

# STATE OF ALASKA REQUEST FOR PROPOSALS



## TEFRA MEDICAID DETERMINATIONS AND SUPPORT

RFP 2024-1600-0286

ISSUED AUGUST 8, 2024

THE DEPARTMENT OF HEALTH, DIVISION OF PUBLIC ASSISTANCE, IS SOLICITING PROPOSAL FROM QUALIFIED CONTRACTORS TO PERFORM INTAKE, SCREENING, AND LEVEL OF CARE DETERMINATIONS OF CHILDREN FOR ELIGIBILITY REQUIREMENT FOR TAX EQUITY AND FISCAL RESPONSIBILITY (TEFRA) MEDICAID, AS WELL AS ADMINISTRATIVE SUPPORT TO MANAGE THE TEFRA MEDICAID PROGRAM.

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ISSUED BY:

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DIVISION OF FINANCE AND MANAGEMENT  
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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.

# TABLE OF CONTENTS

<b>SECTION 1. INTRODUCTION &amp; INSTRUCTIONS</b>	<b>3</b>
SEC. 1.01 PURPOSE OF THE RFP	3
SEC. 1.02 BUDGET	4
SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS	4
SEC. 1.04 MANDATORY REQUIREMENTS	4
SEC. 1.05 REQUIRED REVIEW	4
SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS	4
SEC. 1.07 RETURN INSTRUCTIONS	4
SEC. 1.08 ASSISTANCE TO OFFERORS WITH A DISABILITY	5
SEC. 1.09 AMENDMENTS TO PROPOSALS	5
SEC. 1.10 AMENDMENTS TO THE RFP	5
SEC. 1.11 RFP SCHEDULE	5
SEC. 1.12 ALTERNATE PROPOSALS	6
SEC. 1.13 NEWS RELEASES	6
<b>SECTION 2. BACKGROUND INFORMATION</b>	<b>7</b>
SEC. 2.01 BACKGROUND INFORMATION	7
<b>SECTION 3. SCOPE OF WORK &amp; CONTRACT INFORMATION</b>	<b>8</b>
SEC. 3.01 SCOPE OF WORK & DELIVERABLES	8
SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE	16
SEC. 3.03 CONTRACT TYPE	16
SEC. 3.04 PAYMENT PROCEDURES	16
SEC. 3.05 CONTRACT PAYMENT	16
SEC. 3.06 CONTRACT PRICE ADJUSTMENTS	16
SEC. 3.07 LOCATION OF WORK	17
SEC. 3.08 SUBCONTRACTORS	17
SEC. 3.09 JOINT VENTURES	17
SEC. 3.10 RIGHT TO INSPECT PLACE OF BUSINESS	18
SEC. 3.11 CONTRACT PERSONNEL	18
SEC. 3.12 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES	18
SEC. 3.13 CONTRACT CHANGES - ANTICIPATED AMENDMENTS	18
SEC. 3.14 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS	18
SEC. 3.15 NONDISCLOSURE AND CONFIDENTIALITY	18
SEC. 3.16 INDEMNIFICATION	19
SEC. 3.17 INSURANCE REQUIREMENTS	20
SEC. 3.18 TERMINATION FOR DEFAULT	20
<b>SECTION 4. PROPOSAL FORMAT AND CONTENT</b>	<b>21</b>
SEC. 4.01 RFP SUBMITTAL FORMS	21
SEC. 4.02 SPECIAL FORMATTING REQUIREMENTS	21
SEC. 4.03 OFFEROR INFORMATION AND CERTIFICATIONS (SUBMITTAL FORM A)	21
SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (SUBMITTAL FORM B)	22
SEC. 4.05 UNDERSTANDING OF THE PROJECT (SUBMITTAL FORM C)	22
SEC. 4.06 METHODOLOGY USED FOR THE PROJECT (SUBMITTAL FORM D)	22
SEC. 4.07 MANAGEMENT PLAN FOR THE PROJECT (SUBMITTAL FORM E)	22
SEC. 4.08 MANDATORY REQUIREMENTS (SUBMITTAL FORM F)	23
SEC. 4.09 SUBCONTRACTORS (SUBMITTAL FORM G)	23
SEC. 4.10 COST PROPOSAL (SUBMITTAL FORM H)	23

**SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION .....24**

SEC. 5.01 SUMMARY OF EVALUATION PROCESS ..... 24

SEC. 5.02 EVALUATION CRITERIA..... 24

SEC. 5.03 SCORING METHOD AND CALCULATION ..... 25

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS ..... 26

SEC. 5.05 UNDERSTANDING OF THE PROJECT ..... 26

SEC. 5.06 METHODOLOGY USED FOR THE PROJECT ..... 26

SEC. 5.07 MANAGEMENT PLAN FOR THE PROJECT ..... 26

SEC. 5.08 CONTRACT COST (COST PROPOSAL) ..... 27

SEC. 5.09 APPLICATION OF PREFERENCES ..... 27

SEC. 5.10 ALASKA BIDDER PREFERENCE ..... 28

SEC. 5.11 ALASKA VETERAN PREFERENCE..... 28

SEC. 5.12 ALASKA MILITARY SKILLS PROGRAM PREFERENCE ..... 29

SEC. 5.13 ALASKA OFFEROR PREFERENCE..... 29

SEC. 5.14 OFFEROR NOTIFICATION OF SELECTION..... 30

**SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION.....31**

SEC. 6.01 INFORMAL DEBRIEFING ..... 31

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES ..... 31

SEC. 6.03 STANDARD CONTRACT PROVISIONS ..... 31

SEC. 6.04 BUSINESS ASSOCIATE AGREEMENT (BAA) ..... 32

SEC. 6.05 QUALIFIED OFFERORS..... 32

SEC. 6.06 PROPOSAL AS PART OF THE CONTRACT ..... 32

SEC. 6.07 ADDITIONAL TERMS AND CONDITIONS..... 32

SEC. 6.08 HUMAN TRAFFICKING ..... 32

SEC. 6.09 RIGHT OF REJECTION ..... 33

SEC. 6.10 STATE NOT RESPONSIBLE FOR PREPARATION COSTS ..... 33

SEC. 6.11 DISCLOSURE OF PROPOSAL CONTENTS..... 33

SEC. 6.12 ASSIGNMENT..... 33

SEC. 6.13 DISPUTES..... 34

SEC. 6.14 SEVERABILITY ..... 34

SEC. 6.15 SUPPLEMENTAL TERMS AND CONDITIONS ..... 34

SEC. 6.16 SOLICITATION ADVERTISING ..... 34

SEC. 6.17 CLARIFICATION OF OFFERS ..... 34

SEC. 6.18 DISCUSSIONS WITH OFFERORS ..... 34

SEC. 6.19 CONTRACT NEGOTIATION ..... 35

SEC. 6.20 FEDERALLY IMPOSED TARIFFS ..... 35

SEC. 6.21 PROTEST..... 36

**SECTION 7. ATTACHMENTS.....37**

SEC. 7.01 ATTACHMENTS ..... 37

## SECTION 1. INTRODUCTION & INSTRUCTIONS

### SEC. 1.01 PURPOSE OF THE RFP

The Department of Health, Division of Public Assistance (DPA) is soliciting proposals from qualified contractors to perform intake, screening, level of care determination, and administrative support for children applying for or renewing their TEFRA (Tax Equity and Fiscal Responsibility Act) Medicaid. DPA requires a contractor with the necessary expertise to determine if the child has a medical condition that would require institutional placement

in a hospital, a skilled nursing facility, an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), an Alternative Home placement, or be at risk for future institutional placement. Medical necessity is also based on services that improve or maintain a child's health or prevent a child's health from getting worse. State staff cannot determine what appropriate medical services need to be provided and if those would be available to the child in the home, or the expertise to determine if the estimated cost of the care would exceed the estimated cost of care for the child in an institution.

### SEC. 1.02 BUDGET

DPA has a maximum of \$6,000,000 dollars for completion of this project (includes renewal option). Proposals priced at more than \$600,000 per year will be considered non-responsive.

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

### SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than **2:00PM** prevailing Alaska Time on **Thursday, August 29, 2024**. Late proposals or amendments will be disqualified and not opened or accepted for evaluation.

### SEC. 1.04 MANDATORY REQUIREMENTS

To be considered responsive for this RFP, an offeror must meet the mandatory minimum experience requirements that are provided in **Submittal Form F – Mandatory Requirements**. Failure to meet all these requirements will result in immediate disqualification.

### 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 and least ten days before the deadline for receipt of proposals. 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.

### SEC. 1.07 RETURN INSTRUCTIONS

Offerors must submit their proposals via email. The technical proposal and cost proposal must be saved as separate documents and emailed to [doh.procurement.proposals@alaska.gov](mailto:doh.procurement.proposals@alaska.gov) as separate, clearly labeled attachments. 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.

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 above email address 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
RFP Released		8/8/2024
Deadline to Submit Questions	2:00PM	8/19/2024
Deadline for Receipt of Proposals	2:00PM	8/29/2024
Estimated Proposal Evaluations Complete		9/19/2024
Estimated Notice of Intent to Award		10/31/2024
Estimated Contract Issued		11/14/2024

This RFP does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Health, 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 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. 1.13 NEWS RELEASES**

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

## SECTION 2. BACKGROUND INFORMATION

### SEC. 2.01 BACKGROUND INFORMATION

A disabled child who does not qualify for [SSI](#) cash assistance due to parental income or resources may be eligible for Medicaid based on the child's own income and resources. Children in this category are often called [TEFRA](#) kids (named after the Tax Equity and Fiscal Responsibility Act, P.L. 97-248 that authorized this eligibility category). DPA requires a contractor with the necessary expertise to determine if the child has a medical condition that would require institutional placement in a hospital, a skilled nursing facility, an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), an Alternative Home placement, or be at risk for future institutional placement. Medical necessity is also based on services that improve or maintain a child's health or prevent a child's health from getting worse. State staff cannot determine what appropriate medical services need to be provided and if those would be available to the child in the home, or the expertise determine if the estimated cost of the care would exceed the estimated cost of care for the child in an institution.

