



# **State of New Hampshire Department of Health and Human Services**

REQUEST FOR APPLICATION (RFA) #RFA-2017-BEAS-05-PERSO

FOR

**Personal Emergency Response Systems**

July 19, 2016



## Request for Application #RFA-2017-BEAS-05-PERSO

### 1. Request for Services

The New Hampshire Department of Health and Human Services, Bureau of Elderly and Adult Services is accepting applications from contractors to provide Personal Emergency Response Systems under Title III of the Older Americans Act.

#### 1.1. Purpose

The goal of the service is to support older, isolated and frail adults in securing and maintaining maximum independence and dignity by enabling these individuals to summon 24/7 assistance in case of an emergency.

#### 1.2. Contract Period

The Contract(s) awarded as a result of this RFA will be effective October 1, 2016 or upon the approval of Governor and Executive Council, whichever is later, through September 30, 2018.

The Department reserves the option to extend contract services for up to two (2) years based upon satisfactory vendor performance, continued funding and Governor and Executive Council approval.

#### 1.3. Contract Value

The all-inclusive compensation rate for Personal Emergency Response Systems is \$30 per month per eligible individual for an amount not to exceed \$50,000 for State Fiscal Years 2017-2019 (24-month contract).

### 2. Application Terminology

**BEAS** - Bureau of Elderly and Adult Services.

**DHHS** – Department of Health and Human Services (also the Department)

**PERS** – Personal Emergency Response Systems

**RFA** – Request for Applications. A Request for Applications means an invitation to submit an offer to provide identified services to an agency where the amount of funding available and the particulars of how the services are to be provided are defined by the agency and where the selection of qualifying vendors will be according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

**STATE** – State of New Hampshire/Department of Health and Human Services

### 3. Scope of Services

#### 3.1. Population to be Served

The vendor will provide Personal Emergency Response Systems (PERS) to individuals ages 60 and older with the most economic or social needs. For a complete description please see the:



- Older Americans Act, as amended through P.L. 114-144, Enacted April 19, 2016, Section 305,(a)(2)(E); and
- Title III, Older American Act Services: Title IIIB- Supportive Services, Title IIIC1 and C2 – Nutrition Program Policies, and Title IIID- Disease Prevention and Health Promotion Services, NH Administrative Rule He-E 502,

[http://www.gencourt.state.nh.us/rules/state\\_agencies/he-e500.html](http://www.gencourt.state.nh.us/rules/state_agencies/he-e500.html)

All services and supports are intended to assist eligible people to live as independently as possible in safety and with dignity.

The services described in this RFA are intended for individuals who are not already receiving, or eligible to receive, the same or similar services through one of DHHS' Medicaid Waiver Programs, other NH Medicaid services, the Veterans' Administration, or through the Medicare Program.

### 3.2. Services Description

Services and Administration of the program shall be provided in accordance with all applicable federal and state laws, NH Administrative Rule He-E 502, and policies and regulations adopted by the Department of Health and Human Services currently in effect, and as they may be adopted or amended during the contract period.

#### **Personal Emergency Response Systems:**

Personal Emergency Response Systems (PERS) include devices/technology used to summon emergency assistance. PERS is available to eligible individuals who live alone, or who are alone for more than four hours each day, or who live with an individual who is in poor health or are at risk of having a medical emergency.

PERS shall be simple to use and have wireless capability so it can be used when a client is at home and out in the community. Selected contractor(s) are required to orient the client to the use of the system, test it with the client, and to provide a toll-free number for clients to call if they have questions, experience problems with the PERS, or need to arrange for in-home diagnostics or repair/replacement.

Refer to **Appendix D** for a complete outline of the service and compliance requirements.

## 4. Mandatory Responses

**Question 1 of 5** – *Describe, in narrative form, your company's working history and expertise in providing personal emergency response systems.*

**Question 2 of 5** – *Describe, in narrative form, your company's experience in working with older adults (ages 60 and older) and your understanding of the needs of older adults living in the community.*

**Question 3 of 5** – *Provide a sample of an existing letter that your company utilizes to welcome and orient new clients to services.*

**Question 4 of 5** – *Provide your Company's procedure for enrolling a new client in a program.*



**Question 5 of 5** – Describe, in narrative form, your company's capacity and ability (including but not limited to resources and staffing) to perform the entire scope of work outlined in this RFA.

## 5. Application Evaluation

- 5.1. Experience as described in answers to Q1, Q2 **40 Points**
- 5.2. New client processes and procedures as described in answers to Q3, Q4 **40 Points**
- 5.3. Ability as described in answer to Q5 **20 Points**

**Total possible points for RFA – 100 Points**

## 6. Schedule of Events

### 6.1. Schedule of Events

Item	Action	Date
1	Release of RFA	07/19/2016
2	RFA Questions Due	07/26/2016
3	DHHS answers to RFA questions posted	08/02/2016
4	Application Submission	08/16/2016 <b>2:00 PM EST</b>

## 7. Notices

### 7.1. RFA Amendment

- 7.1.1. DHHS reserves the right to amend this RFA, as it deems appropriate prior to the proposal submission deadline on its own initiative or in response to issues raised through Applicant questions. In the event of an amendment to the RFA, DHHS, at its sole discretion, may extend the proposal submission deadline. The amended language will be posted on the DHHS Internet site.

### 7.2. Application Submission

- 7.2.1. Applications submitted in response to this RFA must be received no later than the time and date specified in Section 6.1. Applications must be addressed for delivery to the Procurement Coordinator identified in Section 8.5. Applications must be marked with #RFA-2017-BEAS-05-PERSO.
- 7.2.2. Late submissions will not be accepted and will remain unopened. Disqualified submissions will be discarded if not re-claimed by the Applicant by the time the contract is awarded. Delivery of the Application shall be at the Applicant's expense. The time of receipt shall be considered when an Application has been received by DHHS, in accordance with its established policies. The State accepts no responsibility for mislabeled mail. Any and all damage that may occur due to shipping shall be the Applicant's responsibility.
- 7.2.3. Applicants shall be presumed to be in agreement with the terms and conditions of the RFA and the sample contract in Appendix B, unless Applicant takes



specific exception to one or more conditions through specifying these on Appendix A. For instructions, see Appendix A.

### **7.3. Compliance**

- 7.3.1. Applicant must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the Department of Health and Human Services currently in effect, and as they may be adopted or amended during the contract period.

