



**Solicitation Information
November 1, 2016**

RFP# 7551104

TITLE: Rhode Island Healthcare Quality Reporting Program Services

Submission Deadline: November 21, 2016 at 11:30 AM (Eastern Time)

PRE-BID/ PROPOSAL CONFERENCE: NO

Questions concerning this solicitation must be received by the Division of Purchases at david.francis@purchasing.ri.gov no later than **November 9, 2016 at 10:00 AM (ET)**. Questions should be submitted in a *Microsoft Word attachment*. Please reference the RFP# on all correspondence. Questions received, if any, will be posted on the Internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information.

SURETY REQUIRED: No

BOND REQUIRED: No

**David J. Francis
Interdepartmental Project Manager**

Applicants must register on-line at the State Purchasing Website at www.purchasing.ri.gov

Note to Applicants:

Offers received without the entire completed three-page RIVIP Generated Bidder Certification Form attached may result in disqualification.

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SECTION 1: INTRODUCTION

The Rhode Island Department of Administration/Division of Purchases, on behalf of the Rhode Island Department of Health (RIDOH), is soliciting proposals from community based, public or non-profit organizations to manage the Healthcare Quality Reporting Program, in accordance with the terms of this Request for Proposals and the State's General Conditions of Purchase, which may be obtained at the Rhode Island Division of Purchases Home Page by Internet at www.purchasing.ri.gov . RIDOH will fund one agency to provide these services.

The initial contract period will begin approximately on February 1, 2017 for one year. Contracts may be renewed for up to four additional 12-month periods based on vendor performance and the availability of funds.

This is a Request for Proposals, not an Invitation for Bid. Responses will be evaluated on the basis of the relative merits of the proposal, in addition to price; there will be no public opening and reading of responses received by the Division of Purchases pursuant to this Request, other than to name those offerors who have submitted proposals.

INSTRUCTIONS AND NOTIFICATIONS TO OFFERORS:

1. Potential vendors are advised to review all sections of this RFP carefully and to follow instructions completely, as failure to make a complete submission as described elsewhere herein may result in rejection of the proposal.
2. Alternative approaches and/or methodologies to accomplish the desired or intended results of this procurement are solicited. However, proposals which depart from or materially alter the terms, requirements, or scope of work defined by this RFP will be rejected as being non-responsive.
3. All costs associated with developing or submitting a proposal in response to this RFP, or to provide oral or written clarification of its content shall be borne by the vendor. The State assumes no responsibility for these costs.
4. Proposals are considered to be irrevocable for a period of not less than 120 days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent.
5. All pricing submitted will be considered to be firm and fixed unless otherwise indicated herein.
6. Proposals misdirected to other state locations, or which are otherwise not present in the Division at the time of opening for any cause will be determined to be late and will not be considered. For the purposes of this requirement, the official time and date shall be that of the time clock in the reception area of the Division.
7. It is intended that an award pursuant to this RFP will be made to a prime vendor, or prime vendors in the various categories, who will assume responsibility for all aspects of the work. Joint venture and cooperative proposals will not be considered. Subcontracts are permitted, provided that their use is clearly indicated in the vendor's proposal and the subcontractor(s) to be used is identified in the proposal.
8. All proposals should include the vendor's FEIN or Social Security number as evidenced by a W9, downloadable from the Division's website at www.purchasing.ri.gov.

9. The purchase of services under an award made pursuant to this RFP will be contingent on the availability of funds.
10. Vendors are advised that all materials submitted to the State for consideration in response to this RFP will be considered to be Public Records as defined in Title 38, Chapter 2 of the General Laws of Rhode Island, without exception, and will be released for inspection immediately upon request once an award has been made.
11. Interested parties are instructed to peruse the Division of Purchases website on a regular basis, as additional information relating to this solicitation may be released in the form of an addendum to this RFP.
12. Equal Employment Opportunity (G.L. 1956 § 28-5.1-1, et seq.) – § 28-5.1-1 Declaration of policy – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies to all areas where State dollars are spent, in employment, public services, grants and financial assistance, and in state licensing and regulation.
13. In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, a corporation without a Rhode Island business address, shall have the right to transact business in the State until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040). This is a requirement only of the successful vendor(s).
14. The vendor should be aware of the State's Minority Business Enterprise (MBE) requirements, which address the State's goal of ten percent (10%) participation by MBEs in all State procurements. For further information visit the website www.mbe.ri.gov
15. Under HIPAA, a "business associate" is a person or entity, other than a member of the workforce of a HIPAA covered entity, who performs functions or activities on behalf of, or provides certain services to, a HIPAA covered entity that involves access by the business associate to HIPAA protected health information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits HIPAA protected health information on behalf of another business associate. The HIPAA rules generally require that HIPAA covered entities and business associates enter into contracts with their business associates to ensure that the business associates will appropriately safeguard HIPAA protected health information. Therefore, if a Contractor qualifies as a business associate, it will be required to sign a HIPAA business associate agreement
16. In order to perform the contemplated services related to the Rhode Island Health Benefits Exchange (HealthSource RI), the vendor hereby certifies that it is an "eligible entity," as defined by 45 C.F.R. § 155.110, in order to carry out one or more of the responsibilities of a health insurance exchange. The vendor agrees to indemnify and hold the State of Rhode Island harmless for all expenses that are deemed to be unallowable by the Federal government because it is determined that the vendor is not an "eligible entity," as defined by 45 C.F.R. § 155.110.

SECTION 2: BACKGROUND

The Rhode Island Department of Health (RIDOH) is established by law (RIGL-23) as the only state and local public health jurisdiction in Rhode Island to take cognizance of the interests of life and health among the peoples of the state; make investigations into the causes of disease, the prevalence of epidemics and endemics among the people, the sources of mortality, the effect of localities, employments and all other conditions and circumstances on the public health, and to do all in its power to ascertain the causes and apply the best means for the prevention and control of diseases or conditions detrimental to the public health. In addition it adopts, promulgates and enforces rules and regulations, conducts laboratory tests, monitors, publishes and circulates information and takes other actions necessary to promote and assure the public's health including emerging infections and treatment-resistant diseases, emergency preparedness (including bioterrorism), and diseases related to lifestyle, genetic and environmental conditions.

RIDOH strives to protect and promote the health of Rhode Islanders with the following outcomes:

- Assuring that everyone has the opportunity for equal life chances
- Reducing the burden of disease and disability in the population
- Assuring safe and healthy human environments
- Assuring access for all to high quality health services
- Assuring appropriate utilization of health services
- Planning for a health service environment that matches resource to need
- Assuring infections disease control
- Promoting healthy behaviors and practices

The technical disciplines underlying public health are specialized and extensive including five core components: epidemiology, biostatistics, environmental health, health services administration, and social and behavioral science. These are augmented by a number of specialized newer fields such as health informatics, genomics, health risk communication, cultural competence, community-based participatory health research, health policy and law, global health, and health ethics. These areas of knowledge and practice are available in only a few places—especially in Rhode Island where specialties tend to be concentrated.

General Purpose:

The purpose of this procurement is to manage the Healthcare Quality Performance Measurement and Reporting Program (Health Care Quality Reporting Program), which was enacted by the General Assembly and signed by the Governor in 1998 (R.I.G.L. 23-17.17). This Act provides that the Director of Health is authorized and directed to develop a state health care quality performance measurement and reporting program for licensed health care facilities in Rhode Island. In 2006, the Act was amended to include licensed health care providers. The Act further provides for a Steering Committee to advise the Director on designated matters. (See: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-17.17/INDEX.HTM>). Since its inception, program activities have been added per changes in legislation and regulations.

The Health Care Quality Reporting Program's accomplishments to date are on the RIDOH website at: <http://www.health.ri.gov/programs/healthcarequalityreporting/>. In addition to the Annual Report to the General Assembly, a series of public, background, and technical reports are provided on the website, as well as information regarding efforts thus far in reporting clinical measures in hospitals, nursing homes and home health care agencies, and patient satisfaction in hospitals. Current efforts are underway to publicly report family and resident satisfaction in nursing homes, client satisfaction with home care agencies, clinical measures in community health centers, nursing sensitive indicators and Hospital-acquired-infections. Wherever possible, links to other public

reporting of Rhode Island licensed health care facilities have been placed on the Performance Measurement and Reporting web page.

Given potential changes in program activities over the period of this contract, it is expected that proposals will address program needs for the first 12-month period of the contract. The Scope of Work outlines current activities that must be maintained as well as other tasks included in this program. It is expected that, where possible, responders will address longer-range program tasks and activities.

SECTION 3: SCOPE OF WORK

General Description:

Responders to this RFP must clearly outline a detailed overall approach to the maintenance of current program activities and how measures for each type of facility might be developed within the context of such an approach. The narrative shall include discussion of the following factors:

- Discussion of the measurement objectives and their desired characteristics.
- Approach used in developing the measurement tools.
- The specific principal staff assigned to the task by the Contractor and the amount of time devoted to the task.
- Total staffing commitment for the task.
- The time required for the expected performance of each task.

The description should be sufficient in detail so that the Contractor clearly shows an understanding of the scope of work. Applicants' proposals should exceed the work outlined in the RFP if appropriate; such as, the applicant should also include in its description any additional information deemed relevant to the accomplishment of the scope of work for this project.

TASK 1: Activities Related to the Healthcare Quality Reporting Program Committees

- Respond to the program direction identified by the Healthcare Quality Reporting Program Steering Committee and/or newly enacted legislation.
- Maintain and share knowledge of current local and national public reporting efforts, trends, and future plans, as they pertain to the scope of this program.
- Collaborate and provide leadership and direction to established subcommittees, varied licensed health care settings, and external contracted vendors to accomplish the recommendations of the Healthcare Quality Reporting Program Steering Committee and subcommittees and to complete program activities.
- Assist with implementation of guidelines recommended by the Technical Expert Panel's recent evaluation of the program. Specifically, coordinate with subcommittees to:
 - Identify and recommend goals and thresholds for comparison
 - Explore options for creating interactive public reporting formats which may enable users to easily trend data over time
 - Use focus groups to evaluate public reporting formats that include members of the target audience, health care staff, and consumers to test that data are interpreted consistently and correctly
- Create quarterly updates of clinical measures for hospitals, nursing homes, and home health care agencies for RIDOH's website. This entails analysis of the Center for Medicare and Medicaid Services' (CMS) "Hospital Compare", "Nursing Home Compare", and "Home

Health Compare”, and publicly reporting them in the format approved by the Healthcare Quality Reporting Program Steering Committee.

- Assist with the management and publicly reporting of family and resident satisfaction surveys regarding Rhode Island nursing homes.
- Coordinate with RIDOH’s website manager and the Nursing Home Subcommittee for public reporting of nursing home clinical, satisfaction, and facility regulatory survey data.
- Coordinate with vendors for the implementation of patient satisfaction surveys with home health care agencies in Rhode Island, and the Home Health Care Subcommittee to assure completion of public survey processes and public reporting.
- Monitor hospital efforts with implementation of CMS’ Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) along with the Hospital Measures Subcommittee and the vendor selected to implement the surveys.
- Assist the Hospital Measures Subcommittee with the development and implementation of public reporting of process and outcome measures for hospitals.
- Assist the Health Care Acquired Infections (HAI) Prevention Advisory Subcommittee in the selection and reporting of clinical measures.
- Assist with the development, implementation, data analysis, and reporting of the biannual survey of physicians on their adoption of Health Information Technology (HIT).

TASK 2: Activities Related to Measurement: Selection, Data Collection, Analysis, Reporting, and Evaluation

2.1 Assist with Measurement Selection and Development of Design for New Measurement Activities

During the period of this contract, legislation may be passed or the Health Care Quality Reporting Program Steering Committee may recommend new measurement activities for the program. The State may receive supplemental funding from Medicaid or other sources to provide services for an additional component under the same scope of work. If additional funding is received, the State of Rhode Island reserves the right to increase this award by an amount up to the dollar amount of the additional funding.

The Contractor shall perform analysis and assessment of current measurement of clinical performance and patient satisfaction for health care facilities and licensed health care providers, locally and nationally. This shall include a review and analysis of existing RIDOH data, as well as external data systems. It shall also include a review and analysis of clinical performance patient satisfaction, and nursing sensitive measurement systems, including review of the professional literature. Based on these reviews and analysis, the Contractor will provide assistance with the selection of appropriate clinical performance, patient satisfaction, and nursing sensitive performance measures.