This programs yearly averages since 2015 are as follows:

	<b>Yearly Average</b>
<b>ICF/MR Assessment</b>	100
<b>ICF/MR Reassessment</b>	421
<b>NF and IPH Assessment</b>	73
<b>Fair Hearing – RN</b>	7.5
<b>Fair Hearing – MD</b>	3.7
<b>NF and IPH Reassessment</b>	2
<b>Retrospective Reviews</b>	2

Please note: Year 2023 and the first half of 2024 are higher than these averages by about 12% and 14% respectively. Also, retrospective reviews did not start until January of 2023.

## SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

### SEC. 3.01 SCOPE OF WORK & DELIVERABLES

The contractor will support the Department of Health (DOH), Division of Public Assistance (DPA) and perform intake, screening, and level of care determination of children for eligibility requirement for TEFRA Medicaid, as well as administrative support to manage the TEFRA Medicaid program.

The contractor will be required to provide the following deliverables:

#### **Deliverable #1 – Program Support**

The contractor shall perform intake, screening, and evaluation of children for the institutional level-of-care eligibility requirement for TEFRA, a category of Medicaid that serves children who meet an institutional level-of-care but reside outside of long-term care facilities.

- a) Maintain contact with all parties involved with this application process to ensure that it moves along in a quick and efficient manner.
  1. Act as a mediator throughout the process to clarify what action is needed to keep the process moving.
  2. Complete all decisions no later than 90 days from date of request.
  3. The contractor will interact with TEFRA applicants, recipients and their families, health care providers, Division of Public Assistance, care coordinators, Department of Health Fair Hearing representatives, and the Division of Senior and Disabilities Services staff.
- b) Administrative Support:
  1. Provide appropriate administrative support; computer and telephonic, including toll-free service, connecting capabilities with the other agencies involved in TEFRA eligibility and services, and professional staff to analyze determinations against program requirements.
  2. Provide various methods of communications with DPA, parents, care coordinators, etc. Communication methods must include the following: toll-free phone number, TDD access, email, direct secured email as approved by DPA, phone and voice mail, and fax.
  3. The professional staff should include a registered nurse, or minimally have comparable experience and access to professional/physician support as needed to enable correct and thorough examination of records, medical diagnosis, and behavioral and psychiatric analysis resulting in accurate determinations.

#### **Deliverable #2 - Performance Requirements**

##### **A. Goals**

The goal is for the contractor to provide a timely level-of-care determination to the Division of Public Assistance.

The contractor will determine if the child meets the level-of-care criteria in the Nursing Facility (NF) or Inpatient Psychiatric Hospital (IPH) categories. The contractor will facilitate the Intermediate Care Facility for the Intellectually Developmentally Disabled (ICF/IDD) level-of-care determination process with the Division of Senior and Disabilities Services. The contractor is also responsible for determining if the child meets plan-of-care, and

cost neutrality program requirements in all level-of-care categories for TEFRA. The role must be completed in a respectful manner emphasizing good customer service.

**B. Care Coordinator and Family Support:**

1. Work with the care coordinator and family to facilitate the application process by answering questions, making suggestions regarding proper documentation and how to obtain the documentation, ensuring that appropriate medical evaluations are proceeding, etc.
2. Support care coordinators to understand and be effective in the processing of the application. This may occur on a case-by-case basis as required periodic meetings with providers.

**C. Program Administration:**

1. DPA must review and approve any changes to how services are performed under this program; this includes any changes in written communication between contractor and clients.
2. Contract personnel responsible for the oversight of the TEFRA contract will meet with the DPA on a quarterly basis to review contract deliverables and ensure that all deliverables are being met in a satisfactory manner. This meeting can be telephonic or face-to-face.

**D. Staff Availability:**

1. When contract personnel are scheduling work hours, the contractor must take into consideration that the majority of State staff work a standard workweek of Monday through Friday from 8 a.m. to 4:30 p.m. Alaska Time and is expected be available during these days/hours during the entire term of the contract. However, if schedule changes are necessary, the state must review and approve before any change is made.
2. Contract personnel will respond to DPA, Division of Senior and Disabilities Services, care coordinator, and parental inquiries within two working days of the inquiry. The contractor will ensure adequate back up and coverage when primary assigned TEFRA worker is not available to respond to these inquiries.
3. When contract personnel primarily responsible for level-of-care determinations will be out of the office and unavailable, the contractor will notify DPA of the planned absence and provide the name and contact number of the back-up person to respond to DPA inquiries. In the event of unplanned absences, contract personnel responsible for the oversight of the contract will contact DPA the first day of absence and provide the name and contact number for the back-up person to respond to DPA inquiries.

**E. Training with State Personnel:**

1. Upon award of the contract, personnel assigned to the project will attend a two-hour training session with DPA regarding the program, the eligibility requirements, and an overview of the Medicaid program. This training will be required whenever there is a change in the primary contract personnel responsible for making level-of-care determinations.
2. Primary contract personnel involved in the level-of-care determinations will attend one-hour training sessions a minimum of two (2) times per year and further as needed, with DPA for a total of a minimum of two (2) hours per year.

These trainings may be part of other meetings such as scheduled quarterly meetings with the contractor. Notify DPA whenever there will be a change in primary contract personnel so that training can be arranged in a timely and expeditious manner.

