

STATE OF GEORGIA
CONTRACT BETWEEN
THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH
AND
(VENDOR)
FOR
ADVERTISING AND PUBLIC RELATIONS SERVICES
FOR
HEALTH INFORMATION TECHNOLOGY

RFP Number: DCH-HIT-02
Contract Number:

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THIS CONTRACT is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH” or the “Department”) and _____ (hereinafter referred to as “_____” or the “Contractor”) and shall be effective on the date signed by the DCH Commissioner (hereinafter referred to as the “Effective Date”).

WHEREAS, DCH is responsible for health care policy, purchasing, planning and regulation pursuant to the Official Code of Georgia Annotated (O.C.G.A.) § 31-2-1 *et seq.*;

WHEREAS, DCH is the single state agency designated to administer Medical Assistance in Georgia under Title XIX of the Federal Social Security Act, as amended, and O.C.G.A. § 49-4-140 *et seq.* (the “Medicaid Program”), and is charged with ensuring the appropriate delivery of health care services to Medicaid and PeachCare for Kids® members;

WHEREAS, DCH is the recipient of a Federal Cooperative Agreement for the establishment of a statewide Health Information Exchange (HIE) in the state of Georgia;

WHEREAS, DCH is in need of advertising expertise to develop, implement and manage statewide awareness of a statewide marketing campaign for health information technology in Georgia;

WHEREAS, Contractor is recognized as an expert in the field of advertising with specific expertise in the area of Health Information Technology advertising;

WHEREAS, The Georgia Department of Administrative Services has determined that the National Institute of Government Purchasing Code category of 915, Communications and Media Related Services, is a service exempt from DOAS State Purchasing procedures;

WHEREAS, DCH issued Request for Proposal (“RFP”) Number DCH-HIT-02 for Advertising and Public Relations Services (attached hereto as Exhibit “1”), which is expressly incorporated into this Contract by reference as if fully written herein;

WHEREAS, Contractor has submitted a Proposal (attached hereto as Exhibit “2”) in response to RFP Number DCH-HIT-02, which is expressly incorporated into this Contract by reference as if fully written herein; and

WHEREAS, the Contractor, including its Subcontractors, has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in this Contract.

NOW THEREFORE, and in consideration of the mutual premises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

1. SCOPE OF SERVICES

- A. Contractor shall work as a collaborative partner with DCH and its associated Partners in the development, implementation, management and evaluation of a statewide awareness and social marketing campaign in support of its initiative to address health information technology in Georgia.
- B. This Contract furthers the purpose of the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as “ARRA”) by:
- i. Preserving and creating jobs and promoting economic recovery; and
 - ii. Providing investments needed to increase economic efficiency by spurring technological advances in science and health.
- C. The Parties agree that DCH retains Contractor to furnish all of the goods, services, and other deliverables contemplated by this Contract, the RFP, and the Contractor’s Proposal.
- D. In the event of a conflict in language between the various documents incorporated into or referenced in this Contract, the terms, conditions, provisions and requirements of this Contract shall control and govern without exception. Any other conflicts shall be clarified or decided by DCH.
- E. The Parties agree that the Department shall not pay or otherwise compensate the Contractor for any services, goods, or deliverables outside of the above Scope of Service. The Department shall not make any exceptions or waivers on this matter. In the event of a dispute regarding whether an item is within the Scope of Service, the Parties will attempt to reach a mutually agreeable solution. If the Parties fail to reach a mutually agreeable solution, Section 36, *Conflict Resolution*, of this Contract shall govern and not be subject to appeal.
- F. If written correspondence is received by the Contractor from DCH and the Contractor believes that the correspondence will cause a change to the scope of service contemplated by this Contract, the Contractor shall advise the Program Director listed in Section 24 of this Contract (hereinafter referred to as “DCH Program Director”) in writing within ten (10) business days of receiving the initial correspondence from DCH at the address indicated in Section 24 of this Contract. The Contractor shall request the DCH Program Director’s written confirmation that the Scope of Service has changed. The notice shall state the following:
- i. the nature and circumstances of the communication regarded as a change in the Scope of Service by the Contractor;
 - ii. the date of the communication;
 - iii. the identification of the documents involved;
 - iv. the particular technical requirements or contract requirements regarded as changed;
 - v. the direct and foreseeable effect of the communication regarded as a change in the Scope of Service contemplated by the Contract, including the number of hours

