

STATE OF ALASKA REQUEST FOR PROPOSALS



HEALTH BENEFIT CONSULTING, ACTUARIAL, AND AUDIT SERVICES RFP 2022-0200-5117

ISSUED APRIL 4, 2022

THE DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT BENEFITS, IS SOLICITING PROPOSALS FOR OFFERORS TO PROVIDE ACTUARIAL AND BENEFIT CONSULTING SERVICES TO ASSIST IN THE ADMINISTRATION OF THE ALASKACARE HEALTH PLANS AND OTHER OPTIONAL BENEFITS.

ISSUED BY:

DEPARTMENT OF ADMINISTRATION
DIVISION OF RETIREMENT AND BENEFITS

PRIMARY CONTACT:

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OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

IMPORTANT NOTICE: IF YOU RECEIVED THIS SOLICITATION FROM THE STATE OF ALASKA'S "ONLINE PUBLIC NOTICE" WEB SITE, YOU MUST REGISTER WITH THE PROCUREMENT OFFICER LISTED IN THIS DOCUMENT TO RECEIVE NOTIFICATION OF SUBSEQUENT AMENDMENTS. FAILURE TO CONTACT THE PROCUREMENT OFFICER MAY RESULT IN THE REJECTION OF YOUR OFFER.

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Administration, Division of Retirement and Benefits, is soliciting proposals from professional offerors to provide actuarial and benefit consulting services to assist in administration of the AlaskaCare health plans and other optional benefit offerings. The successful offeror will provide analysis necessary for rate setting

for the health plans, review and analyze pending legislation impacting the Division, assist in procuring contracts with health plan vendors, perform audits, review reporting provided by third-party administrators, prepare and deliver independent reporting, assist in compliance activities, contribute to communications and actions with the third-party administrators, assist in the development of policy and plan initiatives, and engage in other related consultation services.

SEC. 1.02 BUDGET

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

SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **3:00 P.M.** prevailing Alaska Time on **APRIL 28, 2022**. Late proposals or amendments will be disqualified and not opened or accepted for evaluation.

SEC. 1.04 PRIOR EXPERIENCE

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

- Offerors must demonstrate at least 10 years of prior experience in providing health benefit plan consulting services for at least one self-insured public sector active employee health plan of 6,000 or more employees and for at least one self-insured retiree health plan of 20,000 or more retirees.
- Offeror's actuaries must be members of the American Academy of Actuaries and must provide proof of membership with proposal response.

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

SEC. 1.05 REQUIRED REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should 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 proposal and exposure of offeror's proposals upon which award could not be made.

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.

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: Christine Mash– email address at: doa.oppm.procurement@alaska.gov.

SEC. 1.07 RETURN INSTRUCTIONS

Offerors must submit their proposal via email to the procurement officer. The technical proposal and cost proposal must be saved as separate PDF documents and emailed to doa.oppm.procurement@alaska.gov as separate,

clearly labeled attachments, such as “Vendor A – Technical Proposal.pdf” and “Vendor A – Cost Proposal.pdf”. The email must contain the RFP number in the subject line.

The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Similar to sending a hard copy proposal, if you are emailing your proposal, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of proposals.

It is the offeror’s responsibility to contact the issuing agency via email to doa.oppm.procurement@alaska.gov to confirm that the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

SEC. 1.08 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. 1.09 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. 1.10 AMENDMENTS TO THE RFP

If an amendment is issued before the deadline for receipt of proposals, it will be provided to all who were notified 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 website.

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. 1.11 RFP SCHEDULE

RFP schedule set out herein represents the state’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 accordingly. All times are Alaska Time.

ACTIVITY	TIME	DATE
Issue Date / RFP Released		April 4, 2022
Pre-Proposal Conference		April 7, 2022
Last day for Questions Submittal		April 15, 2022
Deadline for Receipt of Proposals / Proposal Due Date	3:00 pm AKST	April 28, 2022

Interviews (approximately week of)		May 9, 2022
Proposal Evaluations Complete (approximately week of)		May 9, 2022
Notice of Intent to Award (approximately week of)		May 23, 2022
Contract Issued		July 1, 2022

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 Administration, 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. 1.12 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held at **9:00 am, Alaska Time, on Wednesday, April 7, 2022**, via Teams. 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.

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.

All interested Offerors must register with the Procurement Officer via email address at doa.oppm.procurement@alaska.gov

SEC. 1.13 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. 1.14 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 ABOUT THE DIVISION

The Division of Retirement and Benefits (Division) manages the State of Alaska retirement plans, the State-sponsored AlaskaCare health and dental plans, and other State-sponsored optional benefits.

The Commissioner of the Department of Administration is the Plan Administrator, but delegates policy development and operational duties to the Division. Under the leadership of the Division Director, the Division is organized into several sections as follows:

Health Plan Administration: This section administers and manages the AlaskaCare health plans and other optional benefits, manages the associated vendors, manages health plan eligibility, and internally handles some of the work related to health plan customer service, benefits processing, and appeals.

Operations: This section provides administrative services, communications support, information services, internal auditing/compliance activities, and operates a member service center.

Member Benefits: This section provides counseling to members, processes retirement benefit appeals, IT & special project support, and processing related to disability and death, retirement, and survivor benefits.

Finance: This section provides accounting services and payroll services including retiree & refund processing, and employer payroll support.

SEC. 2.02 DEFINED BENEFIT RETIREMENT PLANS

There are three Defined Benefit (DB) Internal Revenue Code (IRC) 401 (a) qualified plans. These are:

1. Public Employees' Retirement System (PERS) Tiers I/II/III
2. Teachers' Retirement System (TRS) Tiers I/II
3. Judicial Retirement System (JRS)

PERS Tiers I/II/III and TRS Tiers I/II are closed to new entrants.

There are two non-qualified retirement plans. Both of these plans would require less than 5% of the total work contemplated under this contract. These are:

1. National Guard and Naval Militia Retirement System (NGNMRS)
2. Elected Public Officials Retirement System (EPORS)

SEC. 2.03 DEFINED CONTRIBUTION RETIREMENT PLANS

There are three Defined Contribution Retirement (DCR) Plans. These are:

1. PERS Tier IV/TRS Tier III Defined Contribution Retirement Plan.
2. The State of Alaska Supplemental Benefits System (SBS) is composed of two basic plans:
 - a. State of Alaska Supplemental Annuity Plan (SBS-AP) is a mandatory defined contribution annuity plan under IRC 401(a).
 - b. State of Alaska Benefits Plan (SBS-BP) a voluntary IRC 125 Cafeteria Plan for the purchase of various benefits.
3. The Deferred Compensation Plan (DCP) is an eligible deferred compensation plan under IRC 457. This plan is for the State of Alaska and 24 political subdivisions (more are joining each year). This plan is voluntary.

In addition, during the course of a DCR plan member's employment, the employer makes contributions into an individual Health Reimbursement Arrangement (HRA) account on the member's behalf. Once a member meets certain eligibility requirements, the HRA account balance is available to the member to use for qualified medical expenses.

SEC. 2.04 ALASKACARE HEALTH BENEFITS & OTHER OPTIONAL BENEFITS

AlaskaCare is the term used to describe the medical, pharmacy, dental, vision, and audio plans administered by the Division. These plans are provided in accordance with Alaska statutes to (1) a portion of state employees; (2) DB retired employees of the state, teachers, and participating political subdivision employees; and (3) DCR retired employees of the state, teachers, and participating political subdivision employees. The plans have different provisions and funding structures, but the State's group health and dental plans are self-funded.

The State offers a self-funded long-term care benefit plan option to all eligible retirees. Additionally, the Division offers a suite of Voluntary Supplemental Benefits (VSB) available to individuals employed by an SBS employer and to retirees in limited circumstances. The VSB offerings are fully insured.

More information about these benefits is available at www.AlaskaCare.gov

The AlaskaCare plans (medical, pharmacy, dental, vision, and audio) have many members who are covered by more than one AlaskaCare plan. This can be through coverage as a member and a dependent of their spouse, or through two of their own plans (e.g., employee plan and retiree plan, or multiple retirement plans). The active employee and DB retiree health plans allow coordination of benefits up to 100% of the recognized charge. The DCR health plan has a government carve-out type coordination of benefits, where AlaskaCare applies the coinsurance calculation to the amount not covered by the primary plan.

