

STATE OF ALASKA REQUEST FOR PROPOSALS



MEDICAID PROVIDER AUDITS

RFP 2025-1600-0376

ISSUED 6/12/2025

THE DEPARTMENT OF HEALTH, MEDICAID PROGRAM INTEGRITY SECTION, IS SOLICITING PROPOSALS TO CONDUCT STATEWIDE ON-SITE AND DESK AUDITS AS REQUIRED BY ALASKA STATUTE 47.05.200. A MINIMUM OF 50 POST-PAYMENT AUDITS ANNUALLY WILL BE REQUIRED OF THE CONTRACTOR.

ISSUED BY:

DEPARTMENT OF HEALTH
DIVISION OF FINANCE AND MANAGEMENT
SERVICES

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OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

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

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE RFP

The Department of Health, Division of Finance and Management Services (FMS), Medicaid Program Integrity section, is soliciting proposals to conduct statewide on-site and desk audits as required by Alaska Statute 47.05.200. A minimum of fifty (50) post-payment audits annually will be required of the contractor. The purpose of the audits includes ensuring provider compliance with state and federal policies, regulations and statutes, recovering overpayments, supporting the investigation and prosecution of violations of criminal statutes and protecting the Medicaid program from inappropriate expenditures resulting from fraud, waste, abuse or misuse.

SEC. 1.02 BUDGET

Department of Health, Division of Finance and Management Services, estimates a maximum budget of \$6,275,000.00 for completion of this project. Proposals priced at more than \$6,275,000.00 will be considered non-responsive.

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

SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS

Proposals must be received no later than 12:00pm prevailing Alaska Time on July 10, 2025. 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 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 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 25mb (megabytes). If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 25 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
Issue Date / RFP Released		6/12/2025
Deadline to Submit Questions		6/30/2025
Deadline for Receipt of Proposals / Proposal Due Date	12:00pm	7/10/2025
ESTIMATED Proposal Evaluations Complete		7/25/2025

ESTIMATED Notice of Intent to Award		8/1/2025
ESTIMATED Contract Issued		8/11/2025

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

The Alaska Medicaid program began in 1972 to provide coverage to recipients found eligible under Title XIX of the Social Security Act. Alaska operates our State Children's Health Insurance Program (Denali Kid Care, or DKC) as an expansion to our Medicaid program. Approximately 260,000 unduplicated individuals were eligible for Alaska's Medical Assistance Programs during fiscal year 2023. Payments to Medical Assistance providers exceeded \$2,700,000,000 in State fiscal year 2024.

The Alaska Department of Health (DOH) is the single state agency responsible for administering the Medicaid Program in Alaska. DOH is responsible for overseeing the activities of Medicaid recipients and Medicaid providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible.

Health care professionals must be enrolled as a provider in Alaska's Medical Assistance Programs to bill for services provided to program members. Out-of-state health care providers must be enrolled in their own State's Medicaid Program and in Alaska's program to receive payment for services provided to Alaska Medical Assistance recipients.

The State of Alaska contracts with HMS/Gainwell as our fiscal agent. Conduent operates the current Enterprise Medicaid Management Information System (MMIS).

Alaska Statute (AS) [47.05.200](#) requires the Department to contract for independent audits of a statewide sample of all medical assistance providers in order to identify overpayments and violations of criminal statutes. The audits conducted must include both on-site audits and desk audits and must include a variety of provider types. A minimum of 50 audits shall be conducted each year.

Provider Participation Requirements

To enroll, a provider must successfully complete the Alaska Provider Enrollment and sign a Provider Agreement. In addition, the provider must agree to meet all of these initial and ongoing participation requirements:

- (1) must verify that the provider meets all other applicable requirements of [7 AAC 105 - 7 AAC 160](#) and all applicable federal and state licensing and certification requirements;
- (2) must comply with all federal and state laws as they apply to providing health care or related services to Medicaid recipients in this state, including laws related to recipient confidentiality, electronic transactions, and civil rights;
- (3) must assume responsibility for all information and claims submitted to the department by that provider or that provider's billing agent;
- (4) must agree to submit claims in the form or format required by the department for claim submission;
- (5) must comply with the requirements of [AS 47.05.300 - 47.05.390](#) and [7 AAC 10.900 - 7 AAC 10.990](#) (barrier crimes, criminal history checks, and centralized registry), if applicable to that provider type.

Provider Types

The following provider types are eligible to participate in Alaska's Medical Assistance Program. Participation for some provider types is limited. Certain provider types, such as mental health clinics and Federally Qualified Health Centers (FQHC) employ some practitioners who are not eligible for independent practice under the Alaska Medical Assistance Program requirements.

