

Agreement Number:

**AGREEMENT**

**Between the**

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS**

**and**

**Name of Contractor:** City of Central Falls

**Title of Agreement:** FDA

**Basis For Contract:**

**Contract Award:**

**Performance Period:** 9/1/2014-8/24/2017

## A G R E E M E N T

This agreement, hereinafter “Agreement”, including attached ADDENDA, is hereby entered into this 1<sup>st</sup> day of September 2014, 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 “the Department”), and the City of Central Falls (hereinafter referred to as “the Contractor”).

WHEREAS, the Department 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/RIVIP/info>. 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 the Department, and in accordance with requirements of this Agreement. The Department shall have the right at all times to review the work being performed as well as the places where such work is performed; and to that end, the Department shall be given reasonable access to all activities related to this Agreement.

### **PAR. 3. TIME OF PERFORMANCE**

The Contractor shall commence performance of this Agreement on the 1<sup>st</sup> day of September 2014, and shall complete performance no later than the 24<sup>th</sup> day of August 2017 (hereinafter the “Initial Term”), unless terminated prior to that day by

other provisions of this Agreement. *If this contract was awarded as a result of an RFP or bid process, then, by mutual agreement, this contract may be extended as stated in the RFP or bid process (hereinafter “Renewal Term(s)”) beyond the Initial Term upon one hundred twenty (120) days prior written notice of the expiration of the Initial Term or any Renewal Term to the Contractor.*

In the event the Department or the Contractor gives notice of its intent not to renew this Agreement, the Department 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 – DEPARTMENT**

The Department 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 the Department 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 the Department in writing immediately, and seek approval from the Department, 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 the Department.

**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**

The Department will make payments to the Contractor in accordance with provisions of **ADDENDUM III - PAYMENTS AND REPORTS SCHEDULE** attached hereto and incorporated by reference herein. The Department acknowledges and agrees that any increase in expenses due to delays by the Department 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 and fiscal reports as 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  
The Department 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 the Department 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 the Department  
The Department 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 the Department, become its property. If the agreement is terminated by the Department as provided herein, the Contractor will be paid an amount which bears the same rate to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement, less payment of compensation previously made.
- d. Availability of Funds  
It is understood and agreed by the parties hereto that all obligations of the Department, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall the Department 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, the Department shall notify the Contractor of such reduction of funds available and the Department shall be entitled to reduce its commitment hereunder as it deems necessary, but shall be obligated for payments due

to the Contractor up to the time of such notice. None of the provisions of this paragraph shall entitle the Department to compensation for anticipated profits for unperformed work.

**PAR. 9. RESPONSIBILITES 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 the Department'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 the Department 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 the Department in the manner and to the extent directed by the Department's project officer all of the rights, title, and interest of the Contractor under the orders so terminated, in which case the Department 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 the Department;
5. With the approval or ratification of the Department'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 the Department's project manager must be obtained. Final approval by the Department 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 the Department (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 the Department'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 Department 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 the Department shall offset any shutdown expenses to the Department.
9. The Contractor acknowledges and agrees the services and/or deliverables provided under this Agreement are very important to the Department and that upon expiration or termination of the Agreement, must be continued without interruption whether by the State, the Department, 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 the Department. Upon termination or expiration of the Agreement, the Contractor, shall, if requested by the Department 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, the Department 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 the Department in form acceptable to the Department.

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, the Department 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 the Department for damages sustained by virtue of any breach of this Agreement by the Contractor.

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

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

The Department 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 the Department'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. The Department's exercise of this provision allowing the Contractor time to cure a failure or breach of this Agreement does not constitute a waiver of the Department'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, the Department 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 the Department'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 the Department and to demonstrate that other project schedules will not be affected. Upon written notice by the Department's project manager of the Department'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 the Department's project officer without affecting other project schedules. The Department'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."

#### Department options at termination

In the event the Department terminates this contract pursuant to this paragraph, the Department 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 the Department'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 the Department 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, the Department 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 the Department for damages sustained by the Department by virtue of any breach of the Agreement by the Contractor, and the Department may withhold payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the Department from the Contractor is determined.

#### **PAR. 10. MODIFICATION OF AGREEMENT**

The Department 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 the Department 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 Division of Purchases.

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

#### **PAR. 11. SUBCONTRACTS**

It is expressly agreed that the Contractor shall not enter into any subcontract(s) nor delegate any responsibilities to perform the services listed in this Agreement without the advanced, written approval of the State's Division of Purchases. 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 the Department 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 the Department. Approval of the Department 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 the Department. Approval by the Department 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 the Department 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 the Department's project officer or other appointed designee(s) for which consent shall not be unreasonably withheld.

