

Notice of Blanket Purchase Agreement



**State Of Rhode Island and Providence Plantations
 Department of Administration
 Division of Purchases
 One Capitol Hill
 Providence, RI 02908-5860**

V E N D O R	NEW ENGLAND STATES CONSORTIUM SYSTEMS ORGANIZATION (NESCSO) 333 SOUTH ST SHREWSBURY, MA 01545 United States
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APA-18821 DD RATE ANNUAL RATE REVIEW	
Award Number	3609321
Revision Number	0
Effective Period	08-FEB-2019 - 30-JUN-2020
Approved PO Date	08-FEB-2019
Vendor Number	7813

S H I P T O	BHDDH DEVELOPMENTAL DISABILITIES SIMPSON HALL, 3RD FLOOR 6 HARRINGTON ROAD CRANSTON, RI 02920 United States
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Type of Requisition	SOLE SOURCE / CRITICAL EXP
Requisition Number	1595213
Change Order Requisition Number	
Solicitation Number	
Freight	Paid
Payment Terms	NET 30
Buyer	- Francis, David
Requester Name	
Work Telephone	

This Purchase Order is issued pursuant to and in accordance with the terms and conditions of the solicitation and applicable federal, state, and local law, including the State of Rhode Island's purchasing regulations, available at www.purchasing.ri.gov.

PO 3608095 REISSUE - TECHNICAL DIFFICULTY
 PO 3609321 REPLACES PO 3608095 FOR THE REMAINDER OF THE CONTRACT

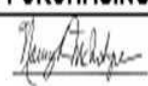
PO #3609321
 DD ANNUAL RATE REVIEW
 NEW ENGLAND STATES CONSORTIUM SYSTEMS ORGANIZATION (NESCSO)

TERM: 02/08/2019 TO 06/30/2020 WITH TWO (2) ANNUAL OPTION YEAR RENEWALS.
 CONTROL VALUE: NTE \$1,365,598.00
 IN ACCORDANCE WITH THE STATE'S GENERAL CONDITIONS OF PURCHASE

INVOICE TO

The State of Rhode Island accepts electronic invoices via its supplier portal. To register and submit electronic invoices, visit the supplier portal at <http://controller.admin.ri.gov/iSupplier/isup/index.php>

To submit paper invoices, mail to: Department of Administration Controller, One Capitol Hill, 4th Floor, Providence 02908.

STATE PURCHASING AGENT
 Nancy R. McIntyre

AGENCY CONTACT:
 COLLEEN MASTERSON
 401-462-6302

SUPPLIER CONTACT:
 ELENA NICOLELLA

Reference Documents: 3609321 NESCSO CONTRACT.pdf

Line	Description	Unit	Unit Price (USD)
1	APA-18821 TASK 1 - HEALTH INFORMATION TECHNOLOGY DEVELOPMENT AND CONNECTIVITY FOR ESH - NTE \$53,053.00	Each	1
2	APA-18821 TASK 2 - ALTERNATIVE PAYMENT METHODS AND RATE REVIEW FOR DD LTC SERVICES TO PERSONS WITH DEVELOPMENT DISABILITIES - NTE \$1,312,545.00	Each	1

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STATE PURCHASING AGENT

 Nancy R. McIntyre

Contract Terms and Conditions

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Terms and Conditions

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

TERMS AND CONDITIONS FOR THIS PURCHASE ORDER

CAMPAIGN FINANCE COMPLIANCE

CAMPAIGN FINANCE: In accordance with RI General Law 17-27-2, Every person or business entity providing goods or services of \$5,000 or more, and has in the preceding 24 months, contributed an aggregate amount in excess of \$250 within a calendar year to any general officer, or candidate for general office, any member, or candidate for general assembly, or political party, is required to electronically file an affidavit regarding political contributions at: <https://secure.ricampaignfinance.com/RhodeIslandCF/Public/VendorAffidavit.aspx>

ARRA SUPPLEMENTAL TERMS AND CONDITIONS

For contracts and sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto, such contracts and sub-awards shall be subject to the Supplemental Terms and Conditions For Contracts and Sub-awards Funded in Whole or in Part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto located on the Division of Purchases website at www.purchasing.ri.gov.

DIVESTITURE OF INVESTMENTS IN IRAN REQUIREMENT:

No vendor engaged in investment activities in Iran as described in R.I. Gen. Laws §37-2.5-2(b) may submit a bid proposal to, or renew a contract with, the Division of Purchases. Each vendor submitting a bid proposal or entering into a renewal of a contract is required to certify that the vendor does not appear on the list maintained by the General Treasurer pursuant to R.I. Gen. Laws §37-2.5-3.

For all Purchase Orders issued on behalf of the University of Rhode Island, Community College of Rhode Island, and Rhode Island College, vendors will receive a confirming order from the respective entity prior to proceeding.

INSURANCE REQUIREMENTS (ADDITIONAL)

ANNUAL RENEWAL INSURANCE CERTIFICATES FOR WORKERS' COMPENSATION, PUBLIC LIABILITY, PROPERTY DAMAGE INSURANCE, AUTO INSURANCE, PROFESSIONAL LIABILITY INSURANCE (AKA ERRORS & OMISSIONS), BUILDER'S RISK INSURANCE, SCHOOL BUSING AUTO LIABILITY, ENVIRONMENTAL IMPAIRMENT (AKA POLLUTION CONTROL), VESSEL OPERATION (MARINE OR AIRCRAFT) PROTECTION & INDEMNITY, ETC., MUST BE SUBMITTED TO THE SPECIFIC AGENCY IDENTIFIED IN THE "SHIP TO" SECTION OF THE PURCHASE ORDER. CERTIFICATES ARE ANNUALLY DUE PRIOR TO THE BEGINNING OF ANY CONTRACT PERIOD BEYOND THE INITIAL TWELVE-MONTH PERIOD OF A CONTRACT. FAILURE TO PROVIDE ANNUAL INSURANCE CERTIFICATION MAY BE GROUNDS FOR CANCELLATION.

MULTI YEAR AWARD

THIS IS A MULTI-YEAR BID/CONTRACT. PER RHODE ISLAND STATE LAW 37-2-33, CONTRACT OBLIGATIONS BEYOND THE CURRENT FISCAL YEAR ARE SUBJECT TO AVAILABILITY OF FUNDS. CONTINUATION OF THE CONTRACT BEYOND THE INITIAL FISCAL YEAR WILL BE AT THE DISCRETION OF THE STATE. TERMINATION MAY BE EFFECTED BY THE STATE BASED UPON DETERMINING FACTORS SUCH AS UNSATISFACTORY PERFORMANCE OR THE DETERMINATION BY THE STATE TO DISCONTINUE THE GOODS/SERVICES, OR TO REVISE THE SCOPE AND NEED FOR THE TYPE OF GOODS/SERVICES; ALSO MANAGEMENT OWNER DETERMINATIONS THAT MAY PRECLUDE THE NEED FOR GOODS/SERVICES.

BLANKET PAYMENT

DELIVERY OF GOODS OR SERVICES AS REQUESTED BY AGENCY. PAYMENTS WILL BE AUTHORIZED UPON SUBMISSION OF PROPERLY RENDERED INVOICES NO MORE THAN MONTHLY TO THE RECEIVING AGENCY. ANY UNUSED BALANCE AT END OF BLANKET PERIOD IS AUTOMATICALLY CANCELLED.

EQUAL OPPORTUNITY COMPLIANCE

THIS PURCHASE ORDER IS AWARDED SUBJECT TO EQUAL OPPORTUNITY COMPLIANCE.

PURCHASE AGREEMENT AWARD

THIS IS A NOTICE OF AWARD, NOT AN ORDER. Any quantity reference in the agreement or in the bid preceding it are estimates only and do not represent a commitment on the part of the state to any level of billing activity, other than for quantities or volumes specifically released during the term. No action is to be taken except as specifically authorized, as described herein under AUTHORIZATION AND RELEASE. ENTIRE AGREEMENT - This NOTICE OF AWARD, with all attachments, and any release(s) against it shall be subject to: (1) the specifications, terms and conditions set forth in the Request/Bid Number cited herein, (2) the General Terms and Conditions of Contracts for the State of Rhode Island and (3) all provisions of, and the Rules and Regulations promulgated pursuant to, Title 37, Chapter 2 of the General Laws of the State of Rhode Island. This NOTICE shall constitute the entire agreement between the State of Rhode Island and the Vendor. No assignment of rights or responsibility will be permitted except with the express written permission of the State Purchasing Agent or his designee. CANCELLATION, TERMINATION and EXTENSION - This Price Agreement shall automatically terminate as of the date(s) described under CONTRACT PERIOD unless this Price Agreement is altered by formal amendment by the State Purchasing Agent or his designee upon mutual agreement between the State and the Vendor.

AUTHORIZATION AND RELEASE

In no event shall the Vendor deliver goods or provide service until such time as a duly authorized release document is certified by the ordering Agency. A Direct Purchase Order (DPO) shall be created by the agency listing the items ordered, using the pricing and format set forth in the Master Blanket. All pricing shall be as described in the Master Blanket and is considered to be fixed and firm for the term of the Agreement, unless specifically noted to the contrary herein. All prices include prepaid freight. Freight, taxes, surcharges, or other additional charges will not be honored unless reflected in Master Blanket.

TERMS AND CONDITIONS OF PRICING AGREEMENT

SCOPE AND LIMITATIONS - This Agreement covers requirements as described herein, ordered by State agencies during the Agreement Period. No additional or alternative requirements are covered, unless added to the Agreement by formal amendment by the State Purchasing Agent or his designee.

Under State Purchasing Law, 37-2-54, no purchase or contract shall be binding on the state or any agency thereof unless approved by the department [of administration] or made under general regulations which the chief purchasing officer may prescribe. Under State Purchasing Regulation 8.2.1.1.2, any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state.

PRODUCT ACCEPTANCE - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the State. The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option.

a) Failure by the state to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

b) Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

Where the vendor fails to cure the defect promptly or replace the goods, the State reserves the right to cancel the Release, contract with a different vendor, and to invoice the original vendor for any differential in price over the original contract price.

ORDER AUTHORIZATION AND RELEASE AGAINST PRICING AGREEMENT

In no event shall the Vendor deliver goods or provide service until such time as a duly authorized release document is certified by the ordering Agency.

State Agencies shall request release as follows: All releases shall reference the Price Agreement number, the Contract Issue number, the item(s) covered, and the unit pricing in the same format as described herein.

A Department Purchase Order (DPO) listing the items ordered shall be created by the agency. The agency may mail or fax a copy of the order to the Vendor. In some cases the agency may request delivery by telephone, but must provide the Vendor with a DPO Order Number reference for billing purposes. Vendors are encouraged to require written orders to assure payments are processed accurately and promptly.

DELIVERY If this is an MPA, Vendor will obtain "ship to" information from each participating agency. This information will be contained in the DPO. APA delivery information will be contained in the Notice of Award.

PRICING - All pricing shall be as described herein, and is considered to be fixed and firm for the term of the Agreement, unless specifically noted to the contrary herein. All prices include prepaid freight. Freight, taxes, surcharges, or other additional charges will not be honored unless reflected herein.

INVOICING All invoices shall reference the DPO Order Number(s), Price Agreement number, the Contract Issue number, the item(s) covered, and the unit pricing in the same format as described herein. If this is an MPA, Vendor will obtain "bill to" information from each participating agency. This information will be contained in the DPO. APA billing information will be contained in the Notice of Award.

PAYMENT - Invoices for items not received, not priced according to contract or for work not yet performed will not be honored. No payment will be processed to any vendor for whom there is no IRS W-9 on file with the State Controller.

AGREEMENT

Between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES
AND HOSPITALS**

and

NEW ENGLAND STATES CONSORTIUM SYSTEMS ORGANIZATION

Name of Contractor: New England States Consortium Systems Organization (NESCSO)

Title of Agreement: Technical Assistance Services

Basis for Contract: Single Source Procurement

Contract Award: Total Contract Amount - \$1,365,598.00

FY19 \$53,053.00 - Task 1

FY19 \$437,515.00 – Task 2

FY20 \$875,030.00 – Task 2

Performance Period: December 1, 2018 – June 30, 2020

A G R E E M E N T

This agreement, hereinafter "Agreement", including attached ADDENDA, is hereby entered into this 1st day of December, 2018 by and between the State of Rhode Island acting by and through the Department of Behavioral Healthcare, Developmental Disabilities And Hospitals (hereinafter referred to as "BHDDH"), and the New England States Consortium Systems Organization, (NESCSO) (hereinafter referred to as "the Contractor").

WHEREAS, BHDDH desires to engage the Contractor to offer services and activities further described, but not limited to the work described in this Agreement, including any Exhibit(s) or Addenda, that are attached hereto and are hereby incorporated by reference into this Agreement.