- (1) a person with an active license under AS 08, or under the laws of the jurisdiction in which the person provides services, to practice as a/an:
 - (A) physician, including an osteopath;
 - (B) podiatrist;
 - (C) dentist;
 - (D) optometrist;
 - (E) chiropractor;
 - (F) pharmacist or retail pharmacy;
 - (G) physical therapist;
 - (H) occupational therapist;
 - (I) audiologist;
 - (J) speech-language pathologist;
 - (K) advanced nurse practitioner;
 - (L) direct-entry midwife;
 - (M) dietitian;
 - (N) nutritionist;
 - (O) psychologist;
 - (P) hearing aid dealer; or
 - (Q) registered nurse anesthetist;
 - (R) a behavior analyst;
 - (S) a clinical social worker;
 - (T) a marital and family therapist;
 - (U) a licensed professional counselor;
 - (V) a licensed dental hygienist who holds an advance practice permit issued by the board of Dental Examiners under [AS 08.32.125](#).

- (2) a facility licensed under [AS 47.32](#), or under the laws of the jurisdiction in which it provides services, to operate as a/an:
 - (A) general acute care hospital or inpatient psychiatric hospital;
 - (B) long-term care facility;
 - (C) home health agency;
 - (D) rural health clinic;
 - (E) ambulatory surgical center;
 - (F) hospice care agency;
 - (G) residential psychiatric treatment center for persons under 22 years of age; or
 - (H) intermediate care facility for the mentally retarded (ICF/MR);
 - (I) a freestanding birth center.

- (3) a company or individual not excluded in [7 AAC 105.200 \(b\)](#) of this section, supplying:
 - (A) medical transportation, ambulance services, oxygen, or eyeglasses;

- (B) under [7 AAC 120.200 - 7 AAC 120.299](#), durable medical equipment, medical supplies, prosthetics, orthotics, noncustomized-fabricated orthotics, respiratory therapy, enteral and oral nutritional products, or home infusion therapy; or
 - (C) items paid under [7 AAC 130.305](#) as specialized medical equipment and supplies.
- (4) a provider of EPSDT screening services under [7 AAC 110.205](#);
 - (5) a facility providing services for end-stage renal disease;
 - (6) a personal care agency;
 - (7) a home and community-based waiver services provider, including a provider of environmental modification services under [7 AAC 130.300](#);
 - (8) a care coordination agency provider, as defined in [7 AAC 130.319](#);
 - (9) a residential supported-living services provider, as defined in [7 AAC 130.319](#);
 - (10) a federally qualified health center (FQHC);
 - (11) a tribal health program;
 - (12) a provider of in-state freestanding or portable x-ray services;
 - (13) a provider of behavioral health rehabilitation services under [7 AAC 135.010\(c\)](#) for a child experiencing a severe emotional disturbance;
 - (14) a private-duty nursing agency;
 - (15) a school district providing a Medicaid-covered service to a Medicaid recipient;
 - (16) an independent laboratory;
 - (17) an outpatient therapy center;
 - (18) a provider of family planning services;
 - (19) a provider of targeted case management services;
 - (20) a community behavioral health services provider;
 - (21) a mental health physician clinic;

Reimbursement

Reimbursement for medical services under the Alaska Medical Assistance Program is pursuant to the following methodologies*:

- (1) Advanced Nurse Practitioners: Lesser of billed charges or 85% of the physician Resource Based Relative Value Scale (RBRVS). See [7 AAC 145.100](#).

- (2) Ambulatory Surgical Center (ASC) Services: ASC payment is based on the Medicare ASC code group to which the billed service(s) is/are assigned. See [7 AAC 145.630](#).
- (3) Behavioral Rehabilitation Services (BRS): Must be a grantee approved by the Department. Lesser of billed charges or rates for applicable services as identified in [7 AAC 145.580](#).
- (4) Chiropractic Services: Lesser of billed charges or the physician RBRVS. See [7 AAC 145.110](#).
- (5) Certified Health Providers: Tribal encounter rate or payment methodology applicable to a nontribal provider in [7 AAC 145](#) if the tribal health program has elected to use that payment methodology for the billed service. See [7 AAC 155.030](#) and [7 AAC 155.040](#).
- (6) Dental Services: Lesser of billed charges or for dental services provided to a recipient 21 years of age or older in accordance with [7 AAC 110.145](#) and the Fee Schedule: Emergent Adult Dental Services, Fee Schedule: Prosthodontic Adult Dental Services, and Fee Schedule: Enhanced Adult Dental Services, adopted by reference in [7 AAC 160.900](#). Except for orthodontic services, the department will pay a dentist for dental services provided to a recipient under 21 years of age in accordance with [7 AAC 110.150](#) and the Fee Schedule: Dental Services for Children, adopted by reference in [7 AAC 160.900](#).
- (7) Early Periodic Screening Diagnostic and Treatment (EPSDT): Lesser of billed charges of the physician RBRVS. See [7 AAC 145.140](#).
- (8) End-stage Renal Disease (ESRD): See [7 AAC 145.607](#).
- (9) Family Planning Services and Supplies: Lesser of billed charges or 85% of the physician RBRVS for services. See [7 AAC 145.150](#).
- (10) FQHC and Rural Health Clinic: Facility specific all-inclusive encounter rate. See [7 AAC 145.700](#).
- (11) Home and Community-Based Waiver Services: Rates and methodologies set out in [7 AAC 145.520](#) for the following services:
 - (A) Care coordination, specialized equipment and supplies
 - (B) Specialized private duty nursing
 - (C) Environmental modifications service
 - (D) Adult day care, chore, habilitation, meals, respite, or waiver transportation service
 - (E) Residential supported living services
- (12) Home Health Services: 80% of billed charges. See [7 AAC 145.510](#).
- (13) Home Infusion Therapy: See [7 AAC 145.400 \(h\)](#).
- (14) Hospice Care Services: Lesser of billed charges or the CMS established Medicaid rates per service established under 42 CFR 418.306. See [7 AAC 145.690](#).
- (15) Imaging services: Lesser of billed charges or RBRVS. See [7 AAC 145.160](#).
- (16) Inpatient Hospital: For discharges on or after January 1, 2024, the department will reimburse inpatient hospital services provided by general acute care hospitals on a per-stay basis using a Diagnosis Related Groups (DRG) payment methodology identified in [7 AAC 150.250](#). The department will apply the DRG