- required from Contractor's staff to accomplish the change and the manner and sequence of performance or delivery of supplies or services, identifying which supplies or services are or will be affected; and
- vi. a detailed cost analysis of the alleged change, including a schedule setting forth the associated staffing costs (including staff names and hourly costs), with the totals for these categories not exceeding amounts based upon specific assumptions.

As stated above, Contractor must provide this Notice to the DCH Program Director within ten (10) business days of receiving the initial correspondence from DCH. The DCH Program Director shall respond within ten (10) business days of receipt of the Contractor's notice.

The DCH Program Director's response shall either:

- i. countermand the correspondence that Contractor regards as a change;
- ii. deny that the correspondence constitutes a change in the Scope of Service contemplated by the Contract;
- iii. confirm in writing that the correspondence is a change to the Scope of Service contemplated by the Contract; or
- iv. advise the Contractor that additional information is required to evaluate the Notice and establish the date by which this information shall be inadequate to permit a decision to be made.

If the Contractor complies with any order, direction, interpretation, or determination, written or oral, without providing notice in accordance with this Subsection, DCH shall not be liable for any increased price, delay in performance, or contract non-conformance by the Contractor.

2. DEFINITIONS AND TERMS

For purposes of this Contract, the following terms, abbreviations, and acronyms are defined as follows:

ADA - Americans with Disabilities Act, Public Law 336 of the 101st Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services.

Agency - Office, agency, department, board, bureau, commission, institution, authority, or other entity of the State of Georgia.

ARRA – American Recovery and Reinvestment Act of 2009

Business Days - Traditional workdays, including Monday, Tuesday, Wednesday, Thursday and Friday. State Holidays are excluded.

Calendar Days – All seven (7) days of the week.

Centers for Medicare & Medicaid Services - CMS

Complete – having all necessary parts, elements, or steps

Contract – The written agreement between the State and the Contractor; comprised of the executed Contract, any addenda, appendices, attachments, exhibits or amendments thereto.

Contract Award – The date upon which DCH issues the Apparent Successful Vendor (ASV) Letter.

Contract Execution – The date upon which all parties have signed the Contract.

Contractor – The prospective vendor in this procurement.

Contractor's Representative – The individual legally empowered to bind the Contractor, using his/her signature block, including his/her title. This individual will be considered the Contractor's Representative during the life of any Contract entered into with the State unless amended in writing.

Corrective Action Plan – The detailed written plan required by DCH to correct or resolve a deficiency or event causing the assessment of liquidated damage(s) or sanction(s) against the Contractor.

Deliverable – A document, manual, report, work plan or any other required document submitted to DCH by the Contractor to fulfill the requirements of this Contract.

DCH – The Georgia Department of Community Health

DOAS – The Georgia Department of Administrative Services

EHR – Electronic Health Record

FFP - Federal Financial Participation

Fraud – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit or financial gain to him/herself or some other person. It includes any act that constitutes Fraud under applicable federal or State law.

Georgia Procurement Manual – Information and instructions for conducting business with the State of Georgia located at:

http://doas.ga.gov/StateLocal/SPD/Docs_SPD_Official_Announcements/GeorgiaProcurementManual.pdf

GHIE, Inc. - Nonprofit 501(C) that with DCH oversight, will operate the statewide HIE

HIE – Health Information Exchange

HHS - U.S. Department of Health and Human Services

HIT - Health Information Technology

Health Insurance Portability and Accountability Act (HIPAA) – A federal law that includes requirements to protect the privacy of individually identified health information in any format, including written or printed, oral and electronic, to protect the security of individually identified health information in electronic format, to prescribe methods and formats for exchange of electronic medical information, and to uniformly identify providers.

Immediately – Within twenty-four (24) hours.

