

**REQUEST FOR PROPOSALS  
(RFP)**

**ISSUE DATE:** March 5, 2007

**TITLE:** Health Promotion Program Services  
Number OHB07-1

**ISSUING AGENCY:** Commonwealth of Virginia  
Department of Human Resource Management  
James Monroe Building, 13th Floor  
101 North 14th Street  
Richmond, Virginia 23219

**PERIOD OF CONTRACT:** From July 1, 2007 through June 30, 2010, with three one-year renewal options.

Sealed proposals for furnishing services described herein will be received subject to the conditions cited herein until 2:00 p.m., Thursday March 29, 2007

All inquiries must be In writing and should be directed to:  
Mr. William G. Gregory  
Department of Human Resource Management  
James Monroe Building, 13th Floor  
101 North 14th Street  
Richmond, Virginia 23219  
Fax Number: 804-225-2790  
bill.gregory@dhrm.virginia.gov

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

**Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 11-35.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

In compliance with this Request for Proposals, and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish materials and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

_____	Date: _____
_____	By: _____
_____	(PRINTED NAME)
_____	_____
_____	(SIGNATURE IN INK)
_____ Zip Code: _____	Title: _____
Fax Number: ( ) _____	Telephone: ( ) _____

**PRE-PROPOSAL CONFERENCE:** AN OPTIONAL pre-proposal conference will be held at 10:00 a.m. on March 15, 2007, at the James Monroe Building. Reference Paragraph 4.9

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## 1.0 PURPOSE

The purpose of this RFP is to solicit proposals for the design, implementation, monitoring and evaluation of health promotion programs and services. The Commonwealth of Virginia Department of Human Resource Management(the Department) wishes to continue to offer health promotion programs to employees, their dependents, and retirees of the Commonwealth through their respective agencies. The Department also offers health promotion programs to enrollees of The Local Choice (TLC) program provided to member localities. These programs are designed to educate and encourage positive health practices as a way of controlling costs in the Commonwealth's employee health benefits programs, and to improve the efficiency and overall health of the respective work forces. The Department seeks a single contractor to provide these services to both groups of enrollees.

## 2.0 BACKGROUND

- 2.1 A pilot wellness program was demonstrated in a State agency in Richmond, Virginia in 1985 and 1986. The pilot program expanded into a statewide program beginning in 1987. Beginning July 1, 1996, a wellness program was offered to TLC member groups with the goal of expanding the services offered over future years. The current contract expires June 30, 2007.
- 2.2 State government services are provided through more than 250 state agencies. Each agency has a high degree of independence in managing its affairs. The degree of participation in and support for health promotion activities depends, in part, on the commitment of the management of each individual agency to health promotion.
- 2.3 TLC program, established effective July 1, 1990 by an Act of the General assembly, has over 200 groups distributed throughout the state. (See Attachment Five for a current listing of member groups) As with the state agencies, the level of each group's participation is determined by local management's commitment to health promotion activities.
- 2.4 The current health promotion program is known as CommonHealth. There are two primary ways that employees participate in the current program: (1) by participating in various health promotion programs and interventions, and (2) reading educational materials.
- 2.5 Educational materials are distributed to all state agencies and TLC member groups which, in turn, distribute the materials to their employees.
- 2.6 Currently, over 200 state agencies, located across the state, participate in the CommonHealth program. Participating state agencies must provide a CommonHealth coordinator in order to offer activities (that is, wellness and health promotion interventions) to their employees. The CommonHealth coordinator is a staff person who is responsible for coordinating the CommonHealth program within the agency. The agency coordinator is responsible for such functions as serving as a liaison with agency management and employees, providing logistical support, scheduling program activities, and providing assistance in gathering evaluation data. Coordinators are trained in their tasks by the contractor at a 1 1/2 day training session. To date, there are over 400

locations (that is, agencies or agency sites) in which employees participate in CommonHealth activities. An outline of the current training module is enclosed as Exhibit E.

The 200+ member TLC groups vary in size from 2 enrollees to over 2000 enrollees and are located in all areas of the state, although primarily in rural locations. The delivery and coordination of a wellness program serving such a widespread customer base makes for a different challenge from that of the state employee group. The Department will look to the successful offeror to provide a short and long-term plan for continued development and expansion of the program to localities.

- 2.7 Agencies that implement the intervention module start with a health risk appraisal and medical screening. The medical screening, fasting or non-fasting, currently includes height, weight, blood pressure, total cholesterol, high density lipoprotein (HDL), blood glucose, and occult blood. Interventions include a variety of programs on smoking cessation, stress management, nutrition, weight loss, healthy back, seven (7) types of fitness programs, self-care/medical consumerism, fitness assessments, CPR classes, hypertension program, cancer prevention, office ergonomics, cholesterol lowering, glaucoma testing, etc., and many “brown bag” seminars and health promotion challenges. Interventions offered at a specific site are tailored to needs of the participants at the site.

TLC groups implement the intervention model in the same manner as the state agencies with only slight modifications in the medical screening process to allow for more efficient delivery to the widespread groups. The Department will closely review each offeror’s program design and plans for delivery to the TLC participants.