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

PAR. 1. GOVERNING LAW AND GENERAL TERMS AND CONDITIONS

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

PAR. 2. PERFORMANCE

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

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

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

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

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

PAR. 3. TIME OF PERFORMANCE

The Contractor shall commence performance of this Agreement on the 1st day of December 2018 and shall complete performance no later than the 30th day of June 2020 (hereinafter the "Initial Term"), unless terminated prior to that day by other provisions of this Agreement. *If this contract was awarded as a result of an RFP or bid process, then, by mutual agreement, this contract may be extended as stated in the RFP or bid process (hereinafter "Renewal Term(s))* beyond the Initial Term upon one hundred twenty (120) days prior written notice of the expiration of the Initial Term or any Renewal Term to the Contractor. This RFP award allows this Contract to be renewed for up to two (2) additional twelve (12) month periods based on Contractor's performance and the availability of funds.

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

PAR. 4. PROJECT OFFICER – BHDDH

BHDDH shall appoint a Contract Officer to manage this Agreement. The Contractor agrees to maintain close and continuing communication with the Contract Officer throughout the performance of work and services undertaken under the terms of this Agreement. The Contract Officer is responsible for authorizing or seeking authorization of all payments made by BHDDH to the Contractor under this Agreement.

PAR. 5. PROJECT OFFICER – CONTRACTOR

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

of BHDDH.

PAR. 6. BUDGET

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

PAR. 7. METHOD OF PAYMENT AND REPORTS

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

PAR. 8. TERMINATION AND/OR DEFAULT OF AGREEMENT

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

a) Mutual Agreement

The contracting parties mutually agree in writing to termination.

b) Default by Contractor

BHDDH may, by not less than thirty (30) days prior written notice to the Contractor, terminate the Contractor's right to proceed as to the Agreement if the Contractor:

1. Materially fails to perform the services within the time specified or any extension thereof; or
2. So fails to make progress as to materially endanger performance of the Agreement in accordance with its terms; or
3. Materially breaches any provision of this Agreement.

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

c) Termination in the Interest of BHDDH

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

services of the Contractor covered by this Agreement, less payment of compensation previously made.

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

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

1. Stop work under this contract on the date and to the extent specified in the notice of termination.
2. Take such action as may be necessary, or as BHDDH's project manager may reasonably direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which BHDDH has or may acquire an interest.
3. Terminate all orders to the extent that they relate to the performance of work terminated by the notice of termination.
4. Subject to the provisions of this paragraph, assign to BHDDH in the manner and to the extent directed by BHDDH's project officer all of the rights, title, and interest of the Contractor under the orders so terminated, in which case BHDDH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders, however, notwithstanding this provision, the Contractor will not be obligated to assign any such rights, title or interest in the absence of payment therefore by BHDDH.
5. With the approval or ratification of BHDDH's project manager, initiate settlement of all outstanding liabilities and all claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract. Prior to a final settlement of said outstanding liabilities and claims arising out of such termination, final written approval of BHDDH's project manager must be obtained. Final approval by BHDDH shall not be unreasonably withheld.
6. Subject to the provisions of this paragraph, transfer title, or if the Contractor does not have title, then transfer their rights to BHDDH (to the extent that title has not already been transferred) and deliver in the manner, at reasonable times, and to the extent reasonably directed by BHDDH's project manager all files, processing systems, data manuals, or other documentation, in any form, that relate to all the work completed or in progress prior to the notice of termination.
7. Complete the performance of such part of the work as shall not have been terminated by the notice of termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.
8. Unless terminated by BHDDH for default of the Contractor, the Contractor shall be entitled to reasonable account shut down expenses associated with such termination including the penalties associated with early termination of lease, software, hardware, and any other unamortized or incremental expenses accrued but not charged, excluding anticipated profits which shall not be reimbursed. The Contractor shall submit all identified shut down expenses associated with such termination incurred before and prior to the termination date. Any damages to BHDDH shall offset any shutdown expenses to BHDDH.

9. The Contractor acknowledges and agrees the services and/or deliverables provided under this Agreement are very important to BHDDH and that upon expiration or termination of the Agreement, must be continued without interruption whether by the State, BHDDH, governmental agency or another private entity ("successor entity"). Prior to the end of the Termination and up to sixty (60) days thereafter, the Contractor agrees to make an orderly transition of contract and/or deliverables hereunder and to perform any and all tasks in good faith that are necessary to preserve the integrity of the work performed by the Contractor on behalf of BHDDH. Upon termination or expiration of the Agreement, the Contractor, shall, if requested by BHDDH at least thirty (30) days prior to such termination or expiration, provide reasonable training for the successor entity and/or continued performance of services. For providing such training or continued performance after the Term of the Agreement, BHDDH shall pay the Contractor at mutually agreed rates for personnel used in providing such training and/or services unless services delivered are already defined herein and rates established then such rates shall apply for such period. Should any missing data, materials, documents, etc., be discovered after expiration or termination, a grace period of one hundred and twenty (120) days shall be in effect during which the data, materials, documents, etc., is to be provided at a predetermined cost or at no additional cost if the Contractor caused the loss. Lost data shall be provided to BHDDH in form acceptable to BHDDH.

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

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

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

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

The Contractor's liability to BHDDH for any damages arising out of or related to this

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

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

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

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

Assurances before breach

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

Nothing in the language contained in "limitation of liability" article, "Contractor's liability for injury to person's or damage to property" article and "indemnification" article shall be construed to waive or limit the state or federal sovereign immunity or

any other immunity from suit provided by law including, but not limited to Rhode Island General Laws, Title 9 Chapter 31, "Governmental Tort Liability."

BHDDH's options at termination

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

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

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

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

PAR. 10. MODIFICATION OF AGREEMENT

BHDDH may permit changes in the scope of services, time of performance, or approved budget of the Contractor to be performed hereunder. Such changes, which are mutually agreed upon by BHDDH and the Contractor, must be in writing and shall be made a part of this agreement by numerically consecutive amendment excluding "Special Projects", if applicable, and are incorporated by reference into this Agreement. No changes are effective unless reflected in an approved change order issued by the State's Division of Purchases.

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

Availability of Funds

It is understood and agreed by the parties hereto that all obligations of BHDDH, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall BHDDH

be liable for any payments hereunder in excess of such available and appropriated funds. In the event that the amount of any available or appropriated funds provided by the State or Federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified amount of services to be purchased hereunder for any reason whatsoever, BHDDH shall notify the Contractor of such reduction of funds available and BHDDH shall be entitled to reduce its commitment hereunder as it deems necessary, but shall be obligated for payments due to the Contractor up to the time of such notice. Neither party shall be liable for any amounts for loss of income, profit or savings or incidental, consequential, indirect, exemplary, severance pay, punitive, or special damages of any party, including third parties arising out of or related to this Agreement.

PAR. 11. SUBCONTRACTS

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

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

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

PAR. 12. CONTRACTOR'S LIABILITY/INDEMNIFICATION

The Contractor shall indemnify, defend and hold the State of Rhode Island, its departments, agencies, branches and its or their officers, directors, agents or employees

(together the "Indemnitees" and their subcontractors) harmless against claims, demands, suits for judgments, losses or reasonable expenses or costs of any nature whatsoever (including actual reasonable attorney's fees) to the extent arising in whole or part from the Contractor's willful misconduct, negligence, or omission in provision of services or breach of this Agreement including, but not limited to, injuries of any kind which the staff of the Contractor or its subcontractor may suffer directly or may cause to be suffered by any staff person or persons in the performance of this Agreement, unless caused by the willful misconduct or gross negligence of the Indemnitees.

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

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

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

PAR. 13. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES

By signing this Agreement, the Contractor agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); Americans with Disabilities Act of 1990 (42 USC 12101 et. seq.); Title IX of the Education Amendments of 1972 (20 USC 1681 et. seq.); The Food Stamp Act, and the Age Discrimination Act of 1975, The United States Department of Health and Human Services Regulations found in 45 CFR, Parts 80 and 84; the United States Department of Education Implementing regulations (34 CFR, Parts 104 and 106; and the United States Department of Agriculture, Food and Nutrition Services (7 CFR §272.6), which prohibit discrimination on the basis of race, color, national origin (limited English proficiency persons), age, sex, disability, religion, political beliefs, in acceptance for or provision of services, employment, or treatment in educational or other programs or activities, or as any of the Acts are amended from time to time.

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

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

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

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

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

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

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

PAR. 14. ASSIGNABILITY

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

PAR. 15. COPYRIGHTS

Any and all data, technical information, information systems, materials gathered, originated, developed, prepared, modified, used or obtained by the Contractor in performance of the Agreement used to create and/or maintain work performed by the

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

The Contractor agrees that no findings, listing, or information derived from information obtained through performance, as described in the Scope of Work in Addendum I with or without identifiers, may be released or publicly disclosed in any form for any purpose if such findings, listing, or information contain any combination of data elements that might allow an individual to determine a beneficiary's identification without first obtaining written authorization from BHDDH's project officer. Examples of such data elements include, but are not limited to geographic indicators, age, sex, diagnosis, procedure, date of birth, or admission/discharge date(s). The Contractor agrees further that BHDDH shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from BHDDH's files identify or would, with reasonable effort, permit one to identify an individual, or to deduce the identifying of an individual to a reasonable degree of certainty. The Contractor agrees that the conditions set forth herein apply to any materials presented or submitted review and/or publication that contain individual identifying elements in the information obtained, as stated above, unless such information is presented in the aggregate. Under no circumstance, shall the Contractor publicly disclose or present or submit any materials for review and/or publication that contains an individual's social security number, in part or in whole. The Contractor is hereby notified that all initial data received from BHDDH is considered confidential by BHDDH. For further requirements regarding confidentiality of information please refer to Paragraph 23 of this Agreement.

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

provides otherwise, the defense and payment obligations set forth in this Paragraph will be conditional upon the following:

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

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

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

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

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

PAR. 16. PARTNERSHIP

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

PAR. 17. INTEREST OF CONTRACTOR

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

PAR. 18. FEDERAL FUNDING PROVISIONS

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

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

Contractor must then provide all sub-contractor FFATA forms to BHDDH. Sub-contractor forms must be provided within fifteen (15) days of date of signature of this Agreement, and if applicable, within fifteen (15) days of the end of each contract year for all subsequent contract years.

PAR. 19. FUNDING DENIED

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

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

PAR. 20. ACCESSIBILITY AND RETENTION OF RECORDS

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

The Contractor and its subcontractors, if subcontractors are permitted within the scope of this Agreement, will provide and maintain a quality assurance system acceptable to the state covering deliverables and services under this Agreement and will tender to the state only those deliverables that have been inspected and found to conform to this Agreement's requirements. The Contractor will keep records evidencing inspections

and their result and will make these records available to the state during Agreement performance and for three (3) years after final payment. The Contractor shall permit the state to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices related to performance of the Agreement.

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

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

PAR. 21. CAPITAL ASSETS

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

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

PAR. 22. COMPETITIVE BIDS

With the exception of services or products obtained for use in a leveraged environment, the Contractor agrees competitive bidding will be utilized for all purchases in direct and exclusive support of BHDDH which are made under this Agreement in excess of five hundred dollars (\$500) or an aggregate of one thousand dollars (\$1,000) for any like items during the time of performance of this Agreement. Evidence of competitive bids must be retained in accordance with PAR. 20. - ACCESSIBILITY AND RETENTION OF RECORDS.

PAR. 23. SECURITY AND CONFIDENTIALITY

The Contractor shall take security measures to protect against the improper use, loss, access of and disclosure of any confidential information it may receive or have access to under this Agreement as required by this Agreement, the RFP and proposal, or which becomes available to the Contractor in carrying out this Agreement and the RFP and the proposal, and agrees to comply with the requirements of BHDDH for safeguarding of client and such aforementioned information. Confidential information includes, but is not limited to: names, dates of birth, home and/or business addresses, social security numbers, protected health information, financial and/or salary information, employment

information, statistical, personal, technical and other data and information relating to the State of Rhode Island data, and other such data protected by Department/BHDDH laws, regulations and policies ("confidential information"), as well as State and Federal laws and regulations. All such information shall be protected by the Contractor from unauthorized use and disclosure and shall be protected through the observance of the same or more effective procedural requirements as are applicable to BHDDH.

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

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

The Contractor agrees to abide by all applicable, current and as amended Federal and State laws and regulations governing the confidentiality of information, including to but not limited to the Business Associate requirements of HIPAA (WWW.HHS.GOV/OCR/HIPAA), to which it may have access pursuant to the terms of this Agreement. In addition, the Contractor agrees to comply with BHDDH confidentiality policy recognizing a person's basic right to privacy and confidentiality of personal information. ("confidential records" are the records as defined as not public in R.I. Gen. Laws 38-2-2-(4) (A)-(AA) entitled "Access to Public Records").

