

**REQUEST FOR PROPOSALS
(RFP)**

ISSUE DATE: August 27, 2012
RFP NO. OHB13-1
TITLE: Disease Management Blood Testing, Reporting and Coaching Pilot
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: beginning September, 20, 2012 through September 20, 2013 with negotiated delivery dates of periodic deliverables.

Sealed proposals for furnishing services described herein will be received subject to the conditions cited herein until 2:00 p.m., September 6, 2012

All Inquiries Must Be In Writing And Should Be Directed To:

Mr. Dan Hinderliter
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
Fax Number: 804-225-2790
Dan.hinderliter@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)
_____	_____
_____ Zip Code _____	(SIGNATURE IN INK)
Fax Number: (____) _____	Title: _____
	Telephone: (____) _____
eVA Vendor ID or DUNS #: _____	

Table of Contents

Purpose	Page 4
Background	Page 4
Tasks	Page 4
Procurement Procedures	Page 5
Form of Response & Criteria for Evaluation	Page 7
Deliverables	Page 8
Special Terms and Conditions	Page 9
General Terms and Conditions	Page 13
Exhibit ONE (Details of Pilot)	Page 22
Exhibit TWO (Small Business Subcontracting Plan)	Page 28
Exhibit Four HIPAA Business Associate Agreement	Page 32

1.0 PURPOSE

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for disease management blood testing, reporting and coaching services for a pilot agency within the Commonwealth of Virginia. The goal of the pilot would be to improve the selected agency's health through personalized risk assessment and prevention services. The primary condition focus for the pilot should be on identifying and reducing risk for cardiovascular disease and diabetes. If pilot is successful, the health outcomes should be measurable by individual as well as for the selected target agency.

2.0 BACKGROUND

The Commonwealth of Virginia offers disease management and a variety of wellness programs to its participants. Many of the wellness programs are "opt-out" and results are inconsistent. We are looking for a pilot that will yield quantifiable results and enable us to use this information in future wellness programs. Plan design information for the employee state health program can be found at the following website: www.dhrm.virginia.gov.

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

2.1.1 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.

2.1.2 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 will require prompt submission of missing information after the receipt of vendor proposals in order for a non-compliant proposal to be considered.

3.0 TASKS

3.1 Use scientific methods such as health assessments, biometric measurements, and laboratory testing to comprehensively assess an individual's health.

3.2 Personal health data should include but not be limited to height, weight, body composition, blood pressure, waist circumference, nutrition, physical activity, and tobacco use.

- 3.3 Offeror shall identify testing markers suggested for target population and document their significance in health risk improvement for cardiovascular disease, metabolic syndrome, pre-diabetes and diabetes. Examples of lab testing markers may include items such as lipids, atherogenic lipoproteins, protective lipoproteins, inflammation, insulin resistance, pre-diabetes and diabetes, omega 3 index. .
- 3.4 Effectively use data from the health assessments, biometric measurements and results of the laboratory testing to evaluate and inform members of their risk levels. We encourage offerors to provide options for member engagement.
- 3.5 Provide engagement services through qualified personnel to educate each participant about their individual report and health risks. Assist each person in setting goals for behavior change to improve health and prevent disease.
- 3.6 Assess the same population at a later date to identify improvements in health status and engagement. To be consistent, the same health assessment, biomarkers and labtesting shall be used.
- 3.7 Provide comprehensive reporting at the 1) individual and 2) aggregate level for the population. Please provide your reporting recommendations.
- 3.8 Include performance and quality standards established to guarantee process, participant satisfaction, impact and other mutually agreed upon outcome measures.

4.0 PROCUREMENT PROCEDURES

4.1 METHOD OF AWARD

- 4.1.1 In accordance with the Virginia Public Procurement Act (VPPA) Virginia Code se 2.2-4300 et. Seq, 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.
- 4.1.2 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 D, Code of Virginia).