- 2.8 Interventions have been supplied directly by the contractor and under arrangements with a subcontractor.
- 2.9 Evaluation data, by Agency, is collected by the contractor to evaluate the effectiveness of each intervention. This data includes program activity/attendance, before/after medical data (individually and groups), high risk group tracking and individual program evaluations by participants. In addition, many interventions and health promotion challenges have before and after assessments to determine behavior change. The success of weight loss, prenatal, smoking cessation programs and challenges are also tracked for results. All data, by Agency, is to be reported on a quarterly basis to DHRM within 30 days after the quarter ends.
- 2.10 **The Department, invites offerors to propose alternative program designs with quantifiable results, different types of educational materials, different types of interventions and any other suggestions for improvements.**

2.11 Policy Regarding Participation of Small, Women, and Minority Owned Businesses

2.11.1 It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships,

joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. **Failure to provide information required by this RFP will ultimately result in rejection of the proposal.**

- 2.11.2 All information requested by this RFP on the ownership, utilization, and planned involvement of small businesses, women owned businesses, and minority owned businesses must be submitted. If an offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after the receipt of vendor proposals.

### 3.0 TASKS

- 3.1 Develop health promotion plans and deliver health promotion services for the State employee group and for the TLC program. Each plan must include a schedule of interventions and a guaranteed price per intervention with its own budget. The plans should be based on spending up to \$4.0 million per year for the state employee group, and approximately 25% of this amount for the TLC program. The plan must permit substitution of interventions from the list of available interventions within the limitation of the overall budget. New programs may be added during the term of the contract within the limits of the overall budget, subject to the prior approval of the Department. Programs may not be withdrawn or materially modified without the prior approval of the Department. The overall contractor's budgets and plans must provide for all services and supervision, including all of the tasks identified in this section.
- 3.2 Develop a pre-natal health promotion program and deliver health promotion services for the State employee group and for the TLC program targeting at-risk pregnancies in an effort to prevent premature deliveries.
- 3.3 For each program, state employees and TLC, provide or arrange for the provision of educational materials and interventions, as required or agreed to by the Department, at sites throughout the State. This task includes all design, typeset, printing, overprinting and distribution costs. No additional costs shall be billed outside of this contract.
- 3.4 Provide training and retraining of CommonHealth coordinators for both the State and TLC programs.
- 3.5 Supervise the delivery of health promotion services.
- 3.6 Report health promotion activities, gather evaluation data and prepare quarterly and annual evaluation reports.
- 3.7 Provide real-time tracking of individual, program and agency participation. All data, by Agency, is to be reported on a quarterly basis to DHRM within 30 days after the quarter ends.
- 3.8 Notwithstanding paragraph 2.10, The Department is interested in reviewing proposals to furnish preventive measures of proven effectiveness, for example, immunizations and

screening tests. Comprehensive case management services for specific conditions (such as cancer and diabetes) are not solicited by this RFP.

#### 4.0 PROCUREMENT PROCEDURES

##### 4.1 METHOD OF AWARD

1. The Department shall select two or more offerors deemed to be fully qualified and best suited among those offerors submitting proposals. The selection of offerors will be based on the evaluation factors including price, included in this RFP. Negotiations shall be conducted with the selected offerors, unless the Department has made a determination in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration. Price shall be considered when selecting finalists for negotiation, but shall not be the sole determining factor.
2. After negotiations have been conducted with each selected offeror, the Department shall select the offeror which, in its opinion, has made the best proposal. The Department shall award the contract to that offeror. The Department may cancel this RFP, or reject proposals at any time prior to an award. The Department is not required to furnish a statement of the reason why a particular offeror was not deemed to have made the best proposal (Section 2.2-4359, Code of Virginia).
3. Should the Department determine in writing, and in its sole discretion, that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The contract will incorporate by reference all the requirements, terms and conditions of this RFP and the contractor's proposal, except as either or both may be amended through negotiation.

##### 4.2 SUBMISSION OF WRITTEN PROPOSALS

1. All proposals must be responsive to both the task descriptions and contractual requirements contained herein. Proposals which are deemed to be non-responsive may not be considered. Proposals must be typed. An original and six copies shall be delivered in a sealed box, and **labeled as a proposal**, with the words "**Do Not Open**" prominently displayed on the box. Proposals must be received no later than 2:00 p.m., as determined by the Department in its sole discretion, on Thursday March 29, 2007, by:

William G. Gregory  
Department of Human Resource Management  
James Monroe Building, 13th Floor  
101 North 14th Street  
Richmond, Virginia 23219

2. If the offeror wishes to protect trade secrets or proprietary information contained in the proposal, a note must be included on the first page of the proposal specifically stating which data or other material should not be subject to public

disclosure and stating in detail the reason or basis on which such claim is made. The offeror must note the page(s) on which the information appears.

In accordance with Section 2.2-4342 of the Code of Virginia, the offeror must state the reason why protection of the information is necessary. Every page so protected must be marked, "Confidential". The Department, in its sole discretion, may not consider proposals with unduly broad requests for protection against disclosure.

#### 4.3 MODIFICATION OF PROPOSALS

Any changes, amendments or modifications of an offeror's proposal prior to the deadline for receipt of proposals must be in writing and submitted in the same manner as the original proposals. All modifications must be labeled conspicuously as a change, amendment, or modification of the previously submitted proposal. Changes, amendments, or modifications of proposals will not be considered after the deadline for receipt of proposals, except when modifications are requested by the Department.