Failure to comply with the provisions of this Paragraph could result in denial of reimbursement for such non-approved sub-contracts.

## **PAR. 12. CONTRACTOR'S LIABILITY/INDEMNIFICATION**

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

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

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

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

### **PAR. 13. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES**

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

Pursuant to Title VI and Section 504, as listed above and as referenced in **ADDENDA V AND VI**, which are incorporated herein by reference and made part of this Agreement, the Contractor shall have policies and procedures in effect, including, mandatory written compliance plans, which are designed to assure compliance with Title VI section 504, as referenced above. An electronic copy of the Contractor's written compliance plan, all relevant policies, procedures, workflows, relevant chart of responsible personnel, and/or self-assessments must be available to EOHHS 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 EOHHS, 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 HEALTH AND HUMAN SERVICES' SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964** and **ADDENDUM VI - NOTICE TO DEPARTMENT OF HEALTH AND HUMAN SERVICES' 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 Health and Human Services 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 the Department 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 the Department.

#### **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 the Department'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 the Department shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from the Department'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 EOHHS is considered confidential by the Department. For further requirements regarding confidentiality of information please refer to Paragraph 26 of this Agreement.

With respect to claims arising from computer hardware or software manufactured by a third party and sold by the Contractor as a reseller, the Contractor will pass through to the Department 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 the Department 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 the Department. Unless a third party obligation provides otherwise, the defense and payment obligations set forth in this Paragraph will be conditional upon the following:

1. The Department 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, the Department shall permit the Contractor at its option and expense either to procure for the Department 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 the Department shall be prevented by injunction, the Contractor agrees to take back such deliverables or software and make every reasonable effort to assist the Department in procuring substitute deliverables or software. If, in the sole opinion of the Department, the return of such infringing deliverables or software makes the retention of other deliverables or software acquired from the Contractor under this Agreement impractical, the Department 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 the Department has paid the Contractor less any reasonable amount for use or damage.

The Contractor shall have no liability to the Department 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 the Department 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 Department funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

The Contractor agrees that no findings, listing, or information derived from information obtained through performance, as described in **ADDENDUM I - SCOPE OF WORK**, with or without identifiers, may be released or publicly disclosed in any form for any purpose if such findings, listing, or information contain any combination of data elements that might allow an individual to determine a beneficiary's identification without first obtaining written authorization from the Department'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 the Department shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from the Department'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 the Department is considered confidential by the Department.

**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 the Department.

**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 the Department in writing and then subsequently obtaining approval, in writing, from the Department, 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 the Department. 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. States are required to collect information from contractors for awards greater than \$25,000 as described in **ADDENDUM XVIII – FEDERAL SUBAWARD REPORTING**.

**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 the Department 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 the Department.

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 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. 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 or, if audit findings have not been received at the end of the three (3) years, the records shall be retained until resolution of the audit findings are made.

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

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

The parties agree that in regards to fixed price portions of the contract, the state's access to the Contractor's books, records and documents shall be limited to those necessary to verify the accuracy of the Contractor's invoice. In no event will the state have access to the Contractors 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 the Department on a pass-through basis and used on behalf of the Department by the Contractor shall upon payment by the Department, become the property of the Department 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 the Department, the Contractor agrees to execute and deliver to the Department 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 the Department).

**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 the Department 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 the Department 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 the office 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 the Department.

The Contractor expressly agrees and acknowledges that said confidential information provided to and/or transferred to provider by the Department or to which the Contractor has access to for the performance of this Agreement is the sole property of the Department 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 the Department. Further, the Contractor expressly agrees to forthwith return to the Department any and all said data and/or information and/or confidential information and/or database upon the Department'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](http://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 the EOHHS confidentiality policy recognizing a person's basic right to privacy and confidentiality of personal information. ("confidential records" are the records as defined in section 38-2-3-(d) (1)-(1-19) of the Rhode Island General Laws, entitled "access to public records" and described in "access to Department of Health records.")

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

Personally Identifiable Information (PII) is defined as any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information

which is linked or linkable to an individual. (Defined in OMB Memorandum M-06-19, "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments").

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").

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

The Contractor shall notify the Covered Entity within one (1) hour by telephone call plus e-mail, web form or fax upon the discovery of any breach of security of PHI, PII or SI or suspected breach of security of PHI, PII or SI (where the use or disclosure is not provided for and permitted by this Agreement) of which it becomes aware. The Contractor shall, within forty-eight (48) hours, notify the Department'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 the Department in examining the matter. More complete and detailed information shall be provided to the Department as it becomes available to the Contractor.