- payment methodology to in-state general acute care hospitals, except hospitals listed in [7 AAC 150.250](#) (b), and to all out-of-state hospitals. See [7 AAC 145.600](#).
- (17) Alaska Native (IHS) hospital: All-inclusive per diem rate. See [7 AAC 155.010](#).
 - (18) Laboratory Services are paid at the Medicare Fee Schedule unless no Medicare fee is established; then paid at RBRVS.: See [7 AAC 145.460](#).
 - (19) Skilled or Intermediate Nursing Facility Services: Facility specific per diem rate. See [7 AAC 145.640](#).
 - (20) DME, medical supplies and prosthetic devices: Lesser of billed charges or the State maximum. See [7 AAC 145.420](#).
 - (21) Behavioral Health Clinic Services: At the rates established in [7 AAC 145.580](#).
 - (22) Alaska Native (IHS) clinic: All-inclusive encounter rate. See [7 AAC 155.010](#).
 - (23) Behavioral Health Rehabilitation Services: At the rates established in [7 AAC 145.580](#).
 - (24) Direct Entry-Midwife Services: Lesser of billed charges or 85% of the physician RBRVS. See [7 AAC 145.130](#).
 - (25) EPSDT services are paid at 100% of RBRVS. See [7 AAC 145.140](#).
 - (26) Nurse Anesthetist: Lesser of billed charges or 85% of the physician RBRVS. See [7 AAC 145.170](#).
 - (27) Nurse Midwives: Lesser of billed charges or 85% of the physician RBRVS. See [7 AAC 145.100 \(e\)](#).
 - (28) Nutrition Services: Lesser of billed charges or the physician RBRVS subject to the limits identified in [7 AAC 145.180](#).
 - (29) Outpatient Hospital Services: Percentage of billed charges for most services. Designated small hospitals receive percentage of billed charges for all services. See [7 AAC 145.600](#).
 - (30) Personal Care Services: Lesser of billed charges or the State maximum. See [7 AAC 145.500](#).
 - (31) Physical and Occupational Therapy Services: Lesser of billed charges or 85% of the physician RBRVS. See [7 AAC 145.300 -320](#).
 - (32) Physician Services: Lesser of billed charges or the RBRVS value for the procedure, subject to the exceptions listed at [7 AAC 145.220](#). See [7 AAC 145.200](#).
 - (33) Podiatry Services: Lesser of billed charges or the physician RBRVS. See [7 AAC 145.240](#).
 - (34) Prescribed Drugs: Lesser of billed charges, the Federal Upper Limit, State Maximum Allowable Cost, or the estimated acquisition cost (Wholesale Acquisition Cost+1%) plus a volume based dispensing fee, plus the reasonable and necessary postage or freight costs incurred in the delivery of the prescription from the dispensing pharmacy to a recipient in a rural area, paid through the pharmacy system. The Offeror should see [7 AAC 145.400](#) and [7 AAC 145.410](#) for special payment methods involving dispensing physicians, unit dose dispensing, high technology drugs, postage, brand name vs. generic drugs, compounding prescriptions, infusion therapy drugs, and dispensing fees.