#### **7.3.2. Culturally and Linguistically Appropriate Standards**

- 7.3.2.1. The New Hampshire Department of Health and Human Services (DHHS) is committed to reducing health disparities in New Hampshire. DHHS recognizes that culture and language can have a considerable impact on how individuals access and respond to health and human services. Culturally and linguistically diverse populations experience barriers in their efforts to access services. As a result, DHHS is strongly committed to providing culturally and linguistically competent programs and services for its clients, and as a means of ensuring access to quality care for all. As part of that commitment DHHS continuously strives to improve existing programs and services, and to bring them in line with current best practices.
- 7.3.2.2. DHHS requires all contractors and sub-recipients to provide culturally and linguistically appropriate programs and services in compliance with all applicable federal civil rights laws, which may include: Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Rehabilitation Act of 1973. Collectively, these laws prohibit discrimination on the grounds of race, color, national origin, disability, age, sex, and religion.
- 7.3.2.3. There are numerous resources available to help recipients increase their ability to meet the needs of culturally, racially and linguistically diverse clients. Some of the main information sources are listed in the Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Section of the RFA, and, in the Vendor/RFP section of the DHHS website.
- 7.3.2.4. A key Title VI guidance is the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards), developed by the U.S. Department of Health and Human Services in 2000. The CLAS Standards provide specific steps that organizations may take to make their services more culturally and linguistically appropriate. The enhanced CLAS standards, released in 2013, promote effective communication not only with persons with Limited English Proficiency, but also with persons who have other communication needs. The enhanced Standards provide a framework for organizations to best serve the nation's increasingly diverse communities.



- 7.3.2.5. Applicants are expected to consider the need for language services for individuals with Limited English Proficiency as well as other communication needs, served or likely to be encountered in the eligible service population, both in developing their budgets and in conducting their programs and activities.
- 7.3.3. **Successful applicants will be:**
  - 7.3.3.1. Required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council;
  - 7.3.3.2. Monitored on their Federal Civil Rights compliance using the Federal Civil Rights Compliance Checklist, which can be found in the Vendor/RFP section of the DHHS website.
- 7.3.4. The guidance that accompanies Title VI of the Civil Rights Act of 1964 requires recipients to take reasonable steps to ensure meaningful access to their programs and services by persons with Limited English Proficiency (LEP persons). The extent of an organization's obligation to provide LEP services is based on an individualized assessment involving the balancing of four factors:
  - 7.3.4.1. The number or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program or services (this includes minor children served by the program who have LEP parent(s) or guardian(s) in need of language assistance);
  - 7.3.4.2. The frequency with which LEP individuals come in contact with the program, activity or service;
  - 7.3.4.3. The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service;
  - 7.3.4.4. The resources available to the organization to provide language assistance.
- 7.3.5. **Applicants are required to complete the TWO (2) steps listed in the Appendix C to this RFA, as part of their application.** Completion of these two items is required not only because the provision of language and/or communication assistance is a longstanding requirement under the Federal civil rights laws, but also because consideration of all the required factors will help inform applicants' program design, which in turn, will allow applicants to put forth the best possible application.
- 7.3.6. For guidance on completing the two steps in Appendix C, please refer to Bidder's Reference Guide for Completing the Culturally and Linguistically Appropriate Services Addendum of the RFA, which is posted on the DHHS website. <http://www.dhhs.nh.gov/business/forms.htm>





#### **7.4. Non-Collusion**

- 7.4.1. The Applicant's required signature on the Transmittal Cover Letter for an application submitted in response to this RFA guarantees that the prices, terms and conditions, and services have been established without collusion with other Applicants and without effort to preclude DHHS from obtaining the best possible application.

#### **7.5. Applicant Withdrawal**

- 7.5.1. Prior to the Closing Date for receipt of applications, an application may be withdrawn by submitting a written request for its withdrawal to Procurement Coordinator identified in Section 8.5.

#### **7.6. Public Disclosure**

- 7.6.1. The content of each application and addenda thereto will become public information once the Governor and Executive Council have approved a contract. Any information submitted as part of an application in response to this RFA may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFA will be made accessible to the public online via the website Transparent NH ([www.nh.gov/transparentnh/](http://www.nh.gov/transparentnh/)). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.
- 7.6.2. Insofar as an Applicant seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Applicant must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This should be done by separate letter identifying by page number and application section the specific information the applicant claims to be exempt from public disclosure pursuant to RSA 91-A:5.
- 7.6.3. Each Applicant acknowledges that DHHS is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. DHHS shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable laws or regulations, including but not limited to New Hampshire RSA Chapter 91-A. In the event DHHS receives a request for the information identified by an Applicant as confidential, DHHS shall notify the Applicant and specify the date DHHS intends to release the requested information. Any effort to prohibit or enjoin the release of the information shall be the Applicant's responsibility and at the Applicant's sole expense. If the Applicant fails to obtain a court order enjoining the disclosure, DHHS may release the information on the date DHHS specified in its notice to the Applicant without incurring any liability to the Applicant.

#### **7.7. Non-Commitment**

- 7.7.1. Notwithstanding any other provision of this RFA, this RFA does not commit DHHS to award a Contract. DHHS reserves the right to reject any and all



proposals or any portions thereof, at any time and to cancel this RFA and to solicit new applications under a new application process.

#### **7.8. Liability**

- 7.8.1. By submitting an Application in response to this RFA, an applicant agrees that in no event shall the State be either responsible for or held liable for any costs incurred by an Applicant in the preparation or submittal of or otherwise in connection with a proposal, or for work performed prior to the Effective Date of a resulting contract.

#### **7.9. Request for Additional Information or Materials**

- 7.9.1. During the period from date of application submission to the date of Contractor selection, DHHS may request of any Applicant, additional information or materials needed to clarify information presented in the application. Key personnel shall be available for interviews.

#### **7.10. Oral Presentations and Discussions**

- 7.10.1. DHHS reserves the right to require some or all Applicants to make oral presentations of their application. Any and all costs associated with an oral presentation shall be borne entirely by the Applicant.