- 4.1.3 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.
- 4.1.4 Offerors will be required to execute a Business Associate Agreement as a part of their submission. (See Exhibit)

4.2 SUBMISSION OF WRITTEN PROPOSALS

- 4.2.1 All proposals must be responsive to both the task descriptions and contractual requirements contained herein. Proposals must be typed. An original, a **redacted** electronic version and five electronic copies of the original shall be delivered in a sealed box, and **labeled as a proposal**, with the words "**Do Not Open**" prominently displayed on the face of the box. Proposals must be received no later than 2:00 p.m., as determined by the Department in its sole discretion, on September 6, 2012 by

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

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. Dan Hinderliter
Department of Human Resource Management
James Monroe Building, 13th Floor
101 North 14th Street
Richmond, Virginia 23219
Fax Number: (804) 225-2790
Dan.Hinderliter@dhrm.virginia.gov

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 TIMETABLE

RFP Published	August 27, 2012
Proposals Due, 2:00 P.M.	September 6, 2012
Notice of Intent to Award	September 17, 2012

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 along with all addenda that are issued. A signed HIPAA Business Associate Agreement shall be included with the submission.

5.2 An original proposal, **an electronic redacted version** and five electronic copies of the original are required. Each electronic copy shall be on a different CD. The electronic copies of the

original must contain everything included in the hard copy original.

- 5.3 Offeror must answer all questions, address all issues, and furnish all of the information required in Exhibit One.
- 5.4 Offeror must answer all questions and furnish all information required in Exhibit 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 and weighting for award in no particular order include the following:

	<u>Criteria</u>	<u>Weighting (%)</u>
1.	Financial and Organizational Stability	5
2.	Experience and Qualifications of Staff	20
3.	Administrative Capabilities	15
4.	Implementation Plans	10
5.	Price	30
6.	Participation of small, women and minority owned businesses	20

6.0 DELIVERABLES

- 6.1 The contractor shall deliver only those services resulting from this RFP which are mutually agreed upon by the Department and the contractor. The administrative fees will be invoiced to the Department on a monthly basis. The Department will accept and pay only for those services which meet the quality standards required by the contract and which have been fully rendered.

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 contact. 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

small businesses, women-owned and minority-owned businesses 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 NUMBERS</u>	<u>TYPE GOODS/ SERVICES</u>	<u>ACTUAL DOLLARS</u>	<u>PLANNED DOLLARS</u>	<u>%OF TOTAL CONTRACT</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS FOR BUSINESS CLASS		_____	_____	_____

7.0 SPECIAL TERMS AND CONDITIONS

7.1 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.

7.2 ELIGIBILITY FOR PROGRAM

The Department shall determine which employees are eligible for the Program.

7.3 TERM OF CONTRACT

The first term of this contract shall be September 20, 2012 through September 20, 2013.

7.4 CANCELLATION OF CONTRACT

The Department reserves the right to cancel and terminate any resulting contract, in part or in whole without penalty, upon 30 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.

7.5 PAYMENTS

Payment will be made by the Department within 30 days of receipt of an approved invoice or according to payment terms as negotiated. Refer to Exhibit Three for information pertaining to the Commonwealth's EDI payment method which will be the preferred method of payment for the administrative fees. Billing frequency may be no less than 30 days.

7.6 MAILINGS AND NOTICES

Notices to all enrollees shall be in a form acceptable to the Department. All notices shall be mailed first class and in an envelope readily identifiable as Commonwealth of Virginia Benefits information. Notices and other mailings must be approved by the Department prior to distribution to enrollees.

7.7 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 contractor shall replace any account representatives at the request of the Department.

7.8 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 Government Data Collection and Decimation Act, Virginia Code Section 2.2-3800 et seq. All files, computer databases 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, including assisting the Department with requests under the Virginia Freedom of Information Act, Virginia Code Section 2.2-3700 et seq.

7.9 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.

7.10 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, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

7.11 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.

7.12 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.

7.13 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 by the contractor. "Affiliate" shall mean a "parent," subsidiary or other company controlling, controlled by, or in common control with the contractor, subcontractor or agents of the contractor.

7.14 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, computer files, other files, and materials of any sort that were maintained for the Commonwealth. The contractor agrees to assist the Department at no cost in understanding, using, and transferring all files and records, including those maintained in computer language.

7.15 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.

7.16 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.

7.18 DRUG FREE WORK PLACE

7.18.1 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 drugs; and
2. Any impairment or incapacitation from the use of alcohol or drugs (except the use of legal drugs for legitimate medical purposes).