AlaskaCare Retiree Health Benefits

The Division offers the following benefit options to retirees:

1. **AlaskaCare Defined Benefit Retiree Health Plan** This plan provides medical and pharmacy benefits to eligible DB retirees automatically upon retirement. This plan is an older plan design that has undergone limited updates since 2000. There are approximately 75,000 covered lives in this plan (encompassing subscribers and dependents), approximately 55,000 of whom are Medicare age-eligible. The plan is funded by various retiree health trusts, and most members are eligible for retirement system-paid premiums, meaning they do not pay a monthly premium out-of-pocket for health coverage for themselves and any eligible dependents.
2. **AlaskaCare Defined Contribution Retiree Health Plan** This plan provides medical and pharmacy benefits to eligible DCR retirees who elect to participate after termination of employment. This plan was first implemented in 2016 and is a more modern plan design. There are less than 200 covered lives in this plan (encompassing subscribers and dependents). This plan is funded by various retiree health trusts, and all members in this plan are required to pay monthly premiums, which vary depending based on a number of factors. Eligible members may elect to use their HRA account to pay or offset their monthly premiums.
3. **AlaskaCare Retiree Dental-Vision-Audio (DVA) Plan** This plan provides dental, vision, and audio benefits to eligible DB and DCR retirees who elect to participate upon retirement or termination of employment. The Division offers eligible retirees a choice between two dental plan options with different cost share and coverage provisions: the Standard Plan, and the Legacy Plan. All DVA plan participants are provided

the same vision and audio benefits. There are approximately 42,000 members in this plan (encompassing subscribers and dependents). The DVA plan is fully funded by member premiums.

Alaska statute requires the AlaskaCare retiree health plans become supplemental to Medicare when members turn 65. The AlaskaCare retiree health plans assume that members are enrolled in both Parts A and B of Medicare at age 65 and will pay as secondary after Medicare or estimate Medicare's payment amount before paying benefits. In 2019 the State implemented a group Medicare Part D Employer Group Waiver Plan (EGWP) for Medicare-eligible members covered under the AlaskaCare retiree health plans. The State reimburses EGWP plan participants for any Income Related Monthly Adjustment Amount (IRMAA) related to their Part D EGWP prescription drug coverage. The State does not reimburse retirees for any IRMAA related to any other Part of Medicare. The State receives prescription drug subsidies through the Centers for Medicare & Medicaid Services (CMS) Retiree Drug Subsidy (RDS) program for the small portion of Medicare-eligible members who do not participate in the EGWP.

The Division works with the Alaska Retiree Health Plan Advisory Board (RHPAB) to analyze and evaluate potential changes to the AlaskaCare Retiree Health Plans. The RHPAB is advisory in nature and makes recommendations to the Plan Administrator related to the retiree health plans.

AlaskaCare Active Employee Benefits

The Division offers the following benefit options to eligible active employees:

1. **AlaskaCare Active Employee Health Plan** This plan provides medical, pharmacy, and audio benefits to eligible State of Alaska employees and their dependents. Eligible employees may, on an annual basis, elect to opt out of medical coverage. The Division offers eligible employees a choice between three plan options with different cost share provisions, but the same coverage provisions: the Standard Plan, the Economy Plan, and the Consumer Choice Plan. The plan is actively managed by the Division. There are approximately 15,000 covered lives in the employee medical plan (encompassing subscribers and dependents). The plan is financially supported by employer contributions and monthly employee premiums.
2. **AlaskaCare Active Employee Dental Plan** This plan provides dental benefits to eligible State of Alaska employees and their dependents. Eligible employees may, on an annual basis, elect to opt out of dental coverage. The Division offers eligible employees a choice between two dental plan options with different cost share and coverage provisions: the Standard Plan, and the Economy Plan. There are approximately 15,000 members in the employee dental plan (encompassing subscribers and dependents). The plan is financially supported by employer contributions and monthly employee premiums for those who elect the Standard Plan; the Economy Plan is offered premium-free to employees.
3. **AlaskaCare Active Employee Vision Plan** This plan provides vision benefits to eligible State of Alaska employees and their dependents. Eligible employees may elect to opt out of vision coverage. There are approximately 11,000 members in the employee vision plan (encompassing subscribers and dependents). The plan is financially supported by employer contributions and monthly employee premiums.
4. **AlaskaCare Active Employee Health Flexible Spending Account (HFSAs)** Eligible employees may elect to contribute pre-tax dollars to a HFSAs to pay for qualified health care expenses. Participants are permitted to carry forward up to \$550 in unused HFSAs funds from year to year. There are approximately 1,300 active employees with a HFSAs account.

The Division works the Health Benefits Evaluation Committee (HBEC), made up of union and management representatives, to analyze and evaluate potential changes to the AlaskaCare Employee Health Plans. The HBEC is advisory in nature and makes recommendations to the Plan Administrator related to the employee health plans.

Other Optional Benefit Offerings

The Division offers the following benefit options to eligible active employees and retirees:

1. **State of Alaska Long-Term Care (LTC) Plan** This plan provides LTC benefits to eligible DB and DCR retirees who elect to participate upon retirement or termination of employment. The State administers a closed plan option (Bronze) which is available only to benefit recipients who retired prior to February 1, 2000. The State offers eligible retirees a choice between three plan options (Silver, Gold, and Platinum) with differing benefit levels. There are approximately 29,000 members in these plans (encompassing subscribers and dependents). The LTC plans are fully funded by member premiums.
2. **Voluntary Supplemental Benefits (VSB)** These benefits are available in some form to individuals employed by an SBS employer and to retirees in limited circumstances. The benefit offering is not exactly the same for each eligible person (depending on their employer or their status as an active employee or retiree), but all benefit offerings are managed by the Division. VSB offerings may include: various life insurance options, various accidental death & dismemberment options, travel accident insurance, disability benefits, and critical illness.

Current AlaskaCare & Other Benefit Offering Vendor Partners

The Division contracts with multiple vendors, Third-Party Administrators (TPA), and a Pharmacy Benefit Manager (PBM) to provide services and to assist in administration of the various benefit offerings. These services are periodically rebid through a competitive procurement process. Current vendor partners include:

1. **Aetna** currently provides TPA services for the medical plans, audio plans, and the retiree indemnity vision plan.
 - a. Aetna partners with **VSP Vision Care** to administer the employee vision plan.
 - b. Aetna partners with **Teladoc** to provide telehealth services to employee medical plan members.
 - c. Aetna partners with **PayFlex** to administer the State's account-based plan offerings (HFSA, HRA), COBRA services, and direct billing services.
 - d. Aetna partners with **HDMS** to provide a claims data warehouse to the State.
2. **OptumRx** currently provides PBM services for the pharmacy plans and supports the State's process to reimburse eligible retiree members for the Medicare Part D IRMAA surcharge.
3. **Delta Dental of Alaska** currently provides dental TPA services for the retiree and employee dental plans.
4. **SurgeryPlus** currently administers supplemental, non-emergent, surgery and travel benefits for the employee medical plan.
 - a. SurgeryPlus partners with **Hinge Health** to provide remote therapy programs for musculoskeletal conditions to employee medical plan members.
5. **CHCS** currently provides TPA services for the retiree long-term care plans.
6. **MetLife** currently provides and administers the VSB offerings.
7. **Segal** currently provides benefit consulting and actuarial services for the AlaskaCare health plans and other optional benefit offerings.

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

The main points of contact for this contract will be the Chief Health Administrator and members of the Division's Health Plan Administration section.

Recurring Services

The following services must be provided on a recurring annual basis.

- A. Provide analysis and rate setting for self-insured health, dental, vision, audio and long-term care plans and associated reserve analysis.
- B. Provide any necessary actuarial services including projecting funding needs for the upcoming fiscal year for all benefit plans.
- C. Notify the state of all federal issues affecting or potentially affecting the state's benefit plans; advise the state of appropriate action to be taken; and provide assistance upon request.
- D. In coordination with the state, on an annual basis review the health benefit plans for quality and value of benefits provided, competitiveness and plan administration.
- E. Inform the state of applicable market trends, employee benefit issues, proposed legislation, and innovations.
- F. Assist in the development of policy and plan initiatives by (1) developing presentation materials, briefing documents, and other related materials as required; (2) providing a thorough analysis of policy implications specific to the state including but not limited to legal and actuarial analysis; and (3) identifying additional recommendations for state consideration.
- G. Assist the state in maintaining surveillance over State's vendor partners' operations to ensure proper performance and leverage industry experience and knowledge to provide insight to the state regarding the State's vendor partner's performance.
- H. No less than once a quarter, review the reports generated by the health benefits contractor(s) for the Division and (1) evaluate the data analysis and quality of the reports; and (2) recommend the addition or alteration of reports as necessary to improve quality of data reporting and to meet the state's evolving needs.
- I. Prepare and deliver necessary reports to the state as required by the federal government and perform other reporting functions including but not limited to those for qualified plans (e.g., RDS annual actuarial attestation).