Upon notice of a suspected security incident, the Department 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 the Department'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 the Department.

Nothing herein shall limit the Department's ability to seek injunctive relief or any and all damages resulting for 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 the Department, 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 the Department, the Contractor shall provide the Department a copy of the above described financial statement(s) within ten (10) days of the Department's request. 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 five hundred thousand federal dollars (\$500,000) in any fiscal year at no additional cost for the Department, the audit must be performed in accordance with OMB circular A-133, or as updated, and 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 the above-mentioned circular. If a management letter is also issued as part of the audit, the management letter must be submitted as well.

All financial statements and audits must be submitted in a format that is acceptable to the Department. Additionally, if the Contractor has agreements with the Department which in aggregate are at least five hundred thousand federal dollars (\$500,000) in any fiscal year, the audit must be performed in accordance with federal requirements as outlined above.

Should the Contractor expend less than five hundred thousand federal dollars (\$500,000) in a fiscal year and be, therefore, exempt from having OMB circular A-133 audit performed, 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 the Department 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 the Department, its designee, and where appropriate, the Federal government.

**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 the Department 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 the Department'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 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 the Department under this Agreement, and paid for by the Department ("Developed Software") is and shall remain the property of the Department. 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 the Department. 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, the Department 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 the Department's sole and exclusive remedy for such failure, an amount equal to the charges actually paid by the Department to the Contractor for the developed software that has failed to meet the foregoing warranty. Upon written request of the Department, 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 the Department 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 the Department 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 the Department 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. The Department'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 the Department'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 Director of the Department or his designee, the Contractor's President or his designee and a mutually agreed 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).

**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 the Department, the Contractor shall provide the Department a copy of the above described Business Continuity Plan within ten (10) days of the Department'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 the Department shall list, in **ADDENDUM XVII – CORE STAFF POSITIONS**, the names, addresses, telephone numbers, and the facsimile numbers of all individuals that the above such notice, approval or consent shall be sent to or copied on.

**PAR. 41. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the

same instrument. Execution may be effected by delivery of facsimiles of signature pages and the parties will follow such delivery by prompt delivery of originals of such pages.

**PAR. 42. AMENDMENTS**

Except as may otherwise set forth in this Agreement, the Agreement may only be amended by the parties agreeing to the amendment, in writing, duly executed by the parties and shall only be effective upon incorporation by the 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. <sup>Approved as to form and correctness</sup>

**IN WITNESS WHEREOF**, the parties hereto have hereunto 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:**

  
CRAIG S. STENNING, DIRECTOR  
DEPARTMENT OF BEHAVIORAL HEALTHCARE  
DEVELOPMENTAL DISABILITIES AND  
HOSPITALS

**CITY OF CENTRAL FALLS:**

  
AUTHORIZED AGENT/SIGNATURE

TITLE: Mayor

James A. Diossa  
PRINT NAME

10-17-14  
DATE

Reviewed per F.S.A.

12/9/2014  
DATE

  
Leonard Morganis  
Administration & Finance Officer

## 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 DEPARTMENT OF HEALTH AND HUMAN SERVICES' SERVICE PROVIDERS OF THEIR RESPONSIBILITIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
- ADDENDUM VI - NOTICE TO DEPARTMENT OF HEALTH OF HUMAN SERVICES' 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 I**  
**REQUEST FOR PROPOSAL**  
**SCOPE OF WORK**

ORIGINAL RFP:

RFP ADDENDA:

SCOPE OF WORK:

**See Attached**

**Addendum I**  
**Contract Specifications – Municipalities**  
**FDA Tobacco Inspection Program**

The Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) is under contract with the federal Food and Drug Administration (FDA) to conduct the FDA Tobacco Compliance Inspection Program for the State of Rhode Island. Under the terms of the contract, BHDDH will conduct inspections of licensed retail tobacco outlets in the State to determine compliance with the provisions of the 2009 federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) which prohibits the sale of certain tobacco products to individuals under the age of eighteen (18) and requires clerks to request photographic identification for certain tobacco sales (UB Inspections).