3. Contract personnel primarily responsible for the level-of-care determinations will be available to attend meetings and trainings with DPA when these meetings and trainings are directly related to TEFRA Medicaid, and other Long Term Care Medicaid processing associated with TEFRA. The State will provide adequate and timely notice of the meetings and/or trainings so contract staff can make the necessary schedule adjustments to attend.

4. Notify DPA of any personnel changes directly related to the TEFRA level-of-care determination so training dates and times can be established in a timely manner.

5. Within 30 days of the awarding of contract, the contractor will arrange a meeting with DPA to review deliverables and establish tentative training dates.

### **Deliverable #3 - Level-of-Care Determinations**

Additional procedures are identified in the State of Alaska, Department of Health, Division of Public Assistance: *Aged, Disabled and Long-Term Care Medicaid Eligibility Manual (ADLTC Manual)* section 533. The contractor will follow all relevant procedures and referenced attachments. The ADLTC manual can be viewed at: [http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm#t=title\\_page.htm](http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm#t=title_page.htm)

#### **A. Intermediate Care Facility for the Intellectually Developmentally Disabled (ICF/IDD):**

The level-of-care determination for the ICF/IDD level-of-care will be the responsibility of the Division of Senior and Disabilities Services. To facilitate a timely initial and redetermination decision, the contractor will maintain and perform the following duties:

1. Initial Applications: When it appears, a new application must be evaluated under the ICF/IDD category, the contractor will:

a) Make an email referral to the Division of Senior and Disabilities Services primary contact with the following information:

i. Child's name

ii. DSDS ID number in DS3

iii. Birth Date

iv. Name and contract information of the child's care coordinator

v. Due date for level-of-care determination in order to comply with DPA policy.

b) Follow guidelines for 90-day time frame for level-of-care determinations to ensure timely decision.

2. The contractor will maintain responsibility for ensuring that the care coordinator submits the plan of care and cost of care documentation within the application and redetermination time frames and review all documentation for appropriate signatures prior to sending out a level-of-care approval or denial email.

3. When the Division of Senior and Disabilities Services (SDS) has made a level-of-care determination, the decision will be communicated to the contractor by SDS. In the case of denials SDS will include an explanation of the

rationale for denial. Upon receiving the level-of-care decision from the Division of Senior and Disabilities Services the contractor will notify the appropriate Division of Public Assistance staff with the following information:

a) ICF/IDD Level-of-Care Approvals – New Applications and Redetermination Approvals:

- i. Name of client
- ii. Date of Birth
- iii. Client Medicaid ID number or case number
- iv. Type of level-of-care (ICF/IDD)
- v. Initial level-of-care approval month (for new applications only)
- vi. Level-of-care renewal month
- vii. Name of care coordination agency

b) ICF/IDD Level-of-care Denials – New Applications and Redetermination Denials:

- i. Name of client
- ii. Date of Birth
- iii. Client Medicaid ID number or case number
- iv. Type of level-of-care (ICF/IDD)
- v. Rationale for Denial including the detailed information given by Division of Senior and Disabilities Services
- vi. Name of care coordination agency

*Note: The contractor will not maintain any of the ICF/IDD medical files. These files will be maintained by the Division of Senior of Disabilities Services.*

**B. Nursing Facility and Inpatient Psychiatric Hospital Level-of-Care Determinations:**

1. The contractor will be responsible for making both initial and renewal level-of-care decisions for the Nursing Facility level-of-care and the Inpatient Psychiatric Hospital level-of-care categories.
2. For Nursing Facility level-of-care (NFLOC) decisions, the contractor will utilize the following as guidance when making level-of-care determinations:
  - a. Intermediate LOC characteristics at 7 AAC 140.510
  - b. Skilled LOC characteristics at 7 AAC 140.515
  - c. Criteria for placement section of the Manual for Prior Authorization of Long-Term Care Services
3. For Inpatient Psychiatric Hospital (IPH) Level-of-care decisions, the contractor will utilize state regulatory authority 7 AAC 100.424 (c)

**C. Level-of-Care Determination and Redetermination Processes:**

Note: the term level-of-care determination and redetermination for Nursing Facility and Inpatient Psychiatric level-of-care decisions include the plan of care and cost of care documentation.

1. If full TEFRA determination is warranted for Nursing Facility (NF) or Inpatient Psychiatric Hospital (IPH) level-of-care:
  - a. Upon contact by the family, the contractor will provide the family a list of certified care coordinators in the applicant's area and advise the parent to pick a care coordinator to facilitate a full determination.
  - b. Refer the parent to the Division of Public Assistance if application for Medicaid has not been made. Explain to the parent that Medicaid application is essential, and that level-of-care is one factor of eligibility.
2. For all TEFRA Nursing Facility and Inpatient Psychiatric Hospital level-of-care determinations and redeterminations that result in a denial of level-of-care, the contractor will perform the following functions:
  - a. Prior to denial, complete a physician review.
  - b. If the physician determination is to deny, the contractor will send a notice of denial to the Division of Public Assistance that includes the following information:
    - i. Name of Client
    - ii. Date of Birth
    - iii. Medicaid ID Number or Case number
    - iv. Type of level-of-care (IPH or NF)
    - v. Care Coordinator agency
    - vi. Effective date
    - vii. Date of physician review
    - viii. Explanation of denial
3. The Division of Public Assistance will be responsible for issuing the level-of-care denial notifications for all determination and redetermination denials. The contractor must provide enough information in the denial notification to the Division of Public Assistance to meet the notification requirements.
4. When the contractor approves a level-of-care determination or redetermination the notification to the Division of Public Assistance will include the following information:
  - i. Name of client
  - ii. Date of Birth
  - iii. Client Medicaid ID number or case number
  - iv. Type of level-of-care (NF or IPH)
  - v. Initial level-of-care approval month
  - vi. Level-of-care renewal month