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

Personally Identifiable Information (PII) is defined as any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information

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

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

The Contractor agrees to adhere to any and all applicable State and Federal statutes and regulations relating to confidential health care and substance abuse treatment including but not limited to the Federal Regulation 42 CFR, Part 2; Rhode Island Mental Health Law, R.I. General Laws Chapter 40.1-5-26; Confidentiality of Health Care Communications and Information Act, R.I. General Laws Chapter 5-37.3-1 *et seq.*, HIPAA 45 CFR 160 and the Rhode Island Identity Theft Protection Act, R.I. General Laws Chapter 11-49.3-1. The Contractor acknowledges that failure to comply with the provisions of this paragraph will result in the termination of this Agreement.

The Contractor shall notify BHDDH and BHDDH's designated security officer by telephone call plus e-mail, web form or fax upon the discovery of any breach of security of PHI, PII or SI or suspected breach of security of PHI, PII or SI (where the use or disclosure is not provided for and permitted by this Agreement) of which it becomes aware within one (1) hour and in no case later than forty-eight (48) hours of the breach and/or Security Incident. The Contractor shall, within forty-eight (48) hours, notify BHDDH and BHDDH's designated security officer of any suspected breach of unauthorized electronic access, disclosure or breach of confidential information or any successful breach of unauthorized electronic access, disclosure or breach of confidential information. A breach is defined pursuant to HIPAA guidelines as well as those found in the "Health Information Technology for Economic and Clinical Health Act" (HITECH). A breach or suspected breach may be an acquisition, access, use or disclosure or suspected acquisition, access, use or disclosure of PHI in violation of HIPAA privacy rules that compromise PHI security or privacy. Additionally, a breach or suspected breach may be an acquisition, access, use or disclosure or suspected

acquisition, access, use or disclosure of PII or SI. The notice of a breach or suspected breach shall contain information available to the Contractor at the time of the notification to aid BHDDH in examining the matter. More complete and detailed information shall be provided to BHDDH as it becomes available to the Contractor.

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

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

Failure to abide by BHDDH's confidentiality policy or the required signed **Business Associate Agreement (BAA)** will result in termination remedies, including but not limited to, termination of this Agreement. A **Business Associate Agreement (BAA)** shall be signed by the Contractor, simultaneously or as soon thereafter as possible, from the signing of this Agreement, as required by BHDDH.

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

PAR. 24. AUDIT

In the case wherein the amount identified in **PAR. 6. - BUDGET** is at least twenty-five thousand dollars (\$25,000) in any year, at no additional cost for BHDDH, the Contractor shall prepare an annual financial statement of the Contractor or the Contractor's parent, where applicable, within nine (9) months of the end of the

Contractor's fiscal year. The financial statements must provide full and frank disclosures of all assets, liabilities, changes in the fund balances, all revenue, and all expenditures. Upon written or oral request by BHDDH, the Contractor shall provide BHDDH a copy of the above described financial statement(s) within ten (10) days of BHDDH's request or within twenty (20) days of the end of the Time of Performance, Paragraph 3 herein. If additional financial documentation is required by the Federal funding source, these additional financial requirements must be met in addition to the preparation of the above financial statements.

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

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

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

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

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

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

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

PAR. 25. SEVERABILITY

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

PAR. 26. ON-SITE INSPECTION

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

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

PAR. 27. DRUG-FREE WORKPLACE POLICY

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

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

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

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

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

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

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

PAR. 30. CHIEF PURCHASING OFFICER

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

PAR. 31. OWNERSHIP

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

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

DEVELOPED SOFTWARE. All software that is developed by the Contractor and delivered by the Contractor to BHDDH under this Agreement, and paid for by BHDDH ("Developed Software") is and shall remain the property of BHDDH. For a period of ninety (90) days following acceptance of any developed software in accordance with the approval procedures adopted by the parties, the Contractor warrants that each item of developed software will conform in all material respects to the written technical specifications agreed to by the parties in accordance with the software development methodologies adopted by the parties and set forth in the procedures manual. As soon as reasonably practicable after discovery by State or Contractor of a failure of the Developed Software to so conform (a "**non-conformance**"), State or Contractor, as applicable, will deliver to the other a statement and supporting documentation describing in reasonable detail the alleged nonconformance. If Contractor confirms that there is a non-conformance, then Contractor will use commercially reasonable efforts to correct such non-conformance. The methods and techniques for correcting non-conformances will be at the sole discretion of BHDDH. The foregoing warranty will not extend to any non-conformances caused (i) by any change or modification to software without Contractor's prior written consent; or (ii) by state operating software otherwise than in accordance with the applicable documentation, for the purpose for

which it was designed, or on hardware not recommended, supplied or approved in writing by Contractor. Furthermore, if, after undertaking commercially reasonable efforts to remedy a breach by Contractor of the foregoing warranty, Contractor, in the exercise of its reasonable business judgment, determines that any repair, adjustment, modification or replacement is not feasible, or in the event that the developed software subsequent to all repairs, adjustments, modifications and replacements continues to fail to meet the foregoing warranty, BHDDH will return the developed software to Contractor, and Contractor will credit to the State, in a manner and on a schedule agreed to by the parties and as BHDDH's sole and exclusive remedy for such failure, an amount equal to the charges actually paid by BHDDH to the Contractor for the developed software that has failed to meet the foregoing warranty. Upon written request of BHDDH, the Contractor will use commercially reasonable efforts to correct an alleged non-conformance for which Contractor is not otherwise responsible hereunder because it is caused or contributed to by one of the factors listed above and, to the extent that such correction cannot be performed within the scope of the Contractor services, such correction will be paid for by BHDDH at the Contractor's then current commercial billing rates for the technical and programming personnel and other materials utilized by the Contractor. Notwithstanding anything to the contrary in this Agreement, the Contractor will continue to own, and will be free to use, the development tools and the residual technology, so long as such use does not breach Contractor's obligations of confidentiality set forth herein

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

PAR. 32. FORCE MAJEURE

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

PAR. 33. RESERVED

PAR. 34. DISPUTES

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

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

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

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

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

PAR. 35. GOVERNING LAW

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

PAR. 36. WAIVER AND ESTOPPEL

Nothing in this Agreement shall be considered waived by any party, unless the party claiming the waiver receives the waiver in writing. No breach of this Agreement is

considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision shall not constitute a waiver of any other. A failure of any party to enforce at any time any provisions(s) of this contract, or to exercise any option which is herein provided, shall in no way be construed as a waiver of such provision of this contract. No consent, or excuse by either party, express or implied, shall constitute a subsequent consent, waiver or excuse.

PAR. 37. INSURANCE

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

PAR. 38. WORK REVIEWS

The Contractor agrees that all work performed under this Agreement may be reviewed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities And Hospitals, Department of Administration, and/or by any third party designated by the Department of Behavioral Healthcare, Developmental Disabilities And Hospitals.

PAR. 39. BUSINESS CONTINUITY PLAN

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

PAR. 40. NOTICES

No notice, approval or consent permitted or required to be given by this Agreement will be effective unless the same is in writing and sent postage prepaid, certified mail or registered mail, return receipt requested, or by reputable overnight delivery service to the other party at the address set forth in **ADDENDUM XVII – CORE STAFF POSITIONS**, or such other address as either party may direct by notice given to the other as provided **ADDENDUM XVII – CORE STAFF POSITIONS**, and shall be deemed to be given when received by the addressee. The Contractor and BHDDH shall list, in **ADDENDUM XVII – CORE STAFF POSITIONS**, the names, addresses, email addresses, telephone numbers, and the facsimile numbers of all individuals that the above such notice, approval or consent shall be sent to or copied on. The Parties agree to update any changes to the designated notice recipients, in writing pursuant to the terms outlined in **PARAGRAPH 40**.

PAR. 41. COUNTERPARTS

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

PAR. 42. AMENDMENTS

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

PAR. 43. SURVIVAL

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

PAR. 44. ADDITIONAL APPROVALS

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

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands as of the date first above written and this Agreement made legally binding upon the issuance of a valid Purchase Order by the State of Rhode Island as follows:

STATE OF RHODE ISLAND:



REBECCA BOSS, DIRECTOR
DEPARTMENT OF BEHAVIORAL
HEALTHCARE, DEVELOPMENTAL
DISABILITIES AND HOSPITALS

1/8/19
DATE

**New England States Consortium Systems
Organization (NESCSO)**

Elena Nicoletta

AUTHORIZED AGENT/ SIGNATURE
TITLE: Executive Director

Elena Nicoletta

PRINT NAME

12/31/2018

DATE

ADDENDA

Attached hereto, incorporated into and made a part herein of this agreement, are the following addenda:

- ADDENDUM I - REQUEST FOR PROPOSAL AND/OR SCOPE OF WORK
- ADDENDUM II - BUDGET
- ADDENDUM III - PAYMENTS AND REPORTS SCHEDULE
- ADDENDUM IV - FISCAL ASSURANCES
- ADDENDUM V - NOTICE TO EXECUTIVE OF HUMAN SERVICES' SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
- ADDENDUM VI - NOTICE TO DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS' SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973
- ADDENDUM VII - DRUG-FREE WORKPLACE POLICY
- ADDENDUM VIII - DRUG FREE WORKPLACE POLICY CONTRACTOR CERTIFICATE OF COMPLIANCE
- ADDENDUM IX - SUBCONTRACTOR COMPLIANCE
- ADDENDUM X - CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE
- ADDENDUM XI - INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS
- ADDENDUM XII - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS
- ADDENDUM XIII - LIQUIDATED DAMAGES
- ADDENDUM XIV - EQUAL EMPLOYMENT OPPORTUNITY
- ADDENDUM XV - BYRD ANTI-LOBBYING AMENDMENT
- ADDENDUM XVI - BID PROPOSAL
- ADDENDUM XVII - CORE STAFF POSITIONS
- ADDENDUM XVIII - FEDERAL SUBAWARD REPORTING
- ADDENDUM XIX - BUSINESS ASSOCIATE AGREEMENT

ADDENDUM I

REQUEST FOR PROPOSAL / SCOPE OF WORK

The Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) seeks to obtain expert technical assistance on Federal financing opportunities and options for leveraging products and services to best meet the needs of the State and its Medicaid population. BHDDH requires technical assistance for Rate Review and options regarding payment methodologies for certain community-based services as well. The Department will collaborate with Medicaid and EOHHS on any services and rates impacting Medicaid.

Task 1: Health Information Technology (HIT) Development and Connectivity for ESH Federal Resources

Eleanor Slater Hospital (ESH) is a state operated public hospital facing unique operating and financial challenges. ESH serves a high need population with multiple co-occurring conditions including severe chronic physical health needs, serious and persistent mental health needs, and forensic admissions. Information systems to support efficient core business operations need modernization.

Additionally, to be able to perform effectively in meeting the needs of its population and to provide for an integrated continuum of care that can support successful transition back to the community for qualified individuals, ESH also needs to develop an outpatient billing and reimbursement capacity with accompanying technology.

Task 1.1 Development of Plan for HIT Financing and Federal Authority

The Contractor shall develop a matrix of funding options including Federal matching opportunities for the Department with timelines and any other financing opportunities for the following modules:

- Patient registration
- Billing, including Medicaid specific patient share focused systems
- Accounting
- Quality reporting, including incident tracking

Task 1.2 Environmental Scan

The Contractor will develop a matrix of public hospital information systems within the New England states that includes at a minimum the population served and census, pros and cons of current systems, modules utilized, and financing strategies utilized. This may require on-site interviews and demonstrations. Contractor will provide analysis and recommendations that takes into account the needs of RI Department of BHDDH and lessons learned from other states.

Task 2: Alternative Payment Methods (APM) and Rate Review for Services to persons with Developmental Disabilities and Behavioral Health (BH) Disorders

BHDDH is responsible for the provision of services to persons with Developmental Disabilities (DD) and Behavioral Health (BH) including Substance Use Disorder (SUD). BHDDH is seeking to further promote the development of a services system and associated reimbursement arrangements that maximize the opportunity for persons with DD to participate to the fullest extent possible in typical community-based activities. Historically, such services were provided in sheltered settings. This practice has been the subject of the Department of Justice Consent Decree of 2013 and 2014, obligating BHDDH to develop a services system that supports greater independence for this population. While BHDDH has pursued this requirement the underlying reimbursement system has lagged. The basis for development of prevailing rates is grounded in past practices and cost bases associated with the provision of services in the sheltered workshop setting.