#### 4.4 RIGHT TO SUBMITTED MATERIALS

Upon submission to the Department, all responses, inquiries, or correspondence relating to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the Department.

#### 4.5 INQUIRIES CONCERNING THE RFP

Any communication concerning this RFP or any resulting contracts must be addressed **in writing** to:

Mr. William G. Gregory  
Department of Human Resource Management  
James Monroe Building, 13th Floor  
101 North 14th Street  
Richmond, Virginia 23219

#### 4.6 PUBLIC INSPECTION OF PROCUREMENT RECORDS

Proposals will be subject to public inspection only in accordance with Section 2.2-4342 of the Code of Virginia.

#### 4.7 CLARIFICATION OF PROPOSAL INFORMATION

The Department reserves the right to request verification, validation or clarification of any information contained in any of the proposals. This clarification may include checking references and securing other data from outside sources, as well as from the offeror.

#### 4.8 REFERENCE TO OTHER MATERIALS

The offeror cannot compel the Department to consider any information except that

which is contained in its proposal, or which is offered in response to a request from the Department. The offeror should rely solely on its proposal. The Department, however, reserves the right, in its sole discretion, to take into consideration its prior experience with offerors and information gained from other sources.

#### 4.9 OPTIONAL PRE-PROPOSAL CONFERENCE

An OPTIONAL pre-proposal conference will be held at 10:00 a.m. on March 15, 2007, in the James Monroe Building, Room B Lobby Level, 101 North 14th Street, Richmond, Virginia. The purpose of this conference is to allow potential offerors an opportunity to present questions and to obtain clarification of any information regarding this procurement.

Please bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

It is requested that any known questions regarding the RFP be forwarded to William G. Gregory prior to the date of the conference to facilitate the conference. William G. Gregory's e-mail address is: [bill.gregory@dhrm.virginia.gov](mailto:bill.gregory@dhrm.virginia.gov)

#### 4.10 TIMETABLE

RFP Published and posted to web site	March 5, 2007
Optional Pre-Proposal Conference	March 15, 2007
Proposals Due,	March 29, 2007, 2:00 P.M.
Notice of Intent to Award	April 30, 2007

#### 5.0 FORM OF RESPONSE & CRITERIA FOR EVALUATION

- 5.1 Offeror shall execute the face sheet of this RFP and return same with the proposal.
- 5.2 An original proposal and six copies are required. Refer to paragraph 4.2.1.
- 5.3 Offeror must answer all questions, address all issues, and furnish all of the information required in Attachment One.
- 5.4 Offeror must answer all questions and furnish all information required in Attachment Two.
- 5.5 The offeror should be prepared to make an oral presentation as part of the negotiation process, should the Department decide to enter into negotiations with the offeror.
- 5.6 The criteria for award include the following.
  - 1. Organization, Philosophy and General Approach 15%
  - 2. Completeness of Proposal, i.e. how you propose to complete the tasks in section 3.0 20%
  - 3. Type and Quality of Services Offered 15%

- 4. Proposed Reporting & Tracking Solution 20%
- 5. Cost Proposals 20%
- 6. Participation of Small, Women and Minority Owned Businesses 10%

6.0 DELIVERABLES & PAYMENT FOR SERVICES

6.1 The contractor shall deliver only those services which are mutually agreed upon by the Department and the contractor at monthly meetings. At these meetings, the contractor will present and explain the bill for services delivered in the preceding month for each program. The Department will accept and pay only for those services which meet the quality standards of the Department and which have been fully rendered. The Department will pay the invoice within 30 days of receipt.

6.2 REPORTS

6.2.1 UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES

1. Periodic Progress Reports/Invoices. Within sixty days of each six months' operation under this contract, disclose the actual dollars contracted to be spent to-date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses.
2. Final Actual Involvement Report: The contractor will submit, prior to completion of the contract and prior to final payment, a report on the actual dollars spent with women and minorities during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value. A suggested format is as follows:

Business Class: Small, Women-Owned or Minority-Owned

<u>FIRM NAME, ADDRESS AND PHONE NUMBER</u>	<u>TYPE GOODS/ SERVICES</u>	<u>ACTUAL DOLLARS</u>	<u>PLANNED DOLLARS</u>	<u>%OF TOTAL CONTRACT</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS FOR BUSINESS CLASS		_____	_____	_____

6.2.2 The contractor shall deliver in person a monthly report summarizing ongoing interventions and plans for the upcoming month along with the

prior month's invoice.

- 6.2.3 The contractor shall deliver separate comprehensive reports by September 15 of each year for the previous twelve months' of operations evaluating the program in terms of process measurements (sustained participation) and outcome measurements (changes in health measurements, medical plan usage, leave, etc.) for the state employees' group and TLC. The report will identify cost relative to outcome..
- 6.2.4 The contractor shall deliver an additional one-year cost proposal by each February 1 prior to the expiration date of each contract period for the upcoming renewal year. Refer to paragraph 8 of Attachment ONE.
- 6.2.5 Latest annual audited financial report.

## 7.0 General Terms and Conditions

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a

bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs :** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract.

A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or

- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR CONTRACTS:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and

completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- R. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.state.va.us](http://www.eva.state.va.us)) for a minimum of 10 days.
- S. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- U. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.

- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

V. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## 8.0 SPECIAL TERMS AND CONDITIONS

- A. **COST LIMITS:** The contractor is responsible for all the costs of implementing and administering the program. The Department is responsible for ensuring that the contractor receives payment of all fees that are established pursuant to the contract which results from this RFP. Any cost incurred by the contractor to address the tasks and responsibilities identified in this RFP which exceeds the contractually established fees is the risk of the contractor.
- B. **ELIGIBILITY FOR PROGRAM:** The Department shall determine which employees are eligible for the Program.
- C. **TERM/RENEWAL OF CONTRACT:** The first term of this contract shall be from July 1, 2007 through June 30, 2010. Thereafter, this contract may be renewed by the Commonwealth for three successive one-year periods under the terms and conditions of the original contract except as stated in one and two below. Price increases may be negotiated only at the time of renewal, therefore the contractor shall submit any proposed increases/decreases in prices by the February 1 prior to expiration date of each contract period. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
  - 1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the "Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
  - 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "Services" category of the CPI-W section of the Consumer Price Index of the

- D. **CANCELLATION OF CONTRACT**: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole without penalty, upon 60 days written notice to the contractor. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- E. **PAYMENTS**: The standard form of payment utilized by the Commonwealth is by EDI. The contractor shall invoice the Department each month for services provided during the prior month. Payment will be made by the Department within 30 days of receipt of an approved invoice. Separate invoices shall be provided for state employees program and the Local Choice program. Refer to Attachment Three for information pertaining to the Commonwealth's EDI payment method.
- F. **MAILINGS AND NOTICES**: Notices to all enrollees shall be in a form acceptable to the Department. The contractor agrees to supply wellness coordinators (staff located in state agencies and TLC Groups who assist in the administration of the program) with all necessary forms and supplies. All notices shall be mailed first class and in an envelope readily identifiable as State Health Insurance information. Notices and other mailings must be approved by the Department prior to distribution to enrollees.
- G. **AUDITS**: The contractor shall assist the Department and the Department's auditors, who may be employees of the Department, employees of other contractors, or agents of the Department, in the conduct of program audits. This assistance shall include the provision of secure, quiet office space, including furnishings and telephones needed by the auditors. The contractor agrees to retain all books, records, and other documents relative to the contract which results from this RFP for five (5) years after final payment, or until the conclusion of any audit by the Commonwealth, whichever is sooner. The Department, its authorized agents, and State Auditors, shall have full access to, and the right to examine, any of the contractor's materials relevant to the contract which results from this RFP.
- H. **CONTRACT REPRESENTATIVES**: Both the Department and the contractor shall appoint a contract representative who shall ensure that the provisions of this contract are adhered to. The Department of Human Resource Management hereby appoints the Program Manager. Currently the position is held by Anne Waring.
- I. **CERTIFIED CORPORATE ANNUAL REPORTS**: Within 120 days of the close of its fiscal year, the contractor shall furnish to the Department an annual report of its consolidated operations. This report shall be certified by an independent auditor.
- J. **COMMISSIONS AND BROKERAGE FEES**: The contractor agrees that, in the performance of this contract, no payments shall be made to brokers or sales persons who are not employees of the contractor.
- K. **CONFIDENTIALITY OF INFORMATION**: The contractor shall treat all information utilized in its performance of the contract as confidential, personal information. The contractor shall handle all confidential information in accordance with the Virginia Privacy Protection Act. All files and other records developed or maintained pursuant to the execution of the contract are the property of the Department, and shall be delivered to the Department upon demand. The contractor merely serves as the custodian of the files, and acts as agent for the Department in

the payment for services and the performance of other assigned tasks.

- L. **SEVERABILITY**: In the event any portion of the contract shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of the contract shall continue in full force and effect.
- M. **FORCE MAJEURE**: Neither party shall be deemed to be in default of any of its obligations hereunder, if, and so long as, it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- N. **SUBCONTRACTING**: The contractor is fully responsible for all work performed under the contract. The contractor may not assign, transfer, or subcontract any interest in the contract, without prior written approval of the Department. The contractor shall require all subcontractors to comply with all provisions of this RFP. The contractor will be held liable for contract compliance for all duties and functions whether performed by the contractor or any subcontractor.
- O. **DISPUTES**: In accordance with section 2.2-4363 of the Code of Virginia, disputes arising out of the contract, whether for money or other relief, may be submitted by the contractor for consideration by the Department. Disputes must be submitted in writing, with all necessary data and information, to the Director of the Department of Human Resource Management at the James Monroe Building, 12th Floor, 101 North 14th Street, Richmond, Virginia 23219. Disputes will not be considered if submitted later than sixty (60) days after the final payment is made by the Department under the contract. Further, no claim may be submitted unless written notice of the contractor's intention to file the dispute has been submitted at the time of the occurrence or at the beginning of the work upon which the dispute is based. The Department shall render a final written decision regarding the dispute not more than ninety (90) days after the dispute is submitted, unless the parties agree to an extension of time. If the Department does not render its decision within 90 days, the contractor's sole remedy will be to institute legal action, pursuant to section 2.2-4364 of the Code of Virginia. The contractor shall not be granted relief as a result of any delay in the Department's decision.
- During the time that the parties are attempting to resolve any dispute, each party shall proceed diligently to perform its duties.
- P. **CONTRACTOR AFFILIATION**: If an affiliate (as defined below in this paragraph) of the contractor takes any action which, if taken by the contractor, would constitute a breach of the contract, the action taken by the affiliate shall be deemed a breach. "Affiliate" shall mean a "parent," subsidiary or other company controlling, controlled by, or in common control with the contractor.
- Q. **TRANSFER OF FILES**: If for any reason the Department decides to no longer contract with the contractor, the contractor agrees to transfer to the party designated by the Department, at no cost, all data, records and files of any sort that were maintained for the Commonwealth. The contractor must agree to assist the Department in understanding, using, and transferring all files and records, including those maintained in computer language.
- R. **ADVERTISING**: In the event a contract is awarded as a result of this RFP, the contractor shall not advertise that the Commonwealth of Virginia, or any agency or institution of the Commonwealth, has purchased, or uses its products or services.