The Contractor shall assist with the development of:

- 1) A standardized data set of clinical performance measures, risk-adjusted for patient variables, to be collected and reported periodically by RIDOH, and
- 2) Statistically valid patient satisfaction measures for each of the types of health care facilities licensed in Rhode Island.

The fields of clinical performance measurement and patient satisfaction with health services are vast and constantly evolving. The proposal must explain how the applicant will review the

professional literature and will select and investigate external data systems that measure clinical performance and patient satisfaction for health services, as well as nursing sensitive indicators.

The Contractor shall demonstrate a familiarity with measurement systems for clinical performance, consumer satisfaction, and nursing sensitive performance used by health care providers in Rhode Island, other states, other geographical areas, and by commercial vendors.

This program has a Steering Committee whose membership is defined by law. The Department also uses several Subcommittees. In order to demonstrate the time and effort that will be required to effectively utilize these committees, the Contractor shall propose a time and effort plan for working with both the Steering Committee and the subcommittees.

The Contractor will be responsible for preparation of written reports and/or oral presentations which will assist in recommendations to the Steering Committee and Director of Health regarding selection of appropriate measures for clinical performance and patient satisfaction for each type of licensed health care facility and/or health care provider, as well as nursing sensitive performance measures. For particular projects, Contractor staff may be required to take a leadership role with program subcommittees, health care facilities, and program vendors, to achieve the objectives of the program.

2.2 Assist with Collection of Clinical Performance and Patient Satisfaction Measures

The Contractor will assist the Department with collection of data on clinical performance, patient satisfaction, and nursing sensitive performance measures. These data may come from databases the Department maintains, from service providers, or from commercial vendors. For internal Department data, the proposal shall explain how the data could be modified and/or analyzed to support the objectives of this project. The response shall propose the process of data collection, including frequency of data collection, timing of data requests, expected time lags in data availability, determination of completeness and errors in data submissions, and the process proposed to resolve problems with data submissions.

2.3 Assist with Analysis of Data on Clinical Performance and Patient Satisfaction

The Contractor shall assist the Department with analysis of data on clinical performance and patient satisfaction. Additionally, the Contractor shall assist with the identification and recommendation of goals and thresholds for comparison. The proposal shall describe the computer capabilities that the Contractor will provide and what capabilities the Contractor expects the Department to provide. The proposal must also discuss the experience and qualifications of staff with regard to statistical analysis, especially concerning analysis of health care clinical performance and patient satisfaction data, including risk-adjustment strategies.

2.4 Assist with Public Reporting of Clinical Performance and Patient Satisfaction Data

The Contractor will assist the Department with reporting the results of the analysis of the data. This shall include exploring options for creating interactive public reporting formats which may enable users to easily trend data over time and the use of focus groups to evaluate public reporting formats that include members of the target audience, health care staff, and consumers to test that data are interpreted consistently and correctly.

The proposal shall describe the process of preparation of the data for publication, including discussion of who the audiences for the reports are expected to be, how the formats for presentation will be selected, how quality control will be provided, and whether the Contractor has the ability to support electronic publication of the data as well as hard copy.

As noted on the website, some previous projects have reported data on two levels. One level is technical and geared to people who have experience in working with health care data. The other level is less complex and is more comprehensible to lay people. The proposal must explain how the

Contractor can assist with the decisions of whether reports of different types for different audiences will be published, including the rationale for this decision. The final decision on the methods of publication will be determined by RIDOH, in consultation with the Steering Committee.

2.5 Assist with Evaluation of Clinical Performance and Patient Satisfaction Data

It is anticipated that the data sets developed under this project will be changed and improved over time. The Contractor shall describe a plan for gathering information from the public, payers, and providers after the publication of reports, to determine from interested parties how useful the data are, and what can be done to improve the usefulness of the data. The proposal shall identify who will be contacted for information, how this will occur, and what types of information will be gathered from them.

2.6. Assist with Administrative Functions Related to the Project:

- Identification of funding mechanisms.
- Preparing an annual report and other related functions that may be mutually agreed upon.

Research projects that incorporate Rhode Island clinical performance and patient satisfaction data are expected to both encourage and help pay for improvements in data usefulness. The Contractor shall describe how it will assist in identifying and securing funding from sources other than the state; and what its experience and qualifications are in this area.

The applicant will be responsible for providing staff support for the Steering Committee and the subcommittees established under this project. The applicant shall propose a basic minimum plan for providing the staff support services in support of RIDOH program staff.

The Contractor shall assist the Department in preparing an annual report to be submitted to the Governor and General Assembly by January 15 of each year on the status of the health care quality performance measurement and reporting program. The report shall include progress to date in implementing the health care quality performance measurement and reporting program, a proposed timetable for adding additional types of licensed facilities and/or providers, and a report on the cost sharing mechanisms for the operational costs to the health care facilities and providers, the state, and other parties. The report may also include selected information on trends in health care quality performance measures, identifying areas for quality improvement initiatives, and program plans and objectives for future years, as appropriate.

2.7 Assist with the Development and Implementation of Medicaid-Specific Measurement of Clinical Indicators and Patient Satisfaction

With a separate work plan and budget, the contractor must discuss how to address Medicaid-specific public reporting of clinical and satisfaction measures. The Contractor must submit qualifications for addressing Medicaid-specific reporting.

The work plan must address what modifications to data collection may be necessary to allow public reporting of clinical indicators and patient satisfaction for Medicaid enrollees. The work plan must describe the collection, analysis, and public reporting of relevant Medicaid data in licensed health care facilities, beginning with hospitals. If Medicaid-specific reporting is initiated during the first 9-month contract period, it is expected that reporting of clinical indicators and/or patient satisfaction for hospitals will be undertaken first.

Summary of TASKS 1 and 2 and Timing of Services

The proposal shall discuss a work plan for each type of licensed health care facility and provider, with the understanding that implementation may be altered depending upon availability of other local and/or national data sources that include Rhode Island, available funding, new legislation, and other circumstances.

TASK 3: Activities Related to Healthcare Associated Infections

3.1 Assist with Efforts Related to the Prevention and Control of Healthcare Associated Infections (HAIs)

In addition to the activities described under Tasks 1 and 2, the State has received federal funds to sustain and expand the state's efforts relating to the control and prevention of healthcare associated infections (HAIs) and infections resulting from antibiotic resistance (AR) bacteria. The Contractor will assist RIDOH with the following:

- a. Coordination and implementation of HAI/AR prevention activities across healthcare settings in the state
- b. Continue to convene the HAI Advisory Subcommittee and collaborate with partners and key stakeholders
- c. Promote proven HAI prevention practices
- d. Improve surveillance to drive public health action; identify opportunities to disseminate information, provide training or facilitate improvement activities
- e. Compare National Health Safety Network (NHSN) measures against other data sources
- f. Improve HAI prevention efforts by increasing access to data
- g. Identify facilities with high HAI infection rates and ensure participation in prevention activities
- h. Support antimicrobial stewardship efforts
- i. Coordinate, collaborate and facilitate HAI prevention efforts

3.2 Assist with Efforts Related to Infection Control Assessment

Federal funds have also been received to identify and address gaps in infection control practices and outbreak reporting. The Contractor will assist RIDOH with the following:

- a. Update and expand the State HAI Plan to incorporate recommendations made by the Task Force for Antimicrobial Stewardship and Environmental Infection Control (TASIC) to address gaps in infection control
- b. Improve coordination between public health and all healthcare settings in the state through a mapping initiative; establish an inventory of healthcare settings to improve categorization of key parameters; assess outbreak reporting and response in healthcare facilities; expand infection control assessments; increase infection control competency and practice in all healthcare settings through training

REQUIREMENTS & REPORTING

Requirements

The Contractor shall have at least five years of experience in assessing the quality or outcomes of health care services, in measurement of clinical performance and patient satisfaction, and in the evaluation of health programs. The experience of the proposed project team shall be indicated and, in the event of deficiencies in one or more areas, the Contractor shall propose methods to address this by hiring appropriate personnel or through use of subcontracts or consultants.

Specific Areas of Capability

The Contractor must show evidence of capability in the following areas:

- Knowledge of local and national trends in public reporting of health care quality related issues
- Measurement, analysis, and reporting of the quality of health care services
- Measurement, analysis, and reporting of outcomes of treatment of health problems
- Measurement, analysis, and reporting of patient satisfaction
- Modeling and statistical analysis
- Strategic planning
- Public information

- Market analysis
- Identification of potential funding sources

Key Staff and Related Experience

Position descriptions provided do not dictate that staff must be agency employees. Consultants can be used, or the requirement can be filled through a formal written agreement with a sub-contracting agency.

Project Manager:

The Contractor must have a Project Manager responsible for overseeing all activities described in the Scope of Work. This person must have at least three years of experience relevant to the evaluation of the quality of health care services and the assessment of patient satisfaction. If the Project Manager is not currently employed by the Contractor, a letter of commitment must be provided. Note that review and approval by the Contract Officer for the RIDOH will be required prior to the appointment of a new Project Manager at any time during the course of the contract.

The Contractor must employ staff as necessary to carry out the scope of work. The staff must work under the direct supervision of the Contractor's Project Manager. The Contractor must clearly indicate the person(s) who, under the direction of the Project Manager will be responsible for each task and the number of hours they are budgeted for on the project.

The Contractor may also subcontract limited components of the work, as may be appropriate. All subcontractors considered for use in performing the basic scope of work must be clearly identified, including a list of all subcontractor staff and task(s) they will perform and the number of hours they will be budgeted to the project. The subcontractors' budget must be in the same detail as that of the Contractor.

For the Project Manager, the Contractor's staff, and subcontractors, the number of hours that these personnel are expected to be on-site in Rhode Island shall be clearly designated. Participation and leadership in the Health Care Quality Reporting Program's Steering Committee and multiple subcommittees, as well as oversight of the project with RIDOH requires attendance at regularly scheduled meetings, and, at times, weekly meetings. Local presence or other detailed arrangement for this level of participation must be described.

RIDOH will assist agencies in coordination efforts. HEALTH must approve all staffing changes.

Reporting

This project will develop a number of reports (hard copy and web-based) as outlined in the preceding section of this RFP. In all cases, it is anticipated that these reports will be prepared in cooperation with the Steering Committee and under the direction of RIDOH. All reports must be agreed to and authorized by RIDOH before the Contractor proceeds. All products must be accepted in writing by the RIDOH Contract Officer before they are considered final. In addition, periodic oral presentations to the Steering Committee to update the progress of the project may be required.

The Contractor must deliver to RIDOH detailed monthly invoices that indicate what work has been done in the past month, by whom, and at what cost.

The contractor will be required to submit a monthly activity report to reflect activities conducted by the 10th of each month following the delivery of services. The activity report is to be accompanied by a monthly invoice and appropriate supporting documentation.

CONTRACTOR RESPONSIBILITIES

1. Project staff shall be located off-site from RIDOH but shall be accessible as described above.
2. Successful applicants will be required to submit monthly reports and invoices by the tenth of each month following the delivery of services and accompanied by appropriate documentation. A quarterly report describing program activities is required.
3. Meetings pertaining to this project shall be held at the RIDOH offices in the Cannon Building, 3 Capitol Hill, Providence, RI, unless there is agreement to alter this arrangement. Contractors are responsible for the provision of office/work space for its personnel.
4. Work done under this project must comply with the legislation creating the Rhode Island Health Quality Performance Measurement and Reporting Program (R.I.G.L. 23-17.17).
5. The Contractor must work in a cooperative fashion with RIDOH staff, the Steering Committee, subcommittees, licensed health care facilities and providers, and their corresponding supporting associations.
6. The rights to any data, work products, reports, etc. produced under this contract are the property of RIDOH and revert to the Department upon payment of contracted costs.
7. The Contractor is expected to have access to confidential data in order to perform this contract. The Contractor will comply with the provisions of R.I.G.L. 5-37.3, Confidentiality of Health Care Communications and Information Act (<http://www.rilin.state.ri.us/Statutes/TITLE5/5-37.3/INDEX.HTM>), and all other state and federal laws and regulations that may apply.

Monitoring

To ensure compliance, RIDOH shall regularly monitor the activities under this contract. The contractor must provide access to any and all materials relevant to the evaluation and monitoring activities and requirements described herein. The contractor will be responsible for supervision, performance and adherence to contractual language of all its subcontractors. The State will retain total discretion of all administrative decisions regarding the management and billing of and/or receipt of payments for services rendered. The contractor must have sufficient liability insurance coverage.