7.18.2 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.

7.19 MONEY AND SECURITIES INSURANCE

Contractor shall maintain an Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Commonwealth of Virginia, with limits of coverage of not less than \$250,000 for Loss Inside the Premises Coverage and not less than \$250,000 for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured. Certificate of such protection must be presented to the Department prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and until all money and property of the Commonwealth are remitted to the Commonwealth.

7.20 IDENTITY/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.

7.20.1 All personal information whether electronic or hard copy shall be stored in a manner that will prevent intrusion by unauthorized persons.

7.20.2 All intrusions or suspicion of intrusion into secured files containing personal information shall be reported to the Agency within 24 hours of detection.

7.20.3 All remedies suggested by the Contractor shall be approved by the Agency prior to being implemented.

8.0 GENERAL TERMS AND CONDITIONS

8.1 **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.eva.virginia.gov under "Vendors Manual" on the vendors tab.

8.2 **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.

8.3 **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).

8.3.1 During the performance of this contract, the contractor agrees as follows:

1. 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.
2. 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.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

8.3.2 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.

8.4 **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.

8.5 **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

8.6 **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.

8.7 **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.

8.8 **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND 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.

8.9 **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.

8.10 **PAYMENT:**

8.10.1 **To Prime Contractor:**

1. 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).
2. 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.
3. 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.
4. 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.
5. **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*).

8.10.2 To Subcontractors:

1. A contractor awarded a contract under this solicitation is hereby obligated:
 - a. 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
 - b. To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
2. 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.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

8.11 **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.

- 8.12 **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.
- 8.13 **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.
- 8.14 **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- 8.15 **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
- 8.15.1 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.
- 8.15.2. 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:
1. By mutual agreement between the parties in writing; or
 2. 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
 3. 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.

8.16 **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.

8.17 **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 MOST 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.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,925,000 per occurrence, \$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:
 July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia.)

Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

8.18 **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

8.19 **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.

8.20 **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.

8.21 **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal 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 eprocurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

- a. eVA Basic Vendor Registration Service: 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: 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.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.

- b. For orders issued August 16, 2006 thru June 30, 2011, 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.

- c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.

- d. For orders issued July 1, 2012 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.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- 8.22 **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.

- 8.23 **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

- 8.24 **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

EXHIBIT ONE

<p style="text-align: center;">COMMONWEALTH OF VIRGINIA EMPLOYEE HEALTH BENEFITS PROGRAM PROCUREMENT</p>
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Disease Management Blood Testing, Reporting and Coaching Pilot Questionnaire

Completion of this questionnaire and its referenced supporting attachments will constitute each offeror's Technical and Cost Proposals for the following plans described in this RFP:

Please provide a direct response to all of the questions below and follow directions for submission of supporting attachments. Attachments should be provided, in order, following your Questionnaire responses. Please note that Cost Proposal related information (Section V following and its attachments) must be submitted under separate cover. If a given response is lengthy or redundant to more than one question, provide a brief cross reference to an attachment (or the similar response to another question). Your responses should be contained in a loose-leaf notebook and not be bound. Data, especially audited data, are preferred to simple assertions. Systems, and other well organized, clear charts or exhibits may serve in lieu of narrative.

I. General

1. The RFP describes Task and Benefit Specifications (Section 3 Items); Standards of Performance (Section 4); Deliverables (Section 7). Under the appropriate evaluation section below, you will be requested to affirm that you will fully comply and meet these specifications as stated. Be advised that failure to identify any deviation in response to the appropriate question constitutes a representation on the offeror's part that the specifications will be met precisely as written. Your response must also contain any demurrals and the reasons therefore. The absence of demurrals shall constitute a representation that the offeror will provide services and reports exactly as requested by the Department. The absence of an implementation plan (see Question IV.1 below) constitutes a representation that the offeror is capable of providing the services and reports exactly as requested as of the day the proposal is submitted. As your written response to this question, state that you understand and have complied with this requirement.
2. Please complete Exhibit Two (small, women-owned, and minority-owned business). State the location in your proposal of your response to this requirement here.