As-Needed Services

The following services will be provided on an as-needed or as-requested basis:

1. Assist in the administration of the plans, including development of administrative systems or platforms and procedures including testing procedures related to qualification compliance.
2. Represent and support the state in communications and actions with the state's vendor partners, boards, commissions, or other independent bodies.
3. Review pending legislation involving all State of Alaska benefit plans and (1) advise the State of the legislation's impact on the insurance plans for active state employees and retirees; and (2) apply assumptions to various scenarios, often with only a few hours notification.
4. Assist the state in reviewing the state's plans for compliance with federal requirements.

5. Discuss and coordinate information with other contractors hired (not employed) by the state.
6. Perform appropriate audits of the state's vendor partners, to evaluate performance, including but not limited to proper and accurate payment of claims, application of plan administrative policies, and customer service.
7. Assist in drafting, reviewing, issuing, and evaluating requests for proposals and invitations to bid; advise in contract negotiations and renewals.
8. Provide advice in labor contract negotiations.
9. Review records of the financial and claims experience, condition, and progress of the state's plans and provide associated reports.
10. Assist with evaluation and implementation of new health benefit and other plans.
11. Assist with the development of compliance programs to ensure the plan's compliance with rules and regulations governing tax qualified plans.
12. Prepare reports showing claims experience.
13. Provide expert witness services, including reports and testimony.
14. Review contracts, plan documents, insurance policies, and other documents for accuracy, consistency and possible plan qualification impacts.
15. Assist in (1) providing thorough analysis of any proposed plan modifications and/or new plan including but not limited to legal and actuarial analysis; (2) representing the state in the amendment approval process; and (3) submitting written reports and other documents as required by the federal government.
16. Assist in developing communication materials (including booklets); coordinating the design, editing, printing, and production of those materials and giving advice and recommendations when necessary or appropriate.
17. Perform other related consultation services.

SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

The length of the contract will be from the date of award, July 1, 2022 through June 30, 2026, with three two-year renewal options at the State's discretion.

Unless otherwise provided in this RFP, the State and the successful offeror/contractor agree: (1) that any extension 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) the procurement officer will provide notice to the contractor of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

SEC. 3.03 CONTRACT TYPE

This contract is a firm fixed price.

SEC. 3.04 PAYMENT PROCEDURES

The State will make payments based on a negotiated payment schedule. Each billing must consist of a detailed invoice. No payment will be made until invoice has been approved by the State.

The State reserves the right to negotiate specific not-to-exceed amounts for discreet projects based on a task order to be provided by the offeror upon request and agreed to by both parties. Price per hour for discreet projects may not exceed price per hour listed on cost proposal.

The offeror may not bill the State for any clerical, administrative, telephone, fax, copies, or other routine office-related administrative charges.

The offeror may not bill for more than one staff person to attend meetings or events unless authorized in advance in writing by the State.

SEC. 3.05 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Commissioner of the Department of Administration 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.

Payments must be accepted by the contractor via Electronic Funds Transfer (EFT).

SEC. 3.06 CONTRACT PRICE ADJUSTMENTS

Consumer Price Index (CPI): Contract prices will remain firm through June 30, 2024.

The contractor may request price adjustments, in writing, 30 days prior to the contract renewal date. Requests must be in writing and must be received 30 days prior to the contract renewal date. If the contractor fails to request a CPI price adjustment 30 days prior to the contract renewal date, the adjustment will be effective 30 days after the state receives their written request. During the initial four-year term, the State will consider allowing for a CPI adjustment after the first two years of the initial four-year term, if request is received in writing 30 days prior to the end of the initial two years, but the state reserves the right to decline this request.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, Urban Alaska.

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (July through December 2022); and each July through December six-month average thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed.

All price adjustments must be approved by the procurement officer prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the procurement officer.

SEC. 3.07 LOCATION OF WORK

The location(s) the work is to be performed, completed and managed at the offeror's place of business.

The state will not provide workspace for the contractor. The contractor must provide its own workspace.

The contractor's price proposal must include all necessary travel costs, which, at a minimum, include: transportation, lodging, and per diem costs sufficient to pay for one person to make at least four trip(s) to Alaska, location is typically Juneau, but other locations in Alaska are possible (e.g., Anchorage).

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. 3.08 SUBCONTRACTORS

United States-based subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must complete the Submittal Form identified in Section 4.02 of this RFP.

An offeror's failure to provide this information with their proposal may cause the state to consider their proposal non-responsive and reject it.

Subcontractor experience **SHALL NOT** 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 state may require a signed written statement from each subcontractor that clearly verifies the subcontractor is committed to provide the good or services required by the contract.

The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director or procurement officer.

If a subcontractor is used to perform work where they have access to Protected Health Information (PHI) or Personally Identifiable Information (PII), a copy of a valid Business Associate Agreement (BAA) between the offeror and the subcontractor must be provided.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

SEC. 3.09 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 3.10 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. 3.11 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 Division's Chief Health Administrator or designee. Changes that are not approved by the state may be grounds for the state to terminate the contract.

SEC. 3.12 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 or procurement officer 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. 3.13 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 procurement officer has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Administration or the Commissioner's designee.

SEC. 3.14 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. If the contractor becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information, it must promptly notify the state in writing and take appropriate action as outlined in the BAA.

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).

Additional information that the contractor shall hold as confidential during the performance of services under this contract include:

The information shared by the Division of Retirement and Benefits with the Offeror during the course of the contract must be held confidential. This information will vary and depend on the specific needs of the Division at the time the work is performed.

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. 3.15 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.

SEC. 3.16 INSURANCE REQUIREMENTS

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 procurement officer prior to beginning work and must provide for at least a 30 day advance notice of cancellation, non-renewal, or material change of conditions to the State 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.

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.

Commercial General Liability Insurance: on an occurrence basis covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum

coverage limits of \$1,000,000.00 for personal injury. \$1,000,000.00 for property damage and \$2,000,000.00 in the aggregate.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000.00 each occurrence for bodily injury and property damage and \$2,000,000.00 in the aggregate.

Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement with minimum coverage limits of \$1,000,000.00 per claim and \$2,000,000.00 in an annual aggregate.

Umbrella Coverage: The Business Associate shall provide Umbrella/Excess Liability coverage in the amount of \$5,000,000.00. The Umbrella or excess liability policy shall contain a clause stating that it takes effect in the event the primary limits are impaired or exhausted.

All insurances noted above shall be considered to be primary and non-contributory to any other insurance carried by the State of Alaska, whether through self-insurance or otherwise. The State of Alaska shall be named as an additional insured on the Commercial General Liability, Automobile Liability, Professional Liability and Umbrella/Excess insurance policies. The Commercial General Liability, Automobile Liability, Professional Liability and Umbrella/Excess insurance policies shall contain an endorsement for contractual indemnity/liability coverage. In any contract or agreement with subcontractors performing work, the contractor shall require that all indemnities and waivers of subrogation it obtains and any requirement contractor be named as an additional insured must also be extended to waive rights of subrogation against the State of Alaska and to add the State of Alaska as an additional named indemnitee and as an additional insured.

SEC. 3.17 TERMINATION FOR DEFAULT

If the project director or procurement officer 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 7. ATTACHMENTS**.

SECTION 4. PROPOSAL FORMAT AND CONTENT

SEC. 4.01 RFP SUBMITTAL FORMS

This RFP contains Submittal Forms, which must be completed by the offeror and submitted as their proposal. An electronic copy of the forms is posted along with this RFP. Offerors shall not re-create these forms, create their own forms, or edit the format structure of the forms unless permitted to do so.

Unless otherwise specified in this RFP, the Submittal Forms shall be the offeror’s entire proposal. Do not include any marketing information in the proposal.

Any proposal that does not follow these requirements may be deemed non-responsive and rejected.

SEC. 4.02 SPECIAL FORMATTING REQUIREMENTS

The offeror must ensure that their proposal meets all special formatting requirements identified in this section.

Documents and Text: All attachment documents must be written in the English language, be single sided, and be single spaced with a minimum font size of 10. Pictures or graphics may be used if the offeror feels it is necessary to communicate their information, however, be aware of the below requirements for page limits.