Eligible applicants must be in good standing with the federal government.

RIDOH reserves the exclusive right to:

- Align the contract with the state fiscal year end, even if the activities are scheduled to end at an earlier date.
- Establish a later effective date in the contract if circumstances are such that it is in the State's best interest to delay it, or if funding availability is undetermined.
- Terminate the contract within the first contract year if the contractor is not able to meet the specified requirements. In addition, with a thirty (30) day notice from RIDOH, this contract may be cancelled anytime for cause.

CLAS Language

Cultural Competence

Cultural competence is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural

functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

Limited English Proficiency

Under the authority of Title VI of the Civil Rights Act of 1964, Presidential Executive Order No. 13166 requires that recipients of federal financial assistance ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. A 2002 report from the U.S. Department of Justice, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, provides guidance on uniform policies for all federal agencies to implement Executive Order No. 13166. Further, the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards) issued by the Federal Office of Minority Health in 2004 outline mandates, guidelines, and a recommendation for the provision of language access services, culturally competent care, and organizational supports for cultural competence in health care settings. CLAS Standards 4-7 (see below) are mandates and address language access services that should be provided by every organization that receives federal funding, whether directly or indirectly.

Effective immediately, all vendors who contract with RIDOH must perform the following tasks and provide documentation of such tasks upon request of a RIDOH employee:

1. The supports and services provided by vendor shall demonstrate a commitment to linguistic and cultural competence that ensures access and meaningful participation for all people in the service area or target population. Such commitment includes acceptance and respect for cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services. Vendor shall have an education, training and staff development plan for assuring culturally and linguistically appropriate service delivery.
2. Vendor shall have a comprehensive cultural competency plan that addresses the following: 1) the identification and assessment of the cultural needs of potential and active clients served, 2) sufficient policies and procedures to reflect the agency's value and practice expectations, 3) a method of service assessment and monitoring, and 4) ongoing training to assure that staff are aware of and able to effectively implement policies.
3. Vendor shall have a plan to recruit, retain and promote a diverse staff and leadership team, including Board members, representative of the demographic characteristics of the populations served.
4. Vendor shall assure equal access for people with diverse cultural backgrounds and/or limited English proficiency, as outlined by the Department of Justice, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Vendor shall provide language assistance services (i.e. interpretation and translation) and interpreters for the deaf and hard of hearing at no cost to the client.

National Standards for Culturally and Linguistically Appropriate Services in Health Care

Culturally Competent Care (Standards 1-3)

Standard 1

Health care organizations should ensure that patients/consumers receive from all staff members effective, understandable, and respectful care that is provided in a manner compatible with their cultural health beliefs and practices and preferred language.

Standard 2

Health care organizations should implement strategies to recruit, retain, and promote at all levels of the

organization a diverse staff and leadership that are representative of the demographic characteristics of the service area.

Standard 3

Health care organizations should ensure that staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery.

Language Access Services (Standards 4-7)

Standard 4*

Health care organizations must offer and provide language assistance services, including bilingual staff and interpreter services, at no cost to each patient/consumer with limited English proficiency at all points of contact, in a timely manner during all hours of operation.

Standard 5*

Health care organizations must provide to patients/consumers in their preferred language both verbal offers and written notices informing them of their right to receive language assistance services.

Standard 6*

Health care organizations must assure the competence of language assistance provided to limited English proficient patients/consumers by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services (except on request by the patient/consumer).

Standard 7*

Health care organizations must make available easily understood patient-related materials and post signage in the languages of the commonly encountered groups and/or groups represented in the service area.

Organizational Supports for Cultural Competence (Standards 8-14)

Standard 8

Health care organizations should develop, implement, and promote a written strategic plan that outlines clear goals, policies, operational plans, and management accountability/oversight mechanisms to provide culturally and linguistically appropriate services.

Standard 9

Health care organizations should conduct initial and ongoing organizational self-assessments of CLAS-related activities and are encouraged to integrate cultural and linguistic competence-related measures into their internal audits, performance improvement programs, patient satisfaction assessments, and outcomes-based evaluations.

Standard 10

Health care organizations should ensure that data on the individual patient's/consumer's race, ethnicity, and spoken and written language are collected in health records, integrated into the organization's management information systems, and periodically updated.

Standard 11

Health care organizations should maintain a current demographic, cultural, and epidemiological profile of the community as well as a needs assessment to accurately plan for and implement services that respond to the cultural and linguistic characteristics of the service area.

Standard 12

Health care organizations should develop participatory, collaborative partnerships with communities and

utilize a variety of formal and informal mechanisms to facilitate community and patient/consumer involvement in designing and implementing CLAS-related activities.

Standard 13

Health care organizations should ensure that conflict and grievance resolution processes are culturally and linguistically sensitive and capable of identifying, preventing, and resolving cross-cultural conflicts or complaints by patients/consumers.

Standard 14

Health care organizations are encouraged to regularly make available to the public information about their progress and successful innovations in implementing the CLAS standards and to provide public notice in their communities about the availability of this information.

* Mandates 11-28-11

SECTION 4: TECHNICAL PROPOSAL

NARRATIVE AND FORMAT

This section includes specific information related to the requirements described in Section 3, Scope of Work and proposals should address the criteria listed below.

Narrative: The separate technical proposal should address specifically each of the required elements described in Section 3. Submit a narrative (25-page limit) summarizing the organization's experience, technical approach, and organizational capacity as outlined below. Supporting documents and samples of work should be referenced in the summary and attached in appendices.

Format: The proposal must be typed, 12 Times New Roman or an equivalent font, English, double-spaced, paginated, 1-inch margins, and one-sided.

Section I. Executive Summary

The Executive Summary is intended to highlight the contents of the Technical Proposal and to provide the State evaluators with a broad understanding of the organization's technical approach and ability, including experience with similar projects. The executive summary should include the following:

- A clear and concise summary of the vendor's understanding of the project and the State's needs.
- A clear and concise summary of the proposed approach and staffing structure.
- A brief summary of the vendors experience and ability to perform this project.
- A general description of the capabilities and role of any subcontractors.

Section II. Relevant Experience and Expertise

Provide a brief description of the organization including its mission, historical development, philosophy, and a list of the services provided. Describe how this contract would fit into that mission.

The Contractor shall have at least five years' experience in assessing the quality or outcomes of health care services, in measurement of clinical performance and patient satisfaction, and in the evaluation of health programs. Level of expertise, experience and qualifications of proposed positions, proposed key staff, and proposed subcontractors will be considered significantly. Evaluators will strongly consider recommendations from other clients utilizing Contractor for similar work to be performed under the contract. Negative feedback from other clients will be cause for significant point deductions.

Corporate level support for the contract management functions of the contract will be considered in the score.

This section shall include the following information:

Staff and Consultant Qualifications: This section shall include a description of all positions to be used for Tasks 1-3. A description of each position, including minimum experience and qualifications, should be included. In an attachment to the technical proposal, please include qualifications/resumes of key staff and/or positions proposed and timeframes for commitment of personnel to this project.

- Corporate resources that will be available to support this project including corporate support of contract management functions.
- Provide at least four (4) references for projects that are of comparable size and complexity. For each reference the vendor should include the following information:
 - Name of the organization, address, telephone numbers
 - Relevance to this proposal
 - Brief summary of project
 - Timeframe for the project
 - Original contract amount
 - All resumes of staff shall be included in the appendix

Section III. Technical Approach and Understanding of Work

The State will evaluate the bidder's written proposal describing how it intends to organize and accomplish the tasks and activities in the Scope of Work. The State will score bidders highly who demonstrate a clear, complete understanding of each task and activity and who present an effective organization and work plan for accomplishing them.

This section shall describe the organization's understanding of the State's requirements, including the result(s) intended and desired the approach and/or methodology to be employed within the scope of work, a work plan for accomplishing each task, and the results proposed. The work plan description shall include a list of activities and/or milestones, deliverables, and timeline (frequency or dates) that will be employed to successfully administer the project.

Section IV. Organizational Capacity

The State will score highly bidders who present a staffing plan that, in the State's best judgment, will accomplish each task effectively and efficiently. This section should include:

- **Level of Effort**

This section should indicate the number and types of all positions and any subcontractors, including the level of effort, duties and responsibilities in relation to the scope of work, length of time they have been with the organization, and projects they have worked on. Attachment A should be completed in support of this section.
- **Organization**

This section should include a description of how the Contractor staff and subcontractors will be organized and supervised. Please include an organizational chart.

Applicants must also complete Appendix B *RIDOH Risk Assessment – Pre Contract Uniform Grant Guidance Compliance Form* and review Appendix C *RIDOH Contract Terms & Conditions*. By submitting a response of proposal these terms and conditions will be part of your RIDOH contract should one be awarded.

SECTION 5: COST PROPOSAL

DETAILED BUDGET (Appendix A) AND BUDGET NARRATIVE

The applicant must prepare a separate, signed and sealed Cost Proposal using Appendix A Detail Budget Form for a 12-month term. Applicants must provide a Budget Justification for all expenses included on Appendix A.

The applicant must submit a budget and budget narrative for the first 12-month period for each Task (1-3). Submitted budget and supporting documentation must appropriately reflect the agency's financial capacity to implement the project in a timely manner. Clearly identify a cost-effective budget. Line items are to be accurate and consistent with achieving objective and program activities.

In the Budget Narrative, please detail need for proposed expenses for Year One. The budget narrative must be descriptive and complete. Please include a brief narrative justifying labor costs by task. Detail the organization's criteria for determining a "billable hour" and describe how billable hours are tracked. If any funding is allocated toward other direct costs, including travel, allowances, etc., please provide adequate justification within the narrative and include totals in the cost summary within attachment B.

ALLOWABLE EXPENSES

1. Personnel: Indicate each staff name and position for this project. Show percentage of time allocated to this project, the total annual salary and hourly rate, the personnel costs being requested under this RFP, and the percentage of time that will be in-kind, if any.
2. Consultants/Speakers: List each consultant/speaker individually, specifying the hourly rate. Only expenses for functions related to this project may be included.
3. Subcontracts with Other Organizations: Payments to not-for-profit community-based organizations and private for-profit entities that provide services to the applicant organizations in support of funded project activities are allowable. Subcontracts with not-for-profit entities may not exceed 25% of the total project budget. Subcontracts with for-profit entities may not exceed 10% of the total project budget. A memorandum of agreement must be provided for each subcontract.
4. Printing/Copying: Include the cost of duplicating educational materials to be distributed during the contract year. The duplication or printing of flyers, brochures, booklets, information sheets, and other educational materials related to the project should be included.
5. Postage: Indicate postage expenses allocated to the project.
6. Travel: Local travel only is allowed unless the RIDOH requests the vendor to attend national meetings on its behalf. Reimbursement for mileage expenses is not to exceed \$0.54/mile or the current rate, which is based on the federal rate, effective for RI State employees. Reimbursement of travel expenses is allowed for activities related to this project only.

Funds may **NOT** be used for capital expenses.

Applicants are advised that RIDOH is not responsible for any expenses incurred by the Applicant prior to the Purchase Order Release.

DUPLICATION OF SERVICES/COST AVOIDANCE

Applicants must be certain to assure RIDOH that the funds to be utilized associated with the scope of work are not duplicated in other area of their agency. These funds are specific to the agreed upon scope of work via this contract and therefore should be utilized to meet the deliverable articulated in the RFP

SECTION 6: EVALUATION AND SELECTION

Proposals will be reviewed by a Technical Review Committee comprised of staff from state agencies. To advance to the Cost Evaluation phase, the Technical Proposal must receive a minimum of 60 out of a maximum of 70 technical points. Any technical proposals scoring less than 60 points will not have the cost component opened and evaluated. The proposal will be dropped from further consideration.

Proposals scoring 60 technical points or higher will be evaluated for cost and assigned up to a maximum of 30 points in cost category, bringing the potential maximum score to 100 points.

The RIDOH reserves the exclusive right to select the individual(s) or firm (vendor) that it deems to be in its best interest to accomplish the project as specified herein; and conversely, reserves the right not to fund any proposal(s).