vii. Name of care coordination agency

**D. Fair Hearing Representation:**

(Note: Level-of-Care Fair Hearing appeals are represented by the State of Alaska Division of Health Care Services; Disabilities Determination Fair Hearing appeals are represented by the State of Alaska Division of Public Assistance.)

1. The contractor will provide the following Fair Hearing services for Nursing Facility or Inpatient Psychiatric level-of-care denials due to insufficient documentation and/or level-of-care denial.

- a. Provide the Division of Health Care Services Fair Hearing Representative with all documentation relating to the denial.
- b. Provide professional nurse to participate in pre-hearing conferences as requested.
- c. Provide professional testimony in the Fair Hearing, including physician testimony on an as requested basis.

2. The contractor will provide the following services for level-of-care denials in the Nursing Facility, Inpatient Psychiatric, Hospital and Intermediate Care Facility for the Intellectually Developmentally Disabled categories due to failure to submit documentation to complete a level-of-care.

- a. Provide the Division of Health Care Services Fair Hearing representative with all documentation relating to the denial.
- b. Participate in the pre-hearing conferences as requested.
- c. Provide testimony at the Fair Hearing regarding case processing, time frames, etc.

**Deliverable #4 – Additional TEFRA Requirements**

**A. Database and System Requirements:**

The contractor will be responsible for maintaining a comprehensive database and tracking system of all current TEFRA children. This database must include the following capabilities:

1. Tracking of all initial applicants and ensuring a level-of-care decision is made within 90 days.
2. Tracking of all level-of-care renewal dates and ensuring that all appropriate personnel are notified of coming renewal dates. This includes tracking and approving or denying by the last business day of the renewal month.

**B. Quality Assurance:**

The contractor will work collaboratively with the Division of Public Assistance to develop a quality assurance plan. This plan will detail the internal processes that will identify and measure contract performance outcomes including a corrective action plan for areas identified as needing improvement. Contract outcomes subject to quality assurance review include but are not limited to:

- quality and substance of level-of-care decisions,
- measure of meeting program timeliness requirements for level-of-care decisions,
- customer satisfaction review

The contractor will work collaboratively with DPA in establishing reporting requirements and timeframes of quality assurance outcomes.

**C. Reporting Requirements:**

Submit monthly, quarterly, and annual reports to the Division of Public Assistance. Providing these reports in an electronic format will sometimes be necessary.

1. The monthly reports will include consist of two reports –
  - a. One report for new applicants in received or pended status, new applicants approved, and new applicants denied. The report should indicate the level-of care for each applicant.
  - b. The second monthly report will show all renewals currently due and being processed, the level-of-care, date approved, or date denied.
2. Quarterly reports will summarize the quarter’s approvals/denials and billing summary.
3. The yearly report will summarize all approvals, denials, and billings for the year. Periodic ad hoc reports will also be requested.
4. Keep all appropriate records in files for background information, audit accessibility, etc. Case records and electronic records are state property as specified in Article 10 of the Standard Agreement (see Section 8, Attachments) and must be available.

**D. Application and Redetermination Timeframes:**

The contractor will work with the Division of Public Assistance to meet the following initial application processing time frames and perform the following administrative functions.

1. Timely processing is completing a level-of-care determination no longer than 90 days from date of Division of Public Assistance application for initial level-of-care determinations. For redeterminations, timely processing is completing a level-of-care determination prior to the last day of the month of the current level-of-care determination period.
2. The initial 90-day time frame will be established by the Division of Public Assistance. The completed Gen 140b form *Referral to Qualis Heath* received from Division of Public Assistance will indicate the application date or eligibility start date. This date establishes the 90-day timeframe.
3. The contractor must develop a comprehensive tracking system for all three level-of-care categories to ensure a level-of-care decision is made within 90 days.
4. If a level-of-care determination cannot be made within the 90 days due to lack of cooperation or insufficient documentation, a level-of-care denial will be issued due to untimely submission of review within 90 days.
5. Extensions to the 90-day time frame will be given to the Division of Public Assistance to render a decision. Extensions must come at the request of the parent.
6. The Division of Public Assistance Long Term Care Eligibility Team may also contact the contractor to request status of decision.

7. For ICF/IDD level-of-care decisions, if the level-of-care determination is not completed within 90 days, the contractor will contact the Division of Senior and Disabilities Services and inquire as to the status of the level-of-care determination.

a. If a determination has been assigned and is in process, the contractor will notify the Division of Public Assistance to request additional time for completion.

b. If the Division of Senior and Disabilities Services reports that the care coordinator has not supplied any supportive documentation to complete an ICF/IDD Level-of-care determination, the contractor will issue a level-of-care denial due to failure to submit documentation.