II. Financial and Organizational Stability

This section asks offerors to describe factors that demonstrate their financial and organizational stability.

1. Provide a brief background of your organization, including:
 - a. Full legal name, and trade name if applicable; and location of the processing and member services center involved with this contract. Provide information on the primary services offered by your firm at this location and number of employees involved with the administration of reimbursement accounts.
 - b. History and parent organizational ties, if applicable. Include the number of years
 - c. The number of similar programs conducted as of September 1, 2012. Please include size of group, year of study and any available outcomes.
 - d. Submit evidence of appropriate liability insurance protection, and other requested insurance.
 - e. Disclose the nature of any pending judgments for malpractice claims.
 - f. Please submit as Attachment 1, a copy of the offeror's last three years of audited financial statements (balance sheet, income statement, flow of funds).

If any of the above material is lengthy, you may provide it in a clearly referenced attachment. However, you must respond briefly to each item in the text of your response.

2. Provide the name, title, and phone number of three references for which you provide similar services. Include the number of employees or members covered and services provided. Preferably, they should be public entities, with scope and responsibility similar to that of this contract. Include the same information for two former clients who have discontinued your services in the past two years.

III. Experience and Qualifications of Staff

1. a. Identify the accountable senior person (including title and office location and phone number) who will be responsible for managing the relationship with the Contractor, including these negotiations.
- b. Please provide the following staffing information for the administration facility you are proposing:
 - 1) Number of Full Time (FTE) Customer Service Representatives
 - 2) Number of qualified personnel by job title
- c. Complete Attachment 2, providing an organization chart that will identify key management personnel, their dedicated time allocation to this contract, and the office locations

responsible for managing the various duties associated with fulfilling all of the provisions of this contract.

- d. Should this RFP result in a contract for administering the Commonwealth's program and as a result generate significant enrollment, indicate your willingness to assign account servicing, member services and other administration to a dedicated unit. Define the level of enrollment necessary for you to commit to this step.

IV. Administrative Capabilities

1. This section asks offerors to describe different facets of their operation to include testing and coaching.
 - a. Please describe your administrative capabilities including any outsourcing or subcontracted services.
 - b. Provide a system flow chart, describing all key interfaces, and submit as Attachment 3.
 - c. Please describe your reporting capabilities by individual and aggregate.
2. Web Capabilities
 - a. Please describe your proposed web enabled solutions if applicable.?
 - b. Describe your security measures for the on-line service.
3. Member Services
 - a. Please describe your proposed customer service..
 - b. Do you presently do customer satisfaction surveying/assessment? If so describe the methodology.
 - c. Provide as Attachment 4 the most recent two years' (or other meaningful periods') customer satisfaction results, if available.

V. Implementation Plans

Provide a PERT or similar chart, labeled as Attachment 8, showing the time frame with all critical points from date of award through end of first month of contract year.

VI. Price

This information must be submitted under separate cover clearly labeled COST PROPOSAL.

Provide a proposed comprehensive pricing exhibit with start-up costs segregated.

VII. Participation of Small, Women and Minority Owned Businesses (20 Points)

Complete the information required on Exhibit 2

**COMMONWEALTH OF VIRGINIA
EMPLOYEE HEALTH BENEFITS PROGRAM PROCUREMENT**

Organization Chart

Provide an organization chart, including title, percent of time allocated to this contract, and office location, that:

EXHIBIT TWO
Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____

Date: _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (check only one below):

_____ Small Business

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification number: _____ Certification Date _____

Section B

A. Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract

Totals \$					

EXHIBIT THREE

The Commonwealth prefers to make payment to the successful offeror via EDI where applicable. Financial Electronic Data Interchange Guide (EDI) is found on Web location below, please note you will need Adobe Acrobat Reader Software to view this document.

[http://www.doa.virginia.gov/General Accounting/EDI/EDI Main.cfm](http://www.doa.virginia.gov/General_Accounting/EDI/EDI_Main.cfm)

EXHIBIT FOUR

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

H I PAA Privacy
Business Associate
Agreement
With

Effective Date:

I. 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 ., a 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 OHB05-1 and dated July 1, 2005 ("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 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: _____
Title: _____	Title: _____
Date: _____	Date: _____