Proposals will be reviewed and scored based upon the following criteria:

| Criteria | Possible Points |
|--|-------------------|
| Agency Experience | 20 Points |
| Technical Approach | 40 Points |
| Organizational Capacity | 10 Points |
| Total Possible Technical Points | 70 Points |
| Cost calculated as lowest responsive cost proposal divided by (this cost proposal) times 30 points * | 30 Points |
| Total Possible Points | 100 Points |

*The Low bidder will receive one hundred percent (100%) of the available points for cost. All other bidders will be awarded cost points based upon the following formula:

$$(\text{low bid} / \text{vendors bid}) * \text{available points}$$

For example: If the low bidder (Vendor A) bids \$65,000 and Vendor B bids \$100,000 for monthly cost and service fee and the total points available are Thirty (30), vendor B's cost points are calculated as follows:

$$\$65,000 / \$100,000 * 30 = 19.5$$

Points will be assigned based on the offeror's clear demonstration of his/her abilities to complete the work, apply appropriate methods to complete the work, create innovative solutions and quality of past performance in similar projects.

Applicants may be required to submit additional written information or be asked to make an oral presentation before the technical review committee to clarify statements made in their proposal.

SECTION 7: PROPOSAL SUBMISSION

Questions concerning this solicitation may be e-mailed to the Division of Purchases at david.francis@purchasing.ri.gov no later than the date and time indicated on page one of this solicitation. Please reference **RFP # 7551104** on all correspondence. Questions should be submitted in a Microsoft Word attachment. Answers to questions received, if any, will be posted on the Internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information. If technical assistance is required to download, call the Help Desk at (401) 574-8100.

Offerors are encouraged to submit written questions to the Division of Purchases. **No other contact with State parties will be permitted.** Interested offerors may submit proposals to provide the services covered by this Request on or before the date and time listed on the cover page of this solicitation. Responses received after this date and time, as registered by the official time clock in the reception area of the Division of Purchases will not be considered.

Responses (**an original plus four (4) copies**) should be mailed or hand-delivered in a sealed envelope marked **“RFP# 7551104 Rhode Island Healthcare Quality Reporting Program Services”** to:

RI Dept. of Administration
Division of Purchases, 2nd floor
One Capitol Hill
Providence, RI 02908-5855

NOTE: Proposals received after the above-referenced due date and time will not be considered. Proposals misdirected to other State locations or those not presented to the Division of Purchases by the scheduled due date and time will be determined to be late and will not be considered. Proposals faxed or emailed to the Division of Purchases will not be considered. The official time clock is in the reception area of the Division of Purchases.

RESPONSE CONTENTS

Responses shall include the following:

1. A completed and signed three-page R.I.V.I.P generated bidder certification cover sheet (included in the original version only) downloaded from the RI Division of Purchases Internet home page at www.purchasing.ri.gov
2. A completed and signed W-9 (included in the original version only) downloaded from the RI Division of Purchases Internet home page at www.purchasing.ri.gov
3. **A separate Technical Proposal** describing the qualifications and background of the applicant and experience with and for similar projects, and all information described earlier in this solicitation.
4. **A separate, signed and sealed Cost Proposal** reflecting the hourly rate, or other fee structure, proposed to complete all of the requirements of this project.
5. In addition to the multiple hard copies of proposals required, Respondents are requested to provide their proposal in **electronic format (CD-ROM, disc, or flash drive)**. Microsoft Word / Excel OR PDF format is preferable. Only 1 electronic copy is requested and it should be placed in the proposal marked “original”.

CONCLUDING STATEMENTS

Notwithstanding the above, the State reserves the right not to award this contract or to award on the basis of cost alone, to accept or reject any or all proposals, and to award in its best interest.

Proposals found to be technically or substantially non-responsive at any point in the evaluation process will be rejected and not considered further.

The State may, at its sole option, elect to require presentation(s) by offerors clearly in consideration for award.

The State's General Conditions of Purchase contain the specific contract terms, stipulations and affirmations to be utilized for the contract awarded to the RFP. The State's General Conditions of Purchases/General Terms and Conditions can be found at the following URL:

<https://www.purchasing.ri.gov/RIVIP/publicdocuments/ATTA.pdf> .

SECTION 8: REQUIRED ATTACHMENTS

DUNS number and an active registration in the federal System for Award Management (SAM)

All federal grant sub-awardees must have an organizational DUNS number and an active registration in the federal System for Award Management (SAM). A hard copy of your organizational SAM registration must be included in your proposal.

Instructions to print out your organizational DUNS registration:

1. Go to the SAM web site at <https://www.sam.gov>
2. Select Search Records
3. Enter your DUNS number in the DUNS Number Search box and select Search
4. On the search results, click the View Details box for your entity
5. On the left menu, select Entity Record
6. Select the Print button on the right to make a hard copy of the record

If your organization does not currently have a DUNS number, please follow the instructions below to obtain a DUNS number and register your organization in SAM prior to submitting your proposal.

STEP 1: Obtain DUNS Number

If requested by phone (1-866-705-5711), DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet website at <http://fedgov.dnb.com/webform> to obtain the number. DUNS number Webform requests take 1-2 business days.

STEP 2: Register with SAM

If you already have a TIN, your SAM registration will take 3-5 business days to process. If you are applying for an EIN, please allow up to 2 weeks. Ensure that your organization is registered with the System for Award Management (SAM) at <https://www.sam.gov>. If your organization is not, an authorizing official of your organization must register. SAM registration takes three to five business days or up to two weeks. When your registration is complete, follow the instructions above to print your registration record and include it in your proposal.

Appendix A – Detail Budget Form

| | | | |
|--|---|------------------|-------|
| Category Personnel (Name, Title) | Hourly Rate | Total # of Hours | Total |
| Fringe Benefits (provide breakdown of fringe benefits) | Fringe % Rate % % % % % % | | Total |
| Consultants (Name and Description of Service, Cost) | | | \$ |
| In-State Travel | .54 per mile @ # of miles* | | \$ |
| Out of State Travel (Name, Breakdown of costs) | | | \$ |
| Printing/Copying | | | \$ |
| Office Space | | | \$ |
| Telephone Internet | | | \$ |
| Education Materials | | | \$ |
| Equipment | | | \$ |
| Postage | | | \$ |
| Other: Tasks | | | \$ |
| Indirect Costs/Admin Costs | | | |
| Total Request | | | |

*The state mileage rate is subject to change and is based on the federal rate.

Appendix B – RIDOH Risk Assessment

Instructions: RFP Applicants please complete the following financial review. This information will aid in determining the specific risks imposed by passed through federal funds based on Uniform Grant Guidance section 200.331.

Grading: For each question, answer according to the code listed at the end of the question. **Yes/No/or High/Medium/Low/Not Applicable**. Use the numerical guide below to grade the answer in the “Numerical Grade” box below. Total the right column for the entity’s total score. **High Risk =5 Points, Medium Risk =3 Points, Low Risk =0 Points, Yes =0, No = 5, NA =0**

| Financial Review | | |
|---|--------------------|-----------------|
| Question | Answer/Explanation | Numerical Grade |
| SAM.GOV Is the entity registered with Sams.Gov? (Y/N) | | |
| If yes, is the entity debarred, suspended, proposed for debarment, or declared ineligible? History on the List? (H/M/L/NA) | | |
| Audit / Fiscal Statements Has the Department received the entity’s formal audit or financial statements in the past 12 months? (Y/N) | | |
| If yes, are there significant audit findings. (H/M/L/NA) | | |
| If yes, was the corrective action plan followed and implemented by the entity? (Y/N) | | |
| Staffing Has the Financial Staff had high turnover in the past 12 months? (H/M/L/NA) | | |
| System Changes Does the entity plan on changing the accounting or billing system in the near future or are they currently changing their system? (H/M/L/NA) | | |
| Legal Risk Has the entity been in legal trouble in the past 12 months? I.e. Personnel arrested for embezzlement, bankruptcy, etc. (H/M/L/NA) | | |
| Has the entity been investigated in the past 12 months? I.e. investigated by state or federal agencies, media exposé, etc. (H/M/L/NA) | | |
| Total Score | | |

Appendix C – RIDOH Contract Terms & Conditions

The following language is included in all Contract Agreements with the RIDOH. Please read thoroughly prior to submitting your cost proposal.

WHEREAS the Contractor is willing and qualified to provide services, the parties hereto do mutually agree as follows:

PAR. 1. GOVERNING LAW AND GENERAL TERMS AND CONDITIONS

The State's Purchasing Law (Chapter 37-2 of the Rhode Island General Laws) and Rhode Island Department of Administration, Division of Purchases, Purchasing Rules, Regulations, and General Conditions of Purchasing apply as the governing terms and conditions of this Agreement, which can be obtained at <http://www.purchasing.ri.gov/rulesandregulations/rulesAndRegulations.aspx>. In addition, the provisions of Federal Laws, Regulations and Procedures governing the implementation of federal funds apply to this Agreement. See also **PAR. 35. - GOVERNING LAW** for further governing law issues. All ADDENDA referenced herein and attached hereto are made a part of and are inclusive in this Agreement.

PAR. 2. PERFORMANCE

The Contractor shall perform all obligations, duties and the required scope of work for the period of time listed in this Agreement, Exhibit(s) and/or Addenda that are attached hereto and are incorporated by reference herein, in a satisfactory manner to be determined at the sole and absolute discretion of RIDOH, and in accordance with requirements of this Agreement. The Contractor shall perform in accordance with applicable State statutory and policy requirements as well as Federal statutory and policy requirements (as defined in 2 CFR § 200.300). More specifically, the **ADDENDUM I - SCOPE OF WORK** shall include performance measurement(s) 2 CFR § 200.301, monitoring and reporting program performance 2 CFR § 200.328, and performance must be in accordance with requirements for pass-through entities 2 CFR § 200.331. RIDOH shall have the right at any time, to review the work being performed as well as the place where such work is performed; and to that end, RIDOH shall be given reasonable access to all activities related to this Agreement.

In accordance with 2 CFR § 200.331 (d) RIDOH will:

Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- 1) Reviewing financial and performance reports required by the pass-through entity.
- 2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
- 3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR § 200.521 Management decision.

RIDOH may request at any time additional monitoring, reporting, site visits, and audits in accordance with 2 CFR § 200.501 or if applicable "Yellow Book" audits (see Paragraph 24). All reports pertaining to 2 CFR § 200.331, shall be maintained by the Contractor. The Contractor must retain any documents pertaining to changes requested from RIDOH or the Federal Government in accordance with 2 CFR § 200.333.

PAR. 3. TIME OF PERFORMANCE

The Contractor shall commence performance of this Agreement on the ___ day of _____, and shall complete performance no later than the _____ day of _____ (hereinafter the "Initial Term"), unless terminated prior to that day by other provisions of this Agreement. *If this contract was awarded as a result of an RFP or bid process, then, by mutual agreement, this contract may be extended as stated in the RFP or bid process (hereinafter "Renewal Term(s)")* beyond the Initial Term upon one hundred twenty (120) days prior written notice of the expiration of the Initial Term or any Renewal Term to the Contractor.

In the event RIDOH or the Contractor gives notice of its intent not to renew this Agreement, RIDOH shall have the right to extend all or any services to be performed under this Agreement for an additional period of one hundred and eighty (180) days, or such longer period as mutually agreed by the parties in writing.

PAR. 4. PROJECT OFFICER – RIDOH

RIDOH shall appoint a Contract Officer to manage this Agreement. The Contractor agrees to maintain close and continuing communication with the Contract Officer throughout the performance of work and services undertaken under the terms of this

Agreement. The Contract Officer is responsible for authorizing, or seeking authorization of all payments made by RIDOH to the Contractor under this Agreement.

PAR. 5. PROJECT OFFICER – CONTRACTOR

The Contractor shall appoint a Project Officer to be responsible for coordinating and reporting work performed by the Contractor agency under this Agreement. The Project Officer shall notify RIDOH in writing immediately, and seek approval from RIDOH, should a change to this Agreement be necessary in the opinion of the Project Officer. Under no circumstances will a change be undertaken without the prior written approval of RIDOH.

PAR. 6. BUDGET

Total payment for services to be provided under this Agreement shall not exceed the total budget as detailed in **ADDENDUM II**. Expenditures exceeding budget line-item categories by ten percent (10%) shall not be authorized unless prior written approval is first obtained pursuant to **PAR. 10. - MODIFICATION OF AGREEMENT**, subject to the maximum amount of this Agreement as stated above.