#### **7.11. Contract Negotiations and Unsuccessful Bidder Notice**

- 7.11.1. If an Applicant(s) is selected, the State will notify the Successful Applicant(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the State successfully completes negotiations with the selected Applicant(s), all submitted Applications remain eligible for selection by the State. In the event contract negotiations are unsuccessful with the selected Applicant(s), the evaluation team may recommend another Applicant(s).
- 7.11.2. In order to protect the integrity of the bidding process, notwithstanding RSA 91-A:4, no information shall be available to the public, or to the members of the general court or its staff, concerning specific responses to requests for bids (RFBs), requests for proposals (RFPs), requests for applications (RFAs), or similar requests for submission for the purpose of procuring goods or services or awarding contracts from the time the request is made public until the closing date for responses except that information specifically allowed by RSA 21-G:37.

#### **7.12. Scope of Award and Contract Award Notice**

- 7.12.1. DHHS reserves the right to award a service, part of a service, group of services, or total services and to reject any and all applications in whole or in part. A contract award is contingent on approval by the Governor and Executive Council.
- 7.12.2. If a Contract is awarded, the Applicant must obtain written consent from the State before any public announcement or news release is issued pertaining to any Contract award.





### 7.13. Site Visits

7.13.1. DHHS reserves the right to request a site visit for DHHS Staff to review Applicant's organization structure, subcontractors, policy and procedures, and any other aspect of the proposal that directly affects the provisions of the RFA and the delivery of services. Any and all costs associated with the site visits incurred by the applicant shall be borne by the applicant.

7.13.2. Prior to implementation, DHHS reserves the right to make a pre-delegation audit by DHHS staff to the applicant's site to determine that the applicant is prepared to initiate required activities. Any and all costs associated with this pre-delegation visit shall be borne by the applicant.

### 7.14. Protest of Intended Award

7.14.1. Any challenge of an award made or otherwise related to this RFA shall be governed by RSA 21-G:37, and the procedures and terms of this RFA. The procedure set forth in RSA 21-G:37, IV, shall be the sole remedy available to challenge any award resulting from this RFA. In the event that any legal action is brought challenging this RFA and selection process, outside of the review process identified in RSA 21-G:37, IV, and in the event that the State of New Hampshire prevails, the challenger agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

### 7.15. Contingency

7.15.1. Aspects of the award may be contingent upon changes to state or federal laws and regulations.

## 8. Application Process

8.1. All Applicants must submit an original application and three (3) copies; the original must be marked "original".

8.2. Application documents identified below must be submitted on standard eight and one-half by eleven inch (8 ½" X 11") white paper, using font size 12 or larger. Application documents must be presented in the order indicated below and stapled in the top left hand corner.

8.3. Applications must conform to all instructions, requirements and contents indicated below:

8.3.1. **A Transmittal Cover Letter** on the applicant's letterhead (for individuals applying their Name, Address, Phone number and Email address) that must:

8.3.1.1. Reference, "**#RFA-2017-BEAS-05-PERSO.**"

8.3.1.2. Identify the name, title, mailing address, telephone number and email address of the person authorized by the applicant to contractually obligate the agency or individual.

8.3.1.3. Acknowledge that the applicant has read this Request for Application, understands it, and agrees to be bound by its requirements.



- 8.3.1.4. Confirm that Appendix A, Exceptions to Terms and Conditions, is included with the application (Appendix A is attached).
- 8.3.1.5. Contain the date that the application was submitted.
- 8.3.1.6. Be signed by an individual who is authorized to bind the applicant to all statements, including services and prices contained in this Request for Application.
- 8.3.2. **Answers to RFA Questions:** each question must be written with its response noted under the question.
- 8.3.3. **Curriculum Vitae or Resume** of each individual performing functions identified in this Request for Application.
- 8.3.4. **Licenses, Certificates and Permits** as required by this Request for Application.
- 8.3.5. **Current Certificate of Insurance**
- 8.3.6. **Affiliations – Conflict of Interest Statement** regarding any and all affiliations that might result in a conflict of interest. Explain the relationship and how the affiliation would not represent a conflict of interest.
- 8.3.7. **Three (3) references for the Applicant.** Each reference must include:
  - 8.3.7.1. Name, address, telephone number of the reference.
  - 8.3.7.2. Description of the nature of the relationship between the Applicant and the reference.
  - 8.3.7.3. Length of time the reference has been affiliated with the Applicant.
- 8.3.8. **Financial Statement.** Each Applicant must submit audited financial statements for the four (4) most recently completed fiscal years that demonstrate the Applicant's organization is in sound financial condition.
- 8.3.9. **Include Appendix A, Exceptions to Terms and Conditions**
- 8.3.10. **Include Appendix C, CLAS Requirements**
- 8.4. **Applications are due no later than August 16, 2016 at 2:00 PM. Faxed or emailed copies of the Application will NOT be accepted.**
- 8.5. **All applications must be submitted to:**
  - State of New Hampshire
  - Department of Health and Human Services
  - E. Maria Reinemann
  - Contracts & Procurement Unit
  - 129 Pleasant Street
  - Concord NH 03301
  - Email: [eva.reinemann@dhhs.nh.gov](mailto:eva.reinemann@dhhs.nh.gov)
  - Phone: (603) 271-9330



## 9. Appendices

- 9.1. Appendix A - Exceptions to Terms and Conditions
- 9.2. Appendix B – Contract Minimum Requirements (including Sample Contract \*  
Please note: Appendix B is a reference document only. DO NOT complete or return Appendix B).
- 9.3. Appendix C - CLAS Requirements
- 9.4. Appendix D – Contract Scope of Services and Compliance Requirements

## EXCEPTIONS TO TERMS AND CONDITIONS

**RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A RESPONDER MATERIALLY DEVIATES FROM A RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.**

**INSTRUCTIONS:** Responders must explicitly list all exceptions to State of NH minimum terms and conditions. Reference the actual number of the State's term and condition and Exhibit number for which an exception(s) is being taken. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their Proposal. *(Add additional pages if necessary.)*

Responder Name:	
<u>Term &amp; Condition Number/Provision</u>	<u>Explanation of Exception</u>

Date \_\_\_\_\_

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

### AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

### GENERAL PROVISIONS

#### 1. IDENTIFICATION.

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____  On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  <div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto;"></div> [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature  <div style="text-align: right;">Date: _____</div>		1.15 Name and Title of State Agency Signatory	
1.16 Approval by the N.H. Department of Administration, Division of Personnel ( <i>if applicable</i> )  <div style="display: flex; justify-content: space-between;"> <span>By: _____</span> <span>Director, On: _____</span> </div>			
1.17 Approval by the Attorney General (Form, Substance and Execution) ( <i>if applicable</i> )  <div style="display: flex; justify-content: space-between;"> <span>By: _____</span> <span>On: _____</span> </div>			
1.18 Approval by the Governor and Executive Council ( <i>if applicable</i> )  <div style="display: flex; justify-content: space-between;"> <span>By: _____</span> <span>On: _____</span> </div>			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this



Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## **8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## **9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

## **12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

## **14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

## Appendix B

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

### 15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

### 19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



### SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
  - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
  - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;



- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
- 8.1. Fiscal Records: books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
- 8.2. Statistical Records: Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 8.3. Medical Records: Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
- 9.1. Audit and Review: During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
- 9.2. Audit Liabilities: In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports:** Fiscal and Statistical: The Contractor agrees to submit the following reports at the following times if requested by the Department.
  - 11.1. Interim Financial Reports: Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
  - 11.2. Final Report: A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
12. **Completion of Services:** Disallowance of Costs: Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
  - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
16. **Equal Employment Opportunity Plan (EEOP):** The Contractor will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or



more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For recipients receiving less than \$25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP Certification Forms are available at: <http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf>.

17. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.
18. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF  
WHISTLEBLOWER RIGHTS (SEP 2013)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

19. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.
- When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:
- 19.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
  - 19.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
  - 19.3. Monitor the subcontractor's performance on an ongoing basis





- 19.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 19.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

#### **DEFINITIONS**

As used in the Contract, the following terms shall have the following meanings:

**COSTS:** Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

**DEPARTMENT:** NH Department of Health and Human Services.

**FINANCIAL MANAGEMENT GUIDELINES:** Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

**PROPOSAL:** If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

**UNIT:** For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

**FEDERAL/STATE LAW:** Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

**CONTRACTOR MANUAL:** Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act. NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

**SUPPLANTING OTHER FEDERAL FUNDS:** The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.



**REVISIONS TO GENERAL PROVISIONS**

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:
  4. **CONDITIONAL NATURE OF AGREEMENT.**  
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.
2. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language:
  - 10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.
  - 10.2 In the event of early termination, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.
  - 10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.
  - 10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.
  - 10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.



**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
    - 1.2.1. The dangers of drug abuse in the workplace;
    - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
    - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
    - 1.4.1. Abide by the terms of the statement; and
    - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency

**Appendix B**  
**New Hampshire Department of Health and Human Services**  
**Exhibit D**



- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
    - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check ☐ if there are workplaces on file that are not identified here.

Contractor Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



**CERTIFICATION REGARDING LOBBYING**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

Programs (indicate applicable program covered):

- \*Temporary Assistance to Needy Families under Title IV-A
- \*Child Support Enforcement Program under Title IV-D
- \*Social Services Block Grant Program under Title XX
- \*Medicaid Program under Title XIX
- \*Community Services Block Grant under Title VI
- \*Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-I.)
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor Name: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION**  
**AND OTHER RESPONSIBILITY MATTERS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and





information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

#### PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; and
  - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

#### LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
- 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Contractor Name: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Contractor Initials \_\_\_\_\_

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations  
and Whistleblower protections

**Appendix B**  
**New Hampshire Department of Health and Human Services**  
**Exhibit G**



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

Exhibit G

Contractor Initials \_\_\_\_\_

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations  
and Whistleblower protections

Date \_\_\_\_\_



**CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Contractor Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



Exhibit I

**HEALTH INSURANCE PORTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**(1) Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



Exhibit I

- I. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) **Business Associate Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business





Exhibit I

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI



Exhibit I

- pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.
- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
  - g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
  - h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
  - i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
  - j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
  - k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
  - l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



Exhibit I

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit I

- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

\_\_\_\_\_  
The State

\_\_\_\_\_  
Name of the Contractor

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY  
ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
  - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: \_\_\_\_\_
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

\_\_\_\_\_ NO                      \_\_\_\_\_ YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

\_\_\_\_\_ NO                      \_\_\_\_\_ YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____

## APPENDIX C

### Addendum to CLAS Section of RFA for Purpose of Documenting Title VI Compliance

**All DHHS applicants are required to complete the following two (2) steps as part of their application:**

- (1) Perform an individualized organizational assessment, using the four-factor analysis, to determine the extent of language assistance to provide for programs, services and/or activities; and;
- (2) Taking into account the outcome of the four-factor analysis, respond to the questions below.

#### **Background:**

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program that receives Federal financial assistance. The courts have held that national origin discrimination includes discrimination on the basis of limited English proficiency. Any organization or individual that receives Federal financial assistance, through either a grant, contract, or subcontract is a covered entity under Title VI. Examples of covered entities include the NH Department of Health and Human Services and its contractors.

Covered entities are required to take reasonable steps to ensure **meaningful access** by persons with limited English proficiency (LEP) to their programs and activities. LEP persons are those with a limited ability to speak, read, write or understand English.

The **key** to ensuring meaningful access by LEP persons is effective communication. An agency or provider can ensure effective communication by developing and implementing a language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP clients/applicants, and that provides for an array of language assistance options, notice to LEP persons of the right to receive language assistance free of charge, training of staff, periodic monitoring of the program, and translation of certain written materials.

The Office for Civil Rights (OCR) is the federal agency responsible for enforcing Title VI. OCR recognizes that covered entities vary in size, the number of LEP clients needing assistance, and the nature of the services provided. Accordingly, covered entities have some flexibility in how they address the needs of their LEP clients. (In other words, it is understood that one size language assistance program does not fit all covered entities.)

The **starting point** for covered entities to determine the extent of their obligation to provide LEP services is to apply a four-factor analysis to their organization. It is important to understand that the flexibility afforded in addressing the needs of LEP clients **does not diminish** the obligation covered entities have to address those needs.



## APPENDIX C

Examples of practices that may violate Title VI include:

- Limiting participation in a program or activity due to a person's limited English proficiency;
- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons (such as then there is no qualified interpretation provided);
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter;
- Subjecting LEP persons to unreasonable delays in the delivery of services.

### **Applicant STEP #1 – Individualized Assessment Using Four-Factor Analysis**

The four-factor analysis helps an organization determine the right mix of services to provide to their LEP clients. The right mix of services is based upon an individualized assessment, involving the balancing of the following four factors.