- (35) Private Duty Nursing: The Department will reimburse for in-state private duty nursing services at the lesser of billed charges or the State maximum allowed. See [7 AAC 145.250](#).
- (36) Psychologist: See [7 AAC 145.260](#).
- (37) Residential Treatment: All-inclusive daily rate established by DOH. See [7 AAC 145.620](#).
- (38) Respiratory Therapy Services: Lesser of billed charges or the State maximum. See [7 AAC 145.420](#).
- (39) School Based Services -The Department will pay for school-based services in accordance with [7 AAC 145.350](#) at the lesser of billed charges or:
- a. 85% of the RBRVS fee schedule for procedures with an established relative value unit (RVU);
 - b. for services with no established RVU, the Department will pay according to the established fee schedule.
- (40) Speech, Hearing and Language Services: Lesser of billed charges or 85% of physician RBRVS. See [7 AAC 145.330 - 340](#).
- (41) Substance Use Rehabilitation Services: At the rates established in [7 AAC 145.580](#).
- (42) Targeted Case Management: Lesser of billed charges or the State established monthly encounter rate. See [7 AAC 145.265](#).
- (43) Telemedicine: Lesser of billed charges or the Physician RBRVS, payment to presenting provider is limited to the rate established for a brief evaluation and management of an established patient. See [7 AAC 145.270](#).
- (44) Transportation Services: Billed charges, except as specified in Table I-3 of the Transportation and Accommodations section of the Alaska Medicaid Provider Billing Manual. See Also [7 AAC 145.440](#).
- (A) Non-emergency ground ambulance within the same community: Lesser of billed charges or the State maximum.
 - (B) Non-emergency ground ambulance outside the community: Lesser of billed charges or State maximum, plus a rate per mile.
 - (C) Emergency ground ambulance: State based rate plus a rate per mile.
 - (D) Emergency air ambulance: Lift-off fee plus per mile rate.
 - (E) Non-emergency air ambulance: Lesser of billed charges or the State maximum.
 - (F) Commercial airline: Billed charges.
 - (G) Lodging and meal costs for recipients and approved escorts: Lesser of billed charges or the State maximum.
- (45) Vision Care Services: See [7 AAC 145.280](#)
- (A) Examinations: Lesser of billed charges or physician RBRVS.
 - (B) Eyeglasses: DOH awards a competitive-bid contract for eyeglasses (frames and lenses); the Department will pay an enrolled provider \$80 for dispensing and fitting contact lenses, \$30 for dispensing and fitting eyeglasses, and \$10 for eyeglass frame repair.
 - (C) Optometrist services: Lesser of billed charges or the physician RBRVS.
- (46) Vaccine Services See [7 AAC 145.275](#)

(47) Payment for services provided in another state: Unless otherwise noted in 7 AAC 105- 7 AAC 160, the Department will pay an out-of-state provider in accordance with [7 AAC 145.025](#).

*Note to Offerors. The payment methods in this section are stated generically. The Offeror is encouraged to see the Billing Manuals and Alaska Administrative Codes for specifics and exceptions. See <http://www.medicaidalaska.com/providers/Billing.shtml>

SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION

SEC. 3.01 SCOPE OF WORK

The DOH Medicaid Program Integrity section is soliciting proposals for desk and on-site audits of services delivered and claims billed by Medicaid-enrolled providers to Medicaid-eligible clients. A statewide sample of all enrolled Medical Assistance provider types must be selected. For the first year of the contract resulting from this RFP, a minimum of 50 providers are to be audited. The contractor, in consultation with the Department, will select 50 providers to be audited and determine which providers will have desk or on-site audits. The Department may select up to five (5) additional providers to be audited and determine whether they are to be desk or on-site audits. In subsequent years, the number of audits may vary in accordance with the requirements of [Alaska Statute 47.05.200](#).

The purposes of the audits include ensuring provider compliance with state and federal policies, regulations and statutes, recovering overpayments, supporting the investigation and prosecution of violations of criminal statutes and protecting the Medicaid program from inappropriate expenditures resulting from fraud, waste, abuse or misuse. To this end, the on-site audits and desk audits are utilized to determine:

1. that the services billed by providers on claims documents were actually provided to Medicaid recipients who were eligible at the time that services were delivered;
2. that the services, procedure codes, and number of units for which claims were submitted reconcile with the recipient's medical chart record of the services rendered, and the services were medically necessary;
3. that the stop and start times are documented for all time-based codes;
4. that the diagnoses recorded on the claim forms reconcile with the medical charts;
5. that the provider records substantiate that the services were rendered on the dates for which the claims were submitted;
6. that the provider followed Medicaid rules and appropriately billed all third party payers, applied proper co-payment and recipient cost-of-care as required;
7. that no duplicate billings and/or payments were made or received by the provider;
8. that no concurrent inpatient, nursing facility or other residential care billings exist with other Medicaid providers;
9. that the provider obtained appropriate authorization for services as applicable;
10. that billings and/or payments did not exceed applicable service limits or 24 hours of service in one day;
11. that the place of service code billed was accurate for the site at which the service was provided (inpatient hospital, office visit, etc.);
12. that Medicaid-eligible medical providers were enrolled with Alaska Medicaid at the time of service; and complied with the requirements for background checks in accordance with [7 AAC 10.900 - 10.990](#).