PAR. 7. METHOD OF PAYMENT AND REPORTS

RIDOH will make payments to the Contractor in accordance with provisions of **ADDENDUM III - PAYMENTS AND REPORTS SCHEDULE** attached hereto and incorporated by reference herein. RIDOH acknowledges and agrees that any increase in expenses due to delays by RIDOH which extends the time of performance shall be subject to reimbursement of the costs associated with such delays. The Contractor will complete and forward narrative, fiscal, and all other reports per **ADDENDUM III - PAYMENTS AND REPORTS SCHEDULE**.

PAR. 8. TERMINATION AND/OR DEFAULT OF AGREEMENT

This Agreement shall be subject to termination under any of the following conditions:

- a) Mutual Agreement
The contracting parties mutually agree in writing to termination.

- b) Default by Contractor
RIDOH may, by not less than thirty (30) days prior written notice to the Contractor, terminate the Contractor's right to proceed as to the Agreement if the Contractor:
 1. Materially fails to perform the services within the time specified or any extension thereof; or
 2. So fails to make progress as to materially endanger performance of the Agreement in accordance with its terms; or
 3. Materially breaches any provision of this Agreement.

Termination, at the option of RIDOH shall be effective not less than thirty (30) days after receipt of such notice, unless the Contractor shall have corrected such failure(s) thirty (30) days after the receipt by the Contractor of such written notice; any failure which, in the exercise of due diligence, cannot be cured within such thirty (30) day period shall not be deemed a default so long as the Contractor shall within such period commence and thereafter continue diligently to cure such failure.

Termination in the Interest of RIDOH

RIDOH may terminate this agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, not less than thirty (30) days prior to the effective date of such termination. In such event, all finished or unfinished documents and other materials shall, at the option of RIDOH, become its property. If the agreement is terminated by RIDOH as provided herein, the Contractor will be paid an amount which bears the same rate to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement, less payment of compensation previously made.

- d) Availability of Funds
It is understood and agreed by the parties hereto that all obligations of RIDOH, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall RIDOH be liable for any payments hereunder in excess of such available and appropriated funds. In the event that the amount of any available or appropriated funds provided by the State or Federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified amount of services to be purchased hereunder for any reason whatsoever, RIDOH shall notify the Contractor of such reduction of funds available and RIDOH shall be entitled to reduce its commitment hereunder as it deems necessary, but shall be obligated for payments due to the Contractor up to the time of such notice. None of the provisions of this paragraph shall entitle RIDOH to compensation for anticipated profits for unperformed work.

PAR. 9. RESPONSIBILITIES UPON TERMINATION AND/OR DEFAULT OF AGREEMENT

Upon delivery to the Contractor of a notice of termination, specifying the nature of the termination, the extent to which performance of work under this contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

1. Stop work under this contract on the date and to the extent specified in the notice of termination.
2. Take such action as may be necessary, or as RIDOH's project manager may reasonably direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which RIDOH has or may acquire an interest.
3. Terminate all orders to the extent that they relate to the performance of work terminated by the notice of termination.
4. Subject to the provisions of this paragraph, assign to RIDOH in the manner and to the extent directed by RIDOH's project officer all of the rights, title, and interest of the Contractor under the orders so terminated, in which case RIDOH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders, however, notwithstanding this provision, the Contractor will not be obligated to assign any such rights, title or interest in the absence of payment therefore by RIDOH.
5. With the approval or ratification of RIDOH's project manager, initiate settlement of all outstanding liabilities and all claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract. Prior to a final settlement of said outstanding liabilities and claims arising out of such termination, final written approval of RIDOH's project manager must be obtained. Final approval by RIDOH shall not be unreasonably withheld.
6. Subject to the provisions of this paragraph, transfer title, or if the Contractor does not have title, then transfer their rights to RIDOH (to the extent that title has not already been transferred) and deliver in the manner, at reasonable times, and to the extent reasonably directed by RIDOH's project manager all files, processing systems, data manuals, or other documentation, in any form, that relate to all the work completed or in progress prior to the notice of termination.
7. Complete the performance of such part of the work as shall not have been terminated by the notice of termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.
8. Unless terminated by RIDOH for default of the Contractor, the Contractor shall be entitled to reasonable account shut down expenses associated with such termination including the penalties associated with early termination of lease, software, hardware, and any other unamortized or incremental expenses accrued but not charged, excluding anticipated profits which shall not be reimbursed. The Contractor shall submit all identified shut down expenses associated with such termination incurred before and prior to the termination date. Any damages to RIDOH shall offset any shutdown expenses to RIDOH.
9. The Contractor acknowledges and agrees the services and/or deliverables provided under this Agreement are very important to RIDOH and that upon expiration or termination of the Agreement, must be continued without interruption whether by the State, RIDOH, governmental agency or another private entity ("successor entity"). Prior to the end of the Termination and up to sixty (60) days thereafter, the Contractor agrees to make an orderly transition of contract and/or deliverables hereunder and to perform any and all tasks in good faith that are necessary to preserve the integrity of the work performed by the Contractor on behalf of RIDOH. Upon termination or expiration of the Agreement, the Contractor, shall, if requested by RIDOH at least thirty (30) days prior to such termination or expiration, provide reasonable training for the successor entity and/or continued performance of services. For providing such training or continued performance after the Term of the Agreement, RIDOH shall pay the Contractor at mutually agreed rates for personnel used in providing such training and/or services unless services delivered are already defined herein and rates established then such rates shall apply for such period. Should any missing data, materials, documents, etc., be discovered after expiration or termination, a grace period of one hundred and twenty (120) days shall be in effect during which the data, materials, documents, etc., is to be provided at a predetermined cost or at no additional cost if the Contractor caused the loss. Lost data shall be provided to RIDOH in form acceptable to RIDOH.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the agreement shall be modified, in writing, accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this agreement; and
- b) The Contractor asserts its right to an equitable adjustment within ninety (90) days after the end of the period of work stoppage; provided, that if the state decides the facts justify the action, the state may receive and act upon a proposal submitted at any time before final payment under this Agreement.

The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this clause, however, unless termination is for a default by the Contractor, the Contractor shall have the right to recover costs associated with maintaining the personnel, leases and equipment during the period of time the stop work order was in effect that cannot otherwise be reasonably utilized by the Contractor during the stop work period.

If the agreement is terminated for default following a reasonable notice and cure period not to exceed thirty (30) days unless agreed to by both parties, RIDOH may withhold payment of any amount in excess of fair compensation for the work actually completed by the Contractor prior to termination of this Agreement and will be entitled to pursue all of its other available legal remedies against

the Contractor. Notwithstanding the above, the Contractor shall not be relieved of liability to RIDOH for damages sustained by virtue of any breach of this Agreement by the Contractor.

The Contractor's liability to RIDOH for any damages arising out of or related to this Agreement, regardless of the form of action that imposes liability, whether in contract, equity, negligence, intended conduct, tort or otherwise, will be limited to and will not exceed, in the aggregate for all claims, actions and causes of action of every kind and nature, the total fees paid by RIDOH to the Contractor under this Agreement. The exception to this limitation of liability is with regard to any direct damages incurred by RIDOH due to the intentional tortious actions of the Contractor in the performance or nonperformance of its obligations under this Agreement. Also, there should be no limitation of the Contractor's liability for disclosure of confidential information or intellectual property infringement. Neither party shall be liable for any amounts for loss of income, profit or savings or incidental, consequential, indirect, exemplary, punitive, or special damages of any party, including third parties arising out of or related to this Agreement; provided, however, that the foregoing shall not be deemed to limit in any way the provisions of **ADDENDUM XIII - LIQUIDATED DAMAGES** of this Agreement.

The imposition of liquidated damages shall not limit RIDOH's rights to pursue any other non-monetary remedies available to it.

RIDOH may, by written notice of default to the Contractor, provide that the Contractor may cure a failure or breach of this contract within a period of thirty (30) days (or such longer period as RIDOH's agreement administrator or project manager may authorize in writing), said period to commence upon receipt of the notice of default specifying such failure or breach. RIDOH's exercise of this provision allowing the Contractor time to cure a failure or breach of this Agreement does not constitute a waiver of RIDOH's right to terminate this Agreement, without providing a cure period, for any other failure or breach of this Agreement.

In the event the Contractor has failed to perform any substantial obligation under this Agreement, or has otherwise committed a breach of this Agreement, RIDOH may withhold all monies due and payable to the Contractor directly related to the breach, without penalty, until such failure is cured or otherwise adjudicated.

Assurances before breach

- a) If documentation or any other deliverables due under this contract are not in accordance with the contract requirements as reasonably determined by the project manager, upon RIDOH's request, the Contractor, to the extent commercially reasonable, will deliver additional the Contractor resources to the project in order to complete the deliverable as required by the agreement as reasonably determined by RIDOH and to demonstrate that other project schedules will not be affected. Upon written notice by RIDOH's project manager of RIDOH's concerns regarding the quality or timeliness of an upcoming deliverable, the Contractor shall, within five (5) business days of receipt of said notice, submit a corrective action plan documenting the Contractor's approach to completing the deliverable to the satisfaction of RIDOH's project officer without affecting other project schedules. RIDOH's project manager, within five (5) business days of receipt of the corrective action plan, shall approve the plan, reject the plan, or return the plan to the Contractor with specific instructions as to how the plan can be modified to merit approval and a specific time period in which the revised plan must be resubmitted.

Nothing in the language contained in "limitation of liability" article, "Contractor's liability for injury to person's or damage to property" article and "indemnification" article shall be construed to waive or limit the state or federal sovereign immunity or any other immunity from suit provided by law including, but not limited to Rhode Island General Laws, Title 9 Chapter 31, "Governmental Tort Liability."

RIDOH's options at termination

In the event RIDOH terminates this contract pursuant to this paragraph, RIDOH may at its option:

- a) Retain all or a portion of such hardware, equipment, software, and documentation as has been provided, obtaining clear title or rights to the same, and procure upon such terms and in such manner as RIDOH's project manager may deem appropriate, hardware, equipment, software, documentation, or services as are necessary to complete the project; or
- b) Notwithstanding the above, except as otherwise agreed, nothing herein shall limit the right of RIDOH to pursue any other legal remedies against the Contractor.

In order to take into account any changes in funding levels because of executive or legislative actions or because of any fiscal limitations not presently anticipated, RIDOH may reduce or eliminate the amount of the contract as a whole with the scope of services being reduced accordingly, or subject to agreement by the parties concerning the scope and pricing, reduce or eliminate any line item(s).

Notwithstanding the terms, conditions and/or requirements set out in Paragraphs 7 and 8, the Contractor shall not be relieved of liability to RIDOH for damages sustained by RIDOH by virtue of any breach of the Agreement by the Contractor, and RIDOH may withhold payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due RIDOH from the Contractor is determined.

PAR. 10. MODIFICATION OF AGREEMENT

RIDOH may permit changes in the scope of services, time of performance, or approved budget of the Contractor to be performed hereunder. Such changes, which are mutually agreed upon by RIDOH and the Contractor, must be in writing and shall be made a

part of this agreement by numerically consecutive amendment excluding “Special Projects”, if applicable, and are incorporated by reference into this Agreement. No changes are effective unless reflected in an approved change order issued by the State’s Division of Purchases.

Special Projects are defined as additional services available to RIDOH on a time and materials basis with the amounts not to exceed the amounts referenced on the Contractor’s RFP cost proposal or as negotiated by project or activity. The change order will specify the scope of the change and the expected completion date. Any change order shall be subject to the same terms and conditions of this Agreement unless otherwise specified in the change order and agreed upon by the parties. The parties will negotiate in good faith and in a timely manner all aspects of the proposed change order.

PAR. 11. SUBCONTRACTS

It is expressly agreed that the Contractor shall not enter into any subcontract(s) nor delegate any responsibilities to perform the services listed in this Agreement without the advanced, written approval of RIDOH. If in **ADDENDUM XVI – BID PROPOSAL**, the Bid Proposal permits Subcontracting, the Contractor must provide the name and the extent of services provided by the Subcontractor in the **BUDGET** paragraph 6, and more fully explained in **ADDENDUM II** of this Agreement, and as further agreed to by RIDOH and the Contractor in **ADDENDUM IX – SUBCONTRACTOR COMPLIANCE**, which is incorporated by reference herein, and which outlines the expectations and requirements of subcontracted vendors to this Agreement.