- (1) The **number** or proportion of LEP persons served or likely to be encountered in the population that is eligible for the program;
- (2) The **frequency** with which LEP individuals come in contact with the program, activity or service;
- (3) The **importance** or impact of the contact upon the lives of the person(s) served by the program, activity or service;
- (4) The **resources** available to the organization to provide effective language assistance.

This addendum was created to facilitate an applicant's application of the four-factor analysis to the services they provide. At this stage, applicants are not required to submit their four-factor analysis as part of their application. **However, successful applicants will be required to submit a detailed description of the language assistance services they will provide to LEP persons to ensure meaningful access to their programs and/or services, within 10 days of the date the contract is approved by Governor and Council.** For further guidance, please see the Bidder's Reference for Completing the Culturally and Linguistically Appropriate Services (CLAS) Section of the RFA, which is available in the Vendor/RFP Section of the DHHS website.

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### Important Items to Consider When Evaluating the Four Factors.

#### **Factor #1 The number or proportion of LEP persons served or encountered in the population that is eligible for the program.**

##### Considerations:

- The eligible population is specific to the program, activity or service. It includes LEP persons serviced by the program, as well as those directly affected by the program, activity or service.
- Organizations are required not only to examine data on LEP persons served by their program, but also those in the community who are **eligible** for the program (but who are not currently served or participating in the program due to existing language barriers).
- Relevant data sources may include information collected by program staff, as well as external data, such as the latest Census Reports.
- Recipients are required to apply this analysis to each language in the service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact. It is also important to consider language minority populations that are eligible for the programs or services, but are not currently served or participating in the program, due to existing language barriers.
- An effective means of determining the number of LEP persons served is to record the preferred languages of people who have day-to-day contact with the program.
- It is important to remember that the **focus** of the analysis is on the lack of English proficiency, not the ability to speak more than one language.

#### **Factor #2: The frequency with which LEP individuals come in contact with the program, activity or service.**

- The more frequently a recipient entity has contact with individuals in a particular language group, the more likely that language assistance in that language is needed. For example, the steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different from those that are expected from a recipient that serves LEP persons daily.
- Even recipients that serve people from a particular language group infrequently or on an unpredictable basis should use this four-factor analysis to determine what to do if an LEP person seeks services from their program.
- The resulting plan may be as simple as being prepared to use a telephone interpreter service.
- The key is to have a plan in place.

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<b>Factor #3 The importance or impact of the contact upon the lives of the person(s) served by the program, activity or service.</b>
<ul style="list-style-type: none"><li>• The more important a recipient's activity, program or service, or the greater the possible consequence of the contact to the LEP persons, the more likely language services are needed.</li><li>• When considering this factor, the recipient should determine both the importance, as well as the urgency of the service. For example, if the communication is both important and urgent (such as the need to communicate information about an emergency medical procedure), it is more likely that immediate language services are required. If the information to be communicated is important but not urgent (such as the need to communicate information about elective surgery, where delay will not have any adverse impact on the patient's health), it is likely that language services are required, but that such services can be delayed for a reasonable length of time.</li></ul>
<b>Factor #4 The resources available to the organization to provide effective language assistance.</b>
<ul style="list-style-type: none"><li>• A recipient's level of resources and the costs of providing language assistance services is another factor to consider in the analysis.</li><li>• Remember, however, that cost is merely one factor in the analysis. Level of resources and costs do not diminish the requirement to address the need, however they may be considered in determining how the need is addressed;</li><li>• Resources and cost issues can often be reduced, for example, by sharing language assistance materials and services among recipients. Therefore, recipients should carefully explore the most cost-effective means of delivering quality language services prior to limiting services due to resource limitations.</li></ul>

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### **Applicant STEP #2 - Required Questions Relating to Language Assistance Measures**

Taking into account the four-factor analysis, please answer the following questions in the six areas of the table below. (**Do not** attempt to answer the questions until you have completed the four-factor analysis.) The Department understands that your responses will depend on the outcome of the four-factor analysis. The requirement to provide language assistance does not vary, but the measures taken to provide the assistance will necessarily differ from organization to organization.

<b>1. IDENTIFICATION OF LEP PERSONS SERVED OR LIKELY TO BE ENCOUNTERED IN YOUR PROGRAM</b>		
<b>a. Do you make an effort to identify LEP persons served in your program?</b> (One way to identify LEP persons served in your program is to collect data on ethnicity, race, and/or preferred language.)	Yes	No
<b>b. Do you make an effort to identify LEP persons likely to be encountered in the population eligible for your program or service?</b> (One way to identify LEP persons likely to be encountered is by examining external data sources, such as Census data)	Yes	No
<b>c. Does you make an effort to use data to identify new and emerging population or community needs?</b>	Yes	No
<b>2. NOTICE OF AVAILABILITY OF LANGUAGE ASSISTANCE</b>		
<b>Do you inform all applicants / clients of their right to receive language / communication assistance services at no cost?</b> (Or, do you have procedures in place to notify LEP applicants / clients of their right to receive assistance, if needed?) <u>Example:</u> One way to notify clients about the availability of language assistance is through the use of an "I Speak" card.	Yes	No
<b>3. STAFF TRAINING</b>		
<b>Do you provide training to personnel at all levels of your organization on federal civil rights laws compliance and the procedures for providing language assistance to LEP persons, if needed?</b>	Yes	No
<b>4. PROVISION OF LANGUAGE ASSISTANCE</b>		
<b>Do you provide language assistance to LEP persons, free of charge, in a timely manner?</b> (Or, do you have procedures in place to provide language	Yes	No

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<b>assistance to LEP persons, if needed)</b> In general, covered entities are required to provide two types of language assistance: (1) oral interpretation and (2) translation of written materials. Oral interpretation may be carried out by contracted in-person or remote interpreters, and/or bi-lingual staff. <u>(Examples</u> of written materials you may need to translate include vital documents such as consent forms and statements of rights.)		
<b>5. ENSURING COMPETENCY OF INTERPRETERS USED IN PROGRAM AND THE ACCURACY OF TRANSLATED MATERIALS</b>		
<b>a. Do you make effort to assess the language fluency of all interpreters used in your program to determine their level of competence in their specific field of service?</b> (Note: A way to fulfill this requirement is to use certified interpreters only.)	Yes	No
<b>b. As a general rule, does your organization avoid the use of family members, friends, and other untested individual to provide interpretation services?</b>	Yes	No
<b>c. Does your organization have a policy and procedure in place to handle client requests to use a family member, friend, or other untested individual to provide interpretation services?</b>	Yes	No
<b>d. Do you make an effort to verify the accuracy of any translated materials used in your program (or use only professionally certified translators)?</b> (Note: Depending on the outcome of the four-factor analysis, N/A (Not applicable) may be an acceptable response to this question.	Yes	No
<b>6. MONITORING OF SERVICES PROVIDED</b>		
Does you make an effort to periodically evaluate the effectiveness of any language assistance services provided, and make modifications, as needed?	Yes	No
If there is a designated staff member who carries out the evaluation function? If so, please provide the person's title: <hr style="border: 0; border-top: 1px solid black; margin-top: 10px;"/>	Yes	No

By signing and submitting this attachment to RFA# \_\_\_\_\_, the Contractor affirms that it:

- 1.) Has completed the four-factor analysis as part of the process for creating its proposal, in response to the above referenced RFA.