Two services of particular focus are rates paid to providers of Day Services and for Employment Supports. In sheltered settings, for example, the ratio of client to Direct Service Workers (DSWs) might have been 1 to 10. In a more independent setting support is still needed but the ratio of DSWs to workers needs to be much higher. In order to adequately meet consumers' needs, providers have been paid supplemental funds to address the deficiency in the payment rates. Supplemental fund payments (L-9s) are an increasing portion of overall payments reflecting the inadequacy of the current rates.

BHDDH is seeking assistance in review of best strategies for complying with the Consent Decree, the HCBS Final Rule, and in developing an optimal and balanced system of services and payments for this population. This includes identification of alternative payment methods and policy options that can further incentivize a consumer centered and consumer-directed utilization of institutional and community-based living and services and options

Additionally, as BHDDH endeavors to build a conflict-free service and a supportive delivery system, the Department will require an analysis of Care Management reimbursement as well. The Department may also request additional rate analyses and reviews of payment methodologies for other services provided to populations that BHDDH serves.

Activities in Task 2 include:

- Analytic review of characteristics of the current DD population, including delineation of the acuity of and support needs of the population using existing data sources.
- Analytic review of total BHDDH specific and Medicaid-wide utilization and expenditures by the DD population, by service type, level of acuity and support needs.
- Delineation of the structure of the DD delivery system, including the distribution of institutional and community-based services by acuity level and care setting.
- Identification of prevailing approaches and potential best practices and payment methods in other New England states for provision of services to the DD population.
- Rate Review of the adequacy of Care Management, Day Services and Employment Support services and APMs
 - Identification of opportunities for alternative payments methods/value-based payment methods that better meet the needs of the population and provide appropriate incentives to providers for improved outcomes and for re-balancing the mix of institutional and community-based care.

- In many instances the same entities provide institutional and community services, raising the potential of bundled and/or total cost of care-based payment arrangements.
- Identification of approaches that might be taken for a more comprehensive rate review of DD related services.
- Analytic review and comparisons of other codes, services and payment methodologies.

ADDENDUM II

BUDGET

BHDDH-NESCSO	FY 2019 (December 1- June 30, 2019)					FY 2020 (July 1- June 30, 2020)					
	Task	Hourly Rate	Admin Cost @ 6%	Weekly Hours	Total Annual Hours	Total FY 2019 cost	Hourly Rate	Admin Cost @ 6%	Weekly Hours	Total Annual Hours	Total FY 2019 cost
Task 1: Health Information Technology (HIT) Development and Connectivity for ESH											
Task 1.1: Plan for Financing and Federal Authority	\$ 175.00	\$ 10.50	10	260	\$ 48,230						
Task 1.2 Environmental Scan	\$ 175.00	\$ 10.50	1	26	\$ 4,823						
					\$ 53,053						
Task 2: Alternative Payment Methods (APM) and Rate Review for DD LTC services to Persons with Developmental Disabilities											
DD SME TBD	\$ 150.00	\$ 9.00	20	520	\$ 82,680	\$ 156.00	\$ 9.36	20	1000	\$ 155,360	
Analyst A	\$ 165.00	\$ 9.90	25	650	\$ 113,685	\$ 171.60	\$ 10.30	25	1250	\$ 227,370	
Analyst B	\$ 165.00	\$ 9.90	25	650	\$ 113,685	\$ 171.60	\$ 10.30	25	1250	\$ 227,370	
Analyst C	\$ 185.00	\$ 11.10	25	650	\$ 127,465	\$ 192.40	\$ 11.54	25	1250	\$ 254,930	
Subtotal					\$ 437,515					\$ 875,030	
Total Cost					\$ 490,568					\$ 875,030	

ADDENDUM III
PAYMENTS AND REPORTS SCHEDULE

<u>PAYMENTS</u>	<u>AMOUNT</u>	<u>TIMETABLE</u>	<u>DOCUMENTATION</u>
<p>Monthly reimbursement of expenditures.</p> <p>The Provider agrees to submit a Monthly Expenditure Report of actual expenses no later than the 10th of the following month, in accordance with the Budget.</p> <p>The Provider agrees to submit a final Monthly Expenditure Report for the period ending June 30, 2020, no later than July 15, 2020. The Provider also agrees to reimburse any excess payments to the Department no later than July 15, 2020.</p> <p>If the audit reveals that the combined amounts of the payment to the Provider by the Department under this Agreement and the client assessment (where applicable) is greater than the total reasonable allowable cost less applicable income offsets, the Provider must reimburse the excess payment to the Department.</p> <p>1. "Reasonable Allowable Costs" are defined as those categories of expenditures necessary to deliver program services as defined in Budget: Salaries, Fringe Benefits, Consultants, Operating Costs and Indirect Costs.</p> <p>2. The extent of BHDDH funding is limited to and shall not exceed the amount \$1,365,598.00. The Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, at the time of the audit, reserves the right to review and adjust costs to the extent of actual expenditures based upon the agreed Budget.</p> <p>The parties agree that all changes greater than 10% of the BHDDH budget line item must be requested in writing to the Department (Division of Developmental Disabilities) and must have prior written approval from the Department (Division of Developmental Disabilities). The Department (Division of Developmental Disabilities) will only consider changes within the total budget and these changes cannot exceed the funding of \$1,365,598.00.</p> <p>The Provider will submit an annual report 60 day after the end period of the contract June 30, 2020. Annual report to encompass all participant(s) and their agencies, and all program(s), for contract period December 1, 2018 through June 30, 2020.</p>	<p>To be determined by monthly expenditure</p>	<p>Monthly</p>	<p>Monthly expenditure report.</p>

**PLEASE SUBMIT ALL DOCUMENTS (Invoices & Reports) TO: deb.florio@ohhs.ri.gov or
send to Department of Developmental Disabilities, 41 West Rd., Cranston, R.I. 02920
Attention: Deborah Florio**

**ADDENDUM IV
FISCAL ASSURANCES**

1. The Contractor agrees to segregate all receipts and disbursements pertaining to this agreement from recipients and disbursements from all other sources, whether by separate accounts or by utilizing a fiscal code system.
2. The Contractor assures a system of adequate internal control will be implemented to ensure a separation of duties in all cash transactions.
3. The Contractor assures the existence of an audit trail which includes: cancelled checks, voucher authorization, invoices, receiving reports, and time distribution reports.
4. The Contractor assures a separate subsidiary ledger of equipment and property will be maintained.
5. The Contractor agrees any unexpended funds from this agreement are to be returned to BHDDH at the end of the time of performance unless BHDDH gives written consent for their retention.
6. The Contractor assures insurance coverage is in effect in the following categories: bonding, vehicles, fire and theft, and liability.
7. The following Federal requirements shall apply pursuant to OMB Guidance for Grants and Agreements. Where applicable:
 - Subpart A - Acronyms and Definitions (200.0 – 200.99)
 - Subpart B – General Provisions (200.100 – 200.113)
 - Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards (200.200 – 200.211)
 - Subpart D – Post Federal Award (200.300 – 200.345)
 - Subpart E – Cost Principles (200.400 – 200.475)
 - Subpart F – Audit Requirements (200.500 – 200.521)
 - All Subsequent Addenda
8. If the Contractor expends Federal awards during the Contractor's particular fiscal year of \$750,000 or more, then 2 CFR § 200.500 et. seq., audits of states, local governments and non-profit organizations shall also apply or if applicable, an audit shall be performed in accordance with "Government Auditing Standards" as published by the Comptroller General of the United States (see Paragraph 24).
9. This agreement may be funded in whole or in part with Federal funds. If so, the CFDA reference number is N/A . The Contractor must review applicable Federal Statutes, regulations, terms and conditions of the Federal Award in accordance with 2 CFR § 200.331 (a)(2).

ADDENDUM V

RHODE ISLAND DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS

NOTICE TO DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS' SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Public and private agencies, organizations, institutions, and persons that receive Federal financial assistance through the Department of Behavioral Healthcare, Developmental Disabilities And Hospitals (BHDDH) are subject to the provisions of Title VI of the Civil Rights Act of 1964 and the implementing regulations of the United States Department of Health And Human Services (DHHS), which is located at 45 CFR, Part 80, collectively referred to hereinafter as Title VI. BHDDH contracts with Contractors include a Contractor's assurance that in compliance with Title VI and the implementing regulations, no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in its programs and activities on the grounds of race, color, or national origin. Additional DHHS guidance is located at 68 FR 47311-02.

BHDDH reserves its right to at any time review Contractors to assure that they are complying with these requirements. Further, BHDDH reserves its right to at any time require from Contractors, Sub-Contractors and Vendors that they are also complying with Title VI.

The Contractor shall have policies and procedures in effect, including, a mandatory written compliance plan, which are designed to assure compliance with Title VI. An electronic copy of the service providers written compliance plan and all relevant policies, procedures, workflows and relevant chart of responsible personnel must be available to BHDDH upon request.

The Contractor's written compliance plan must address the following requirements:

- Written policies, procedures and standards of conduct that articulate the organization's commitment to comply with all Title VI standards.
- Designation of a compliance officer who is accountable to the service provider's senior management.
- Effective training and education for the compliance officer and the organization's employees.
- Enforcement of standards through well-publicized guidelines.
- Provision for internal monitoring and auditing.
- Written complaint procedures
- Provision for prompt response to all complaints, detected offenses or lapses, and for development and implementation of corrective action initiatives.

- Provision that all Contractors, Sub-Contractors and Vendors of the service provider execute assurances that said Contractors, Sub-Contractors and Vendors are in compliance with Title VI.

The Contractor must enter into an agreement with each Sub-Contractor or Vendor under which there is the provision to furnish to it, DHHS or BHDDH on request full and complete information related to Title VI compliance.

The Contractor must submit, within thirty-five (35) days of the date of a request by DHHS or BHDDH, full and complete information on Title VI compliance by the Contractor and/or any Sub-Contractor or Vendor of the Contractor.

It is the responsibility of each Contractor to acquaint itself with all of the provisions of the Title VI regulations. A copy of the regulations is available upon request from the community relations liaison officer, **Department of Behavioral Healthcare, Developmental Disabilities And Hospitals**, 74 West Road, Cranston, RI 02920; telephone number: (401) 462-5274.

THE REGULATIONS ADDRESS THE FOLLOWING TOPICS:

SECTION:

80.1	PURPOSE
80.2	APPLICATION OF THIS REGULATION
80.3	DISCRIMINATION PROHIBITED
80.4	ASSURANCES REQUIRED
80.5	ILLUSTRATIVE APPLICATION
80.6	COMPLIANCE INFORMATION
80.7	CONDUCT OF INVESTIGATIONS
80.8	PROCEDURE FOR EFFECTING COMPLIANCE
80.9	HEARINGS
80.10	DECISIONS AND NOTICES
80.11	JUDICIAL REVIEW
80.12	EFFECT ON OTHER REGULATIONS; FORMS AND INSTRUCTIONS
80.13	DEFINITION

ADDENDUM VI

RHODE ISLAND DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS

NOTICE TO RHODE ISLAND DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS' CONTRACTORS OF THEIR RESPONSIBILITIES UNDER SECTION USC 504 OF THE REHABILITATION ACT OF 1973

Public and private agencies, organizations, institutions, and persons that receive Federal financial assistance through the **Department of Behavioral Healthcare, Developmental Disabilities And Hospitals (BHDDH)** are subject to the provisions of Section 504 of the Rehabilitation Act of 1973 and the Implementing Regulations of the United States Department of Health And Human Services (DHHS), which are located at 45 CFR, part 84 hereinafter collectively referred to as Section 504. BHDDH contracts with service providers include the provider's assurance that it will comply with Section 504 of the regulations, which prohibits discrimination against handicapped persons in providing health, welfare, or other social services or benefits.

The Contractor shall have policies and procedures in effect, including, a mandatory written compliance plan, which are designed to assure compliance with Section 504. An electronic copy of the Contractor's written compliance plan and all relevant policies, procedures, workflows and relevant chart of responsible personnel must be available to BHDDH upon request.

The Contractor's written compliance plan must address the following requirements:

- Written policies, procedures and standards of conduct that articulate the organization's commitment to comply with all Section 504 standards.
- Designation of a compliance officer who is accountable to the service provider's senior management.
- Effective training and education for the compliance officer and the organization's employees.
- Enforcement of standards through well-publicized guidelines.
- Provision for internal monitoring and auditing.
- Written complaint procedures
- Provision for prompt response to all complaints, detected offenses or lapses, and for development and implementation of corrective action initiatives.
- Provision that all Contractors, Sub-Contractors and Vendors of the service provider execute assurances that said Contractors, Sub-Contractors and Vendors are in compliance with Section 504.

The Contractor must enter into an agreement with each Sub-Contractor or Vendor under which there is the provision to furnish to the contractor, DHHS or BHDDH on request full and complete information related to Section 504 compliance.