Incomplete – lacking one or more detail elements

MIP -- Medicaid Incentive Plan (Program) -- This federally funded program is designed to incentivize eligible health care providers to adopt, implement and upgrade their meaningful usage of electronic health records.

O.C.G.A. - Official Code of Georgia Annotated (State statutes)

Offeror – Respondent to this RFP

ONC - Office of the National Coordinator

Prospective Offeror – Respondent to this solicitation

Publish - to produce or release for distribution

State – The State of Georgia

SMHP - State Medicaid Health Plan

Subcontract – Any written contract between the Contractor and a third party, including a Provider, to perform a specified part of the Contractor’s obligations under this Contract.

Subcontractor – Any third party who has a written contract with the Contractor to perform a specified part of the Contractor’s obligations under this Contract.

Week – The traditional seven-day week, Sunday through Saturday.

WBS – Work Breakdown Structure

Work Week – The traditional work week, Monday through Friday

3. DCH RESPONSIBILITIES

- A. Review deliverables and pay all invoices submitted in accordance with Section 7 of this Contract.
- B. Identify and provide appropriate information, resources and technical assistance necessary for Contractor to complete assigned tasks.
- C. Conduct a financial audit or programmatic audit or both as deemed necessary. DCH may also conduct site visits to review and audit vendor performance and compliance.

4. CONTRACTOR RESPONSIBILITIES

A. General Contractor Responsibilities

The Contractor shall immediately notify the Department of any of the following changes:

- i. Change in business address, telephone number, facsimile number or e-mail address;
- ii. Change in corporate status or nature;
- iii. Change in business location;
- iv. Change in solvency;
- v. Change in corporate officers, executive employees, or corporate structure;
- vi. Material change in ownership (i.e. more than 25% a month);
- vii. Change in federal employee identification number or federal tax identification number;
- viii. In short, the Contractor shall not, without the prior written consent of DCH, take the following actions:
 - a. Change its legal status;
 - b. Change its legal structure; or,
 - c. Sell, transfer, convey, or assign more than a twenty-five percent (25%) ownership interest in the Contractor.

Should DCH not consent to any of the actions set forth in Paragraph viii and the Contractor desires to proceed with such action, then DCH may, at its option, elect to terminate this Contract at such date as determined by DCH.

B. Specific Contractor Responsibilities

Contractor shall complete the following actions, tasks, obligations and responsibilities:

1. Prepare and submit a detailed work plan addressing all aspects of the work to be performed under this Contract, including staffing; project milestone and phases; budgetary controls; timeline of activities; and performance measures.
2. Conduct benchmarking activities and produce findings regarding the use of electronic health information by providers and patients, including but not limited to secure exchange of health data, consumer privacy and security concerns, provider and patient awareness of available technology, and access to health information.
3. Develop a Marketing Communications Plan, subject to DCH approval, intended to facilitate stakeholders' understanding and appreciation for the purposes of HIT activities, including but not limited to HIE, MIP, ICD-10 and the Medicaid Eligibility initiative. Contractor shall also assist DCH in gathering and understanding stakeholder feedback, in order to clarify and make more effective outbound communications, and shall create and implement performance measures to gauge campaign effectiveness.
4. Create brand awareness for Georgia HIT activities by targeting providers and consumers in Georgia through positioning, branding and messaging.
5. Build effective communication strategies promoting adoption, implementation or upgrade and meaningful use of ONC certified electronic health records to providers. Include provider outreach strategies for the Medicaid EHR Incentive Program and statewide health information exchange and its available services.
6. Generate collateral, subject to DCH approval, including but not limited to: logo, tag line, brand, fact sheets, provider FAQs, "champions" graphic templates and testimonials, crisis communications, and/or style guides.
7. Develop an interactive digital presence, including but not limited to: website, widgets, videos, e-mail marketing campaigns.
8. Develop Trade advertising (Traditional, New Media), direct marketing, and direct/interactive venues (Conferences, Webinars, etc.).