Anonymity: Some Submittal Forms listed below must not contain any names that can be used to identify who the offeror is (such as company names, offeror name, company letterhead, personnel names, project names, subconsultant names, manufacturer or supplier names, or product names).

Page Limits: Some Submittal Forms listed below have maximum page limit requirements. Offerors must not exceed the maximum page limits. Note, the page limit applies to the front side of a page only (for example, ‘1 Page’ implies that the offeror can only provide a response on one side of a piece of paper).

Submittal Form	Anonymous Document	Maximum Page Limits
Submittal Form A – Offeror Information and Certifications		
Submittal Form B – Experience and Qualifications	YES	5
Submittal Form C – Understanding of the Scope of Services	YES	5
Submittal Form D – Management Plan	YES	5
Submittal Form E – Subcontractors		
Submittal Form F – Cost Proposal		

Any Submittal Form that is being evaluated and does not follow these instructions may receive a ‘1’ score for the evaluated Submittal Form, or the entire response may be deemed non-responsive and rejected. Failure to submit any of the Submittal Forms will result in the proposal being deemed non-responsive and rejected.

SEC. 4.03 OFFEROR INFORMATION AND CERTIFICATIONS (SUBMITTAL FORM A)

The offeror must complete and submit this Submittal Form. The form must be signed by an individual authorized to bind the offeror to the provisions of the RFP.

By signature on the form, the offeror certifies 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; and
- g) that the offers will remain open and valid for at least 90 days.

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

The Submittal Form also requests the following information:

- a) The complete name and address of offeror's firm along with the offeror's Tax ID.
- b) Information on the person the state should contact regarding the proposal.
- c) Names of critical team members.
- d) Addenda acknowledgement.
- e) Conflict of interest statement.
- f) Federal requirements.
- g) Alaska preference qualifications.

An offeror's failure to address/respond/include these items may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (SUBMITTAL FORM B)

Offerors must provide a personnel roster that identifies each person who will actually work on the contract, along with their titles and the location(s) where work will be performed.

Offerors must provide resumes for the critical team members designated in Submittal Form A and any other relevant personnel assigned to accomplish the work called for in this RFP and provide any additional relevant details regarding their experience and background.

Offeror must describe the firm's prior and current experience in providing the services called for in the RFP.

Offerors must also provide three reference names, phone numbers, and a brief description of the work completed for similar services.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form. This Submittal Form shall be kept anonymous and must not contain any names that can be used to identify who the offeror is and cannot exceed the page limit (as described in Section 4.02).

SEC. 4.05 UNDERSTANDING OF THE SCOPE OF SERVICES (SUBMITTAL FORM C)

Offerors must provide a comprehensive narrative statement that illustrates their understanding of the purpose and scope of the services required by the RFP.

Offerors should identify potential risks and risk mitigation strategies related to the required services.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form. This Submittal Form shall be kept anonymous and must not contain any names that can be used to identify who the offeror is and cannot exceed the page limit (as described in Section 4.02).

SEC. 4.06 MANAGEMENT PLAN (SUBMITTAL FORM D)

The Offeror must provide comprehensive narrative statements that set out the management plan they intend to follow and illustrate how the plan will serve to meet the state's needs.

This narrative should describe how the offeror will be accountable to the State and how the team of personnel will be organized. It should clearly illustrate roles and responsibilities, lines of authority and communication, and outline which components of the RFP they will be responsible for.

The Offeror should describe any additional or enhanced service offerings they are prepared to provide or offer that may benefit the State.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form. This Submittal Form shall be kept anonymous and must not contain any names that can be used to identify who the offeror is and cannot exceed the page limit (as described in Section 4.02).

SEC. 4.07 INTERVIEWS

The State will conduct interviews with offerors determined to be within the competitive range after evaluation and scoring of technical proposals is completed. Interviews will be held with the critical team members identified in Submittal Form A (principal, lead actuary, and lead benefit consultant). No substitutes or proxies will be allowed. Individuals who fail to attend the interview at the date and time scheduled will be given a "0" score.

The State will interview each person individually. Each interview will be scheduled for 30 minutes. Interviewees are prohibited from making any reference to their proposed cost/fee. Interviewees may be asked questions regarding their experience, knowledge and understanding of the scope of work, obstacles and challenges, strategies, and their plan/approach. The State may request additional information prior to interviews.

Interviews may be conducted via Teams or in-person if the offeror prefers. If an in-person interview is preferred, offerors are responsible for all costs associated for their employee to attend the interview, including but not limited to, flights, per-diem, car rental and lodging associated with travel to Alaska for the in-person interview.

If selected for interview the state will notify the offeror of the time and date the interview is scheduled. The state anticipates giving one weeks' notice of interview date and time.

SEC. 4.08 SUBCONTRACTORS (SUBMITTAL FORM E)

If using subcontractors, the offeror must complete and submit this Submittal Form. If no subcontractors will be used, this form is not necessary.

SEC. 4.09 COST PROPOSAL (SUBMITTAL FORM F)

Offerors must complete and submit this Submittal Form. Proposed costs must include all direct and indirect costs associated with the performance of the contract, including, but not limited to: total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit, including travel, lodging, car rental and per-diem for each person working on the project. The costs identified on the cost proposal are the total amount of costs to be paid by the state. No additional charges shall be allowed.

SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

SEC. 5.01 SUMMARY OF EVALUATION PROCESS

The state will use the following steps to evaluate and prioritize proposals:

- 1) Proposals will be assessed for overall responsiveness. Proposals deemed non-responsive will be eliminated from further consideration.
- 2) A proposal evaluation committee (PEC), made up of at least three state employees or public officials, will evaluate specific parts of the responsive proposals.
- 3) The Submittal Forms, from each responsive proposal, will be sent to the PEC. No cost information will be shared or provided to the PEC prior to proposal evaluation and scoring.
- 4) The PEC will independently evaluate and score the documents based on the degree to which they meet the stated evaluation criteria.
- 5) After independent scoring, the PEC will have a meeting, chaired by the procurement officer, where the PEC may have a group discussion and identify the top three highest ranking offerors. The State may increase or decrease the number of highest ranked offerors based on the competitiveness of the proposals and/or from feedback from the PEC.
- 6) The State will conduct interviews, as outlined in Section 4.07.
- 7) After the interviews, the PEC will have a meeting, chaired by the procurement officer, where the PEC may have a group discussion prior to finalizing their scores. The evaluators will submit their final individual scores to the procurement officer, who will then compile the scores and calculate awarded points as set out in Section 5.03.
- 8) The procurement officer will calculate scores for cost proposals as set out in Section 5.08 and add those scores to the awarded points along with factoring in any Alaska preferences.
- 9) The procurement officer may ask for best and final offers from offerors susceptible for award and revise the cost scores accordingly.
- 10) The state will then conduct any necessary negotiations with the highest scoring offeror and award a contract if the negotiations are successful.

SEC. 5.02 EVALUATION CRITERIA

Proposals will be evaluated based on their overall value to state, considering both cost and non-cost factors as described below. Note: 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.

Overall Criteria		Weight
Responsiveness		Pass/Fail
Subcontractors (Submittal Form E – if applicable)		Pass/Fail
Qualifications Criteria		Weight
Experience and Qualifications	(Submittal Form B)	75
Understanding of the Scope of Services	(Submittal Form C)	75
Management Plan	(Submittal Form D)	75

Interview: Principal	125
Interview: Lead Actuary	75
Interview: Lead Benefit Consultant	75
Total	500

Cost Criteria	Weight
Cost Proposal (Submittal Form F)	400
Total	400

Preference Criteria	Weight
Alaska Offeror Preference (if applicable)	100
Total	100

TOTAL EVALUATION POINTS AVAILABLE: 1000

SEC. 5.03 SCORING METHOD AND CALCULATION

The PEC will evaluate responses against the questions and criteria set out in Sections 5.04 through 5.07 and assign a single score for each section. Offerors' responses for each section will be rated comparatively against one another with each PEC member assigning a score of 1, 5, or 10 (with 10 representing the highest score, 5 representing the average score, and 1 representing the lowest score). Responses that are similar or lack dominant information to differentiate the offerors from each other will receive the same score. Therefore, it is the offeror's responsibility to provide dominant information and differentiate themselves from their competitors.