The contractor must submit, within thirty-five (35) days of the date of a request by DHHS or BHDDH, full and complete information on Section 504 compliance by the Contractor and/or any Sub-Contractor or Vendor of the contractor.

It is the responsibility of each Contractor to acquaint itself with all of the provisions of the Section 504 regulations. A copy of the regulations, together with an August 14, 1978 Policy Interpretation of

General Interest to Providers of Health, Welfare, or Other Social Services or Benefits, is available upon request from the Communications Officer, **Department of Behavioral Healthcare, Developmental Disabilities And Hospitals**, 14 Harrington Road, Cranston, RI 02920; telephone number (401) 462-3446.

Contractors should pay particular attention to subparts A, B, C, and F of the regulations which pertain to the following:

SUBPART A - GENERAL PROVISIONS

SECTION:

- 84.1 PURPOSE
- 84.2 APPLICATION
- 84.3 DEFINITIONS
- 84.4 DISCRIMINATION PROHIBITED
- 84.5 ASSURANCE REQUIRED
- 84.6 REMEDIAL ACTION, VOLUNTARY ACTION, AND SELF-EVALUATION
- 84.7 DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES
- 84.8 NOTICE
- 84.9 ADMINISTRATIVE REQUIREMENTS FOR SMALL RECIPIENTS
- 84.10 EFFECT OF STATE OR LOCAL LAW OR OTHER REQUIREMENTS AND EFFECT OF EMPLOYMENT OPPORTUNITIES

SUBPART B - EMPLOYMENT PRACTICES

SECTION:

- 84.11 DISCRIMINATION PROHIBITED
- 84.12 REASONABLE ACCOMMODATION
- 84.13 EMPLOYMENT CRITERIA
- 84.14 PREEMPLOYMENT INQUIRIES
- 84.15 - 84.20 (RESERVED)

SUBPART C - ACCESSIBILITY

SECTION:

- 84.21 DISCRIMINATION PROHIBITED
- 84.22 EXISTING FACILITIES
- 84.23 NEW CONSTRUCTION
- 84.24 - 84.30 (RESERVED)

SUBPART F - HEALTH, WELFARE, AND SOCIAL SERVICES

SECTION:

- 84.51 APPLICATION OF THIS SUBPART
- 84.52 HEALTH, WELFARE, AND OTHER SOCIAL SERVICES
- 84.53 DRUG AND ALCOHOL ADDICTS
- 84.54 EDUCATION AND INSTITUTIONALIZED PERSONS
- 84.55 PROCEDURES RELATING TO HEALTH CARE FOR HANDICAPPED INFANTS
- 84.56 - 84.60 (RESERVED)

ADDENDUM VII

DRUG-FREE WORKPLACE POLICY

Drug use and abuse at the workplace or while on duty are subjects of immediate concern in our society. These problems are extremely complex and ones for which there are no easy solutions. From a safety perspective, the users of drugs may impair the well-being of all employees, the public at large, and result in damage to property. Therefore, it is the policy of the state that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace. Any employee(s) violating this policy will be subject to discipline up to and including termination. An employee may also be discharged or otherwise disciplined for a conviction involving illicit drug use, regardless of whether the employee's conduct was detected within employment hours or whether his/her actions were connected in any way with his or her employment. The specifics of this policy are as follows:

1. Any unauthorized employee who gives or in any way transfers a controlled substance to another person or sells or manufactures a controlled substance while on duty, regardless of whether the employee is on or off the premises of the employer will be subject to discipline up to and including termination.
2. The term "controlled substance" means any drugs listed in 21 USC, Section 812 and other Federal regulations. Generally, all illegal drugs and substances are included, such as marijuana, heroin, morphine, cocaine, codeine or opium additives, LSD, DMT, STP, amphetamines, methamphetamines, and barbiturates.
3. Each employee is required by law to inform the agency within five (5) days after he/she is convicted for violation of any Federal or State criminal drug statute. A conviction means a finding of guilt (including a plea of nolo contendere) or the imposition of a sentence by a judge or jury in any Federal or State Court.
4. The employer (the hiring authority) will be responsible for reporting conviction(s) to the appropriate Federal granting source within ten (10) days after receiving notice from the employee or otherwise receives actual notice of such conviction(s). All conviction(s) must be reported in writing to the Office of Personnel Administration (OPA) within the same time frame.
5. If an employee is convicted of violating any criminal drug statute while on duty, he/ she will be subject to discipline up to and including termination. Conviction(s) while off duty may result in discipline or discharge.
6. The state encourages any employee with a drug abuse problem to seek assistance from the Rhode Island Employee Assistance Program (RIEAP). Your Personnel Officer has more information on RIEAP.
7. The law requires all employees to abide by this policy.

**ADDENDUM VIII
DRUG-FREE WORKPLACE POLICY
CONTRACTOR CERTIFICATE OF COMPLIANCE**

I, Elena Nicoletta, Executive Director, NESCSO, a contractor doing business with the state of Rhode Island, hereby acknowledge that I have received a copy of the state's policy regarding the maintenance of a **Drug-Free Workplace**. I have been informed that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance (to include but not limited to such drugs as marijuana, heroin, cocaine, PCP, and crack, and may also include legal drugs which may be prescribed by a licensed physician if they are abused), is prohibited on the State's premises or while conducting State business. I acknowledge that my employees must report for work in a fit condition to perform their duties.

As a condition for contracting with the state, as a result of the Federal Omnibus Drug Act, I will require my employees to abide by the state's policy. Further, I recognize that any violation of this policy may result in termination of the contract.

SIGNATURE:

Elena Nicoletta

TITLE:

Executive Director

DATE:

12/31/2018

ADDENDUM IX

SUBCONTRACTOR COMPLIANCE

I, Elena Nicoletta, Executive Director, NESCSO, a contractor doing business with the state of Rhode Island, hereby certify that all approved subcontractors performing services pursuant to this agreement will have executed written contracts with NESCSO. All such contracts shall contain language identical to the following provisions of this agreement as follows:

PAR. 12. CONTRACTOR'S LIABILITY/INDEMNIFICATION

PAR. 13. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES

PAR. 18. FEDERAL FUNDING PROVISIONS

SIGNATURE:

Elena Nicoletta

TITLE:

Executive Director

DATE:

12/31/2018

ADDENDUM X

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part c - Environmental Tobacco Smoke (20 U.S.C.A. § 6081-6084), also known as the Pro-Children Act of 1994 (**Act**), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through state or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment.

Any failure to comply with a prohibition in this section shall be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty under this section, the total amount shall not exceed the amount of Federal funds received by such person for the fiscal year in which the continuing violations occurred.

By signing and submitting this application the applicant/contractor certifies that it will comply with the requirements of the Act. The applicant/contractor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-contractors shall certify accordingly.

SIGNATURE:

Elena Nicoletta

TITLE:

Executive Director

DATE:

12/31/2018

ADDENDUM XI

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with BHDDH's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when BHDDH determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to BHDDH. BHDDH may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to BHDDH if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of the rules implementing Executive Order 12549.
5. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by BHDDH.
6. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled certification regarding debarment, suspension, ineligibility and voluntary exclusion - lower tier covered transactions, provided by BHDDH, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which

it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement list (of excluded parties).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by as prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, BHDDH may terminate this transaction for cause of default.

ADDENDUM XII

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**

The contractor, as the primary participant, certifies to the best of the contractor's knowledge and belief, that the contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicated or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to this proposal.

SIGNATURE: *Elena Nicoletta*

TITLE: Executive Director

DATE: 12/31/2018

ADDENDUM XIII

LIQUIDATED DAMAGES

The prospective primary participant contractor agrees that time is of the essence in the performance of certain designated portions of this contract. BHDDH and the contractor agree that in the event of a failure to meet the milestones and project deliverable dates or any standard of performance within the time set forth in BHDDH's bid proposal and the contractor's proposal response (Addendum XVI), damage shall be sustained by BHDDH and that it may be impractical and extremely difficult to ascertain and determine the actual damages which BHDDH will sustain by reason of such failure. It is therefore agreed that BHDDH, at its sole option, may require the contractor to pay liquidated damages for such failures with the following provisions:

1. Where the failure is the sole and exclusive fault of BHDDH, no liquidated damages shall be imposed. To the extent that each party is responsible for the failure, liquidated damages shall be reduced by the apportioned share of such responsibility.
2. For any failure by the contractor to meet any performance standard, milestone or project deliverable, BHDDH may require the contractor to pay liquidated damages in the amount(s) and as set forth in the state's general conditions of purchase as described particularly in the LOI, RFP, RFQ, or scope of work, however, any liquidated damages assessed by BHDDH shall not exceed 10% of the total amount of any such month's invoice in which the liquidated damages are assessed and shall not in the aggregate, over the life of the agreement, exceed the total contract value.

Written notification of failure to meet a performance requirement shall be given by BHDDH's project officer to the contractor's project officer. The contractor shall have a reasonable period designated by BHDDH from the date of receipt of written notification. If the failure is not materially resolved within this period, liquidated damages may be imposed retroactively to the date of expected delivery.

In the event that liquidated damages have been imposed and retained by BHDDH, any such damages shall be refunded, provided that the entire system takeover has been accomplished and approved by BHDDH according to the original schedule detailed in the contractor's proposal response included in this contract (Addendum XVI) as modified by mutually agreed upon change orders.

To the extent liquidated damages have been assessed, such damages shall be the sole monetary remedy available to BHDDH for such failure. This does not preclude the state from taking other legal action.

ADDENDUM XIV

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this agreement, the contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment relating to this agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed, and employees are treated equally during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. 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 shall, in all solicitations or advertising for employees placed by or on behalf of the contractor relating to this agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability.
3. The Contractor shall inform the contracting BHDDH's equal employment opportunity coordinator of any discrimination complaints brought to an external regulatory body (RI Ethics Commission, RI Department of Administration, US DHHS Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
4. The Contractor shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
5. Contractors and subcontractors with agreements in excess of \$50,000 shall also pursue in good faith affirmative action programs.
6. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ADDENDUM XV

BYRD ANTI-LOBBYING AMENDMENT

No Federal or State appropriated funds shall be expended by the contractor for influencing or attempting to influence an officer or employee of any agency, a member of congress or State Legislature, an officer or employee of congress or state legislature, or an employee of a member of congress or state legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this agreement fulfills the requirement that contractors receiving over \$100,000 in Federal or State funds file with BHDDH on this provision.

If any Non-Federal or State Funds have been or will be paid to any person in connection with any of the covered actions in this provision, the Contractor shall complete and submit a "Disclosure of Lobbying Activities" form.

The Contractor must certify compliance with all terms of the Byrd Anti-Lobbying Amendment (31 U.S.C 1352) as published in the Federal Register May 27, 2003, Volume 68, Number 101.

The Contractor hereby certifies that it will comply with Byrd Anti-Lobbying Amendment provisions as defined in 45 CFR Part 93 and as amended from time to time.

SIGNATURE:

Elena Nicoletta

TITLE:

Executive Director

DATE:

12/31/2018

ADDENDUM XVI

BID PROPOSAL

The New England States Consortium Systems Organization (NESCO) has been approved by the RI Division of Purchasing as a single source vendor for this scope of work.

ADDENDUM XVII

CORE STAFF POSITIONS

BHDDH's Project Officer: Deborah Florio, Associate Director
74 West Road
Cranston, RI 02920
(401) 462-2023

BHDDH's Financial Officer: Carmela Corte, Chief Financial Officer
74 West Road
Cranston, RI 02920
(401) 462-1343

Contractor's Project Officer: Elena Nicoella, Executive Director
333 South Street
Shrewsbury, MA 01545
(508) 856-8229

ADDENDUM XVIII

FEDERAL SUBAWARD REPORTING FFATA FORM

See Attached RI Office of Management and Budget, Sub-Award Reporting Worksheet

Directions:

For contracts awarding more than \$25,000 in FEDERAL funds, include Transparency Act Questionnaire for agency to complete and return.

If award is not for Federal funds, or is for less than \$25,000, enter "Reserved" under the above heading, and no questionnaire should be provided.

IMPORTANT ITEMS TO NOTE ABOUT NEW REQUIREMENT

The Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282, as amended by section 6202(a) of P.L. 110-252) requires the Office of Management and Budget (OMB) to maintain a single, searchable website that contains current information on all Federal spending awards. That site is at www.USASpending.gov.

- Includes both mandatory and discretionary grants
- Do not include grants funded by the Recovery Act (ARRA)
- For more information about Federal Spending Transparency, refer to <http://www.whitehouse.gov/omb/open>
- If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award will be subject to the reporting requirements, as of the date the award exceeds \$25,000
- If the initial award equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the award continues to be subject to the reporting requirements of the Transparency ACT and this Guidance

Rhode Island Office of Management & Budget

Sub-Award Reporting Worksheet

Please type or print clearly in black or blue ink, answer all questions, and sign and date the form.