5. DELIVERABLES

All deliverables shall be submitted to the DCH Program Director identified in Section 24, *Notice*. Contractor shall deliver the following deliverables by the due dates indicated below:

- A. Work Plan: Contractor shall submit a final, detailed work plan, subject to DCH approval, due to DCH within twenty (20) calendar days after the notice of award.

The work plan must address all aspects of the work to be performed as detailed in Section 3.3 of the RFP and the Proposal. At a minimum, the work plan must include:

- i. Staffing: Staff assigned to the project and contact information;
- ii. Milestones and Phases: A listing and description of key milestones which includes activities and deliverables associated with each milestone, as well as an outline of phases for the project including, but not limited to, planning; discovery & analysis; briefing; and reporting;
- iii. Budgetary controls: An itemization of costs associated with each deliverable and phase of the project;
- iv. Timeline: A projected timeline for all activities; and
- v. Performance Measures: A specific plan for evaluating the effectiveness of each deliverable.

B. Benchmarking and Analysis

- i. Activities: Contractor must conduct benchmarking activities, including, but not limited to, primary and secondary user research; qualitative and quantitative analyses; stakeholder interviews; and gathering and preparation of user and influencer information (such as user attitude, behaviors, perceptions, wants and needs) as related to use of health information technology and exchange of health care data. All benchmarking activities must be pre-approved by DCH, including, but not limited to, lists of individuals and groups to be targeted and/or contacted; survey instruments to be used; survey content; interview questions and format, etc.
- ii. Target Audience: At a minimum, the target audience should include representation from the following groups: physicians, urban/rural hospitals, patients/consumers, health insurance payors, large/small Georgia employers, service area HIEs, and health-related state agencies.
- iii. Methodology: Contractor must use a common industry-accepted methodology pre-approved by DCH for the benchmarking analysis and must provide details of such methodology in the benchmarking summary report.
- iv. Reporting: Contractor must submit a draft benchmarking report no later than December 31, 2011, or an alternative date agreed upon by the parties, which must include, at a minimum, all findings (qualitative and quantitative), interview/survey results, strategic implications of findings, and recommendations. The final benchmarking report (addressing all issues and deficiencies raised by DCH regarding the draft) shall be subject to DCH approval and must be submitted within fifteen (15) calendar days of receipt of DCH feedback from the draft benchmarking report.

C. Marketing Communications Plan

- i. Contractor shall develop and submit a high level Marketing Communications Plan (hereinafter "MCP") based on the Benchmarking and Analysis described in B above to cover a minimum of two years of

- implementation of marketing and advertising strategies.
- ii. At a minimum, the MCP must include situation analysis, research (i.e., highlights from the Benchmarking and Analysis & any secondary research); target markets; products/services; other states/competitive look; plan objectives (i.e., creating and sustaining awareness, etc.); strategies & tactics; budgets; performance measures; flowcharts (i.e., timelines), etc. Sub-plans for each recommended component should be developed and may include, but not be limited to: traditional and interactive advertising; promotion; special events; direct marketing; public/media relations; plus sales (i.e. direct, indirect, process, etc.). The MCP must address items 2, 3, 4, 5 & 7 of the RFP Section 3.3, Detailed Services Required.
- iii. The draft MCP shall be submitted to DCH for feedback within thirty (30) days of approval of the final benchmarking report. The final MCP (addressing all issues and deficiencies raised by DCH regarding the draft) shall be subject to DCH approval and must be submitted within fifteen (15) calendar days of receipt of DCH feedback from the draft MCP.

D. Interactive Digital Presence

- i. Contractor shall implement a detailed digital (interactive) marketing/media strategy, as described in the final MCP, including, but not limited to: digital media planning and buying activities; email marketing; website development; digital branding; online marketing and advertising; social media campaign; search marketing; and use of video, mobile and emerging technologies. All marketing products and materials associated with the work performed under this Contract must be pre-approved by DCH prior to use.
- ii. Contractor shall produce digital media plan components, including a fully operational website, approved by DCH within fifteen (15) calendar days of DCH approval of the final MCP or an alternative date agreed to by both parties.