- I. Rhode Island Tobacco Compliance Inspection Program
  - a. Undercover Buy (UB) Inspections: The purpose of which is to determine licensed tobacco retailer compliance with certain provisions of the 2009 federal Tobacco Control Act prohibiting the sale of cigarette and smokeless tobacco products to individuals under the age of eighteen (18) and requiring photographic identification for the purchase of qualified tobacco products
  - b. Eligible activities include:
    - i. identifying 1-3 sworn adult law enforcement officers to be commissioned by the FDA to conduct UB inspections within the State of Rhode Island;
    - ii. making commissioned officers available to attend training in UB inspection protocols as required by FDA (1 initial training, minimum 1 annual training, additional trainings to be determined by FDA or BHDDH);
    - iii. conducting routine UB inspections of licensed retail tobacco outlets within their jurisdiction as well as any follow-up inspections as requested by FDA, utilizing commissioned officers accompanied by trained underage youth inspectors and following protocols approved by FDA;
    - iv. documenting and reporting the results of all UB inspections conducted in a time frame provided by FDA, utilizing the FDA Tobacco Inspection Management System (TIMS);
    - v. collecting, maintaining, and transmitting evidence collected as a result of UB inspections in accordance with FDA-approved evidence-handling protocols;
    - vi. as required, making commissioned officers available for a period of five (5) years following the conduct of their last UB inspection to testify in an FDA prosecution of a retail tobacco vendor found in repeat violation of the UB provisions of the federal Tobacco Control Act;
    - vii. commissioned officers may, with the approval of the Police Chiefs in the affected communities, conduct UB inspections outside of their respective jurisdictions;
    - viii. commissioned officers will maintain their commission for a period of five (5) years or until the RI FDA Tobacco Compliance Inspection Program ends, the officer is no longer participating in the Program, or as requested by the FDA. Commissioned officers will provide FDA with current

contact information for a period of five (5) years following the conduct of their last UB inspection; commissioned officers will return FDA credentials and any assigned FDA property immediately upon leaving the RI FDA Tobacco Compliance Inspection Program or upon request by FDA or BHDDH;

- ix. commissioned officers will secure and safeguard their FDA credential, all assigned FDA property, and evidence collected as a result of UB inspections in accordance with FDA protocols;
- x. commissioned officers will comply with FDA requirements regarding confidentiality of non-public information.

II. The Department of BHDDH will:

- a. coordinate the FDA officer commissioning process in collaboration with the FDA;
- b. coordinate training of commissioned officers and maintain the records of all such trainings in collaboration with FDA;
- c. recruit, train, and make available to commissioned officers trained underage youth inspectors to assist commissioned officers in the conduct of UB inspection;
- d. provide regulatory notebooks to all commissioned officers as required by FDA;
- e. provide on-going technical assistance and support to commissioned officers in FDA tobacco inspection protocol, evidence handling, FDA reporting requirements, preparing testimony, and related activities as required by FDA;
- f. consistent with the FDA Tobacco Compliance Inspection Program contract in effect between the federal FDA and the State of Rhode Island, BHDDH will reimburse municipalities for the following:
  - i. commissioned officer time while attending mandatory trainings;
  - ii. commissioned officer time spent in preparing to conduct UB inspections, including time spent picking up and returning underage inspectors at/to a pre-determined safe location;
  - iii. conducting UB inspections as assigned by BHDDH;
  - iv. documenting and securing evidence collected as a result of conducting UB inspections and delivering evidence to BHDDH as necessary;
  - v. preparing and transmitting reports arising from the conduct of UB inspections utilizing TIMS;
- g. BHDDH also will reimburse municipalities for other costs associated with the conduct of FDA UB inspections including:
  - i. Cost of the purchase of eligible cigarette and smokeless tobacco products;
  - ii. Mileage (including bridge and ferry tolls) for commissioned officers to attend required trainings and to conduct UB inspections;
  - iii. Costs associated with underage inspectors to assist with UB inspections

III. Submission Schedule:

- a. Invoices arising from the conduct of FDA UB inspections must be submitted monthly on a form provided by BHDDH. If a municipality submits a claim for mileage reimbursement, it must be made utilizing the Travel Reimbursement Form provided by BHDDH and must be submitted with the monthly invoice form.



IV. Rates for Reimbursement:

- a. for commissioned officers, the reimbursement rate shall not exceed the special duty rate in existence for the municipality. The reimbursement rate is capped at the hourly compensation rate established by the municipality for a Sergeant's rate for overtime unless other negotiated with BHDDH;
- b. compensation for youth inspectors used in enforcement and inspection activities is at the rate of \$10 per hour or the federal contractor minimum wage at the time when reimbursable activities were conducted;
- c. mileage rate is at the rate of \$.56 per mile or the current rate as set by the State of Rhode Island, Department of Administration;
- d. reimbursement for all costs of purchasing eligible tobacco products and for bridge/ferry tolls will be for actual costs incurred (receipts required for bridge/ferry tolls).