Section 1: State Agency and Federal Award Information

Agency Contact Name	Agency Contact Telephone
Sub-Award Program Name	Agency Contact Email
Sub-Award Program Description	
Federal Award Information	
Federal Program Name	Federal Awarding Agency
Federal Award Number	Date of Federal Award
Award Type	CFDA Number
Prime Agency DUNS +4	Amount Obligated from this Award
Is sub-award funded by more than one federal award?	Yes * No

If yes, use Attachment 1-A to provide information on additional federal awards funding this sub-award.

Section 2: Sub-Awardee Information

Sub-Awardee DUNS+4	+	System for Award Management Registration
		Expiration Date (if applicable)
Sub-Awardee Name (as registered in DUNS)		Sub-Award Principal Place of Performance (where work performed)
Sub-Awardee Address (as registered in DUNS)		Number and Street 333 South Street
Number and Street		City Shrewsbury
City		State MA
State		ZIP+4 01545 + 7807
ZIP+4	+	

Executive Compensation† (to be completed by sub-awardee)

In preceding fiscal year, did federal funds from all sources make up more than 80% of agency budget? If no, stop. Do not report executive compensation. Proceed to Sub-Awardee Certification.	Yes	X	No
In preceding fiscal year, did your agency receive more than \$25 million in federal funds? If no, stop. Do not report executive compensation. Proceed to Sub-Awardee Certification.	Yes	X	No
Is information about the compensation of the senior executives in the sub-recipient's organization (including parent organization, all branches, and all affiliates worldwide) publicly available? If no, report executive compensation for five highest paid officials below.	X	Yes	No

Official Name	Compensation Amount
Official Name	Compensation Amount
Official Name	Compensation Amount
Official Name	Compensation Amount
Official Name	Compensation Amount

† See Federal Register Volume 75, No. 177, Appendix A, Paragraph E5 for guidance on reporting executive compensation.

Sub-Awardee Certification

I certify, to the best of my knowledge and belief, that the information provided is complete and accurate, and that I am authorized to sign contracts and other legally binding documents on behalf of the entity. I understand that my typed name below shall have the same force and effect as my written signature.

Signature *Elena Nicoletta* Title of Signatory Executive Director Date 12/31/2018

Section 3: Sub-Award Information (for state agency administrative purposes only)

Sub-Award Number	Sub-Award Date	FFATA Report Month
Amendment 1 Obligation Amount	Amendment 1 Date	FFATA Report Month
Amendment 2 Obligation Amount	Amendment 2 Date	FFATA Report Month

ADDENDUM XIX

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

Except as otherwise provided in this Business Associate Agreement Addendum, New England States Consortium Systems Organization (NESCSO), (hereinafter referred to as "Business Associate"), may use, access or disclose Protected Health Information to perform functions, activities or services for or on behalf of the State of Rhode Island, (Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH)), (hereinafter referred to as the "Covered Entity"), as specified herein and the attached Agreement between the Business Associate and the Covered Entity (hereinafter referred to as "the Agreement"), which this addendum supplements and is made part of, provided such use, access, or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d et seq., and its implementing regulations including, but not limited to, 45 CFR, parts 160, 162 and 164, hereinafter referred to as the Privacy and Security Rules and patient confidentiality regulations, and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (HITECH Act) and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates, Rhode Island Mental Health Law, R.I. General Laws Chapter 40.1-5-26, and Confidentiality of Health Care Communications and Information Act, R.I. General Laws Chapter 5-37.3-1 et seq. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

1. Definitions:

A. Generally:

- (1) Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, and 164.304, 164.501 and 164.502.
- (2) The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA, the Privacy and Security Rules and the HITECH Act: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific:

- (1) "Addendum" means this Business Associate Agreement Addendum.
- (2) "Agreement" means the contractual Agreement by and between the State of Rhode Island, (BHDDH) and Business Associate, awarded pursuant to State of Rhode Island's Purchasing Law (Chapter 37-2 of the Rhode Island General Laws) and Rhode Island Department of Administration, Division of Purchases, Purchasing Rules, Regulations, and General Conditions of Purchasing.

C. "Business Associate" generally has the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **New England States Consortium Systems Organization (NESCSO)**.

D. "Client/Patient" means Covered Entity funded person who is a recipient and/or the client or patient of the Business Associate.

E. "Covered Entity" generally has the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean BHDDH.

F. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed or consulted by authorized health care clinicians and staff.

G. "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPA Security Regulations.

H. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

I. "HIPAA Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information including, the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

J. "HITECH Act" means the privacy, security and security Breach notification provisions applicable to Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and any regulations promulgated thereunder and as amended from time to time.

K. "Secured PHI" means PHI that was rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of technologies or methodologies specified under or pursuant to Section 13402 (h)(2) of the HITECH Act under ARRA.

L. "Security Incident" means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information.

M. "Security Rule" means the Standards for the security of Electronic Protected Health Information found at 45 CFR Parts 160 and 162, and Part 164, Subparts A and C. The application of Security provisions Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations shall apply to Business Associate of Covered Entity in the same manner that such sections apply to the Covered Entity.

N. "Suspected breach" is a suspected acquisition, access, use or disclosure of protected health

ADDENDUM XIX

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

Except as otherwise provided in this Business Associate Agreement Addendum, **New England States Consortium Systems Organization (NESCSCO)**, (hereinafter referred to as "Business Associate"), may use, access or disclose Protected Health Information to perform functions, activities or services for or on behalf of the State of Rhode Island, (Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH)), (hereinafter referred to as the "Covered Entity"), as specified herein and the attached Agreement between the Business Associate and the Covered Entity (hereinafter referred to as "the Agreement"), which this addendum supplements and is made part of, provided such use, access, or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d et seq., and its implementing regulations including, but not limited to, 45 CFR, parts 160, 162 and 164, hereinafter referred to as the Privacy and Security Rules and patient confidentiality regulations, and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (HITECH Act) and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates, Rhode Island Mental Health Law, R.I. General Laws Chapter 40.1-5-26, and Confidentiality of Health Care Communications and Information Act, R.I. General Laws Chapter 5-37.3-1 et seq. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

1. Definitions:

A. Generally:

- (1) Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, and 164.304, 164.501 and 164.502.
- (2) The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA, the Privacy and Security Rules and the HITECH Act: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific:

- (1) "Addendum" means this Business Associate Agreement Addendum.
- (2) "Agreement" means the contractual Agreement by and between the State of Rhode Island, (BHDDH) and Business Associate, awarded pursuant to State of Rhode Island's Purchasing Law (Chapter 37-2 of the Rhode Island General Laws) and Rhode Island Department of Administration, Division of Purchases, Purchasing Rules, Regulations, and General Conditions of Purchasing.

information ("PHI") in violation of HIPPA privacy rules, as referenced above, that compromises the security or privacy of PHI.

O. "Unsecured PHI" means PHI that is not secured, as defined in this section, through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

2. Obligations and Activities of Business Associate.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by Law, provided such use or disclosure would also be permissible by law by Covered Entity.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by the "Security Rule."
- C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI 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 PHI not provided for by this Agreement, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware, within five (5) days of the incident.
- E. Business Associate agrees to ensure that any agent, including a subcontractor or vendor, to whom it provides PHI 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 through a contractual arrangement that complies with 45 C.F.R. § 164.314.
- F. Business Associate agrees to provide paper or electronic access, at the request of Covered Entity and in the time and manner designated by Covered Entity, to PHI 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 C.F.R. § 164.524. If the Individual requests an electronic copy of the information, Business Associate must provide Covered Entity with the information requested in the electronic form and format requested by the Individual and/or Covered Entity if it is readily producible in such form and format; or, if not, in a readable electronic form and format as requested by Covered Entity.

- G. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. If Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request.
- H. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for the purposes of the Secretary determining compliance with the Privacy Rule and Security Rule.
- I. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- J. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures for PHI in accordance with 45 §C.F.R. 164.528.
- K. If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in 45 C.F.R. § 164.402) for Covered Entity, it shall, following the discovery of a breach of such information, notify Covered Entity of such breach within a period of five (5) days after discovery of the breach. Such notice shall include: a) the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such breach; b) a brief description of what happened, including the date of the breach and discovery of the breach; c) a description of the type of Unsecured PHI that was involved in the breach; d) a description of the investigation into the breach, mitigation of harm to the individuals and protection against further breaches; e) the results of any and all investigation performed by Business Associate related to the breach; and f) contact information of the most knowledgeable individual for Covered Entity to contact relating to the breach and its investigation into the breach.
- L. To the extent the Business Associate is carrying out an obligation of the Covered Entity's under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.

- M. Business Associate agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 45 C.F.R. § 164.502(a)(5)(ii)(B)(2) applies.
- N. Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of Marketing under 45 C.F.R. §164.501, unless permitted by 45 C.F.R. § 164.508(a)(3)(A)-(B).
- O. If applicable, Business Associate agrees that it will not use or disclose genetic information for underwriting purposes, as that term is defined in 45 C.F.R. § 164.502.
- P. Business Associate hereby agrees to comply with state laws and rules and regulations applicable to PHI and personal information of individuals' information it receives from Covered Entity during the term of the Agreement.
 - i. Business Associate agrees to: (a) implement and maintain appropriate physical, technical and administrative security measures for the protection of personal information as required by any state law and rules and regulations; including, but not limited to: (i) encrypting all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly; (ii) prohibiting the transfer of personal information to any portable device unless such transfer has been approved in advance; and (iii) encrypting any personal information to be transferred to a portable device; and (b) implement and maintain a Written Information Security Program as required by any state law as applicable.
 - ii. The safeguards set forth in this Agreement shall apply equally to PHI, confidential and "personal information." Personal information means an individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited to this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Arrangement, provided that such use or

disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity required by 45 C.F.R. §164.514(d).

- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or 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.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504 (e)(2)(i)(B).
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

4. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Service Arrangement, Business Associate may use or

disclose PHI for Business Associate's Data Aggregation activities or proper management and administrative activities.

6. Term and Termination.

- a. The term of this Agreement shall begin as of the effective date of the Service Arrangement and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the termination provisions of this Section.
- b. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Service Arrangement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity.
 - ii. Immediately terminate this Agreement and the Service arrangement if Business Associate has breached a material term of this Agreement and cure is not possible.
- c. Except as provided in paragraph (d) of this Section, upon any termination or expiration of this Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall ensure that its subcontractors or vendors return or destroy any of Covered Entity's PHI received from Business Associate.
- d. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Miscellaneous.

- a. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. 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 HIPAA, the Privacy and Security Rules and HITECH.
- c. The respective rights and obligations of Business Associate under Section 6 (c) and (d) of this Agreement shall survive the termination of this Agreement.
- d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA and HITECH.
- e. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- f. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- g. Modification of the terms of this Agreement shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.
- h. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.
- i. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- j. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Rhode Island, including all matters of construction, validity and performance.
- k. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other part as its respective address as shown on the signature page, or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

1. This Agreement, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.


- m. Business Associate shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Business Associate and its employees, agents, representatives, or subcontractors against any and all claims or claims for damages arising under this Business Associate Agreement and such insurance coverage shall apply to all services provided by Business Associate or its agents or subcontractors pursuant to this Business Associate Agreement. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims of harm related to a breach) incurred as a result of, or arising directly or indirectly out of or in connection with any acts or omissions of Business Associate, its employees, agents, representatives or subcontractors, under this Business Associate Agreement, including, but not limited to, negligent or intentional acts or omissions. This provision shall survive termination of this Agreement.

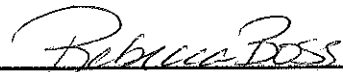
8. Acknowledgment.

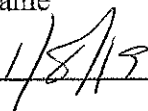
The undersigned affirms that he/she is a duly authorized representative of the Business Associate for which he/she is signing and has the authority to execute this Addendum on behalf of the Business Associate.

Acknowledged and agreed to by:


Behavioral Healthcare, Developmental
Disabilities and Hospitals (BHDDH);


 REBECCA BOSS, Director
 Behavioral Healthcare, Developmental
 Disabilities and Hospitals (BHDDH)


 Printed Name


 Date

New England States Consortium Systems
Organization (NESCSO)


 AUTHORIZED AGENT
 TITLE: Executive Director

Elena Nicolella
 Printed Name

12/31/2018
 Date



DATA USE AGREEMENT

DUA # _____

DATA USE AND SECURITY AGREEMENT BETWEEN The Executive Office of Health and Human Services AND **New England States Consortium Systems Organization (NESCSO)** FOR THE PURPOSE OF **BHDDH Alternative Payment Methods (APM) and Rate Review for Services to persons with Developmental Disabilities and Behavioral Health (BH) Disorders.**

This Data Use and Data Security Agreement ("Agreement"), for the period which begins on the date that the last party signs this agreement, which is the ("Effective Date") and ends on **6/30/2021** ("End Date"), is between the parties, **NESCSO** ("REQUESTER") and the Executive Office of Health and Human Services, State of Rhode Island ("EOHHS").