6. TERM OF CONTRACT

This Contract shall begin on the Effective Date and shall continue until June 30, 2012, and may be renewed as hereinafter provided. The Parties agree that DCH shall have two (2) options to renew this Contract for additional terms of up to one (1) State fiscal year each, which shall begin on July 1, and end at midnight on June 30, of the following year, each upon the same terms, conditions and at Contractor's best price in effect at the time of renewal. Pursuant to O.C.G.A. § 50-5-64(a)(2), the renewal option shall be exercisable solely and exclusively by DCH. As to each term, the Contract shall be terminated absolutely at the close of the then current state fiscal year without further obligation by DCH.

7. PAYMENT FOR SERVICES

A. Each invoice for payment must reference the Contract Number XXXXX, Contractor's tax identification number (XX-XXXXX), and be itemized to identify the activities being

billed. DCH will pay the invoice within thirty (30) calendar days of receipt, upon approval of deliverables and the invoice by the DCH Program Director. Each invoice should be mailed to the following address:

GA Department of Community Health
PO Box 1966
Atlanta, GA 30301-1966

Payment of deliverables is based upon acceptance and approval by DCH of submitted deliverables. If deliverables are deemed unacceptable, Contract will correct deficiencies of deliverables at no additional charge to DCH.

- B. The total of all payments made by DCH to Contractor during the life of this Contract (hereinafter referred to as the "Maximum Funds") shall not exceed the dollar amount of **XXXXX Dollars and XXXXX Cents (\$XX.00)**, which has been provided through the use of State or federal grants or other funds.

DCH shall have no responsibility for payment beyond that amount. It is expressly understood that the total of all payments made by DCH to the Contractor during the life of this Contract will not exceed the Maximum Funds provided above, unless Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total payment. Additionally, the Contractor agrees that the Department will not pay or otherwise compensate the Contractor for any work that it performs in excess of the Maximum Funds.

- C. The Contractor shall not increase any charges during any term of this Contract, except as specifically permitted herein or upon the issuance of DCH's express written authorization for the Contractor to increase charges or upon subsequent renewal periods. Renewal proposals will be submitted to DCH for approval.
- D. The Contractor's employees, designees, assignees, consultants, and independent contractors (collectively "Workers") shall not be entitled to, nor shall they receive any additional consideration, compensation, salary, wages, or any other type of remuneration for services rendered under this Contract, except as specifically permitted herein. In particular, the Workers shall not be entitled to or receive, by virtue of this Contract, consideration in the form of overtime, health insurance benefits, retirement benefits, disability benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid or unpaid leaves of absence of any type or kind whatsoever for any reason.
- E. As stated in Section 34 of this Contract, DCH shall have the right to audit Contractor's books, records and other documentation pertaining to the costs and expenses incurred under this Contract. If DCH conducts an audit and determines that Contractor has been overpaid relative to the services that have been provided, DCH shall promptly issue a written notice to the Contractor. The notice shall contain the following information:

- i. Date(s) of overpayment and

- ii. Amount of overpayment.

Contractor shall have thirty (30) calendar days from the receipt of this notice to issue a written response to the DCH Program Director at the address indicated in Section 24. In that response, Contractor may take one of the following actions:

- i. Agree that an overpayment has taken place or
- ii. Dispute that an overpayment has taken place and set forth its reasons for this position, including any supporting documentation.

If the Contractor agrees that an overpayment has taken place, or Contractor fails to respond within thirty (30) calendar days, DCH shall deduct the amount of the overpayment from upcoming payments to Contractor until the amount is fully recouped. If Contractor disagrees with the finding that an overpayment has occurred, Section 36 of this Contract shall control. Decisions made pursuant to Section 36 shall not be subject to appeal.

8. FUNDING

Notwithstanding any other provision of this Contract, the Parties hereto acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. The certification by DCH of the events stated above shall be conclusive and not subject to appeal.

9. PAYMENT OF TAXES

- A. Contractor shall pay all taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. DCH makes no representation whatsoever as to the liability or exemption from liability of Contractor with regard to any tax imposed by any governmental entity.
- B. Furthermore, Contractor shall be responsible for payment of all expenses related to, based on, or arising from salaries, benefits, employment taxes (whether State or Federal) and insurance (whether health, disability, personal, or retirement) for its employees, designees, or assignees.