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- 2.) Understands that Title VI of the Civil Rights Act of 1964 requires the Contractor to take reasonable steps to ensure meaningful access to ***all*** LEP persons to all programs, services, and/or activities offered by my organization.
- 3.) Understands that, if selected, the Contractor will be required to submit a detailed description of the language assistance services it will provide to LEP persons to ensure meaningful access to programs and/or services, within 10 days of the date the contract is approved by Governor and Council.

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Contractor/Vendor Signature

Contractor's Representative Name/Title

---

Contractor Name

Date



## Scope of Services

### 1. Provisions Applicable to All Services

The Contractor shall provide services to assist eligible individuals to enable them to live as independently as possible in safety and with dignity.

- 1.1. The Contractor shall submit a detailed description of the language assistance services they will provide to persons with limited English proficiency to ensure meaningful access to their programs and/or services within ten (10) days of the contract effective date.
- 1.2. The Contractor agrees that, to the extent future legislative action by the New Hampshire General Court or federal or state court orders may have an impact on the Services described herein, the Department has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith.
- 1.3. The services in this contract shall be for individuals who are not already receiving the same or similar services through one of the Department's Medicaid Waiver Programs, who are eligible for other New Hampshire Medicaid services, or who are receiving the same or similar services through the Veterans' Administration.
- 1.4. Services are for individuals who reside in independent living settings and who meet the eligibility criteria as follows:
  - 1.4.1. Title III  
Individuals who are age 60 or older and with the most economic or social needs as described in:
    - Older Americans Act of 1965, as amended through P.L. 114-144, Enacted April 19, 2016.
    - Title III Older Americans Act Services: NH Administrative Rule He-E 502.
- 1.5. The Contractor shall provide services to eligible individuals statewide.
- 1.6. The Contractor shall report suspected abuse, neglect, self-neglect, and/or exploitation of incapacitated adults as required by RSA 161-F: 46 (the New Hampshire Adult Protection law). The Contractor shall:
  - 1.6.1. Make a good faith effort to assure the provision of some level of services to those persons who the Department refers to the Contractor and identifies the client in need of protective services.
  - 1.6.2. Inform the referring APS staff of any changes in the individual's situation or other concerns.
- 1.7. The Contractor shall use BEAS' E-Studio electronic information system which is BEAS' primary vehicle for uploading important information concerning time-sensitive announcements, policy releases, administrative rule adoptions, and other critical information. The Contractor shall:





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- 1.7.1. Identify all of the key personnel who need to have E-Studio accounts to ensure that information from BEAS can be shared with the necessary agency staff, at no cost to the Contractor.
- 1.7.2. Ensure that E-Studio account(s) are kept current and that BEAS is notified when a staff member is no longer working in the program so his/her account can be terminated.

**1.8.** The Contractor shall ensure all staff and volunteers:

- 1.8.1. Complete a BEAS State Registry check before the staff member or volunteer begins providing direct services to clients
- 1.8.2. Undergo a New Hampshire Criminal Records Background check.

**1.9.** The Contractor shall conduct a New Hampshire criminal background check if a potential applicant for employment or volunteer, funded under this Contract, may have client contact.

**1.10.** Contractors licensed, certified or funded by the Department shall meet the requirements of RSA 161-F:49 which requires the submission of the name of a prospective employee who may have client contact, for review against the BEAS State Registry.

## **2. Scope of Work**

### **2.1. Service Eligibility**

- 2.1.1. The Contractor shall provide Personal Emergency Response Systems (PERS), which include, but are not limited to, devices/technology used to summon emergency assistance. PERS are available to eligible individuals who:
  - 2.1.1.1. Live alone,
  - 2.1.1.2. Are alone for more than four hours each day, or
  - 2.1.1.3. Live with an individual who is in poor health or at risk of having a medical emergency.

### **2.2. Service Assistance**

- 2.2.1. The Contractor shall assist the individual with setting up the system in his/her home; which includes, but is not limited to:
  - 2.2.1.1. Providing the necessary training to the individual to operate the system.
  - 2.2.1.2. Providing 24/7 monitoring services that provides immediate assistance to the individual by summoning for appropriate help.

### **2.3. Access to Services**

- 2.3.1. The Contractor shall ensure individuals can access the services directly or by referral through the Adult Protection Program (APS). The Contractor shall:
  - 2.3.1.1. Determine eligibility for individuals who submit direct applications for services in accordance with the rules and requirements of the Title III Program. The Contractor shall:



- 2.3.1.1.1. Determine the eligibility of the individual.
- 2.3.1.1.2. Provide written notice of eligibility within 45 days from the date eligibility was determined.
- 2.3.1.1.3. Indicate the services to be provided and the frequency of the services.
- 2.3.1.1.4. Indicate the beginning and end dates for the individual's period of eligibility.
- 2.3.1.2. Complete the individual's application, eligibility, authorizations, assessments, and person centered provision services in accordance with Section 4.2 through 4.5 of this Appendix D when information is received through an APS referral.

## **2.4. Client Application/Request for Services**

The Contractor shall review requests for services and determine eligibility pursuant to NH Administrative Rule He-E 502 (Title III).

## **2.5. Client Eligibility**

### **2.5.1. Eligibility Determination**

- 2.5.1.1. The Contractor shall submit its policies and procedures for eligibility determination for services to the Department for review and approval, within 30 days of the Contract effective date.
- 2.5.1.2. If the individual is determined ineligible for service(s), the Contractor shall issue a notice which shall include:
  - 2.5.1.2.1. The reason(s) for the denial;
  - 2.5.1.2.2. A statement regarding the right of the individual or his or her authorized representative to request an informal resolution or appeal of the eligibility determination decision.
  - 2.5.1.2.3. Information needed for requesting an appeal.