PURPOSE AND SERVICES

REQUESTER will receive or have access to specific Protected Health Information or Personal Sensitive Information, ("PHI") or a combination of the two, from EOHHS ("EOHHS Data") for the specific ("purpose") as outlined below:

1. REQUESTER shall use and disclose the EOHHS data only in connection with the purpose of this Agreement, as defined herein.
2. Purpose of this Data Use Agreement
 - A. Purpose
 - (1) This Data Use and Security Agreement will allow REQUESTER to conduct an independent analysis of the Medicaid data set forth in this Agreement to assist the Office of Health and Human Services **with a review of BHDDH's rates that are paid to providers, as mandated by the Consent Decree and as necessary for the Department to support an effective healthcare delivery system..** This independent study is required to fulfill the goal of **creating a report including a review of rates for selected key BHDDH services.** This Agreement describes the security measures regarding access, handling, and storage of the data that REQUESTER will undertake to protect the integrity and physical security of any direct identifiers or indirect identifiers that could be used alone or in combination with other information to identify an individual who is a subject of the information provided to REQUESTER pursuant to this Agreement including but not limited to claims, dates of services or other MMIS data fields including but not limited to medical and pharmacy claims level data with all related plan, encounter, cost and provider fields including location, practice and specialty information.
 - (2) The study period for this project begins on Effective Date and ends on **6/30/2021** with a report or reports to RI EOHHS and **The Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals.**

- B. For this study, the study population will comprise the data for RI Medicaid enrollees for dates of services from **1/1/2013** through **6/30/2021** only.
- C. Analyses and reports to be Provided by REQUESTER
- (1) REQUESTER will create aggregate and de-identified summary reports from the data set to inform the Secretary of the Executive Office of Health and Human Services and **the Director of BHDDH, and BHDDH senior staff associated with this project.**
 - (2) Analysis Reports will be made public only at the aggregate (not specific claim or specific person) level. Reporting will be provided without reference to any direct identifiers or indirect identifiers that could be used alone or in combination with other information to identify an individual who is a subject of the information provided to REQUESTER by EOHHS.
 - (3) REQUESTER will store EOHHS data in compliance with the HIPAA Security Rule and as outlined in the Security section of this Agreement.
 - (4) REQUESTER and its Contractors or Subcontractors will not release or share PHI or Sensitive Patient Data to any other entity or person, outside the report to the Secretary of the Executive Office of Health and Human Services and **[The Director of BHDDH, and BHDDH senior staff associated with this project.,** without the explicit written consent of the Rhode Island EOHHS.
3. Frequency and Manner of Exchange
- A. A data transfer or data transfers will be made from EOHHS to the REQUESTER via encrypted secure format downloading this data set to the secure REQUESTER network on or after the Effective Date and before **12/31/2018.**
 - B. Transfer will not occur until all authorized parties have signed this DUA and a signed original copy has been returned to EOHHS Legal Office.
 - C. Connection will be via secure FTP site and comport with the Security section of this Agreement.

TERMS AND CONDITIONS

4. Applicable Law

EOHHS and REQUESTER will comply with all applicable laws and standards, including those governing the creation, use, disclosure, access, maintenance, and transmission (collectively, "Use") of PHI and Sensitive Patient data under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); 42 USC sec. 1320d et seq., and its implementing regulations including but not limited to HIPAA Security and Privacy Rules at 45 CFR parts 160 to 164 and the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act (HITECH), R.I. General Laws Chapter §§ 42-7.2-1; 40.1-5-26 and Confidentiality of Health Care Communications and Information Act, R.I. Gen. Laws Chapter 5-37.3-1 et seq. (collectively, as modified from time to time, the "Applicable Laws"). REQUESTER shall recognize and agree that it is obligated to be aware of the Applicable Laws, to meet and comply with the applicable provisions of the above statutes, rules, regulations and Acts as may be amended from time to time.

5. Use and Disclosure of Rhode Island EOHHS Data.
 - A. REQUESTER may use EOHHS Data as set forth in this Agreement and as required by law (collectively, the "Permitted Uses"). Specifically, the permitted use of the EOHHS data fields are to be used for the report or reports of this project only. The data use and security period for this project begins upon transmission of the EOHHS data and ends on **6/30/2021**, except as contemplated in "Survival" paragraph 23.
 - B. REQUESTER may use the EOHHS Data to perform the analysis described in this Agreement only.
 - C. REQUESTER may disclose the EOHHS data for state and federal required legal responsibilities provided that:
 - (1) REQUESTER notifies EOHHS that EOHHS data is being disclosed and it will remain confidential and is being disclosed only as Required by Law;
 - D. REQUESTER shall provide EOHHS a copy of any reports or analyses conducted upon completion of the reports or analyses prepared to inform **rate setting**.
 - E. REQUESTER shall prevent any potential re-identification that may result from the analysis of the data provided by EOHHS in accordance with the requirements of the HIPAA Privacy and Security Rule and by ensuring that any analysis that results in a cell size of less than 10 shall be suppressed in any reports or analysis conducted pursuant to this Agreement.
 - F. Requester shall not attempt to identify and contact any individuals for whom they have collected data for any purpose.
 - G. This Agreement prohibits REQUESTER's use of EOHHS Data beyond the permitted uses set forth herein. REQUESTER will limit its use of EOHHS Data to the minimum amount necessary to perform the analyses as part of this Agreement and will not use EOHHS Data outside the terms of this Agreement.
6. Malware.

REQUESTER warrants the following:

 - A. That to the best of its knowledge, software used on EOHHS data is free of and does not contain any code or mechanism that collects information or asserts control of EOHHS systems or which may restrict access to or use of EOHHS systems or EOHHS Data;
 - B. That it will not knowingly introduce via any means: spyware, adware, ransom-ware, rootkit, key-logger, virus, trojan, worm, or other code or mechanism designed to provide unauthorized access to EOHHS systems or EOHHS Data, or which may restrict EOHHS's access to or use of EOHHS systems or EOHHS Data; and,
 - C. That it will use available, reasonable efforts and means to ensure that EOHHS will not receive Malware from REQUESTER or any of its employees or subcontractors (via modem, VPN, Internet, or any other method or means). At all times during the term of

this Agreement, REQUESTER will use current antivirus and security protection for its internal systems and will install all critical Malware protection program updates (e.g. security patches and antivirus updates) according to current industry and regulatory standards.

7. Security.

A. Security Incident.

A Security Incident includes the following meanings when used in this Agreement:

- (1) the meaning of "Security Incident" as defined in Health Insurance Portability and Accountability Act of 1996;
- (2) the meaning of "Breach" as defined in Health Insurance Portability and Accountability Act of 1996;
- (3) the meaning of "Compromise" as defined in the Health Insurance Portability and Accountability Act of 1996;

B. Responsibility for Security.

- (1) REQUESTER agrees that it is responsible for the continued security of the data used under this Agreement and that the data is kept, managed, and controlled in compliance with the security requirements of the HIPAA Security Rule of 45 CFR sections 160 to 164. The Security Rule includes the standards of Electronic Protected Health Information found at 45 CFR parts 160 to 164.
- (2) REQUESTER acknowledges that the unsecured telecommunication or transfer of individually identifiable or deducible information derived from the data is prohibited.
- (3) REQUESTER agrees that no findings, listings or information derived from the data specified in this Agreement with or without identifiers, may be released if such findings, listings or information contain any combination of data elements that might allow for the deduction of beneficiary/recipient identification. All reports will comprise aggregated data but will not contain any overt or deducible elements of PHI or PI.

C. The dataset that REQUESTER will receive will qualify as a limited data set as defined by HIPAA under 45 CFR §164.514(e). As such, the only elements of protected and sensitive information (PI) that will be included in the dataset will be:

- Randomly assigned Unique Identifier that is not the Medicaid Recipient Unique Identifier (RUI) nor the SSN.
- Gender.
- Age at the time of service.

D. Social Security Number, Name, Address, DOB and age at the time of service will not be transferred under this Agreement.

- E. To protect EOHHS and safeguard EOHHS Data, REQUESTER agrees it shall:
- (1) Segment and limit access to the EOHHS Data so only REQUESTER authorized employees, and contractors with whom REQUESTER has a Data Use Agreement (DUA) or Business Associate Agreement (BAA) which complies with all Applicable Laws, and who have a need to access the EOHHS data can do so;
 - (2) Separate the EOHHS Data from other data maintained by REQUESTER using either of the following methods:
 - (3) REQUESTER shall also:
 - a. logically separate the EOHHS Data, using software that can remove or filter out any EOHHS Data from all other data; or
 - b. physically separate the EOHHS Data by placing it on a separate encrypted server or by itself on other encrypted hardware;
 - (4) Encrypt the storage; the datasets used for this project will be accessed and used only on secure servers. The REQUESTER employees or contractors will not copy the data to their own hard drives or to any mobile storage device; REQUESTER and its contractors will keep audit logs for review in event of data breach sufficient to show breach or compromise based on risk assessment;
 - (5) Encrypt data transmissions between REQUESTER and EOHHS using VPN, Secure FTP, or another EOHHS approved encryption method (note: all encryption technologies and practices must be consistent with or better than applicable industry standards and the Applicable Laws);
 - (6) Not use or permit any person or entity to use generic account logins or generic root access to REQUESTER's information systems or REQUESTER's contractors' information systems, (i.e., each administrator of REQUESTER's information systems or REQUESTER's contractors' information systems must have his or her own logins that can be tracked and audited individually);
 - (7) Implement an information security process for each system, system component, interface, and connection that stores, processes, or transmits and complies with the Applicable Laws;
 - (8) Take all necessary action to limit to the minimum access necessary to complete tasks and to provide services for which the data is required. Implement procedures for terminating access to electronic protected health information when the employment of, or other arrangement with, a workforce member ends or as required by this Agreement.
 - (9) Ensure that no third party (other than project designated personnel, and authorized agents and authorized subcontractors) has access to EOHHS Data except as otherwise provided herein.

- (10) Take steps to prevent, detect, contain, and correct security violations in accordance with the HIPAA Security Rule. Implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with 42 CFR § 164.306(a).

8. Agents and Subcontractors.

A. If agents or subcontractors are utilized, REQUESTER will enter into a written contract with each agent and subcontractors receiving EOHHS Data under this Agreement and will keep a copy of each contract for seven (7) years after the contractual relationship between REQUESTER and that agent or subcontractor ends. Each contract will bind the agent or subcontractor to the following:

- (1) Agent or subcontractor agrees to be bound to the same terms of this Agreement;
- (2) Agent or subcontractor will report to REQUESTER by immediate written notice to the Secretary or her designee, but no later than twenty-four hours (24) hours, after it knows or suspects a Security Incident (excepting unsuccessful attempts to gain access to EOHHS data as defined in para. 9A, below); the report must include at least the same information that REQUESTER is required to provide to EOHHS under the Reporting section of this Agreement;
- (3) Mitigate, to the extent practicable and as soon as possible, any harmful effect from a Security Incident that is known or discovered; and
- (4) Implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the Rhode Island EOHHS data and to prevent any harmful effect from a Security Incident known or discovered by the agent or subcontractor.

9. Reporting and Mitigating.

A. Reporting Duties.

REQUESTER will report to EOHHS by immediate written notice to the Secretary or her designee, but no later than twenty-four hours (24) hours, after REQUESTER knows or suspects of a Security Incident. For reporting purposes under this Section, REQUESTER does not need to report as a Security Incident any unsuccessful attempt to gain access to EOHHS Data. Examples of unsuccessful attempts to gain access to EOHHS Data include, but are not limited to, pings, and other broadcast attacks on REQUESTER's firewall, port scans, log-on attempts, denials of service and any combination of the above. This reporting duty does not relieve REQUESTER in any degree of its duty to safeguard EOHHS Data and to prevent any Security Incidents.

- (1) Implement procedures for monitoring log-in attempts and reporting discrepancies to EOHHS that result in a Breach or suspected Breach.

B. Reporting Contents.

The report of a Security Incident will include, to the extent possible and subsequently as such information becomes available, at least the following information:

- (1) The date of the Security Incident;
- (2) Any harmful effects that may or have been caused by the unauthorized use, disclosure, breach or suspected breach, or access of the EOHHS data;
- (3) If EOHHS data was disclosed or accessed the name, address, and phone number of each entity or person who accessed or received EOHHS data;
- (4) Details about the most likely causes of the Security Incident and how it occurred;
- (5) A description of the EOHHS data accessed, used, or disclosed; and
- (6) A brief statement of the circumstances of and surrounding the Security Incident.
- (7) This report of breach or suspected breach shall be written and provided to EOHHS within one (1) calendar day of the Security Incident. If information must be added as it becomes available REQUESTER will supplement this report.