If the Contractor subsequently needs to enlist the services of a Subcontractor, the Contractor shall obtain prior written approval of RIDOH. Approval of RIDOH for the Contractor to enter into subcontracts to perform the services or obligations of the Contractor pursuant to this Agreement shall not be unreasonably withheld. Nothing in this Agreement or in a subcontract or sub-agreement between the Contractor and subcontractors shall create any contractual relationship between the subcontractor and RIDOH. Approval by RIDOH of the Contractor’s request to subcontract shall not relieve the Contractor of its responsibilities under this contract and the Contractor shall therefore remain responsible and liable to RIDOH for any conduct, negligence, acts and omissions, whether intentional or unintentional, by any subcontractor

The positions named by the Contractor and detailed in **ADDENDUM XVII – CORE STAFF POSITIONS**, which is incorporated by reference herein, will be considered core project staff positions for this project. The Contractor will not alter the core project team or use an independent contractor, company or subcontractor to meet required deliverables without the prior written consent of RIDOH’s project officer or other appointed designee(s) for which consent shall not be unreasonably withheld. Failure to comply with the provisions of this Paragraph could result in denial of reimbursement for such non-approved sub-contracts.

PAR. 12. CONTRACTOR’S LIABILITY/INDEMNIFICATION

The Contractor shall indemnify and hold the State of Rhode Island, its departments, agencies, branches and its or their officers, directors, agents or employees (together the “Indemnitees” and their subcontractors) harmless against claims, demands, suits for judgments, losses or reasonable expenses or costs of any nature whatsoever (including actual reasonable attorney’s fees) to the extent arising in whole or part from the Contractor’s willful misconduct, negligence, or omission in provision of services or breach of this Agreement including, but not limited to, injuries of any kind which the staff of the Contractor or its subcontractor may suffer directly or may cause to be suffered by any staff person or persons in the performance of this Agreement, unless caused by the willful misconduct or gross negligence of the Indemnitees.

The Contractor shall indemnify and hold the State of Rhode Island, its departments, agencies, branches and its or their officers, directors, agents or employees (together the “Indemnitees” and their subcontractors”) harmless against claims, demands, suits for judgments, losses or reasonable expenses or costs of any nature whatsoever (including actual reasonable attorney’s fees) to the extent arising in whole or part for infringement by the Contractor of any intellectual property right by any product or service provided hereunder.

Nothing in this agreement shall limit the Contractor’s liability to indemnify the State for infringements by the Contractor of any intellectual property right.

Nothing in the language contained in this Agreement shall be construed to waive or limit the State or federal sovereign immunity or any other immunity from suit provided by law including, but not limited to Rhode Island General Law, Title 9, Chapter 31 et al., entitled “Governmental Tort Liability.”

PAR. 13. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES

By signing this Agreement, the Contractor agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); Americans with Disabilities Act of 1990 (42 USC 12101 et. seq.); Title IX of the Education Amendments of 1972 (20 USC 1681 et. seq.); The Food Stamp Act, and the Age Discrimination Act of 1975, The United States Department of Health and Human Services Regulations found in 45

CFR, Parts 80 and 84; the United States Department of Education Implementing regulations (34 CFR, Parts 104 and 106; and the United States Department of Agriculture, Food and Nutrition Services (7 CFR 272.6), which prohibit discrimination on the basis of race, color, national origin (limited English proficiency persons), age, sex, disability, religion, political beliefs, in acceptance for or provision of services, employment, or treatment in educational or other programs or activities, or as any of the Acts are amended from time to time.

Pursuant to Title VI and Section 504, as listed above and as referenced in **ADDENDA V AND VI**, which are incorporated herein by reference and made part of this Agreement, the Contractor shall have policies and procedures in effect, including, mandatory written compliance plans, which are designed to assure compliance with Title VI section 504, as referenced above. An electronic copy of the Contractor's written compliance plan, all relevant policies, procedures, workflows, relevant chart of responsible personnel, and/or self-assessments must be available to RIDOH upon request.

The Contractor's written compliance plans and/or self-assessments, referenced above and detailed in **ADDENDA V AND VI** of this Agreement must include but are not limited to the requirements detailed in **ADDENDA V AND VI** of this Agreement.

The Contractor must submit, within thirty-five (35) days of the date of a request by DHHS or RIDOH, full and complete information on Title VI and/or Section 504 compliance and/or self-assessments, as referenced above, by the Contractor and/or any subcontractor or vendor of the Contractor.

The Contractor acknowledges receipt of **ADDENDUM V - NOTICE TO RHODE ISLAND DEPARTMENT OF HEALTH SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND ADDENDUM VI - NOTICE TO RHODE ISLAND DEPARTMENT OF HEALTH SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973**, which are incorporated herein by reference and made part of this Agreement.

The Contractor further agrees to comply with all other provisions applicable to law, including the Americans with Disabilities Act of 1990; the Governor's Executive Order No. 05-01, Promotion of Equal Opportunity and the Prevention of Sexual Harassment in State Government.

The Contractor also agrees to comply with the requirements of the RI Department of Health for safeguarding of client information as such requirements are made known to the Contractor at the time of this contract. Changes to any of the requirements contained herein shall constitute a change and be handled in accordance with **PAR. 10. - MODIFICATION OF AGREEMENT above**.

Failure to comply with this Paragraph may be the basis for cancellation of this Agreement.

PAR. 14. ASSIGNABILITY

The Contractor shall not assign any interest in this Agreement (whether by assignment or novation) without the prior written consent of the State's Division of Purchases, thereto; provided, however, that claims or money due or to become due to the Contractor from RIDOH under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to RIDOH.

PAR. 15. COPYRIGHTS

Any and all data, technical information, information systems, materials gathered, originated, developed, prepared, modified, used or obtained by the Contractor in performance of the Agreement used to create and/or maintain work performed by the Contractor, including but not limited to, all hardware, software computer programs, data files, application programs, intellectual property, source code, documentation and manuals, regardless of state of completion shall be deemed to be owned and remain owned by the State ("State Property"), and the State has the right to (1) reproduce, publish, disclose or otherwise use and to authorize others to use the State Property for State or federal government purposes, and (2) receive delivery of such State Property upon 30 day notice by the State throughout the term of the contract and including 120 days thereafter. To be clear with respect to State Property, the work shall be considered "work for hire," i.e., the State, not the selected Contractor or any subcontractor, shall have full and complete ownership of all State Property. The selected Contractor and any subcontractor hereby convey, assign and transfer to State any and all of its or their right, title and interest in State Property, if any, including but not limited to trademarks and copyrights. The State hereby grants to the federal government, and the federal government reserves, a royalty-free, nonexclusive and irrevocable license to reproduce, publish, disclose or otherwise use and to authorize others to use for federal government purposes such software, modifications and documentation designed, developed or installed with federal financial participation.

The Contractor agrees that no findings, listing, or information derived from information obtained through performance, as described in the Scope of Work in Addendum I with or without identifiers, may be released or publicly disclosed in any form for any purpose if such findings, listing, or information contain any combination of data elements that might allow an individual to determine a beneficiary's identification without first obtaining written authorization from RIDOH's project officer. Examples of such data elements include, but are not limited to geographic indicators, age, sex, diagnosis, procedure, date of birth, or admission/discharge date(s). The Contractor agrees further that RIDOH shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from RIDOH's files identify or would, with reasonable effort,

permit one to identify an individual, or to deduce the identifying of an individual to a reasonable degree of certainty. The Contractor agrees that the conditions set forth herein apply to any materials presented or submitted review and/or publication that contain individual identifying elements in the information obtained, as stated above, unless such information is presented in the aggregate. Under no circumstance, shall the Contractor publicly disclose or present or submit any materials for review and/or publication that contains an individual's social security number, in part or in whole. The Contractor is hereby notified that all initial data received from RIDOH is considered confidential by RIDOH. For further requirements regarding confidentiality of information please refer to Paragraph 26 of this Agreement.

With respect to claims arising from computer hardware or software manufactured by a third party and sold by the Contractor as a reseller, the Contractor will pass through to RIDOH such indemnity rights as it receives from such third party ("third party obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the third party obligation, the Contractor will provide RIDOH with indemnity protection equal to that called for by the third party obligation, but in no event greater than that called for in the first sentence of this Paragraph the provisions of the preceding sentence apply only to third party computer hardware or software sold as a distinct unit and accepted by RIDOH. Unless a third party obligation provides otherwise, the defense and payment obligations set forth in this Paragraph will be conditional upon the following:

1. RIDOH will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time;
2. The Contractor will have sole control of the defense of any action on all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Rights by any product or service provided hereunder; and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future state operations or liability, or when involvement of the state is otherwise mandated by law, the state may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the state will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
3. The State will reasonably cooperate in the defense and in any related settlement negotiations.

Should the deliverables or software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Rights, RIDOH shall permit the Contractor at its option and expense either to procure for RIDOH the right to continue using the deliverables or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such deliverables or software by RIDOH shall be prevented by injunction, the Contractor agrees to take back such deliverables or software and make every reasonable effort to assist RIDOH in procuring substitute deliverables or software. If, in the sole opinion of RIDOH, the return of such infringing deliverables or software makes the retention of other deliverables or software acquired from the Contractor under this Agreement impractical, RIDOH shall then have the option of terminating such agreements, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such deliverables or software and refund any sums RIDOH has paid the Contractor less any reasonable amount for use or damage.

The Contractor shall have no liability to RIDOH under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement that is based upon:

- The combination or utilization of deliverables furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
- The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of the Contractor-supplied operating software; or
- The modification by RIDOH of the equipment furnished hereunder or of the software; or
- The combination or utilization of software furnished hereunder with non-Contractor supplied software.

The Contractor certifies that it has appropriate systems and controls in place to ensure that RIDOH funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

The Contractor agrees that no findings, listing, or information derived from information obtained through performance, as described in **ADDENDUM I - SCOPE OF WORK**, with or without identifiers, may be released or publicly disclosed in any form for any purpose if such findings, listing, or information contain any combination of data elements that might allow an individual to determine a beneficiary's identification without first obtaining written authorization from RIDOH's project officer. Examples of such data elements include, but are not limited to geographic indicators, age, sex, diagnosis, procedure, date of birth, or admission/discharge date(s). The Contractor agrees further that RIDOH shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from RIDOH's files identify or would, with reasonable effort, permit one to identify an individual, or to deduce the identifying of an individual to a reasonable degree of certainty. The Contractor agrees that the conditions set forth herein apply to any materials presented or submitted review and/or publication that contain individual identifying elements in the information obtained, as stated above, unless such information is presented in the aggregate. Under no circumstance, shall the Contractor publicly disclose or present or submit any materials for review and/or publication that contains an individual's social security number, in part or in whole. The Contractor is hereby notified that all initial data received from RIDOH is considered confidential by RIDOH.

PAR. 16. PARTNERSHIP

It is understood and agreed that nothing herein is intended or should be construed in any manner as creating or establishing the legal relation of partnership between the parties hereto, or as constituting the employees, agents, or representatives of the Contractor included in this Agreement as employees, agents, or representatives of RIDOH.

PAR. 17. INTEREST OF CONTRACTOR

The Contractor covenants that it presently has no pecuniary interest and shall not acquire any such interest, direct or indirect, without first disclosing to RIDOH in writing and then subsequently obtaining approval, in writing, from RIDOH, that would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor further covenants that no person having any such interest shall be employed by the Contractor for the performance of any work associated with this Agreement.

PAR. 18. FEDERAL FUNDING PROVISIONS

Funds made available to the Contractor under this Agreement are or may be derived from federal funds made available to RIDOH. The Provisions of Paragraph 5 and Addendum II notwithstanding, the Contractor agrees to make claims for payment under this Agreement in accordance with applicable federal policies. The Contractor agrees that no payments under this Agreement will be claimed for reimbursement under any other Agreement, grant or contract that the Contractor may hold that provides funding from the same State or Federal sources. The Contractor further agrees to be liable for audit exceptions that may arise from examination of claims for payment under this Agreement. The Contractor specifically agrees to abide by all applicable federal requirements for Contractors. Additionally, the Federal Award must be used in accordance with the specific Catalog of Federal Domestic Assistance (CFDA) number listed in **ADDENDUM IV – FISCAL ASSURANCES**.
<https://www.cfda.gov/>

States are required to collect information from contractors for awards greater than \$25,000 as described in **ADDENDUM XVIII – FEDERAL SUBAWARD REPORTING** (hereafter referred to as the FFATA form). The Contractor and its subcontractors, if subcontractors are permitted within the scope of this Agreement, will provide new FFATA forms for each contract year. When applicable in multiyear contracts, the Contractor is required to review and update the FFATA form, this must be provided to RIDOH 30 days prior to the end of the first contract year. For example, if the contract performance period is July 1, 2015 to June 30, 2018; then the FFATA form for the second contract year is due June 1, 2016. Any sub-contractor paid with Federal Funding will provide the FFATA form for each contract year to the Contractor, the Contractor must then provide all sub-contractor FFATA forms to RIDOH. Sub-contractor forms must be provided within fifteen (15) days of date of signature of this Agreement, and if applicable, within fifteen (15) days of the end of each contract year for all subsequent contract years.