13. that the providers complied with their Alaska Medicaid Provider Agreement to identify and quantify overpayments and to detect all possible violations of Alaska and federal policies, regulations and criminal statutes.

The audits conducted under the resulting contract must meet the requirements of [AS 47.05.200](#).

SEC. 3.02 DELIVERABLES

The contractor will be required to provide the following deliverables:

1. **Agreed Upon Procedures:**

Prior to the start of the contract, the contractor and state will agree to a set of standard procedures to be performed for each audit. These agreed-upon procedures will include a description of the planning, claims analysis, detailed claims documentation review, field examination and reporting steps to be taken for each audit.

2. **Provider Selection:**

The contractor, in consultation with the Department, shall select, for the first year of the contract 50 providers to be audited. At least 2 providers must be facilities as defined under [AS 47.07.900](#). Providers must be selected from all Medical Assistance providers who billed the department a minimum of \$50,000 and the sampling must represent a variety of provider types and locations. It is anticipated that at least 33% of these audits will be on-site.

The DOH Medicaid Program Integrity section may select an additional 5 providers for audit and determine whether the audit is an on-site or desk audit. In subsequent years, the number of audits may vary in accordance with the requirements of [AS 47.05.200](#).

3. **Sample Selection:**

The contractor will develop, maintain and perform a sampling of Medicaid providers' activities through statistically valid methodologies that will result in an adequate sample selection. The methods used must be standard, recognized methodologies. All calculations used in the sampling process must be made available to the Department upon request. The sampling methodologies used by the contractor must support extrapolation of overpayments and the contractor must be able to justify and explain the sampling methodologies utilized in legal or administrative proceedings.

The scope of each audit will cover one calendar year of the provider's activities starting with calendar year 2023. Each subsequent audit cycle will cover the subsequent calendar year.

The proposal must include a description of the sample selection methodologies to be used for this contract in compliance with the criteria as outlined in this section.

4. **Records Review, Findings, and Reports:**

The principal focus of desk and on-site audits is to identify violations of Medicaid program rules including claim overpayments as well as potential violations of criminal statutes. It is also to determine if services billed to the Medicaid program are supported by documentation contained in the providers' recipient medical, financial or other records, and whether the provider is complying with the Medicaid Provider Agreement and all applicable federal and state statutes, regulations policies and procedures.

The audits will involve a review of medical necessity, computerized analysis of Medicaid claims activity; other MMIS information; providers' financial records, including financial credit balances; billing records; the services received as documented in providers' clinical medical records including diagnostic testing results and prescribed services documentation, and any other information which may support the services billed to Medicaid. A determination will be made as to whether the services billed meet the program requirements as stated in the state and federal Medicaid rules, policies and regulations, including provider billing manuals.

The contractor will research and become familiar with all pertinent Medicaid state and federal policies, regulations, and statutes. The contractor will prepare and provide all materials and supporting documentation necessary to perform desk and on-site record audits, including requesting data from the DOH Program Integrity Section and its fiscal agent, data extraction, data preparation, abstraction tool development, programming, if necessary, and preparation of all other items necessary for the desk and on-site record audits. Letters of notification, requests for records and other correspondence regarding the audit to individual providers will be produced by the contractor.

5. Preliminary Audit Report

The contractor, upon completion of the desk or on-site audit, will prepare and submit a preliminary audit report to the DOH Medicaid Program Integrity section for review prior to issuing the report to the provider. Medicaid Program Integrity will consult with the appropriate divisions on any necessary policy clarifications.

Upon receipt of approval from Medicaid Program Integrity, the contractor will submit the Preliminary detail report to the provider with documentation of the findings including but not limited to those listed below. Providers will be given at least 30 days to review the preliminary audit and to submit additional documentation to address the findings.

The reviewers may find:

- lack of medical necessity
- billing errors
- duplicate billings
- unbundled billings
- up-coded billings
- split billings
- no documentation/billing not justified
- service billed was not the service rendered/service rendered not covered
- failure to document start and stop times for time-based codes

The review findings may indicate the need for:

- provider education
- recovery of inappropriate payments
- referral to the appropriate agency
- other actions or sanctions to be implemented by the Department.

The review may also find that no further action is indicated.

Inappropriate billings identified during the desk or on-site review process will be researched, recovery amounts calculated (both actual and extrapolated), and recommendations for recovery will be made by the contractor to the Department. Each monetary finding will be accompanied by an administrative code reference which supports the identification of the overpayment. Recovery amounts will be calculated based upon a statistically valid extrapolation method and shall be presented in the Audit Report. The current extrapolation methodology is the

greater of actual overpayments or the results of an extrapolation using the lower bound of a one sided 90% confidence interval.

Please note: Overpayments may include amounts that are subject to extrapolation (part of the claims sampled for detailed testing) and amounts not subject extrapolation (amounts identified during analytical review which are in conflict with inpatient stays, duplicate billings, etc.). Extrapolated and non extrapolated overpayment amounts will be identified separately in the audit report.