S. **INDEMNIFICATION**: The contractor agrees to indemnify, defend, and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages, and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Department.

T. **DRUG FREE WORK PLACE**: The contractor acknowledges and certifies that it understands that the following acts by the contractor, its employees, and/or agents performing services on state property are prohibited:

1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
- 2.. Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).

The contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract any may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.

U. **HIPAA PRIVACY BUSINESS ASSOCIATES AGREEMENT**: The Contractor agrees to be bound by the HIPAA Privacy Business Associates Agreement. This agreement must be executed prior to any contract award. See Attachment Four.

V. **DATA THEFT**: The Contractor assures that any and all personal information and data obtained as a result of performing contractual duties associated with this contract shall be held in strict confidence. Such information shall not be divulged without written permission from the individual and this Agency.

1. All personal information whether electronic or hard copy shall be stored in a manner that will prevent intrusion and theft by unauthorized persons.
2. All intrusions or suspicions of intrusion into files containing personal information shall be reported to the Agency and proper authorities within 24 hours of detection or suspicion.
3. All remedies suggested by the Contractor shall be approved by the Agency prior to being implemented.
4. Data thefts occurring due to Contractor errors, omissions, or oversights are the financial responsibility of the Contractor. This responsibility includes the cost of remedy.

## ATTACHMENT ONE

### 1. **Philosophy and General Approach**

Briefly describe your general approach to worksite health promotion, specifically covering the following.

- (1) Communications (content & appearance)
- (2) Interventions (types and how monitored)
- (3) Participation incentives
- (4) Service delivery & management
- (5) Use of employer time and facility
- (6) Cost

### 2. **Twenty-Four Month Plan**

Attach a separate 24 month plan for delivery of services at (a) over 400 sites throughout Virginia for the state employee group, and (b) over 160 local employers throughout Virginia. The plans must specify the services to be delivered, total cost, estimated enrollment and unit cost as well as planned programs for improving participation. The plans should contain the following elements:

- (1) A schedule for delivery over 24 months
- (2) The services to be offered, the expected populations served, the total cost of each service and the unit cost.
- (3) The numbers of each program to be offered in each month.
- (4) Clear recognition of the geographically diverse sites for offering the services.
- (5) Clear recognition of the different needs of the various populations for whom services are planned.
- (6) Integration of the planned services with community-wide health promotion initiatives.
- (7) Sample reports with frequency of distribution for department's use in monitoring progress of plans.

### 3. **Evaluation**

- (1) For each of the activities contained in the 24 month plans, tell how you plan to evaluate the contribution that the activity makes to the objectives of the program.
- (2) Attach the most recent total program evaluation you have completed for one employer most similar to the Commonwealth along these dimensions: size, organizational diversity, geographic distribution, and types of occupations.

4. **Qualification of Offeror**

- (1) Provide resumes of all persons who will work 1/2 time or more on the State programs. Identify the program for which time is spent by percent.
- (2) Include statements of the qualifications of the offeror's principals/owners.
- (3) Identify existing subcontractors. Provide the criteria and rationale used in selecting these subcontractors.
- (4) Identify planned subcontractors. Provide the criteria and rationale for using these subcontractors.
- (5) Identify all proposed activities which are not:
  - A. Furnished directly by the offeror,
  - B. Furnished by an established subcontractor identified in 4.(3), or
  - C. Furnished by a planned subcontractor identified in 4.(4).

5. Describe your plans for coordinating the state-wide delivery of services. Please be as specific as possible.

6. Provide references, including contact names and telephone numbers, for two groups with whom you have current contract. Also, provide the same information for a terminated contract.

7. **Cost Proposals**

Summarize the cost proposed in each fiscal year. These cost figures must represent all proposed costs/fees in administering the program.

**7/1/07 - 6/30/08      7/1/08 - 6/30/09      7/1/09 - 6/30/10**

Educational Materials

Activities

Coordination Services

Overhead & Profit

Total Costs

Estimated Population  
to be served

Per Capita Cost

8. **Renewal Guarantees**

It will be expected that an additional one year cost proposal in the same format of number 7 above will be provided to the Department by the contractor by each February 1 prior to the expiration date of each contract period. This will be provided for each of the three optional renewal years. Confirm your agreement to this.