PAR. 19. FUNDING DENIED

It is understood and agreed that in the event that less than full federal funding or other funding is received by RIDOH due directly to the failure of the Contractor to comply with the terms of this Agreement, the Contractor is liable to the State of Rhode Island for an amount equal to the amount of the denied funding. Should the Contractor be liable for the amount of the denied funding, then such amount shall be payable upon demand of RIDOH.

The Contractor agrees that no expenditures claimed for reimbursement under this Agreement will be claimed for reimbursement under any other agreement, grant, or contract that the Contractor may hold which provides funding from state or federal sources. The Contractor further agrees to be liable for audit exceptions that may arise from examination of expenditures: (a) claimed by the Contractor for reimbursement under this Agreement, and/or (b) submitted by the Contractor in meeting any cost participation requirements.

PAR. 20. ACCESSIBILITY AND RETENTION OF RECORDS

The Contractor agrees to make accessible and to maintain all fiscal and activity records relating to this Agreement to state and/or federal officials, or their designated representatives, necessary to verify the accuracy of Contractor invoices or compliance with this Agreement. This accessibility requirement shall include the right to review and copy such records. This requirement is also intended to include but is not limited to any auditing, monitoring, and evaluation procedures, including on-site visits, performed individually or jointly, by state or federal officials or their agents necessary to verify the accuracy of Contractor invoices or compliance with the this Agreement (in accordance with 2 CFR § 200.331). If such records are maintained out of the State of Rhode Island, such records shall be made accessible by the Contractor at a Rhode Island location. Minutes of board of directors meetings, fiscal records, and narrative records pertaining to activities performed will be retained for audit purposes for a period of at least three (3) years following the submission of the final expenditure report for this Agreement. Additionally, if any litigation, claim, or audit is started before the expiration of the 3 year period, as mentioned in Paragraph 2 of this Agreement, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken in accordance with 2 CFR § 200.333. If audit findings have not been resolved at the end of the three (3) years, the records shall be retained for an additional three (3) years after the resolution of the audit findings are made or as otherwise required by law.

The Contractor and its subcontractors, if subcontractors are permitted within the scope of this Agreement, will provide and maintain a quality assurance system acceptable to the state covering deliverables and services under this Agreement and will tender to the state only those deliverables that have been inspected and found to conform to this Agreement's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the state during Agreement performance and for three (3) years after final payment. The Contractor shall permit the state to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices related to performance of the Agreement.

Further, the Contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to performance of this Agreement.

The parties agree that in regards to fixed price portions of the contract, the state's access to the Contractor's books, records and documents shall be limited to those necessary to verify the accuracy of the Contractor's invoice. In no event will the state have access to the Contractor's internal cost data as they relate to fixed price portion of the contract.

PAR. 21. CAPITAL ASSETS

The Contractor agrees that any capital assets purchased on behalf of RIDOH on a pass-through basis and used on behalf of RIDOH by the Contractor shall upon payment by RIDOH, become the property of RIDOH unless otherwise agreed to by the parties and may be utilized by the Contractor in a reasonable manner. Capital assets are defined as any item having a life expectancy of greater than one (1) year and an initial cost of greater than five thousand dollars (\$5,000) per unit, except greater than five hundred dollars (\$500) per unit for computer equipment.

Upon written request by RIDOH, the Contractor agrees to execute and deliver to RIDOH a security interest in such capital assets in the amount of the value of such capital asset (or for a lesser amount as determined by RIDOH).

PAR. 22. COMPETITIVE BIDS

With the exception of services or products obtained for use in a leveraged environment, the Contractor agrees competitive bidding will be utilized for all purchases in direct and exclusive support of RIDOH which are made under this Agreement in excess of five thousand dollars (\$5,000) or an aggregate of five thousand dollars (\$5,000) for any like items during the time of performance of this Agreement. Evidence of competitive bids must be retained in accordance with **PAR. 20. - ACCESSIBILITY AND RETENTION OF RECORDS.**

PAR. 23. SECURITY AND CONFIDENTIALITY

The Contractor shall take security measures to protect against the improper use, loss, access of and disclosure of any confidential information it may receive or have access to under this Agreement as required by this Agreement, the RFP and proposal, or which becomes available to the Contractor in carrying out this Agreement and the RFP and the proposal, and agrees to comply with the requirements of RIDOH for safeguarding of client and such aforementioned information. Confidential information includes, but is not limited to: names, dates of birth, home and/or business addresses, social security numbers, protected health information, financial and/or salary information, employment information, statistical, personal, technical and other data and information relating to the State of Rhode Island data, and other such data protected by RIDOH laws, regulations and policies ("confidential information"), as well as State and Federal laws and regulations. All such information shall be protected by the Contractor from unauthorized use and disclosure and shall be protected through the observance of the same or more effective procedural requirements as are applicable to RIDOH.

The Contractor expressly agrees and acknowledges that said confidential information provided to and/or transferred to provider by RIDOH or to which the Contractor has access to for the performance of this Agreement is the sole property of RIDOH and shall not be disclosed and/or used or misused and/or provided and/or accessed by any other individual(s), entity(ies) and/or party(ies) without the express written consent of RIDOH. Further, the Contractor expressly agrees to forthwith return to RIDOH any and all said data and/or information and/or confidential information and/or database upon RIDOH's written request and/or cancellation and/or termination of this Agreement.

The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information, which is or becomes legitimately publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Agreement, or is rightfully obtained from third parties under no obligation of confidentiality.

The Contractor agrees to abide by all applicable, current and as amended Federal and State laws and regulations governing the confidentiality of information, including to but not limited to the Business Associate requirements of HIPAA (WWW.HHS.GOV/OCR/HIPAA), to which it may have access pursuant to the terms of this Agreement. In addition, the Contractor agrees to comply with RIDOH confidentiality policy recognizing a person's basic right to privacy and confidentiality of personal information. ("Confidential Records" are the records as defined in section 38-2-3-(d) (1)-(1-19) of the Rhode Island General Laws, entitled "access to public records" and described in "access to Department of Health records.")

In accordance with this Agreement and all Addenda thereto, the Contractor will additionally receive, have access to, or be exposed to certain documents, records, that are confidential, privileged or otherwise protected from disclosure, including, but not limited to: personal information; Personally Identifiable Information (PII), Sensitive Information (SI), and other information (including electronically stored information), records sufficient to identify an applicant for or recipient of government benefits; preliminary draft, notes, impressions, memoranda, working papers and work product of state employees; as well as any other records, reports, opinions, information, and statements required to be kept confidential by state or federal law or regulation, or rule of court ("State Confidential Information"). State Confidential Information also includes PII and SI as it pertains to any public assistance recipients as well as retailers within the SNAP Program and Providers within any of the State Public Assistance programs.

Personally Identifiable Information (PII) is defined as any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc. (As defined in 2 CFR § 200.79 and as defined in OMB Memorandum M-06-19, "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments"). PII shall also include individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts (As defined in 2 CFR § 200.82 Protected Personally Identifiable Information).

Sensitive Information (SI) is information that is considered sensitive if the loss of confidentiality, integrity, or availability could be expected to have a serious, severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. Further, the loss of sensitive information confidentiality, integrity, or availability might: (i) cause a significant or severe degradation in mission capability to an extent and duration that the organization is unable to perform its primary functions; (ii) result in significant or major damage to organizational assets; (iii) result in significant or major financial loss; or (iv) result in significant, severe or catastrophic harm to individuals that may involve loss of life or serious life threatening injuries. (Defined in HHS Memorandum ISP-2007-005, "Departmental Standard for the Definition of Sensitive Information" as amended).

The Contractor agrees to adhere to any and all applicable State and Federal statutes and regulations relating to confidential health care and substance abuse treatment including but not limited to the Federal Regulation 42 CFR, Part 2; Rhode Island Mental Health Law, R.I. General Laws Chapter 40.1-5-26; Confidentiality of Health Care Communications and Information Act, R.I. General Laws Chapter 5-37.3-1 et seq., and HIPAA 45 CFR 160. The Contractor acknowledges that failure to comply with the provisions of this paragraph will result in the termination of this Agreement.

The Contractor shall notify the Covered Entity within one (1) hour by telephone call plus e-mail, web form or fax upon the discovery of any breach of security of PHI, PII or SI or suspected breach of security of PHI, PII or SI (where the use or disclosure is not provided for and permitted by this Agreement) of which it becomes aware. The Contractor shall, within forty-eight (48) hours, notify RIDOH's designated security officer of any suspected breach of unauthorized electronic access, disclosure or breach of confidential information or any successful breach of unauthorized electronic access, disclosure or breach of confidential information. A breach is defined pursuant to HIPAA guidelines as well as those found in the "Health Information Technology for Economic and Clinical Health Act" (HITECH). A breach or suspected breach may be an acquisition, access, use or disclosure or suspected acquisition, access, use or disclosure of PHI in violation of HIPAA privacy rules that compromise PHI security or privacy. Additionally, a breach or suspected breach may be an acquisition, access, use or disclosure or suspected acquisition, access, use or disclosure of PII or SI. The notice of a breach or suspected breach shall contain information available to the Contractor at the time of the notification to aid RIDOH in examining the matter. More complete and detailed information shall be provided to RIDOH as it becomes available to the Contractor.

Upon notice of a suspected security incident, RIDOH and Contractor will meet to jointly develop an incident investigation and remediation plan. Depending on the nature and severity of the confirmed breach, the plan may include the use of an independent third-party security firm to perform an objective security audit in accordance with recognized cyber security industry commercially reasonable practices. The parties will consider the scope, severity and impact of the security incident to determine the scope and duration of the third party audit. If the parties cannot agree on either the need for or the scope of such audit, then the matter shall be escalated to senior officials of each organization for resolution. The Contractor will pay the costs of all such audits. Depending on the nature and scope of the security incident, remedies may include, among other things, information to individuals on obtaining credit reports and notification to applicable credit card companies, notification to the local office of the Secret Service, and or affected users and other applicable parties, utilization of a call center and the offering of credit monitoring services on a selected basis.

Notwithstanding any other requirement set out in this Agreement, the Contractor acknowledges and agrees that the HITECH Act and its implementing regulations impose new requirements with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations to be adopted by the U.S. Department of Health and Human Services. The HITECH requirements, regulations and provisions are hereby incorporated by reference into this Agreement as if set forth in this Agreement in their entirety. Notwithstanding anything to the contrary or any provision that may be more restrictive within this Agreement, all requirements and provisions of HITECH, and its implementing regulations currently in effect and promulgated and/or implemented after the date of this Agreement, are automatically effective and incorporated herein. Where this Agreement requires stricter guidelines, the stricter guidelines must be adhered to.

Failure to abide by RIDOH's confidentiality policy or the required signed **Business Associate Agreement (BAA)** will result in termination remedies, including but not limited to, termination of this Agreement. A **Business Associate Agreement (BAA)**

shall be signed by the Contractor, simultaneously or as soon thereafter as possible, from the signing of this Agreement, as required by RIDOH.

Nothing herein shall limit RIDOH's ability to seek injunctive relief or any and all damages resulting from the Contractor's negligent or intentional disclosure of confidential information.

PAR. 24. AUDIT

In the case wherein the amount identified in **PAR. 6. - BUDGET** is at least twenty-five thousand dollars (\$25,000) in any year, at no additional cost for RIDOH, the Contractor shall prepare an annual financial statement of the Contractor or the Contractor's parent, where applicable, within nine (9) months of the end of the Contractor's fiscal year. The financial statements must provide full and frank disclosures of all assets, liabilities, changes in the fund balances, all revenue, and all expenditures. Upon written or oral request by RIDOH, the Contractor shall provide RIDOH a copy of the above described financial statement(s) within ten (10) days of RIDOH's request or within twenty (20) days of the end of the Time of Performance, Paragraph 3 herein. If additional financial documentation is required by the Federal funding source, these additional financial requirements must be met in addition to the preparation of the above financial statements.