After the PEC has scored each section, the scores for each section will be totaled and the following formula will be used to calculate the amount of points awarded for that section:

$$\frac{\text{Offeror Total Score}}{\text{Highest Total Score Possible}} \times \text{Max Points} = \text{Points Awarded}$$

Example (Max Points for the Section = 100):

	PEC Member 1 Score	PEC Member 2 Score	PEC Member 3 Score	PEC Member 4 Score	Combined Total Score	Points Awarded
Offeror 1	10	5	5	10	30	75
Offeror 2	5	5	5	5	20	50
Offeror 3	10	10	10	10	40	100

Offeror 1 was awarded 75 points:

$$\frac{\text{Offeror Total Score (30)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (75)}$$

Offeror 2 was awarded 50 points:

$$\frac{\text{Offeror Total Score (20)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (50)}$$

Highest Total Score Possible (40)

Offeror 3 was awarded 100 points:

Offeror Total Score (40)

_____ x Max Points (100) = Points Awarded (100)
Highest Total Score Possible (40)

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS

Submittal Form B will be evaluated against the following questions:

1) Questions regarding the personnel:

- a) How complete is the personnel roster and associated information?
- b) Does the personnel roster clearly identify the principal, lead actuary and lead benefit consultant?
- c) Are personnel resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?
- d) How extensive is the applicable experience and background of the personnel designated to work on the project?
- e) How clearly does the offeror demonstrate who will be responsible for the services described in the RFP?

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

- a) How well has the firm demonstrated experience in providing the services required by the RFP?
- b) Has the firm provided reference information from previous clients?

SEC. 5.05 UNDERSTANDING OF THE SCOPE OF SERVICES

Submittal Form C will be evaluated against the following questions:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the required services?
- 2) How well has the offeror identified potential risks and risk mitigations strategies related to the required services?

SEC. 5.06 MANAGEMENT PLAN

Submittal Form D will be evaluated against the following questions:

- 1) How well does the management plan support all of the requirements 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) Do additional or enhanced service offerings proposed by the offeror add value to their proposal or benefit the State?

SEC. 5.07 INTERVIEWS

The State will conduct interviews with the critical team members (principal, lead actuary, and lead benefit consultant) from each of the highest ranking offerors. The individuals that will be interviewed must be the same individuals that are identified in Submittal Form A. Interviewees will be evaluated based on based on their responses to the State’s questions regarding their experience, knowledge and understanding of the scope of work, obstacles and challenges, strategies, and their plan or approach.

SEC. 5.08 CONTRACT COST (COST PROPOSAL)

Overall, a minimum of 40% of the total evaluation points will be assigned to cost. After the procurement officer applies any applicable preferences, the offeror with the lowest total cost will receive the maximum number of points allocated to cost per 2 AAC 12.260(c). The point allocations for cost on the other proposals will be determined using the following formula:

$$[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})] \div (\text{Cost of Each Higher Priced Proposal})$$

Example (Max Points for Contract Cost = 400):

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 1,000 points to cost. This means that the lowest cost will receive the maximum number of points.

Offeror #1 receives 400 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, 400 points.

Offeror #2 receives 374.3 points.

$$\$40,000 \text{ lowest cost} \times 400 \text{ maximum points for cost} = 16,000,000 \div \$42,750 \text{ cost of Offeror \#2's proposal} = \mathbf{374.3}$$

Offeror #3 receives 336.8 points.

$$\$40,000 \text{ lowest cost} \times 400 \text{ maximum points for cost} = 16,000,000 \div \$47,500 \text{ cost of Offeror \#3's proposal} = \mathbf{336.8}$$

SEC. 5.09 APPLICATION OF PREFERENCES

Certain preferences apply to all state contracts, 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 following website:

<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. 5.10 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 Certification Form

In order to receive the Alaska Bidder Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC. 5.11 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.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Veteran Preference Certification

In order to receive the Alaska Veteran Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this RFP. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

SEC. 5.12 ALASKA OFFEROR PREFERENCE

Per 2 AAC 12.260, 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, which will be added to the offeror’s overall evaluation score.

Example:

Step 1

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

1000 Total Points Available in RFP x 10% Alaska Offeror preference = 100 Points for the preference

Step 2

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

Offeror #1	830 points	No Preference	0 points
Offeror #2	740 points	Alaska Offeror Preference	100 points
Offeror #3	800 points	Alaska Offeror Preference	100 points

Step 3

Add the applicable Alaska Offeror preference amounts to the offerors’ scores:

Offeror #1	830 points
Offeror #2	840 points (740 points + 100 points)
Offeror #3	900 points (800 points + 100 points)

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

SEC. 5.13 OFFEROR NOTIFICATION OF SELECTION

After the completion of contract negotiation, the procurement officer will issue a written Notice of Intent to Award and send copies of that notice to all offerors who submitted proposals. The notice will list the names of all offerors and identify the offeror selected for award.

SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 6.01 INFORMAL DEBRIEFING

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

SEC. 6.02 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 Preference 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** 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. 6.03 STANDARD CONTRACT PROVISIONS AND BAA REQUIREMENTS

The contractor will be required to sign the state's Standard Agreement Form for Professional Services Contracts (form SAF.DOC/Appendix A: Attachment 1) and the BAA (Attachment 2). These forms are attached with the RFP for your review. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law, and the state reserves the right to reject a proposal that is non-compliant or takes exception with the contract terms and

conditions stated in the Agreement. Any requests to change language in this document (adjust, modify, add, delete, etc.), must be set out in the offeror's proposal in a separate document. Please include the following information with any change that you are proposing:

- 1) Identify the provision that the offeror takes exception with.
- 2) Identify why the provision is unjust, unreasonable, etc.
- 3) Identify exactly what suggested changes should be made.

SEC. 6.04 QUALIFIED OFFERORS

Per 2 AAC 12.875, unless provided for otherwise in the RFP, to qualify as an offeror for award of a contract issued under AS 36.30, the offeror must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the RFP.

If the offeror leases services or supplies or acts as a broker or agency in providing the services or supplies in order to meet these requirements, the procurement officer may not accept the offeror as a qualified offeror under AS 36.30.

SEC. 6.05 PROPOSAL AS PART OF THE CONTRACT

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

SEC. 6.06 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. 6.07 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: <https://www.state.gov/trafficking-in-persons-report/>

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

SEC. 6.08 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. 6.09 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. 6.10 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.

The Office of Procurement and Property Management (OPPM), or their designee recognizes that some information an offeror submits might be confidential under the United States or the State of Alaska Constitution, a federal statute or regulation, or a State of Alaska statute: i.e., might be confidential business information (CBI). *See, e.g.*, article 1, section 1 of the Alaska Constitution; AS 45.50.910 – 45.50.945 (the Alaska Uniform Trade Secrets Act); *DNR v. Arctic Slope Regional Corp.*, 834 P.2d 134, 137-39 (Alaska 1991). For OPPM or their designee to treat information an offeror submits with its proposal as CBI, the offeror must do the following when submitting their proposal: (1) mark the specific information it asserts is CBI; and (2) for each discrete set of such information, identify, in writing, each authority the offeror asserts make the information CBI. If the offeror does not do these things, the information will become public after the Notice of Intent to Award is issued. If the offeror does these things, OPPM or their designee will evaluate the offeror's assertion upon receiving a request for the information. If OPPM or their designee reject the assertion, they will, to the extent permitted by federal and State of Alaska law, undertake reasonable measures to give the offeror an opportunity to object to the disclosure of the information.

SEC. 6.11 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. 6.12 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. 6.13 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. 6.14 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with Section 6.08 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. 6.15 SOLICITATION ADVERTISING

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

SEC. 6.16 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. 6.17 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. 6.18 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. 6.19 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 in the State Office Building in Juneau or via Teams.

If the contract negotiations take place in Juneau, Alaska, the offeror will be responsible for their travel and per diem expenses.

SEC. 6.20 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. 6.21 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
 - a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract;

b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.

- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](#), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
- **State's Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
- **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

SEC. 6.22 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."

SECTION 7. ATTACHMENTS

SEC. 7.01 ATTACHMENTS

Attachments:

- 1) Standard Agreement Form - Appendix A
- 2) Business Associate Agreement (BAA)
- 3) Submittal Forms A-E
- 4) Cost Proposal (Submittal Form F)

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number	2. Contract Title	3. Agency Fund Code	4. Agency Appropriation Code
5. Vendor Number	6. IRIS GAE Number (if used)	7. Alaska Business License Number	
This contract is between the State of Alaska,			
8. Department of Administration		Division of	hereafter the State, and
9. Contractor			hereafter the contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>10. 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 sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends _____.</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 _____ in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:</p>			
11. Department of		Attention: Division of	
Mailing Address		Attention:	
12. CONTRACTOR		<p>14. CERTIFICATION: 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 alternations 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.</p>	
Name of Firm			
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	Date		
Signature of Project Director		Typed or Printed Name	
Typed or Printed Name of Project Director		Title	
Title			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

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, and 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, and 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.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Business Associate Agreement") is by and between **OFFEROR**, having an office at **ADDRESS** (hereinafter referred to as the "Business Associate") and **State of Alaska, Department of Administration, Division of Retirement and Benefits** having an office at 333 Willoughby Ave., 6th Floor, Juneau, AK 99801, as Plan Administrator of the Health Plans (hereinafter referred to as the "Covered Entity"). The Business Associate Agreement is effective as of , 20.