- (1) Provide an unequivocal guarantee of all prices during the first three years of the contract.
- (2) Provide an unequivocal guarantee of all prices for each of the three one- year renewals, if you are willing to extend the contract beyond the initial three year term. This guarantee shall be based on the Consumer Price Index (CPI-W) as described in section 8.C of the special terms and conditions.

## ATTACHMENT TWO

### PARTICIPATION IN STATE PROCUREMENT TRANSACTIONS

BY

### SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES

The following definitions will be used in completing the information required by one or more of the three categories of businesses contained in this Appendix as applicable to your firm: (1) Participation by Small Businesses; (2) Participation by Businesses Owned by Women; and (3) Participation by Businesses Owned by Minorities.

#### DEFINITIONS

**Period** is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

**Firm Name, Address and Phone Number** is the name, address and business phone number of the small business, women-owned business or minority-owned business with which the offeror has contracted or done business over the specified period or plans to involve on this contract, as applicable.

**Contact Person** is the name of the individual in the specified small business, women owned business or minority-owned business who would have knowledge of the specified contracting and would be able to validate the information provided in this list.

**Type Goods or Services** is the specific goods or services the offeror has contracted for from the specified small, women-owned or minority-owned business over the specified period of time or plans to use in the performance of this contract, as applicable. The offeror will asterisk (\*) those goods and services that are in the offeror's primary business or industry.

**Dollar Amount** is the total dollar amount (in thousands of dollars) the offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this contract, as applicable.

**% Total Company Expenditures for Goods and Services** is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the offeror over the specified period for goods and services.

**% of Total Contract** is calculated by dividing the estimated dollars planned for the indicated firm on this contract by the total offeror estimated price of this contract.













## **ATTACHMENT THREE**

### **ELECTRONIC DATA EXCHANGE (EDI)**

Financial Electronic Data Interchange Guide (EDI). Also found on Web location below, please note you will need Adobe Acrobat Reader Software to view this document.

<http://www.doa.state.va.us/procedures/GeneralAccounting/EDI/tradingpartnerguide.pdf>

ATTACHMENT FOUR

Office of State Health Benefits Programs  
of the  
Department of Human Resource  
Management

H I PAA Privacy  
Business Associate  
Agreement  
With  
(Insert Company Name)

Effective Date:  
(Insert Date)

## 1. PREAMBLE

**Pursuant** to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. Section 84,462 et seq. (Dec. 28, 2000) and all subsequent provisions and Federal guidance ("HIPAA Privacy Rule"), the Commonwealth of Virginia's Office of Health Benefits Programs ("Covered Entity"), and (name of the Business Associate), a (state) corporation, ("Business Associate"), (jointly "the Parties"), wish to enter into this Business Associate Agreement ("Agreement") that addresses the requirements of the HIPAA Privacy Rule with respect to "business associates" as that term is defined in that Rule.

This Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" (as defined in the HIPAA Privacy Rule and copied below) that the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "Services") to be provided by Business Associate to Covered Entity. These Services are identified in a separate agreement between the Parties entitled (RFP# OHBXX-XX) and dated (Insert date) ("Service Agreement").

The Parties acknowledge and agree that in providing Services, Business Associate will create, receive, use, or disclose Protected Health Information. In connection with Business Associate's creation, receipt, use, or disclosure of Protected Health Information, Business Associate, and Covered Entity hereby agree as follows:

## II. DEFINITIONS

- (a) *General definitions.* All capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
- (b) *Specific definitions.*
- (i) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (ii) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- (iii) *Protected Health Information.* "Protected Health Information" ("PHI") shall mean individually identifiable health information maintained and transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that is created or received by a health care provider, health plan, employer, or health care clearinghouse, and relates to: (A) the past, present, or future physical or mental health or condition of an individual; (B) the provision of health care to an individual; or (C) the past, present, or future payment for the provision of health care to an individual, and that identifies or could reasonably be used to identify an individual. Protected Health Information does not include health information that has been de-identified in accordance with the standards for de-identification provided for in the Privacy Rule.
- (iv) *Designated Record Set.* "Designated Record Set" shall mean a group of records maintained by or for the Covered Entity that is:
- (A) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- (B) Used, in whole and in part, by or for the Covered Entity to make decisions about individuals.

For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

(v) *Data Aggregation*. "Data Aggregation" shall mean, with respect to Protected Health Information created or received by the Business Associate in its capacity as the Business Associate of the Covered Entity, the combining of such Protected Health Information by the Business Associate with the Protected Health Information received by the Business Associate in its capacity as business associate of another entity to permit data analyses that relate to the health care operations of the respective entities.

(vi) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(vii) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") or his designee.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR § 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section III (i) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- (k) Business Associate agrees to: (i) implement the administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that

it creates, receives, maintains, or transmits on Covered Entity's behalf; (ii) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate standards to protect the information; and (iii) agrees to report to Covered Entity any security incident of which it becomes aware that involves the information. Business Associate agrees that the obligations set forth in Section III (k) shall be implemented by the final compliance date for the Security Standards to the extent required by law.