### **2.5.2. Redetermination of Service Eligibility.**

The Contractor shall submit its policies and procedures for eligibility redetermination for services to the Department for review and approval, within 30 days of start of the Contract effective date.

### **2.5.3. Termination of Services.**

- 2.5.3.1. The Contractor shall terminate an individual's services when:
  - 2.5.3.1.1. The individual or his or her authorized representative requests that the services be terminated;
  - 2.5.3.1.2. The individual no longer meets the eligibility requirements for services;
  - 2.5.3.1.3. Funding by the Department for the service(s) is no longer available;
  - 2.5.3.1.4. The individual did not reapply for services as required by program rules;



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2.5.3.1.5. The individual has been admitted to a nursing home or residential care facility; or

2.5.3.1.6. The individual is deceased.

**2.5.4. Service Authorizations for Eligible Individuals.**

Once an individual has been determined eligible to receive services, the Contractor shall obtain a service authorization from the Department in order to be reimbursed under this Contract for allowable costs in providing services to that individual.

2.5.4.1. The Contractor shall submit a completed Form 3502 "Contract Service Authorization-New Authorization" for each individual who has been determined eligible to receive services. More than one service may be included on a Form 3502. The completed Form 3502 shall be submitted to:

Bureau of Data Management  
129 Pleasant Street  
Concord, NH 03301

**2.6. Client Assessments**

The Contractor shall assess the individual's needs and develop written service plans, keep written progress notes, and monitor and adjust service plans to meet the individual's needs in accordance with NH Administrative Rule He-E 502.

**2.7. Person Centered Provision of Services**

The Contractor shall incorporate into its agency's functions, policies, staff-client interactions and in the provision of all services in this Agreement the following Guiding Principles for Person-Centered Planning Philosophy:

2.7.1. Individuals and families are invited, welcomed, and supported as full participants in service planning and decision-making.

2.7.1.1. Individual's wishes, values, and beliefs are considered and respected.

2.7.1.2. Individual is listened to; needs and concerns are addressed.

2.7.1.3. Individual receives the information he or she needs to make informed decisions.

2.7.2. Planning is responsive to the individual. His or her preferences drive the planning process, though the decision making process may need to be accelerated to respond to emergencies.

2.7.3. Services are designed, scheduled, and delivered to best meet the needs and preferences of the individual.

2.7.4. The system is committed to excellence and quality improvement:

2.7.5. Individual rights are affirmed and protected.

2.7.6. Individuals are protected from exploitation, abuse, and neglect.

2.7.7. The service system is accessible, responsive, and accountable to the individual.



- 2.7.8. Person-centered planning may be incorporated into existing service plans or documents already being used by the Contractor.

## **2.8. Staffing**

The Contractor shall adhere to the following staffing requirements:

- 2.8.1. Provide sufficient staff to perform all tasks specified in this Agreement. The Contractor shall maintain a level of staffing necessary to perform and carry out all of the functions, requirements, roles, and duties in a timely fashion for the number of individuals and geographic area, as identified in this Agreement.
- 2.8.2. The Contractor shall verify and document that all staff and volunteers have appropriate training, education, experience, and orientation to fulfill the responsibilities of their respective positions. This includes keeping up-to-date personnel and training records and documentation of all individuals requiring licenses and/or certifications. The Contractor shall develop a Staffing Contingency Plan and shall submit its written Staffing Contingency Plan to the Department within thirty (30) days of approval of the Contract Agreement. The plan shall include but not be limited to:
- 2.8.3. The process for replacement of personnel in the event of loss of key personnel or other personnel during the period of this Agreement;
- 2.8.4. A description of how additional staff resources will be allocated to support this Agreement in the event of inability to meet any performance standard;
- 2.8.5. A description of time frames necessary for obtaining staff replacements;
- 2.8.6. An explanation of the Contractor's capabilities to provide, in a timely manner, staff replacements/additions with comparable experience; and
- 2.8.7. The method of bringing staff replacements/additions up-to-date regarding this Agreement.

## **3. Performance Measures**

### **3.1. Eligibility**

- 3.1.1. The number of applications/service requests received and
- 3.1.1.1. The number and percentage of applicants found eligible for each service; and
- 3.1.1.2. The number and percentage of applicants found ineligible for each service.

### **3.2. Quality and Appropriateness**

- 3.2.1. Plans of Care: the number and percent of individuals' plans of care where the plans contain evidence of person-centered planning;
- 3.2.1.1. The number and percentage of individuals who have experienced a safety-related incident or accident which occurs during times of face-to-face contact with the client(s);
- 3.2.1.2. The number and percentage of individuals for whom a report to Adult Protection Services was made.



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- 3.2.2. Experience: The number and percentage of individuals surveyed (via telephone, mail, e-mail, or face-to-face) who report their experiences with their services and providers have been satisfactory or better.
- 3.2.3. The Contractor shall indicate the reasons why:
  - 3.2.3.1. For home delivered meals, applicants' plans of care did not include evidence of person-centered planning;
  - 3.2.3.2. Applicants experienced safety-related incidents which occurs during times of face-to-face contact with the client(s);
  - 3.2.3.3. Applicants were referred to Adult Protection Services; and
  - 3.2.3.4. The number and percentage of individuals surveyed who reported their experiences with their services and providers were not satisfactory or better.
- 3.2.4. The Contractor shall describe the quality improvement activity(ies) to be initiated to address identified concerns about the quality and appropriateness of care.
- 3.2.5. The Contractor shall survey a sample of participants for each contracted service and provide their survey methodology, in writing, to the Bureau of Elderly and Adult Services (BEAS).

### **3.3. Service Delivery**

- 3.3.1. The number of open cases at the end of each reporting period, and
  - 3.3.1.1. The number and percentage of days individuals did not receive a planned service(s) due to the service(s) not being available due to inadequate staffing or other related provider issue or due to lack of transportation, etc.
- 3.3.2. The Contractor shall indicate the reasons applicants did not receive their planned services.
- 3.3.3. The Contractor shall describe the quality improvement activity(ies) to be initiated to address identified concerns about service delivery.