RECITALS

WHEREAS, the Business Associate and the Covered Entity have entered into a service agreement (the "Service Agreement") under which the Business Associate performs or assists the Covered Entity with functions or activities involving the use or disclosure of Individually Identifiable Health Information ("Services"); and

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule are codified at 45 CFR parts 160, 162, and 164 as such regulations may be amended from time to time (collectively referred to herein as the "HIPAA Standards"); and

WHEREAS, the Covered Entity and the Business Associate acknowledge and agree that capitalized terms used herein, but not otherwise defined, are as defined in the HIPAA Standards; and

WHEREAS, the HIPAA Standards require that the Covered Entity obtain satisfactory assurances that the Business Associate will appropriately safeguard the Individually Identifiable Health Information used or disclosed by the Business Associate in the course of performing Services pursuant to this Business Associate Agreement and the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the Parties agree as follows:

1. Definitions

The following terms shall have the meaning ascribed to them in this Section:

- a. **Breach** shall have the same meaning as the term "breach" at 45 CFR § 164.402, and generally means the unauthorized acquisition, access, use, or disclosure of Protected Health Information ("PHI") that compromises the security or privacy of such information.
- b. **Business Associate** shall have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the Party in this Business Associate Agreement, shall mean **OFFEROR**.

- c. **Covered Entity** shall have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the Party in this Business Associate Agreement, shall mean the Health Plans.
- d. **Designated Record Set** shall mean a group of records maintained by or for Covered Entity that is: (a) the medical records and billing records about Individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for Covered Entity to make decisions about Individuals. For these purposes, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.
- e. **Effective Date** means, with respect to the term of this Business Associate Agreement, **EFFECTIVE DATE**.
- f. **Electronic Health Information** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined by 45 CFR § 160.103.
- g. **Health Plans** shall mean the health plans that may be sponsored, from time to time, by the State of Alaska for its eligible employees, retirees, and their eligible dependents to which Business Associate provides Services or to which Business Associate will provide Services during the term of this Business Associate Agreement, and which are covered entities as defined by 45 CFR §160.103.
- h. **HHS** shall mean the United States Department of Health and Human Services.
- i. **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended or modified by applicable laws or regulations.
- j. **HIPAA Standards** shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule at 45 CFR Parts 160, 162 and 164.
- k. **Individual** shall mean the person who is the subject of the PHI, and shall have the same meaning as the term "individual" at 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- l. **Limited Data Set** shall have the same meaning as the term "limited data set" at 45 CFR § 164.514(e)(2).
- m. **Parties** shall mean the Business Associate and the Covered Entity.
- n. **Protected Health Information** shall have the same meaning as the term "protected health information" at 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- o. **Required By Law** shall have the same meaning as the term "required by law" at 45 CFR § 164.103.
 - p. **Secretary** shall mean the Secretary of HHS or his or her designee.
 - q. **Security Incident** shall have the same meaning as the term "security incident" at 45 CFR § 164.304, which generally means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
 - r. **Subcontractor** shall have the same meaning at the term "subcontractor" at 45 CFR § 160.103, which generally means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.
 - s. **Transaction Standards** shall mean the standards adopted by the Secretary under 45 CFR Part 162.
 - t. **Unsecured Protected Health Information** ("Unsecured PHI") shall have the meaning set forth at 45 CFR § 164.402, as amended, and generally means PHI that is not secured through the use of technologies and methodologies that render such PHI unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in guidance.
2. Obligations and Activities of Business Associate
- a. Business Associate shall not use or further disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required By Law. Further, Business Associate shall use and disclose Protected Health Information in accordance with Covered Entity's Notice of Privacy Practices as provided by Covered Entity to Business Associate pursuant to Section 4(a).
 - b. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Health Information, to prevent use or disclosure of the PHI other than as provided for by this Business Associate Agreement.
 - c. Business Associate shall immediately report to Covered Entity any use or disclosure of PHI or an Individual's information not provided for by this Business Associate Agreement, including, without limitation, any Breach of PHI, Unsecured PHI or an Individual's information, and any Security Incident involving the PHI or an Individual's information of which the Business Associate becomes aware. Such report shall be in writing and shall be reported to Covered Entity as soon as practicable after Business Associate becomes aware of such use or disclosure or Security Incident, but in no event more than five (5) days following such date.

Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Further, Business Associate shall take any action necessary or reasonably requested by the Covered Entity to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident or use or disclosure of PHI, Unsecured PHI, or an Individual's information by Business Associate, or any agent or Subcontractor of Business Associate, in violation of the requirements of this Business Associate Agreement. In the event of a Breach of PHI or Unsecured PHI, Business Associate's notice to Covered Entity of such Breach shall include:

- i. The identification of each Individual whose PHI has been, or is reasonably believed by the Business Associate, to have been, accessed, acquired, or disclosed during such Breach;
- ii. A description of the Breach, including the date of the Breach and the date of the discovery of the Breach, if known;
- iii. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, credit card numbers, diagnosis, disability code or other types of PHI were involved);
- iv. Any steps that Individuals should take to protect themselves from potential harm resulting from the Breach;
- v. A description of what Business Associate is doing to investigate the Breach, to mitigate the harm to Individuals and to protect against further Breaches; and
- vi. Contact procedures for affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site or postal address.

Business Associate shall also provide Covered Entity any other available information that the Covered Entity is required to include in the notification to the Individual, even if such information becomes available after notification to the Individual. Business Associate shall also take any action necessary as reasonably requested by the Covered Entity to assist Covered Entity in complying with any applicable Breach notification obligations to Individuals, the media, and/or the Secretary, as applicable, under 45 CFR §§ 164.404, 164.406, and 164.408. If a notification, notice, or posting required by the Breach Notification Rule would impede a criminal investigation or cause damage to national security, such notification shall be delayed as required by law enforcement pursuant to 45 CFR § 164.412.

- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply through this

Business Associate Agreement to the Business Associate with respect to such information. Such written agreement shall also require the agent or Subcontractor to implement reasonable and appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate, and not Covered Entity, is solely responsible for its agents' and Subcontractors' compliance under the HIPAA Standards.

- e. Business Associate shall make available PHI in a Designated Record Set. The Business Associate shall provide access, at the request of the Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity, or as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524; and
 - (1) Make PHI maintained by Business Associate available to Covered Entity, at the request of the Covered Entity and in the time and manner designated by Covered Entity or as directed by Covered Entity, to a person or entity other than an Individual, for use and disclosure pursuant to a valid written authorization and maintain appropriate documentation for the period, including, but not limited to, copies of any written authorization by an Individual or his or her legal representative, to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.508; and
 - (2) Notify Covered Entity, if any Individual requests access to, or the release pursuant to an authorization or otherwise of, PHI directly from Business Associate or its agents or Subcontractors, in writing within five (5) business days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.
- f. Business Associate shall make any amendment(s) to PHI contained in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to 45 C.F.R. §164.526 at the request of Covered Entity, and in the time and manner designated by Covered Entity, or to otherwise allow Covered Entity to comply with its obligations under 45 CFR § 164.526. If any Individual requests an amendment of PHI contained in a Designated Record Set directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.
- g. Business Associate shall make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity or the

Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA Standards. Business Associate shall notify Covered Entity, in writing, of any request by the Secretary under this Section, and shall provide Covered Entity with a copy of any practices, books, and records that Business Associate provides to the Secretary concurrently with providing such materials to the Secretary.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
 - i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Such documentation shall be kept with regard to all disclosures of PHI except the disclosures described in 45 CFR § 164.528(a)(1). For each such disclosure, Business Associate shall document the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure.
 - ii. Business Associate shall provide to Covered Entity, in a time and manner designated by Covered Entity, information pertaining to disclosures of PHI by Business Associate to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. In the event that Business Associate, or its agent or Subcontractor, receives a direct request from an Individual, or a party other than Covered Entity, for an accounting of disclosures of PHI made by Business Associate, Business Associate shall within five (5) business days of such request forward it to Covered Entity in writing. Business Associate shall, unless otherwise directed by Covered Entity or as Required By Law, supply an accounting of disclosures of Protected Health Information only to Covered Entity.
- i. Business Associate shall implement and maintain appropriate safeguards designed to ensure that all PHI is used or disclosed only as authorized under the HIPAA Standards and this Business Associate Agreement.