#### **IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) *General Uses and Disclosures.* Business Associate agrees to create, receive, use, or disclose Protected Health Information only in a manner that is consistent with this Agreement or the Privacy Rule and only in connection with providing Services to the Covered Entity identified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. In providing Services, Business Associate, for example, will be permitted to use and disclose Protected Health Information for "treatment, payment and health care operations" in accordance with the Privacy Rule.
- (b) *Other Uses and Disclosures:*
- (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - (ii) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - (iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

#### **V. OBLIGATIONS OF THE COVERED ENTITY**

- (a) *Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions:*
- (i) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
  - (ii) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
  - (iii) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- (b) *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except Protected Health Information for those activities performed by the Business Associate in accordance with the provisions of the Service Agreement between the parties.

#### **VI. TERM AND TERMINATION**

- (a) *Term.* The Term of this Agreement shall be effective as of April 1, 2003, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the Termination provisions in this Section.
- (b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time agreed to by the Parties, or if Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may terminate this Agreement [and the applicable Sections of the Service Agreement] upon written notice to Business Associate.
- (c) *Effect of Termination:*
  - (i) Except as provided in paragraph (c)(ii) of this Section IV, upon Termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - (ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for as long as the Business Associate maintains such Protected Health Information.

## VII. MISCELLANEOUS

- (a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of Business Associate under Section VI(c)(i)&(ii) of this Agreement shall survive the termination of this Agreement.
- (d) *Interpretation:*
  - (i) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
  - (ii) In the event of an inconsistency between the provisions of this Agreement and the Privacy Rule, as may be amended from time to time, as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties, the interpretation of HHS, such other court or regulatory agency shall prevail.
  - (iii) In the event provisions of this Agreement differ from those mandated by the Privacy Rule but are nonetheless permitted by the Rule, the provisions of this Agreement shall control.
- (e) *Complete Integration.* This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of the Agreement. Unless expressly provided otherwise herein, this Agreement may not be

modified unless in writing signed by the duly authorized representatives of both parties. If any provision or part thereof is found to be invalid, the remaining provisions shall remain in full force and effect.

- (f) *Successors and Assigns.* This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity owned or under common control with Business Associate.
- (g) *Limitation of Liability.* Except as otherwise provided for in the Privacy Rule, neither party shall be liable for other party's loss of profits, attorney's fees or interest, or for any incidental, indirect, special, or consequential damages as a result of this Agreement.
- (h) *No Third Party Beneficiaries.* Except as expressly provided for in the Privacy Rule, there are no third party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- (i) *Confidentiality.* Except as otherwise provided for in the Privacy Rule or this Agreement, neither party will disclose the terms of this Agreement to any third party without the other party's written consent.
- (j) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which may be deemed an original.

#### **VIII. ACKNOWLEDGEMENT AND SIGNATURES**

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT,  
UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS.

For :	For Department of Human Resource Management
By:	By:
Print Name:	Print Name: Sara Redding Wilson
Title:	Title: Director
Date:	Date:

**Active TLC Groups**

Alberta, Town of  
Altavista, Town of  
Amelia County Board of Supervisors  
Amelia County School Board  
Amherst County Board of Supervisors  
Amherst County Service Authority  
Amherst, Town of  
Appalachian Juvenile Commission  
Appomattox Regional Library System  
Appomattox River Soil & Water Conservation District  
Ashland, Town of  
Assistive Technology Loan Fund Authority  
Bath County Schools & Government  
Bedford County Public Service Authority  
Berryville, Town of  
Blackstone, Town of  
Bland, County of  
Blue Ridge Regional Jail Authority  
Bluefield, Town of  
Bridgewater, Town of  
Bristol Redevelopment & Housing Authority  
Broadway, Town of  
Brodnax, Town of  
Brookneal, Town of  
Brunswick County & Town Employees  
Brunswick County Public Schools  
Buckingham, County of  
Buena Vista City Schools  
Buena Vista, City of  
Carroll County Board of Supervisors  
Carroll County Public Schools  
Cedar Bluff, Town of  
Center of Innovative Technology  
Central Shenandoah Planning District Commission  
Central Virginia Alcohol Safety Action Program  
Central Virginia Regional Jail  
Central Virginia Waste Management Authority  
Chaplin Youth Center  
Charlottesville-Albemarle Airport Authority  
Chesapeake Bay Bridge & Tunnel District  
Clarksville, Town of  
Clifton Forge, Town of  
Clintwood, Town of

**ATTACHMENT FIVE**

**PAGE 2**

Coeburn, Town of  
Coeburn-Norton-Wise Regional Waste Water Treatment Authority  
Colonial Beach, Town of  
Colonial Heights, City of  
Courtland, Town of  
Covington City School Board  
Covington, City of  
Craig County School Board  
Craig, County of  
Crater Planning District Commission  
Crater Youth Care Commission  
Cumberland Mountain Community Services Board  
Danville Redevelopment and Housing Authority  
Dayton, Town of  
Dickenson County Department of Social Services  
Dinwiddie County Public Schools  
Dinwiddie County Water Authority  
Dinwiddie, County of  
District 19 Community Service Board  
District Three Governmental Cooperative  
Dublin, Town of  
Eastern Shore Community Services Board  
Edinburg, Town of  
Elkton, Town of  
Emporia, City of  
Fairfax, City of  
Farmville, Town of  
Franklin City Public Schools  
Franklin Redevelopment and Housing Authority  
Franklin, City of  
Fredericksburg - Stafford Park Authority  
Fredericksburg City Public Schools  
Fries, Town of  
Front Royal, Town of  
Gate City, Town of  
Giles County Public Schools  
Giles County Public Service Authority  
Glade Spring, Town of  
Goochland Schools & County  
Greensville County School Board  
Greensville, County of  
Grottoes, Town of  
Grundy, Town of  
Halifax County Employee/Board of Supervisors