The contractor will review any additional documentation submitted by the provider in response to the Preliminary audit and make appropriate modifications to the final audit report prior to issuance. Final audit reports will be transmitted to the Medicaid Program Integrity section who will then issue the report to the provider notifying them of their appeal rights.

During the desk or onsite review or research process, the contractor may observe and/or identify state system, procedural or policy issues. The contractor will include these observations in the Narrative Summary and may make recommendations regarding those issues.

During the desk or on-site audit, the contractor may have reason to believe that fraud has occurred or may identify potential fraud. The contractor will notify the Project Manager in writing and provide all relevant descriptions and materials. The contractor may be requested to cease to continue working on the audit at that time or may be requested to continue the audit in progress.

Although assessment of quality of care is not the focus of this contract, the Department recognizes that it has a responsibility to take note of any discrepancies that might indicate a quality of care issue. Issues related to quality of care identified during the desk or onsite review process shall be immediately reported to the Project Manager of the DOH Medicaid Program Integrity Section in writing and included in the narrative report. The offeror will include in their proposal the policy and procedures to be followed when quality of care issues are identified during audits performed under this contract.

6. Final Audit Report

Within 10 working days after completion of the audit, the contractor will submit a written audit report, together with two copies of the final audit report to the Project Manager. The final audit report will consist of:

Auditors Statement: the Auditors Statement will consist of a description of the type of audit, time period audited, scope of audit, a complete summary of the findings, recovery amounts identified, a statement that the audit was conducted in accordance with Government Auditing Standards 2018 Revision, and signature of contractor.

Narrative Summary:

The narrative summary will include an explanation of all findings and recommendations in a narrative format. This explanation will include a summary of the audit findings and recommendations, overpayments, observations and interactions with the providers' staff, an explanation of the audit process, sampling methodologies used, proceedings of the entrance conference, etc. This narrative summary may include tables/graphs presenting data and interpretation of results. The Narrative Summary will include specific observations or findings of actual or potential violations of criminal statutes. All findings identified in the Narrative Summary will include the citations supporting the findings.

Report Detail: The report detail will consist of schedules describing each claim reviewed and serve as an accounting of all financial details. This report will include the claim control number, date of service, procedure code, procedure modifier, claim type modifier, claim status, amount billed, allowed amount,

Third Party Liability [TPL] amount, co-pay amount, recipient liability, payment amount, payment date, diagnosis, other claims data as necessary, a specific description of the overpayments/problems identified per claim, errors identified and all calculations, including recoverable amounts for each claim.

The final audit report informing the provider of the audit findings, related overpayments, program participation deficiencies and other related issues will be forwarded to the Project Manager in the DOH Medicaid Program Integrity section. The DOH Medicaid Program Integrity section will issue the final audit report to the provider and will include applicable appeal instructions.

7. Monthly Status Report:

Within five working days of the end of each month, the contractor will submit a monthly status report to the Project Manager of this contract explaining the status of all desk and on-site audits. This report will include the status of each audit and actions taken as well as other parameters defined by the DOH Medicaid Program Integrity section.

8. Annual Status Report:

Within two working weeks of the end of each audit cycle, the contractor will submit a status report to the Project Manager of this contract. The contractor will produce a report and accounting of all activities to be used in the DOH Medicaid Program Integrity section annual report and to evaluate the cost effectiveness of the desk and on-site audit process.

9. Record Keeping Requirements:

The contractor will maintain all supporting documentation and data used in the contractor's audit process for a period of not less than 7 years following completion of an audit.

The contractor, upon completion of the audit process, will provide the DOH Project Manager an electronic file of all supporting documentation and data supporting the contractors audit process and findings.

10. Appeal Support:

The DOH Medicaid Program Integrity section will provide for the legal defense and manage the Department's defense in any appeal or legal proceeding. The contractor will support its audit conclusions, recovery determinations, and findings in any appeal or legal proceeding. That support includes, but may not be limited to, the preparation of all necessary materials and exhibits and providing testimony when appropriate.

11. Optional Services:

In addition to the 50 annual audits that are to be performed under this contract, the following additional services may be requested by the State at additional cost:

- Additional audits: The state may request up to 5 additional audits to be conducted in addition to the 50 required annually. The scope of each audit may be modified but will be similar to the work required for the 50 audits described in detail above.
- Claims data analysis: The state may request the contractor to perform data analysis on claims other than those selected as part of the 50 annual audits. That data analysis will search for and identify potential duplicate claims and claims concurrent with inpatient hospital, or long-term care claims. Additional types of data analysis may be proposed by the state or the contractor.

SEC. 3.03 CONTRACT TERM AND WORK SCHEDULE

The length of the contract will be from September 1, 2025, for approximately three (3) years until completion, approximately August 31, 2028, with one (1) three- year renewal. Renewal options will be at the sole discretion of the state.