Business Associate agrees to assess potential risks and vulnerabilities to PHI in its possession and develop, implement and maintain the administrative, physical and technical safeguards required by the HIPAA Standards that protect the confidentiality, availability and integrity of the Electronic Health Information that Business Associate creates, receives, maintains or transmits on behalf of the

Covered Entity as required by the Security Rule. These measures must be documented in comprehensive written privacy and security policies and procedures and kept current, and must include, at a minimum, those measures that fulfill the requirements outlined in the HIPAA Standards and the necessary administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities. Business Associate also agrees to implement policies and procedures that address Business Associate's compliance with applicable HIPAA Standards and its efforts to detect, prevent, and mitigate the risks of identity theft resulting from the improper use and/or disclosure of an Individual's information.

- j. Business Associate shall, in the performance of its duties under this Business Associate Agreement and the Agreement, comply with the HIPAA Standards and all applicable federal laws, regulations and rules relating to the administrative simplification provisions of the HIPAA Standards.
- k. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure is in compliance with each applicable requirement of 45 CFR § 164.504(e), relating to business associate agreements. The HIPAA Standards that relate to privacy and that are made applicable with respect to Covered Entity and Business Associate are hereby incorporated into this Business Associate Agreement.
- l. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirements.
- m. Business Associate shall provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to Protected Health Information.
- n. Business Associate shall promptly notify Covered Entity if it receives a subpoena or other legal process seeking the disclosure of PHI. Such notification shall be provided in a timeframe that allows Covered Entity a reasonable amount of time to respond to the subpoena, object to the subpoena, or to otherwise intervene in the action to which the subpoena pertains.
- o. Business Associate shall promptly notify Covered Entity upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Business Associate Agreement or the PHI, regardless of whether Covered Entity and/or Business Associate are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.
- p. Business Associate shall make itself and any Subcontractors, employees or agents

assisting Business Associate in the performance of its obligations under this Business Associate Agreement, available to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon Business Associate's (or its Subcontractors') claimed violation of HIPAA, the HIPAA Standards, or other laws relating to security and privacy, except where Business Associate or its Subcontractor, employee, or agent is named as an adverse party.

- q. Business Associate shall retain any documentation it creates or receives relating to its duties under this Business Associate Agreement for the duration of this Business Associate Agreement. Covered Entity shall have the right to reasonably access and copy such documentation during the term of the Business Associate Agreement. At the termination of this Business Associate Agreement, Business Associate shall, at Covered Entity's election, return or destroy all such documentation.
- r. If Business Associate performs any transactions for Covered Entity for which a standard has been adopted by the Secretary under 45 CFR Part 162, the following shall apply:
 - i. Business Associate, its agents and Subcontractors, shall conduct all transmissions of data required under the Business Associate Agreement that are subject to the Transaction Standards in compliance with the Transaction Standards, as they may be amended from time to time. With respect to any such Transactions, the Parties shall not: (i) change the definition, data condition, or use of a data element or segment in a Transaction Standard; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked "not used" in the Transaction Standard's implementation specification or are not in the Transaction Standard's implementation specification(s); or (iv) change the meaning or intent of the Transaction Standard's implementation specification(s).
 - ii. The Parties, at their own expense, shall provide and maintain the hardware, software, services and testing necessary to effectively and reliably conduct the applicable Transaction Standards.

3. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the Business Associate Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity, except for the specific uses and disclosures set forth below in Sections 3(b), 3(c), and 3(d). Any such use or disclosure shall be limited to those reasons and those individuals as necessary to meet Business

Associate's obligations.

- b. Business Associate may use or disclose PHI as Required By Law.
- c. Except as otherwise limited in this Business Associate Agreement, Business Associate may use PHI: (i) for the proper management and administration of the Business Associate, (ii) to carry out the legal responsibilities of the Business Associate, or (iii) to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).
- d. Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose PHI to carry out the functions described in Section 3(a), for the management and administration of the Business Associate, or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Except as otherwise permitted by the HIPAA Standards, when using or disclosing PHI or responding to a request for PHI, Business Associate must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request.
- f. Except as otherwise permitted by the HIPAA Standards, to the extent this Business Associate Agreement or the Service Agreement would otherwise permit Business Associate to receive remuneration for PHI, Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any PHI, as prohibited by 42 U.S.C. § 17936(a).
- g. Except as otherwise permitted by the HIPAA Standards, Business Associate agrees that it will not use or disclose PHI in connection with any fundraising and/or marketing communication for or on behalf of Covered Entity unless Covered Entity has obtained a valid authorization from each Individual who will be a recipient of any such communication. In any event, Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) and 45 CFR § 164.514(f).
- h. If an Individual requests that Business Associate restrict the disclosure of the Individual's PHI to carry out treatment, payment or health care operations, Business Associate agrees that it will comply with the requested restriction if, except as otherwise Required By Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying

out treatment), and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

- i. Disclosures to Workforce. Business Associate shall not disclose PHI to any member of its workforce unless necessary to fulfill a purpose described in Section 3 and unless Business Associate has advised such person of Business Associate's obligations under this Business Associate Agreement and of the consequences for such person and for Business Associate of violating this Business Associate Agreement. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this Business Associate Agreement or any federal or state law or regulation.

4. Obligations of Covered Entity

- a. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such Notice of Privacy Practices and the Business Associate shall comply with such Notice of Privacy Practices.
- b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall comply with any such changes or revocations.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522. Business Associate shall comply with any such restrictions.
- d. Except as necessary for the management and administrative activities of Business Associate as allowed in Sections 3(b), 3(c), and 3(d), Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by Covered Entity.

5. Term and Termination

- a. Term. The Term of this Business Associate Agreement shall be effective as of the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon either party's knowledge of a material breach of this Business Associate Agreement by the breaching party, the non-breaching party shall provide an opportunity for the breaching party to cure the breach or end the violation, and the non-breaching party may terminate the Business Associate Agreement and the Service Agreement if the breaching party does not cure the

breach or end the violation within thirty (30) days from the date of written notification from the non-breaching party describing the breach or violation, or the non-breaching party may immediately terminate the Business Associate Agreement if the breaching party has breached a material term of this Business Associate Agreement and cure is not possible, as determined by the non-breaching party in its reasonable discretion.

If termination of this Business Associate Agreement is not feasible, the non-breaching party shall report the breach to the Secretary.

- c. Covered Entity may terminate this Business Associate Agreement and any other agreement or relationship between the Parties related to the Services by written notice to the Business Associate, effective immediately, if: (a) the Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Standards, or other security or privacy laws; or (b) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HIPAA Standards, or any other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.
- d. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either party with regard to the subject of this Business Associate Agreement, the Parties shall attempt in good faith to renegotiate the Business Associate Agreement to delete the unlawful provision(s) so that the Business Associate Agreement can continue. If the Parties are unable to renegotiate the Business Associate Agreement within thirty (30) days, the Business Associate Agreement shall terminate immediately, upon written notice of either party.
- e. Effect of Termination.
 - i. Except as provided in subparagraph (ii) of this subsection (e), upon termination of the Service Agreement or this Business Associate Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If Business Associate is directed to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
 - ii. In the event that Business Associate determines that it is necessary to retain some or all of the PHI to continue its proper management and administration or to carry out its legal responsibilities, Business Associate shall provide to Covered Entity written notification of such need. Upon Covered Entity's approval, which shall not be unreasonably withheld, Business Associate may retain only the PHI that is necessary for Business Associate to continue its

proper management and administration or to carry out its legal responsibilities, but Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) all other PHI pursuant to subparagraph (i). With regard to any retained PHI, Business Associate shall not use or disclose such PHI other than for the purposes for which the PHI was retained and subject to the same conditions set forth in this Business Associate Agreement that applied prior to this Business Associate Agreement's termination. Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) the retained PHI pursuant to subparagraph (i) when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- iii. The parties hereto understand and agree that the terms of this Business Associate Agreement are reasonable and necessary to protect the interests of the Covered Entity and the Business Associate. The parties further agree that Covered Entity would suffer irreparable harm if the Business Associate breached this Business Associate Agreement and there exists no adequate remedy of law. Thus, in addition to any other rights or remedies, all of which shall be deemed cumulative, the Covered Entity shall be entitled to obtain injunctive relief to enforce the terms of this Business Associate Agreement. The exercise by Covered Entity of its rights under this subparagraph (iii) shall not act as a waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this Business Associate Agreement.