**E. Administrative Support for Level-of-Care Renewal Notification and Tracking:**

All level-of-care renewals must be completed by the close of business of the last business day of the renewal month. To accomplish this, the contractor will develop a comprehensive system of tracking level-of-care renewal dates and will perform the following functions:

1. For Nursing Facility and IPH Level-of-care Renewals:

a. 90 days prior to renewal month the contractor will notify the care coordinator and parent via letter that the child's level-of-care determination is due and state the renewal month.

b. When documentation is received the contractor will follow the level-of-care determination processes as outlined above.

c. If the level-of-care renewal determination is not completed by the contractor by the last business day of the renewal month, on the first day of the month following month of renewal, the contractor will issue a level-of-care renewal denial and email it to the Division of Public Assistance Long Term Care Coordinator.

d. Extensions to the 90-day time frame will be given to the Division of Public Assistance to render a decision. Extensions must come at the request of the parent.

2. For ICF/IDD Level-of-Care Renewals:

a. 90 days prior to the month of renewal the contractor will email notification to the Division of Senior and Disabilities Services of all coming ICF/IDD level-of-care renewals.

b. 90 days prior to the month of renewal the contractor will notify the parent(s) and care coordinator of the coming renewal month.

c. If the level-of-care renewal determination is not completed by Division of Senior and Disabilities Services by the last business day of the renewal month, on the first day of the following month of renewal the contractor will issue a level-of-care renewal denial email to the Division of Public Assistance.

d. Extensions to the 90-day time frame will be given to the Division of Public Assistance to render a decision. Extensions must come at the request of the parent.

e. For completed level-of-care decisions, the Division of Senior and Disabilities Services will notify the contractor of the decision and the contractor will notify the appropriate DPA Eligibility Team of the decision.

### SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE

The length of the contract will be from anticipated start date of December 1, 2024 for approximately five (5) years with one (5) five-year renewal option at the sole discretion of the state.

Unless otherwise provided in the RFP, any extension of the contract beyond the exercised renewal options will be upon mutual agreement between the State and the contractor and effected with a contract amendment processed by the procurement officer and signed by both parties. All other terms and conditions of the contract, including those previously amended, shall remain in full force and effect. Unless otherwise agreed to by both parties, the procurement officer will provide written notice to the contractor of the intent to cancel an extension at least 30 days before the desired date of cancellation.

### SEC. 3.03 CONTRACT TYPE

This contract is a firm fixed Price contract in accordance with Submittal Form H- Cost Proposal.

### SEC. 3.04 PAYMENT PROCEDURES

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

### SEC. 3.05 CONTRACT PAYMENT

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

Any single contract payment of \$1 million or higher 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 the first five (5) years.

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.

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 (January through June 2029); and each (January through June) 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 contractor's place of business. The state will not provide workspace for the contractor.

Travel to locations will not be required or reimbursed in this contract.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor 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**

Subcontractors may be used to perform physician support only on 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.

Subcontractors shall only be considered in determining whether the offeror meets the requirements set forth in Submittal Form F – Mandatory Requirements, #3 – Physician Support.

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.

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 named in the proposal must be approved, in advance and in writing, by the project director or procurement officer. 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 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 - ANTICIPATED AMENDMENTS**

Any contract resulting from this RFP will contain a not-to-exceed dollar amount. Since the State anticipates these services to be billed upon actual number of determinations and support needed and these amounts may fluctuate, it was determined that the contract will contain a clause that authorizes the State to increase the not-to-exceed amount of the contract if necessary. Any increases will be specific to the actual increase in determinations and support, in accordance with the contract rates, and executed via a written contract amendment processed by the procurement officer and signed by the State and the contractor.

**SEC. 3.14 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS**

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

The contractor will not commence additional work until the 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 Health or the Commissioner's designee.

**SEC. 3.15 NONDISCLOSURE AND CONFIDENTIALITY**

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential

information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. “Reasonable care” means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

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

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

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

### **SEC. 3.16 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. 3.17 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 a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

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

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

### SEC. 3.18 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.

**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	Maximum Page Limits
Submittal Form A – Offeror Information and Certifications	N/A
<b>Submittal Form B – Experience and Qualifications</b>	<b>5</b>
<b>Submittal Form C – Understanding of the Project</b>	<b>5</b>
<b>Submittal Form D – Methodology Used for the Project</b>	<b>5</b>
<b>Submittal Form E – Management Plan for the Project</b>	<b>5</b>
Submittal Form F – Mandatory Requirements	N/A
Submittal Form G - Subcontractors	N/A
Submittal Form H – Cost Proposal	N/A

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 items listed in the Certifications section of the Submittal Form. If the offeror fails to comply with these items, the state reserves the right to disregard the proposal, consider the contractor in default, or terminate the contract.

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/personnel.
- d) Addenda acknowledgement.
- e) Conflict of interest statement.
- f) Federal requirements.
- g) Alaska preference qualifications.

An offeror's failure to provide this information may cause the proposal to be determined to non-responsive and rejected.

