document.
- b. BA may use or disclose PHI as required by law.
- c. BA agrees to make uses and disclosures and requests for PHI consistent with CE’s minimum necessary policies and procedures.

- d. BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.
- e. BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- f. BA may provide data aggregation services related to the health care operations of CE.

3. Obligations of Business Associate.

- a. Permitted uses and disclosures: BA may only use and disclose PHI owned by the CE that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this BAA. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to BA and are incorporated into this BAA.

To the extent that BA discloses CE's PHI to a subcontractor, BA must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information; and (2) an agreement from the subcontractor to notify BA of any Breach of confidentiality, or security incident, within two business days of when it becomes aware of such Breach or incident.

- b. Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to BA in the same manner that such sections apply to CE, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to BA and are incorporated into this BAA.

Unless CE agrees in writing that this requirement is infeasible with respect to certain data, BA shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

BA shall patch its operating system and all applications within two weeks of the release of any patch. BA shall keep its antivirus and antimalware installed and active. BA shall limit its use of administrative accounts for IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 24 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents. BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, Breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

If the unauthorized acquisition, access, use or disclosure of CE's PHI involves only Secured PHI, BA shall notify CE within 10 days of discovering the Breach but is not required to notify CE of the names of the individuals affected.

- d. BA is not an agent of CE.

- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.
- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.
- h. Amendment of PHI: Within 30 days of a written request by CE or an individual, BA shall amend PHI maintained, transmitted, created or received by BA on behalf of CE as directed by CE or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.
- j. Risk Assessment: BA shall biennially conduct a thorough assessment of the potential risks to and vulnerabilities of the confidentiality, integrity, and availability of CE's PHI that BA receives, stores, transmits, or has access to, and shall provide CE with a written report detailing the results of the assessment within 60 days of completing it.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing reasonable notice to the BA, conduct an inspection of the facilities, systems, books, logs and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

Notwithstanding BA's obligation to report under paragraph 3.c of this BAA, BA shall provide a monthly report to CE detailing the unauthorized, or reasonable belief of unauthorized, acquisition, access, use, or disclosure of CE's PHI, including any unauthorized creation, modification, or destruction of PHI and unauthorized login attempts. BA shall include privileged and nonprivileged accounts in its audit and report, indicating the unique individual using the privileged account. BA shall also indicate whether CE's PHI subject to unauthorized activity was encrypted or destroyed at the time of the unauthorized activity.

BA shall provide a yearly report to CE that lists the names of all individuals with technical or physical access to CE's PHI and the scope of that access.

- m. Restrictions and Confidential Communications: Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.

- n. Indemnification: BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty imposed on CE or monetary settlement reached by CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.
4. Obligations of CE. CE will be responsible for using legally appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to BA under the BAA until the PHI is received by BA. CE will not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act or the Privacy and Security Rule if done by CE.
5. Termination.
- a. Breach: A breach of a material term of the BAA by BA that is not cured within a reasonable period of time will provide grounds for the immediate termination of the contract.
- b. Reasonable Steps to Cure: In accordance with 45 C.F.R. 164.504(e)(1)(ii), CE and BA agree that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BAA, the nonbreaching party will take reasonable steps to get the breaching party to cure the breach or end the violation and, if the steps taken are unsuccessful, terminate the BAA if feasible, and if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.
- c. Effect of Termination: Upon termination of the contract, BA will, at the direction of the CE, either return or destroy all PHI received from CE or created, maintained, or transmitted on CE's behalf by BA in any form. Unless otherwise directed, BA is prohibited from retaining any copies of PHI received from CE or created, maintained, or transmitted by BA on behalf of CE. If destruction or return of PHI is not feasible, BA must continue to extend the protections of this BAA to PHI and limit the further use and disclosure of the PHI. The obligations in this BAA shall continue until all of the PHI provided by CE to BA is either destroyed or returned to CE.
6. Amendment. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving, and that the parties may be required to further amend this BAA to ensure compliance with applicable changes in law. Upon receipt of a notification from CE that an applicable change in law affecting this BAA has occurred, BA will promptly agree to enter into negotiations with CE to amend this BAA to ensure compliance with changes in law.
7. Ownership of PHI. For purposes of this BAA, CE owns the data that contains the PHI it transmits to BA or that BA receives, creates, maintains or transmits on behalf of CE.
8. Litigation Assistance. Except when it would constitute a direct conflict of interest for BA, BA will make itself available to assist CE in any administrative or judicial proceeding by testifying as witness as to an alleged violation of HIPAA, the HITECH Act, the Privacy or Security Rule, or other law relating to security or privacy.
9. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.
10. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy and Security Rule and applicable state and federal laws. The parties agree that any ambiguity in BAA will be resolved in favor of a meaning that permits the CE to comply with and be consistent with HIPAA, the HITECH Act, and the Privacy and Security Rule. The parties further agree that where this BAA conflicts with a contemporaneously executed confidentiality agreement between the parties, this BAA controls.
11. No Private Right of Action Created. This BAA does not create any right of action or benefits for individuals whose PHI is disclosed in violation of HIPAA, the HITECH Act, the Privacy and Security Rule or other law relating to security or privacy.

In witness thereof, the parties hereto have duly executed this BAA as of the effective date.