C. Mitigating.

REQUESTER will mitigate, to the extent practicable and as soon as possible, any harmful effect known to REQUESTER of a Security Incident. REQUESTER will preserve forensic evidence relating to each Security Incident; including log report data to be shared with EOHHS within fourteen (14) calendar days of request.

D. Investigation.

REQUESTER will cooperate with EOHHS, and other related State and Federal agencies in any investigation into a Security Incident.

- (1) REQUESTER assumes full legal and financial responsibility associated with mitigating the harmful effects that have been caused by the unauthorized disclosure or access of data obtained from the data files subject of this Agreement given to REQUESTER.
- (2) If requested by EOHHS, delete all data relevant or connected with the unauthorized disclosure or unauthorized access and confirm in writing to EOHHS that REQUESTER and/or its subcontractor has deleted all of the requested EOHHS data, and provide written confirmation of destruction to EOHHS within thirty (30) days of the End Date of this Agreement.
- (3) Upon request by EOHHS, REQUESTER will submit a Corrective Action Plan outlining the steps that REQUESTER took and will take to prevent a continuing and/or similar Security Incident, should an Incident occur.

10. Duration Term and Termination.

A. Duration Term.

This Agreement begins on the date that the last party signs this agreement, which is the

Effective Date. The Agreement continues until **6/30/2021** (“End Date”), or until EOHHS terminates this contract as outlined below.

- B. If an extension to this Agreement is necessary, the duration may be extended in writing only by the parties. [See paragraph 13F].
- C. If additional data sets are necessary after the duration of this Data Use and Data Security agreement and addendum must be in writing executed by both parties.
- D. Termination.
 - (1) If EOHHS determines that REQUESTER has violated a material term of this Agreement, EOHHS may terminate this Agreement or any affected Agreement associated with this Agreement immediately or at the EOHHS discretion, by giving REQUESTER a period of up to thirty (30) calendar days to cure the violation, or breach. EOHHS will notify REQUESTER in either event of its decision of termination in writing.
 - (2) Upon termination, REQUESTER will return or destroy all EOHHS Data and will not retain, nor allow any of its agents or subcontractors to retain, any EOHHS Data in any form (including de-identified or aggregated data derived from the EOHHS Data). Further, REQUESTER will certify in writing to EOHHS that REQUESTER (including its agents and subcontractors) has returned or destroyed all EOHHS Data, unless destruction is infeasible, as this Agreement requires. In the event that REQUESTER determines that returning or destroying the PHI is infeasible, REQUESTER must provide to EOHHS written notification of the conditions that make return or destruction infeasible. Such written notice must be provided to EOHHS no later than sixty (60) days prior to the expiration of this Agreement. Upon EOHHS’s written agreement that return or destruction of Data is infeasible, REQUESTER shall extend the protections of this Agreement to such Data and limit further uses and disclosures of such Data to those purposes that make the return or destruction infeasible, for so long as REQUESTER maintains such Data. This provision regarding written notification shall also apply to Data that is in the possession of subcontractors or agents of REQUESTER. Breach and suspected breach notifications outlined in para. 9 above still survive this Agreement if EOHHS data is breached.
 - (3) REQUESTER’s duty to destroy EOHHS Data includes, but is not limited to, the obligations to destroy all copies of EOHHS Data including backup tapes and other electronic backup medium, and to destroy all EOHHS Data by “clearing” (which requires a minimum of three (3) passes), “purging” or “physically destroying” the EOHHS Data in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-88 or in another manner approved in advance by EOHHS. REQUESTER will confirm destruction in writing to EOHHS.
 - (4) Implement procedures for removal of EOHHS protected health implementation from electronic equipment prior to re-use or movement of hardware as contemplated under the HIPAA physical safeguards.

11. Books and Records.

A. Audit.

EOHHS, and other related State and Federal government agencies as necessary, has the right to review all of REQUESTER's policies and procedures relating to REQUESTER's compliance with this Agreement. EOHHS may exercise that right at least once each year. Additionally, from time to time, EOHHS may request an attestation of REQUESTER's compliance with this Agreement and Applicable Laws. If EOHHS requests that attestation, REQUESTER will provide it within fourteen (14) days of EOHHS's request. EOHHS will provide the form of the attestation described above. Under this Section, the term records include all policies, procedures, and internal audits relating to this Agreement. EOHHS will give REQUESTER at least five (5) business days' advance notice of a review and will conduct the review at REQUESTER's place of business during normal business hours.

B. Government Access.

REQUESTER will make available to the Rhode Island Secretary of the Office of Health and Human Services all records requested by the Secretary or the Secretary's designee. Neither REQUESTER nor EOHHS waives any attorney-client, accountant-client, or other legal privilege or confidentiality as a result of this Agreement.

12. Amendment.

A. Required by Law.

If an Applicable Law requires a change in this Agreement, the parties will consider that change to be made automatically, but only to the minimum extent required by that Applicable Law. Following amendment of the Agreement in this manner, the parties shall, as necessary, work together to clarify their respective obligations with respect to any new requirements under the modified Applicable Law.

B. Amendment by Rhode Island.

The parties may amend this Agreement by mutual agreement in writing. If REQUESTER and EOHHS cannot agree on an amendment that EOHHS considers necessary, then either party may terminate this Agreement and any services associated with this Agreement by giving written notice, in the time frame stated in the termination section, to the other party.

13. Ownership of Information.

A. EOHHS owns and retains ownership of all EOHHS Data that EOHHS discloses to the REQUESTER under this Agreement. REQUESTER acquires no title or right under this Agreement to any information, including any de-identified or aggregated EOHHS Data.

B. REQUESTER shall not disclose, release, reveal, show, sell, rent, lease, loan, submit or present for scholarly review, publish, or otherwise grant access to the data covered by this agreement to any person outside of those working on the specific purpose and use specified within this Agreement.

C. REQUESTER agrees to provide EOHHS with a copy of Certificate of Destruction no

later than (30) thirty calendar days from the end date of this Data Use and Security Agreement.

- D. If the EOHHS elects to terminate the data use agreement REQUESTER agrees to return all files to the state within thirty (30) calendar days of receiving notice to that effect.
- E. REQUESTER agrees that no data from the EOHHS records, files, copies or any derivative or subset of the records, data or files shall be retained when the aforementioned file(s) are returned or destroyed.
- F. If the files or data are needed after (30) thirty days from the end date of this agreement, a new data agreement or Extension shall be fully executed in writing by all parties.
- G. A Certificate of ePHI Destruction is attached as Attachment D.

14. Indemnification.

- A. REQUESTER agrees to indemnify, hold harmless and defend EOHHS, Rhode Island and its affiliates, directors, officers, employees, agents and other workforce members from and against any and every claim, cause of action, obligation, liability, judgment, damage, loss, cost, expense, and fee (including without limitation reasonable attorneys' fees) to the extent arising from or relating to REQUESTER's breach of this Agreement, willful negligence, or failure to perform its obligations under the Applicable Laws.
- B. No other agreement between the parties alters a party's liability under this Agreement. But this Agreement does not limit a party's liability under any other agreement.
- C. REQUESTER does not have the authority to enter into any settlement without EOHHS Rhode Island's written consent if the settlement includes any admission of fault on the part of Rhode Island or any obligation binding Rhode Island.
- D. Between EOHHS Rhode Island and REQUESTER, REQUESTER is liable for the actions and inactions of each of REQUESTER's agents and subcontractors.
- E. If REQUESTER breaches this Agreement, REQUESTER is responsible for Rhode Island's out-of-pocket expenses incurred that are directly caused by REQUESTER's breach, negligence or failure to mitigate. Any out-of-pocket expenses incurred for breach, agreed upon notification, monitoring, and/or mitigation activities stemming from REQUESTER's breach are direct damages payable by REQUESTER. Notifications will occur no later than twenty-four (24) hours after the discovery of the breach, not upon conclusion of reports as contemplated in HIPAA Notification Timeliness requirements.
- F. In no event will either party be liable to the other for indirect, consequential, or special damages or for lost profits unless caused by either party's violation of this data use and security agreement.

15. Covered Files or Data

- A. The dataset that REQUESTER will receive will qualify as a limited data set as defined by

HIPAA under 45 CFR §164.514 and will exclude name, address, telephone number, health plan beneficiary number, medical record number, DOB, Medicaid ID number (MID), Social Security Number (SSN), Recipient Unique Identifier (RUI) and Aids Drug Assistance Program (ADAP), Department of Corrections and Drug Court data. The dates of service will include and be limited to the dates of services from **1/1/2013** through **6/30/2021**.

B. No other data elements will be transferred from EOHHS to REQUESTER other than as outlined in this Agreement.

C. No social security numbers or names of EOHHS clients and/or provider taxpayer ID numbers other than the National Provider Identifier (NPI) will be transferred under this data use and security agreement.

16. Injunctive Relief.

EOHHS is entitled to seek, without bond, injunctive and other mandatory judicial relief against REQUESTER to restrain and prevent any threatened, possible, or likely prohibited use. This remedy is in addition to any other legal or equitable remedies to which EOHHS may be entitled.

17. Legally Required Disclosure.

REQUESTER will preserve forensic evidence relating to each Prohibited Use and to each Security Incident. Also, REQUESTER will, if legally permissible, notify EOHHS in writing at least 14 calendar days before providing the EOHHS Data to any third party under a judicial or governmental request, and will cooperate with EOHHS, as EOHHS reasonably requests, in seeking a protective order or limiting the effect of that disclosure.

18. Assignment.

REQUESTER may not assign this Agreement without EOHHS's prior written consent. Any attempt by REQUESTER to assign any of its rights or delegate any of its duties under this Agreement without EOHHS's prior written consent will be null and void and will entitle EOHHS, in its sole discretion, to terminate this Agreement without liability to, or recourse by, REQUESTER. EOHHS may freely assign and delegate any of its rights and obligations under this Agreement without restriction. Subject to the limitations on assignment set forth in this Section, this Agreement will apply to, be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties.

19. Governing Law.

The laws of the State of Rhode Island and applicable federal laws govern this agreement and its interpretation. Jurisdiction and venue for any dispute relating to this Agreement will rest exclusively with the state courts or federal courts of Rhode Island.

20. Training.

REQUESTER will train its personnel whose services may be used to satisfy REQUESTER's obligations under this Agreement regarding the terms of this Agreement.

21. Correspondence.

Each party will send any reports or notices required under this Agreement to the other party's addresses listed below or to another address as the other party may designate in writing by first class mail, fax, or hand delivery.

REQUESTER Project Contact:

Name: **Char Kasprzak**
Title: **Financial Data Analyst**
Address: **41 West Rd., Cranston, RI 02920**
Phone: **401.462.1432**
Cell Phone: **617.645.6410**
Fax: **401.462.3555**
Email: **char.kasprzak@bhddh.ri.gov**

EOHHS Operational Contact:

Name: **Rebecca Lebeau**
Title: **Medicaid Analytics Lead**
Address: **74 West Road, Cranston, RI 02920**
Phone: **401.462.3609**
Cell: **401.282.9962**
Fax: **401.462.6352**
Email: **Rebecca.Lebeau@ohhs.ri.gov**

22. Conflict of Terms.

If there is a conflict between the terms of this Agreement and any underlying agreement between the parties, the terms of this Agreement prevail. No term in any other document, including an invoice, purchase order, or work order, modifies this Agreement.

23. Survival.


If this Agreement expires or is terminated, the following Sections survive expiration or termination of this Agreement: 4, 5, 6, 7B, 8, 9, 10, 11, 12, 13, 14, and 16.

24. Authority.

Each signatory agrees by signing below that it has authority to sign this Agreement on behalf of the party the signatory represents. Each entity agrees to be bound by the Terms and Conditions of this Agreement.

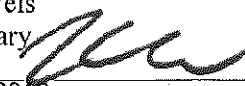
REQUESTER

Authorized Signatory:

Name: **Rebecca Boss**
Title: **Director, BHDDH**
By (Signature): 
Date: **December 31, 2018**
Phone: **401.462.2023**
Fax: **401.462.3555**
Email: **deb.florio@ohhs.ri.gov**
Tax ID#: **[n/a]**

EOHHS

Authorized Signatory:

Name: **Lisa Vura-Weis**
Title: **Acting Secretary**
By (Signature): 
Date: **January 16, 2019** Phone: **401-462-0620**
Email: **Lisa.Vura-Weis@ohhs.ri.gov**