#### **SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (SUBMITTAL FORM B)**

Offerors must provide detail on their specific experience in eligibility, level of care determinations, and program administration services. Offerors should detail experience in training, care, coordination's/family support, and fair hearing support.

Offerors must also provide detail on the primary project manager's specific experience in projects of a similar nature along with the directly related experience of the overall project team identified in Submittal Form A.

Finally, offerors must provide a description of the organization of the project team and the individual(s) responsible and accountable for the completion each component and deliverable of the RFP.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in Section 4.02).

#### **SEC. 4.05 UNDERSTANDING OF THE PROJECT (SUBMITTAL FORM C)**

Offerors must provide detail that demonstrates their understanding of the requirements of the project and how to meet the state's needs.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in Section 4.02).

#### **SEC. 4.06 METHODOLOGY USED FOR THE PROJECT (SUBMITTAL FORM D)**

Offerors must provide detail that demonstrates the methodology they will employ and how the methodology will serve to accomplish the work and meet the state's needs.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in Section 4.02).

#### **SEC. 4.07 MANAGEMENT PLAN FOR THE PROJECT (SUBMITTAL FORM E)**

Offerors must provide detail that demonstrates the management plan they intend to follow and how the plan will serve to accomplish the work and meet the state's needs.

Offerors must also identify any potential issues, risks, or problems they foresee with this project and how they will address them.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in Section 4.02).

#### **SEC. 4.08 MANDATORY REQUIREMENTS (SUBMITTAL FORM F)**

Offerors must complete and submit this Submittal Form.

#### **SEC. 4.09 SUBCONTRACTORS (SUBMITTAL FORM G)**

If using subcontractors for physician support, the offeror must complete and submit this Submittal Form.

#### **SEC. 4.10 COST PROPOSAL (SUBMITTAL FORM H)**

Offerors must complete and submit this Submittal Form.

## 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.
- 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 prior to finalizing their scores.
- 6) 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.
- 7) 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.
- 8) The procurement officer may ask for best and final offers from offerors susceptible for award and revise the cost scores accordingly.
- 9) 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
Mandatory Requirements Compliance (Submittal Form F)	Pass/Fail

Qualifications Criteria		Weight
Experience and Qualifications	(Submittal Form B)	200
Understanding of the Project	(Submittal Form C)	100
Methodology Used for the Project	(Submittal Form D)	100
Management Plan for the Project	(Submittal Form E)	100
Total		500

Cost Criteria		Weight
Cost Proposal	(Submittal Form H)	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 set out in Sections 5.04 through 5.07 and assign a single score for each section. Offerors’ responses for each section may 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:

- 1) Maximum Points Available / Maximum Combined PEC Score Possible
- 2) Combined PEC Score x Result of 1)

**Example (Maximum Points Available 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
<b>Offeror 1</b>	10	5	5	10	30	75
<b>Offeror 2</b>	5	5	5	5	20	50
<b>Offeror 3</b>	10	10	10	10	40	100

**Offeror 1** was awarded 75 points:

$$\frac{\text{Maximum Points Available (100)}}{\text{Maximum Combined PEC Score Possible (40)}} = 2.5$$

$$\text{Combined PEC Score (30)} \times 2.5 = \text{Points Awarded (75)}$$

**Offeror 2** was awarded 50 points:

$$\frac{\text{Maximum Points Available (100)}}{\text{Maximum Combined PEC Score Possible (40)}} = 2.5$$

$$\text{Combined PEC Score (20)} \times 2.5 = \text{Points Awarded (50)}$$



## 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:

- <https://oppm.doa.alaska.gov/media/1453/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)
- Alaska Military Skills Program Preference – AS 36.30.321(l)

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 MILITARY SKILLS PROGRAM PREFERENCE**

An Alaska Military Skills Program Preference of 2%, 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:

- A. Employs at least one person who is currently enrolled in, or within the previous two years graduated from, a United States Department of Defense SkillBridge or United States Army career skills program for service members or spouses of service members that offers civilian work experience through specific industry training, pre-apprenticeships, registered apprenticeships, or internships during the last 180 days before a service member separates or retires from the service; or
- B. has an active partnership with an entity that employs an apprentice through a program described above.

#### **Alaska Military Skills Program Preference Certification**

In order to receive the Alaska Military Skills Program 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. 5.13 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)
<b>Offeror #3</b>	<b>900 points (800 points + 100 points)</b>

**Offeror #3** is the top scoring offeror.

## SEC. 5.14 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

The contractor will be required to sign the state's Standard Agreement Form for Professional Services Contracts (form SAF.DOC/Appendix A). This form is 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 BUSINESS ASSOCIATE AGREEMENT (BAA)**

The State has a standard BAA that is included in contracts that involve Personal Health Information (PHI) covered under the Health Insurance Portability and Accountability (HIPAA) Act. This BAA will be included in the fully executed contract and is attached along with this RFP as HIPAA BAA. Similar to Section 6.03, any request to change language in this document must be set out in the offeror’s proposal in a separate document.