In the case wherein the amount identified in **PAR. 6. - BUDGET** is at least seven hundred and fifty thousand federal dollars (\$750,000) in any fiscal year, at no additional cost for RIDOH, the audit must be performed in accordance with 2 CFR § 200.500 et. seq., or with "Government Auditing Standards" as published by the Comptroller General of the United States. The audit must address areas of compliance and internal controls as outlined in 2 CFR § 200.500 et. seq. If a management letter is also issued as part of the audit, the management letter must be submitted as well (2 CFR § 200.512). All financial statements and audits must be submitted in a format that is acceptable to RIDOH.

In the case wherein the Contractor expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR § 200.501, et seq. at no additional cost for RIDOH, the audit must be performed in accordance with 2 CFR § 200.500 et. seq., or with "Government Auditing Standards" as published by the Comptroller General of the United States. The audit must address areas of compliance and internal controls as outlined in 2 CFR § 200.500 et. seq. If a management letter is also issued as part of the audit, the management letter must be submitted as well (2 CFR § 200.512). All financial statements and audits must be submitted in a format that is acceptable to RIDOH.

Moreover, if the Contractor has Agreements and/or Federal Awards which **in aggregate** are at least seven hundred and fifty thousand federal dollars (\$750,000) in any fiscal year, including the amount identified in **PAR. 6 - BUDGET**, the audit must be performed in accordance with federal requirements as outlined above (2 CFR 200.500 et seq.).

Should the Contractor expend less than seven hundred and fifty thousand federal dollars (\$750,000) in a fiscal year and be, therefore, exempt from having to perform an audit in accordance with 2 CFR § 200.500 et. seq., the Contractor may not charge the cost of such an audit to a federal award.

Pursuant to 2 CFR § 200.501 (h), "for-profit" entities shall conduct a "Yellow Book" audit annually by a Public Accounting Firm in accordance with Government Auditing Standards, mentioned above, and standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the U.S. (GAGAS) and provide a copy thereof to Client; the Contractor may not charge the cost of such an audit to a federal award.

The Contractor agrees that the state or its designated representative will be given access to any part of the system which is delivered under this Agreement to inventory and/or inspect the system.

The Contractor expressly agrees that any overpayment identified through an audit must be repaid to RIDOH within a period of six (6) months from the issuance of the audit.

PAR. 25. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

PAR. 26. ON-SITE INSPECTION

The Contractor agrees to permit on-site monitoring, evaluation and inspection of all activities related to the Agreement by officials of RIDOH, its designee, and where appropriate, the Federal government. On-site inspections and monitoring shall be in accordance with 2 CFR § 200.328. All reports pertaining to 2 CFR § 200.331, shall be maintained by the Contractor. The Contractor must retain any documents pertaining to changes requested from RIDOH or the Federal Government in accordance with 2 CFR § 200.333.

If, as a result of on-site inspections, changes are requested by RIDOH to ensure compliance with this Agreement and/or Federal Awards, the Contractor must perform changes within a time period defined by RIDOH. All changes shall be documented by the Contractor and provided to RIDOH upon request. All requested changes shall comply with 2 CFR § 200.331.

PAR. 27. DRUG-FREE WORKPLACE POLICY

The Contractor agrees to comply with the provisions of the Governor's Executive Order 91-14, the State's Drug Free Workplace Policy, and the Federal Omnibus Drug Abuse Act of 1988. As a condition of contracting with the State of Rhode Island, the Contractor hereby agrees to abide by **ADDENDUM VII - DRUG-FREE WORKPLACE POLICY**, and in accordance therewith has executed **ADDENDUM VIII - DRUG-FREE WORKPLACE POLICY CONTRACTOR CERTIFICATE OF COMPLIANCE**.

Furthermore, the Contractor agrees to submit to RIDOH any report or forms which may from time-to-time be required to determine the Contractor's compliance with this policy.

The Contractor acknowledges that a violation of the Drug-Free Workplace Policy may, at RIDOH's option, result in termination of this Agreement.

PAR. 28. PRO-CHILDREN ACT OF 1994 (ACT)

As a condition of contracting with the State of Rhode Island, the Contractor hereby agrees to abide by **ADDENDUM X - CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**, and in accordance has executed **ADDENDUM X - CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**.

PAR. 29. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Contractor agrees to abide by **ADDENDUM XI – INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**, and in accordance has executed the required certification included in **ADDENDUM XII – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**.

PAR. 30. CHIEF PURCHASING OFFICER

This Agreement shall take effect upon the issuance of a Purchase Order by the State of Rhode Island's Chief Purchasing Officer or his/her designee. No modifications to this agreement shall be effective unless in an authorized change order issued by the State's Division of Purchases.

PAR. 31. OWNERSHIP

The following additional paragraphs are added to the Rhode Island Department of Administration, Division of Purchases, Purchasing Rules, Regulations, and General Conditions of Purchasing.

PROPRIETARY SOFTWARE. Each party will retain all rights in any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the date of this Agreement, or acquired or developed after the date of this Agreement without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor.

DEVELOPED SOFTWARE. All software that is developed by the Contractor and delivered by the Contractor to RIDOH under this Agreement, and paid for by RIDOH ("Developed Software") is and shall remain the property of RIDOH. For a period of ninety (90) days following acceptance of any developed software in accordance with the approval procedures adopted by the parties, the Contractor warrants that each item of developed software will conform in all material respects to the written technical specifications agreed to by the parties in accordance with the software development methodologies adopted by the parties and set forth in the procedures manual. As soon as reasonably practicable after discovery by State or Contractor of a failure of the Developed Software to so conform (a "**non-conformance**"), State or Contractor, as applicable, will deliver to the other a statement and supporting documentation describing in reasonable detail the alleged nonconformance. If Contractor confirms that there is a non-conformance, then Contractor will use commercially reasonable efforts to correct such non-conformance. The methods and techniques for correcting non-conformances will be at the sole discretion of RIDOH. The foregoing warranty will not extend to any non-conformances caused (i) by any change or modification to software without Contractor's prior written consent; or (ii) by state operating software otherwise than in accordance with the applicable documentation, for the purpose for which it was designed, or on hardware not recommended, supplied or approved in writing by Contractor. Furthermore, if, after undertaking commercially reasonable efforts to remedy a breach by Contractor of the foregoing warranty, Contractor, in the exercise of its reasonable business judgment, determines that any repair, adjustment, modification or replacement is not feasible, or in the event that the developed software subsequent to all repairs, adjustments, modifications and replacements continues to fail to meet the foregoing warranty, RIDOH will return the developed software to Contractor, and Contractor will credit to the

State, in a manner and on a schedule agreed to by the parties and as RIDOH's sole and exclusive remedy for such failure, an amount equal to the charges actually paid by RIDOH to the Contractor for the developed software that has failed to meet the foregoing warranty. Upon written request of RIDOH, the Contractor will use commercially reasonable efforts to correct an alleged non-conformance for which Contractor is not otherwise responsible hereunder because it is caused or contributed to by one of the factors listed above and, to the extent that such correction cannot be performed within the scope of the Contractor services, such correction will be paid for by RIDOH at the Contractor's then current commercial billing rates for the technical and programming personnel and other materials utilized by the Contractor. Notwithstanding anything to the contrary in this Agreement, the Contractor will continue to own, and will be free to use, the development tools and the residual technology, so long as such use does not breach Contractor's obligations of confidentiality set forth herein

OTHER. Notwithstanding anything to the contrary in this Agreement, the Contractor (i) will retain all right, title and interest in and to all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the services hereunder which are based on trade secrets or proprietary information of the Contractor, are developed or created by or on behalf of the Contractor without reference to or use of the intellectual property of RIDOH or are otherwise owned or licensed by the Contractor (collectively, "tools"); (ii) subject to the confidentiality obligations set forth in this Agreement, will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the services and may be retained by the Contractor's employees in an intangible form, all of which constitute substantial rights on the part of the Contractor in the technology developed as a result of the services performed under this Agreement; and (iii) will retain ownership of any Contractor-owned software or tools that are used in producing the developed software and become embedded therein. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights, except as otherwise expressly provided in this Agreement.

PAR. 32. FORCE MAJEURE

Except for defaults of subcontractors at any tier, in the event that any party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies, or other event or failure not the fault or within control of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other parties and shall use reasonable efforts to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended

PAR. 33. RESERVED

PAR. 34. DISPUTES

The parties shall use good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. When a dispute arises between RIDOH and Contractor, both parties will attempt to resolve the dispute pursuant to this subsection. When a dispute arises, the party initiating the dispute shall notify the other party in writing of the dispute, with the notice specifying the disputed issues and the position of the party submitting the notice. RIDOH's project officer and Contractor project officer shall use good faith efforts to resolve the dispute within ten (10) State business days of submission by either party to the other of such notice of the dispute.

If RIDOH's Project Officer and the Contractor's Project Officer are unable to resolve the dispute, either party may request that the dispute be escalated for resolution to the Secretary of the RI Department of Health or his or her designee, the Contractor's President or his or her designee and a mutually agreed upon third party shall attempt to resolve the issue.

If the issue is not resolved, the parties shall proceed pursuant to R.I. General Laws § 37-2-46 and applicable State Procurement Regulations (1.5).

If the issue is not resolved, the parties shall endeavor to resolve their claims by mediation which shall be administered by the Presiding Justice of the Providence County Superior Court. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the court. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this paragraph, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the State of Rhode Island where the project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

PAR. 35. GOVERNING LAW

This Agreement is deemed executed and delivered in the City of Cranston, State of Rhode Island, and all questions arising out of or under this Agreement shall be governed by the laws of the State of Rhode Island.

PAR. 36. WAIVER AND ESTOPPEL

Nothing in this Agreement shall be considered waived by any party, unless the party claiming the waiver receives the waiver in writing. No breach of this Agreement is considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision shall not constitute a waiver of any other. A failure of any party to enforce at any time any provisions(s) of this contract, or to exercise any option which is herein provided, shall in no way be construed as a waiver of such provision of this contract. No consent, or excuse by either party, express or implied, shall constitute a subsequent consent, waiver or excuse.

PAR. 37. INSURANCE

Throughout the term of the Agreement, the Contractor and any subcontractor shall procure and maintain, at its own cost and expense, insurance as required by the Bid Specifications.

PAR. 38. WORK REVIEWS

The Contractor agrees that all work performed under this Agreement may be reviewed by the Rhode Island Department of Health, Department of Administration, and/or by any third party designated by the RI Department of Health.

PAR. 39. BUSINESS CONTINUITY PLAN

The Contractor shall prepare and maintain a Business Continuity Plan upon execution of this Agreement, which shall include, but not be limited to, the Contractor's procedure for recovery of data and recovery for all operation components in case of an emergency or disaster. Upon written or oral request by RIDOH, the Contractor shall provide RIDOH a copy of the above described Business Continuity Plan within ten (10) days of RIDOH's request.

PAR. 40. NOTICES

No notice, approval or consent permitted or required to be given by this Agreement will be effective unless the same is in writing and sent postage prepaid, certified mail or registered mail, return receipt requested, or by reputable overnight delivery service to the other party at the address set forth in **ADDENDUM XVII – CORE STAFF POSITIONS**, or such other address as either party may direct by notice given to the other as provided **ADDENDUM XVII – CORE STAFF POSITIONS**, and shall be deemed to be given when received by the addressee. The Contractor and RIDOH shall list, in **ADDENDUM XVII – CORE STAFF POSITIONS**, the names, addresses, telephone numbers, and the facsimile numbers of all individuals that the above such notice, approval or consent shall be sent to or copied on.

PAR. 41. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages and the parties will follow such delivery by prompt delivery of originals of such pages.

PAR. 42. AMENDMENTS

Except as may otherwise set forth in this Agreement, the Agreement may only be amended by the parties agreeing to the amendment in writing, duly executed by the parties and shall only be effective upon incorporation by the State's Division of Purchases through the issuance of a change order.

PAR. 43. SURVIVAL

Any obligations and provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, including but not limited to safeguarding confidential information and indemnification, shall survive the expiration or termination of this Agreement.

PAR. 44. ADDITIONAL APPROVALS

The parties acknowledge that this Agreement requires issuance of a valid Purchase Order by the State of Rhode Island for this Agreement to remain in full force and effect.