6. Miscellaneous

- a. Survival. The respective rights and obligations of Business Associate under Section 5(e) and the obligations of Business Associate under Section 6(i) of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.
- b. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Standards where provisions of this Business Associate Agreement are different from those mandated by the HIPAA Standards, but are nonetheless permitted by the HIPAA Standards, the provisions of the Business Associate Agreement shall control.
- c. No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state

or federal law or regulation relating to privacy or confidentiality.

- d. Amendment. In the event that any law or regulation is enacted or promulgated regarding the protection of health information that is in any way inconsistent with the terms of this Business Associate Agreement or that interferes with the Parties obligations with respect to the protection of health information so as to warrant a modification to this Business Associate Agreement or in the event any HIPAA Standard is amended or modified, either Party shall have the right to amend this Business Associate Agreement so as to bring it into compliance with any such change by providing written notice thereof to the other Party but without having to obtain the other Party's consent thereto. Except as set forth above in this Section 6(d), this Business Associate Agreement shall only be amended or modified upon written consent of the parties.
- e. Application of State Law. Where any applicable provision of State law relates to the privacy of health information and is not preempted by HIPAA, as determined by application of the HIPAA Standards, the parties shall comply with the applicable provisions of State law.
- f. Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.
- g. Governing Law. To the extent not preempted by federal law, this Business Associate Agreement shall be interpreted, construed and governed according to the laws of the State of Alaska. The parties agree that venue shall lie in Federal and State courts in Alaska, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.
- h. Notices. Any notice or other communication given to the Parties pursuant to this Business Associate Agreement must be in writing and (i) delivered personally, (ii) delivered by overnight express, or (iii) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.
- i. Indemnification. Without limitation to any indemnification obligation that Business Associate may have under the Service Agreement, Business Associate shall indemnify, hold harmless and defend Covered Entity from and against, and reimburse Covered Entity for, any and all claims, losses, liabilities, demands, causes of action, lawsuits, governmental enforcement actions, costs and other expenses brought by a third party resulting from, or relating to, the actual or alleged acts or omissions of Business Associate, its employees, agents and Subcontractors, in breach of their obligations under this Business Associate Agreement or Business

Associate's, or its employees' or Subcontractors', use or disclosure of PHI, Unsecured PHI or an Individual's information not provided for by this Business Associate Agreement, including without limitation any Breach of PHI, Unsecured PHI or an Individual's information or any expenses incurred by Covered Entity in providing required breach notifications. Such indemnification shall include, but not be limited to, the payment of Covered Entity's reasonable attorney fees associated with any claims, losses, liabilities, demands, causes of action, lawsuits, governmental enforcement actions arising out of or related to such acts or omissions. In addition to the foregoing, in the event of a Breach of Unsecured PHI or similar breach or wrongful disclosure as defined by an applicable law or regulation requiring notification or other remedial action due to the breach or wrongful disclosure of PHI or other personal or financial information ("Other Breach Law") that arose out of or related to Business Associate's actual or alleged acts and omissions (or those of its agents or Subcontractors), Business Associate shall indemnify Covered Entity against all costs and expenses incurred by Covered Entity that are associated with complying with the notification requirements under the Breach Notification Rule or Other Breach Law. Such indemnification shall include all costs, including reasonable attorney fees, related to notifying Covered Entity, Individuals, HHS, or any other entity required to be notified by an Other Breach Law, any remediation necessitated by the Breach, any fines or penalties arising out of the Breach, and any other actions required to be taken pursuant to the Breach Notification Rule or Other Breach Law.

- j. **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 procurement officer prior to beginning work and must provide for at least a 30 day advance notice of cancellation, non-renewal, or material change of conditions to the State 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.

- i. **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.
- ii. **Commercial General Liability Insurance:** on an occurrence basis covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits

of \$1,000,000.00 for personal injury. \$1,000,000.00 for property damage and \$2,000,000.00 in the aggregate.

- iii. **Commercial Automobile Liability Insurance:** covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000.00 each occurrence for bodily injury and property damage and \$2,000,000.00 in the aggregate.
- iv. **Professional Liability Insurance:** covering all errors, omissions or negligent acts in the performance of professional services under this agreement with minimum coverage limits of \$1,000,000.00 per claim and \$2,000,000.00 in an annual aggregate
- v. **Umbrella Coverage:** The Business Associate shall provide Umbrella/Excess Liability coverage in the amount of \$5,000,000.00. The Umbrella or excess liability policy shall contain a clause stating that it takes effect in the event the primary limits are impaired or exhausted.

All insurances noted above shall be considered to be primary and non-contributory to any other insurance carried by the State of Alaska, whether through self-insurance or otherwise. The State of Alaska shall be named as an additional insured on the Commercial General Liability, Automobile Liability, Professional Liability and Umbrella/Excess insurance policies. The Commercial General Liability, Automobile Liability, Professional Liability and Umbrella/Excess insurance policies shall contain an endorsement for contractual indemnity/liability coverage. In any contract or agreement with subcontractors performing work, the contractor shall require that all indemnities and waivers of subrogation it obtains and any requirement contractor be named as an additional insured must also be extended to waive rights of subrogation against the State of Alaska and to add the State of Alaska as an additional named indemnitee and as an additional insured.

- k. Assignment. This Business Associate Agreement shall be binding upon and inure to the benefit of the respective legal successors of the parties. Neither this Business Associate Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party.
- l. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Business Associate Agreement, HIPAA, or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- m. Property Rights. All PHI shall be and remain the exclusive property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this Business Associate Agreement.
- n. Preemption of Other Business Associate Agreements and Liability Limitations/Exclusions. Any limitations on liabilities or exclusions from liability

previously agreed upon by the parties, whether written or oral, shall not be applicable to breaches of this Business Associate Agreement, HIPAA, the HIPAA Standards, and other confidentiality and privacy requirements regarding PHI under this Business Associate Agreement. To the extent that any provision of this Business Associate Agreement conflicts with the Service Agreement or any other agreement between the Parties, whether written or oral, the provisions of this Business Associate Agreement shall govern. Furthermore, and by way of example and not limitation, the termination provisions of this Business Associate Agreement shall supersede the termination provisions of any other agreement, including, but not limited to, any limitations on terminating the Service Agreement or any other agreement (such as notice periods) or any provisions requiring a period to cure.

- o. Right to Cure. Business Associate agrees that Covered Entity has the right, but not the obligation, to cure any and all breaches of Business Associate's privacy, security and confidentiality obligations under this Business Associate Agreement. Any expenses or costs, including reasonable attorney fees, associated with Covered Entity's cure of Business Associate's Breach(es) shall be borne solely by Business Associate. The exercise by Covered Entity of its rights under this Section shall not act as a waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this Business Associate Agreement.
- p. Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Standards means the section as in effect or as amended, and for which compliance is required.
- q. Entire Business Associate Agreement. This document, together with any written schedules, amendments and addenda, constitute the entire agreement of the parties and supersedes all prior oral and written agreements or understandings between the Parties with respect to the matters provided for herein.
- r. Waiver of Breach. No failure or delay by either party in exercising its rights under this Business Associate Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.
- s. Titles. Titles or headings are used in this Business Associate Agreement for reference only and shall not have any effect on the construction or legal effect of this Business Associate Agreement.
- t. Independent Contractors. For purposes of this Business Associate Agreement, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this Business Associate Agreement are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of

effecting this Business Associate Agreement. None of the provisions of this Business Associate Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.

- u. No Third Party Beneficiaries. It is the intent of the Parties that this Business Associate Agreement is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this Business Associate Agreement and no privity of contract shall exist between third parties and the Parties.

The Parties warrant that each has full power and authority to enter into this Business Associate Agreement, and the person signing this Business Associate Agreement on behalf of the Parties warrants that he/she has been duly authorized and empowered to enter into this Business Associate Agreement.

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

BUSINESS ASSOCIATE

By: _____

Printed Name: _____

Title: _____

COVERED ENTITY

By: _____

Printed Name: _____

Title: _____

cc: Covered Entity HIPAA Compliance Officer