#### **SEC. 6.05 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. 6.06 PROPOSAL AS PART OF THE CONTRACT**

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

#### **SEC. 6.07 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. 6.08 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. 6.09 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. 6.10 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. 6.11 DISCLOSURE OF PROPOSAL CONTENTS

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

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

## SEC. 6.12 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. 6.13 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. 6.14 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. 6.15 SUPPLEMENTAL TERMS AND CONDITIONS**

Proposals must comply with Section 6.09 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. 6.16 SOLICITATION ADVERTISING**

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

### **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 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. 6.20 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. 6.21 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 for Professional Services with Appendix A
- 2) HIPAA BAA
- 3) Submittal Forms A – G (attached separately)
- 4) Submittal Form H - Cost Proposal (attached separately)

# Attachment 1

## 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. Vendor Number	4. IRIS GAE Number (if used)	5. Alaska Business License Number	
<b>This contract is between the State of Alaska,</b>			
6. Department of Health	Division	hereafter the State, and	
7. Contractor			hereafter the Contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>8.</p> <p><b>ARTICLE 1. Appendices:</b> Appendices referred to in this contract and attached to it are considered part of it.</p> <p><b>ARTICLE 2. Performance of Service:</b></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>2.4 Appendix D sets forth the provisions for payment.</p> <p>2.5 Appendix E governs the use of Protected Health Information under this contract.</p> <p><b>ARTICLE 3. Period of Performance:</b> The period of performance for this contract begins , and ends .</p> <p><b>ARTICLE 4. Considerations:</b></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><b>NOTICE:</b> By signature on this contract, the contractor certifies that neither it nor its principles are not currently debarred, suspended, proposed for debarment, or declared ineligible for award by any federal or other government entity.</p>			
<b>9. CONTRACTOR</b>		<p><b>11. CERTIFICATION:</b> 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			
<b>10. CONTRACTING AGENCY</b>		Signature of Contracting Agency Head or Designee	Date
Department/Division Health /	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 ensure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

#### **Article 5. Termination.**

- 5.1 The Procurement Officer, 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 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.

5.2 The Procurement Officer may also, by written notice, terminate this contract under Administrative Order 352 if the contractor supports or participates in a boycott of the State of Israel.

**Article 6. No Assignment or Delegation.**

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

**Article 7. No Additional Work or Material.**

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

**Article 8. Independent Contractor.**

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

**Article 9. Payment of Taxes.**

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

**Article 10. Ownership of Documents.**

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

**Article 11. Governing Law; Forum Selection**

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

**Article 12. Conflicting Provisions.**

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

**Article 13. Officials Not to Benefit.**

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

**Article 14. Covenant Against Contingent Fees.**

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

**Article 15. Compliance.**

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

**Article 16. Force Majeure:**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

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

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health ("Covered Entity" or "CE") and the Contractor ("Business Associate" or "BA").

**RECITALS**

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information ("PHI");
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the "Privacy and Security Rule"), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act"), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement ("BAA") is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;
- D. CE may operate a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2 (collectively "Part 2"); and
- E. BA may be a Qualified Service Organization ("QSO") under Part 2 and therefore must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

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

1. Definitions.

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

3) Privacy and Security Rule: “Privacy and Security Rule” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

4) Triennially: “Triennially” shall mean once every three years.

2. Statement of Work and Responsibilities.

As provided by AS 44.21.020 and AS 44.21.160, The BA provides automatic data processing services to the CE. These services include storage, transmission, security, and recovery of electronic information owned by CE. BA is responsible for ensuring continuity of service, delivery, and access to CE electronic information at all times including in the event of a disaster.

3. Permitted Uses and Disclosures by Business Associate.

a. BA may only use or disclose PHI for the following purposes:

1) BA may use or disclose PHI as required by law.

2) BA agrees to make uses and disclosures and requests for PHI consistent with CE’s minimum necessary policies and procedures.

3) BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.

4) BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5) BA may provide data aggregation services related to the health care operations of CE.

4. Obligations of Business Associate.

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

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

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

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

BA shall not use personally owned devices to create, receive, maintain, or transmit PHI. Devices the BA uses to create, receive, maintain, or transmit CE's electronic PHI shall be owned and managed by BA or CE.

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

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 72 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents. BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use, or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

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

- d. BA is not an agent of CE.
- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.
- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI

disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.

- h. Amendment of PHI: Within 30 days of a written request by CE, BA shall amend PHI maintained, transmitted, created, or received by BA on behalf of CE as directed by CE when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.
- j. Risk Assessment: Upon agreement execution and triennially thereafter, or upon changes that occur which significantly affect the security posture of the system (whichever comes first), BA shall comply and complete CE's security assessment. Upon receipt of the security assessment, CE will review BA's responses prior to granting authority to operate, and provide any necessary instruction to ensure the confidentiality, integrity, and availability of CE's PHI. BA shall triennially, or upon changes that occur which significantly affect the security posture of the system (whichever comes first), review and update CE security assessment, as required, in order to comply with BA's current system controls. BA must provide an implementation response for each specific system control. Upon receipt of the updated assessment, CE will review the changes to the system for renewal of authority to operate.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing 10 days' notice to the BA, conduct an inspection of the facilities, systems, books, logs, and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

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

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

- m. Restrictions and Confidential Communications: Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.
- n. Indemnification: BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty or fine imposed on CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.

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

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