Any extension of the contract beyond the end date 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. 3.04 CONTRACT TYPE

This contract is a Firm Fixed Price contract.

SEC. 3.05 PAYMENT PROCEDURES

The state will make monthly payments on hourly appeal support and after each audit is completed and approved by the project director. The state will pay the contractor based upon the per item costs submitted in Submittal Form H – Cost Proposal.

SEC. 3.06 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. 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.

For agreements over \$500,000, under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. Payment for agreements under \$500,000 for the undisputed purchase of goods or services provided to a state agency, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

SEC. 3.07 ELECTRONIC PAYMENTS

The State of Alaska prefers vendors receive payment via Electronic Funds Transfer (EFT). The contractor may review information concerning the EFT process and access the Electronic Payment Agreement Form for Vendors at the following link: <https://doa.alaska.gov/dof/vendor.html>.

Any single contract payment of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

SEC. 3.08 LOCATION OF WORK

The location(s) the work is to be performed, completed and managed is at contractor's workplace.

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

Travel will be required for on-site audits, both within the state and, if necessary, to providers located outside of state. The contractor will be responsible for all travel arrangements and travel associated costs, none may be billed separately to the State.

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

If the offeror cannot certify that all work will be performed in the United States, the offeror must submit a request, set out in a separate document in their proposal, that provides a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason that is necessary.

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

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

SEC. 3.09 SUBCONTRACTORS

Subcontractors may be used to perform work under this contract. Subcontractor staff may only be up to 50% of all assigned staff on this contract. All other staff must be direct employees of the prime contractor. If an offeror intends to use subcontractors, the offeror must complete the Submittal Form identified in Section 4.02 of this RFP.

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

Subcontractor experience **SHALL** be considered in determining whether the offeror meets the requirements set forth in Submittal Form F – Mandatory Requirements. **Offerors must be specific in Submittal Form F as to which subcontractor(s) defined in Submittal Form G – Subcontractors they are citing to meet the specific requirement listed in Submittal Form F.**

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. 3.10 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 3.11 RIGHT TO INSPECT PLACE OF BUSINESS

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

SEC. 3.12 CONTRACT PERSONNEL

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

SEC. 3.13 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The project director 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. 3.14 CONTRACT CHANGES - ANTICIPATED AMENDMENTS

During this contract, the contractor may be required to perform additional audits and claims data analysis (see Section 3.02, Deliverables - 11. Optional Services). The resultant contract will contain a clause that authorizes the State to increase the not-to-exceed amount of the contract if necessary for this anticipated additional work. Any increases will be specific to the additional audits, in accordance with the contract rates.

When data analysis is needed, the project director will discuss with the selected contractor. The contractor will then submit a firm price for the additional work that is agreed upon with the state. The state may add up to \$100,000 per year for these services.

All increases to the not-to-exceed amount will be executed via a written contract amendment processed by the procurement officer and signed by the State and the contractor.

SEC. 3.15 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. 3.16 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. 3.17 INDEMNIFICATION

The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any third-party 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. 3.18 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 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.

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.

SEC. 3.19 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.

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

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 links or marketing information in the proposal or it may be removed by the procurement officer prior to the proposals being sent to the proposal evaluation committee (PEC).

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
Submittal Form B – Experience and Qualifications	5
Submittal Form C – Understanding of the Project	5
Submittal Form D – Methodology Used for the Project	5
Submittal Form E – Management Plan for the Project	5
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) Alaska preference qualifications.

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

SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (SUBMITTAL FORM B)

Offerors must provide details on their specific experience using United States principles and standards with Generally Accepted Government Auditing Standards and financial auditing standards with specific expertise in medical records auditing, investigative research, and state and federal health care criminal law.

Offerors must also provide detail on the Audit Manager's, Medical Professional, and Certified Professional coder, specific experience in projects of a similar nature along with the directly related experience of the overall project team identified in Submittal Form A.

Offeror must also provide details on their experience with statistical sampling, extrapolation, data analysis, and data management.

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, 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

Technical Criteria		Weight
Experience and Qualifications	(Submittal Form B)	250
Understanding of the Project	(Submittal Form C)	50
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 G)	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
Offeror 1	10	5	5	10	30	75
Offeror 2	5	5	5	5	20	50
Offeror 3	10	10	10	10	40	100

Offeror 1 was awarded 75 points:

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

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

Offeror 2 was awarded 50 points:

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

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

Offeror 3 was awarded 100 points:

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

Combined PEC Score (40) x 2.5 = Points Awarded (100)

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS

This portion of the offeror's proposal will be evaluated against the following questions:

- 1) How well did the offer detail their specific experience requested in section 4.04?
- 2) How well did the offeror detail the primary project manager's experience in projects of a similar nature and the directly related experience of the overall project team?
- 3) How did the offeror describe the organization of the project team and the individual(s) responsible for and accountable for the completion of each component and deliverable of the RFP?
- 4) If subcontractors will perform work on the contract, how well do they measure up to the experience and qualifications of the offeror?