**ATTACHMENT FIVE**

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Halifax, Town of  
Hamilton, Town of  
Hampton Roads Planning District Commission  
Hampton Roads Regional Jail Authority  
Handley Regional Library  
Haysi, Town of  
Henricopolis Soil & Water Conservation District  
Highland County Board of Supervisors  
Hillsville, Town of  
Hopewell Redevelopment & Housing Authority  
Hurt, Town of  
Iron Gate, Town of  
James River Soil & Water Conservation District  
Jarratt, Town of  
John Flannagan Water Authority  
Joint Public Service Authority of Wythe County & Bland County  
Jonesville, Town of  
Kenbridge, Town of  
Kilmarnock, Town of  
King George, County of  
King William, County of  
LaCrosse, Town of  
Lebanon, Town of  
Lee County Department of Social Services  
Lee County Government  
Lee County Public Service Authority  
Lenowisco Planning District Commission  
Lonesome Pine Regional Library  
Lunenburg County Public Schools  
Lunenburg, County of  
Luray, Town of  
Manassas Park City Schools  
Manassas Park, City of  
Marion, Town of  
Mathews County  
Middle Peninsula Planning District Commission  
Middle Peninsula Regional Security Center  
Middleburg, Town of  
Mineral, Town of  
Monacan Soil & Water Conservation District  
Montross, Town of  
Mount Jackson, Town of  
Mount Rogers Planning District Commission  
Narrows, Town of

**ATTACHMENT FIVE**

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Nelson, County of  
New Kent, County of  
New Market, Town of  
New River Soil and Water Conservation District  
New River Valley Agency on Aging  
New River Valley Community Services Board  
New River Valley Juvenile Detention Home  
New River Valley Planning District Commission  
New River Valley Regional Jail  
Northern Neck Essex County Group Home Commission  
Northern Neck Planning District Commission  
Northern Neck Regional Jail  
Northern Neck Technical Center  
Northern Shenandoah Valley Regional Commission  
Northumberland County and Schools  
Norton City Public Schools  
Norton, City of  
Onancock, Town of  
Opportunity Inc. of Hampton Roads (OIHR)  
Page County Government  
Parksley, Town of  
Peanut Soil & Water Conservation District  
Pearisburg, Town of  
Pembroke, Town of  
Pennington Gap, Town of  
Peter Francisco Soil and Water Conservation District  
Petersburg, City of  
Piedmont Regional Jail  
Piedmont Regional Juvenile Detention Center  
Piedmont Soil & Water Conservation District  
Powhatan County Public Schools  
Prince Edward County  
Prince Edward County Public Schools  
Prince William Soil & Water Conservation District  
Pulaski, Town of  
Purcellville, Town of  
Radford City Schools  
Rappahannock Juvenile Center  
Rappahannock, County of  
Rappahannock-Rapidan Community Service Board  
Regional Governor's School for Global Economics & Technology, The  
Remington, Town of  
Rich Creek, Town of  
Richlands, Town of  
Richmond County Employees  
Richmond Regional Planning District Commission

**ATTACHMENT FIVE**

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Roanoke Higher Education Authority  
Roanoke River Service Authority  
Roanoke Valley-Alleghany Regional Commission  
Rockbridge, County of  
Round Hill, Town of  
Saint Paul, Town of  
Scott County Soil & Water Conservation District  
Scottsville, Town of  
Shenandoah County  
Shenandoah Valley Juvenile Detention Home Commission  
Shenandoah, Town of  
South Boston, Town of  
South Central Wastewater Authority  
Southampton County  
Southampton County School Board  
Southside Community Services Board  
Southwest Virginia Regional Jail Authority  
Spotsylvania County School Board  
Stanley, Town of  
Strasburg, Town of  
Suffolk Redevelopment Housing Authority  
Surry County  
Surry County Public Schools  
Sussex County  
Sussex County School Board  
Sussex Service Authority  
Tappahannock, Town of  
Tazewell County  
Tazewell County Department of Social Services  
Tazewell County Public Schools  
Thomas Jefferson Soil & Water Conservation District  
Tidewater Regional Group Home Commission  
Tidewater Soil and Water Conservation District  
Timberville, Town of  
Urbana, Town of  
Vinton, Town of  
Virginia Biotechnology Research Park Authority  
Virginia Peninsulas Public Service Authority  
Virginia Port Authority  
Virginia Recreational Facilities Authority  
Virginia Resources Authority  
Wakefield, Town of  
Warsaw, Town of  
Washington County Government  
Washington County School Board  
Waverly, Town of

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Waynesboro Redevelopment and Housing Authority  
Western Tidewater Community Service Board  
Westmoreland County  
Williamsburg-James City County Public Schools  
Windsor, Town of  
Wise County Board of Supervisors  
Wise County School Board  
Wise, Town of  
Woodstock, Town of  
Wythe County Board of Supervisors  
Wytheville, Town of