## **4. Reporting Requirements**

### **4.1. Quarterly Reports**

- 4.1.1. Contractor shall complete quarterly reports which shall be in a pre-defined electronic form supplied by the Department. The report must be submitted by the 15<sup>th</sup> of the month following each quarter end. The data shall include, but not be limited to, the following:
  - 4.1.1.1. Expenses by program service provided. Service is defined as Personal Emergency Response System;
  - 4.1.1.2. Revenue, by program service provided, by funding source;
  - 4.1.1.3. Actual Units served, by program service provided, by funding source;
  - 4.1.1.4. Number of unduplicated clients served, by service provided, by funding source;



- 4.1.1.5. Number of Title III clients served with non-BEAS funds;
- 4.1.1.6. Unmet need/waiting list; and
- 4.1.1.7. Lengths of time clients are on a waiting list.

#### **4.2. Personal Emergency Response Services Form**

- 4.2.1. The Contractor shall complete the Personal Emergency Response Services Form two (2) times per year. This form will be due March 31, 2017, September 30, 2017, March 31, 2018, and September 30, 2018. The form will be a pre-defined electronic form supplied by the Department. The data shall include, but not be limited to, the following:
  - 4.2.1.1. The number of clients served by city or town.

#### **4.3. Client Fees and Donations**

##### **4.3.1. Title III Services**

Except as provided in paragraph 7.9.3, NH Administrative Rule He-E 502.12 allows Title III Contractors to ask individuals receiving services for a voluntary donation towards the cost of the service and provides guidance for requesting donations. The donation is to be purely voluntary, and no one can be refused services if they are unable or unwilling to donate.

The Contractor is required to report the total amount of collected donations on the quarterly report sent to BEAS Finance.

##### **4.3.2. Adult Protection Services**

Under RSA 161-F:42 et seq. BEAS provides protective services to incapacitated adults to prevent and/or ameliorate neglect, abuse or exploitation. When BEAS determines that an individual needs protective services as described in the Adult Protection Program NH Administrative Rule He-E 700, the Contractor agrees that the payment received from BEAS for the specified services is payment in full for those services, and the provider agrees to refrain from making any attempt to secure additional reimbursement of any type from the individual for those services. The Contractor shall make a good faith effort to assure the provision of some level of services to those persons in need of protective services.

- 4.3.3. Agencies providing Title III services may not charge fees or ask donations from individuals referred by the DHHS Adult Protection Services (APS) Program as long as these individuals remain active recipients of adult protective services as verified by Adult Protection Services staff.

#### **4.4. Grievance and Appeals**

- 4.4.1. The Contractor shall maintain a system for tracking, resolving, and reporting client complaints regarding its services, processes, procedures, and staff. The Contractor shall have a grievance system in place that includes a grievance process and any grievances filed are to be available to DHHS upon request. At a minimum the process shall include the following:
  - 4.4.1.1. Client name,





- 4.4.1.2. Type of service,
- 4.4.1.3. Date of written grievance,
- 4.4.1.4. Nature/subject of the grievance,
- 4.4.1.5. Who in the agency reconsiders agency decisions,
- 4.4.1.6. What the issues are that can be addressed in the grievance process, and
- 4.4.1.7. How consumers are informed of their right to appeal or file grievances.

#### **4.5. Privacy and Security of Client Information**

The Department is the designated owner of all data and shall approve all access to that data. The Contractor shall not have ownership of State data at any time. The Contractor shall be in compliance with privacy policies established by governmental agencies or by state or federal law. Privacy policy statements may be developed and amended from time to time by the State and will be appropriately displayed on the State portal. The Contractor shall provide sufficient security to protect the State and DHHS data in network, transit, storage and cache. In the event of breach, the Contractor shall notify the Department within one day from the date of breach.

#### **4.6. Wait Lists**

- 4.6.1. All services covered by this contract shall be provided to the extent that funds, staff and/or resources for this purpose are available. The Contractor shall maintain a wait list in accordance with the NH Administrative Rules He-E 501 and 502 when funding or resources are not available to provide the requested services. A wait list includes at a minimum:
  - 4.6.1.1. The Contractor shall include the following information on its wait list:
    - 4.6.1.1.1. The individual's full name and date of birth;
    - 4.6.1.1.2. The name of the service being requested;
    - 4.6.1.1.3. The date upon which the individual applied for services which shall be the date the application was received by the Contractor or BEAS;
    - 4.6.1.1.4. The target date of implementing the services based on the communication between the individual and the BEAS/Contractor;
    - 4.6.1.1.5. The date upon which the individual's name was placed on the wait list shall be the date of the notice of decision in which the individual was determined eligible for Title XX services;
    - 4.6.1.1.6. The individual's assigned priority on the wait list, determined in accordance with (b) below;
    - 4.6.1.1.7. A brief description of the individual's circumstances and the services he or she needs.
  - 4.6.1.2. The Contractor shall prioritize each individual's standing on the list by determining the individual's urgency of need in the following order:
    - 4.6.1.2.1. Individual is in an institutional setting or is at risk of being admitted to or discharged from an institutional setting;





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- 4.6.1.2.2. Declining mental or physical health of the caregiver;
- 4.6.1.2.3. Declining mental or physical health of the individual;
- 4.6.1.2.4. Individual has no respite services while living with a caregiver; and
- 4.6.1.2.5. Length of time on the wait list.
- 4.6.1.2.6. When 2 or more individuals on the wait list have been assigned the same service priority, the individual served first will be the one with the earliest application date.
- 4.6.1.2.7. Individuals who are being served under protective services RSA 161-F:42-57 shall be given priority status on the waitlist and in accordance with He-E 501.14 (f) and He-E 502.13.
- 4.6.1.2.8. Individuals with adult protective needs in accordance with RSA 161-F:42-57 shall be exempt from the wait list.
- 4.6.1.3. When an individual is placed on the wait list, the Contractor shall notify the individual in writing
- 4.6.1.4. The wait list must be maintained during the Contract period and available to BEAS upon request.

#### **4.7. Transition Process**

The Contractor shall have a transition process for clients in the event that they maybe transitioned between Department-contracted providers and shall submit their written transition process to the Department within thirty (30) days of approval of the Contract Agreement. The process shall ensure:

- a) Uninterrupted delivery of services for clients;
- b) A method of notifying clients and/or the community about the transition. A staff member shall be available to address questions about the transition.