Questions regarding the firm:

- 1) How well has the firm demonstrated experience in completing similar projects on time and within budget?

SEC. 5.05 UNDERSTANDING OF THE PROJECT

This portion of the offeror's proposal will be evaluated against the following questions:

- 1) How well did the offeror demonstrate their understanding of the project requirements and how to meet the state's needs?
- 2) How well has the offeror identified pertinent issues and potential problems related to the project?
- 3) Has the offeror demonstrated an understanding of the state's time schedule and their ability to meet it?

SEC. 5.06 METHODOLOGY USED FOR THE PROJECT

This portion of the offeror's proposal will be evaluated against the following questions:

- 1) How well did the offeror demonstrate the methodology they will employ and how the methodology will serve to accomplish the work and meet the state's needs?

- 2) How well does the proposed sample selection methodology comply with the criteria outlined in Deliverable 2: Provider Selection.
- 3) Has the offeror provided policies and procedures for identification quality of care issues? Do these policies & procedures indicate an alignment of concern for these issues and include notification to the state?

SEC. 5.07 MANAGEMENT PLAN FOR THE PROJECT

This portion of the offeror’s proposal will be evaluated against the following questions:

- 1) How well did the offeror demonstrate their management plan and how that plan will service to accomplish the work and meet the state’s needs?
- 2) To what extent did the offeror identify potential issues, risks, or problems they foresee with this project and how they will address them?
- 3) Is the organization of the project team clear, and does it illustrate the lines of authority and communication?
- 4) Does it appear that the offeror can meet the schedule set in the RFP?

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.

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

Offeror #3 receives 336.8 points.

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

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/policy-oversight/policy-resources/user-guide-matrixes/>

- 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.

In addition, proof of graduation of the qualifying employee from an eligible program as described in AS 36.30.321(l) must be provided to the procurement officer at time of proposal submission. Offerors must provide clarification or additional information requested by the procurement officer related to the preference not later than 5:00 PM Alaska Time one (1) business day following the date of the request. Failure to provide sufficient documentation will result in the offeror not receiving the Military Skills Program 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)
Offeror #3	900 points (800 points + 100 points)

Offeror #3 is the top scoring offeror.

SEC. 5.14 COST REASONABLENESS

Prior to entering into contract negotiations, the procurement officer may perform a cost reasonableness assessment of all shortlisted proposals in the following manner:

- If the highest ranked offeror's cost proposal is within 5% of the next highest ranked offeror's cost proposal, the state will proceed to invite the highest ranked offeror to contract negotiations.
- If the highest ranked offeror's cost proposal is 5% or more higher than the next highest ranked offeror's cost proposal, the state reserves the right to invite the second highest ranked offeror to contract negotiations.

SEC. 5.15 CONTRACT NEGOTIATIONS

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. 5.16 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. This form is attached with the RFP for your review. The contractor must comply with the Appendix A 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 procurement officer does so, and if the procurement officer agrees, in writing, to do so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

SEC. 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. Proposals that are conditioned upon the state's approval of an assignment will be rejected as non-responsive.

SEC. 6.13 SEVERABILITY

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

SEC. 6.14 SUPPLEMENTAL TERMS AND CONDITIONS

Proposals must comply with Section 6.08 Right of Rejection. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

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

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

SEC. 6.15 SOLICITATION ADVERTISING

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

SEC. 6.16 SITE INSPECTION

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

SEC. 6.17 CLARIFICATION OF OFFERS

Prior to the contract negotiation period detailed in RFP Section 5.15, 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

Prior to the contract negotiation period detailed in RFP Section 5.15, 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 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 contract 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. 6.20 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.

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) Cost Proposal (attached separately)
- 2) Submittal Forms A – G (attached separately)
- 3) Standard Agreement Form - Appendix A
- 4) HIPAA BAA

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
This contract is between the State of Alaska,		
6. Department of Health	Division	hereafter the State, and
7. Contractor		hereafter the Contractor
Address		
<p>8.</p> <p>ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.</p> <p>2.2 Appendix B 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>ARTICLE 3. Period of Performance: The period of performance for this contract begins , and ends .</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$ in accordance with the provisions of Appendix D.</p> <p>NOTICE: 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>		
9. CONTRACTOR		11. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.
Name of Firm		
Signature of Authorized Representative	Date	
Typed or Printed Name of Authorized Representative		
Title		
10. CONTRACTING AGENCY		Signature of Contracting Agency Head or Designee
Department/Division Health /	Date	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.

**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 _____ ("Business Associate" or "BA"). This agreement is intended to accomplish the objectives of a HIPAA Business Associate Agreement ("BAA") as set out in 45 C.F.R. §164.504(e)(3)(i).

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.

- i. 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 4.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