10. RELATIONSHIP OF PARTIES

Neither Party is an agent, employee, assignee or servant of the other. It is expressly agreed that Contractor and any subcontractors and agents, officers, and employees of Contractor or any subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of DCH. DCH shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Parties acknowledge, and agree, that the Contractor, its agents, employees, and servants shall in no way hold themselves out as agents, employees, or servants of DCH. The parties also agree that the

Contractor, its agents, employees, and servants shall have no claim against DCH hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any subcontractor and DCH.

11. CONTRACTOR STAFFING

A. Staffing Assignments and Credentials

- i. Contractor represents that all persons, including independent contractors and consultants assigned by it to the performance of this Contract, shall be employees or formal agents of Contractor and shall have the credentials necessary (i.e., licensed, and bonded, as required) to perform the work required herein; failure to notify DCH of replacement of subcontractors will be considered breach of contract. Contractor shall include a similar provision in any contract with any subcontractor selected to perform work hereunder. Contractor also agrees that DCH may approve or disapprove Contractor's subcontractors or its staff assigned to this Contract prior to the proposed staff assignment or change in staffing. DCH's decision on this matter shall be final, subject to the Conflict Resolution provisions in Section 36.
- ii. In addition, Contractor represents that all persons assigned by it to perform work under this Contract shall be employees or authorized subcontractors of Contractor and shall be fully qualified, as specified in Contractor's Proposal (Exhibit 1), to perform the services required herein. Personnel commitments made in Contractor's Proposal shall not be changed unless approved by the Department in writing, excluding staffing reductions through retirement or an agency reduction in force, provided all responsibilities and deliverables outlined in this Contract are met. Staffing will include the named individuals at the levels of effort proposed.
- iii. Contractor shall provide and maintain sufficient qualified personnel and staffing to enable the Deliverables to be provided in accordance with the Contractor's Proposal. Contractor also represents that it will comply with all other staffing/personnel obligations set out in the Contractor's Proposal, including but not limited to those pertaining to security, health, and safety issues.
- iv. Contractor represents that all staff used in the performance of this contract shall not be from an offshore location.
- v. Contractor shall provide the DCH Program Director with a staff roster every ninety (90) days during the Term of the Contract. This roster shall set forth the names of all members of Contractor's staff (including subcontractor and Contractor affiliates), their areas of assignment and the number of hours they are required to work.

B. Staffing Changes

- i. Notwithstanding the above provisions, the Parties acknowledge and agree that the Contractor may terminate any of its employees designated to perform work or services under this Contract, as permitted by applicable law. In the event an employee of Contractor that is designated to perform work or services under this Contract is terminated, the Contractor will provide DCH with immediate notice of the termination, the reason(s) for the termination, and an action Plan for meeting the contract obligations contained herein with Contractor's remaining staff, or replacing the discharged employee with a person of equivalent training, experience, and talent within ten (10) calendar days of the termination.
- ii. The Contractor shall notify DCH prior to any changes to the key staff listed in Contractor's Proposal including the Overall Project Manager. The Contractor shall replace any of the key staff with a person of equivalent experience, knowledge and talent. Within ten (10) calendar days of the termination, Contractor shall provide the DCH Program Director with the resume of the proposed replacement and offer the DCH Program Director, and/or his authorized representatives, the opportunity to interview that person. If the DCH Program Director is not reasonably satisfied with the apparent skill and qualifications of the proposed replacement, he or she shall notify Contractor within ten (10) calendar days after receiving the resume or conducting the interview (whichever occurs last). Once that has occurred, the Contractor shall propose another replacement and the DCH Program Director shall have the same right of approval. Such process shall be repeated until a proposed replacement is approved by the DCH Program Director. If, after thirty (30) calendar days from the notice of termination, a qualified replacement is not approved, the contract may be terminated.

12. SUBCONTRACTS

A. Use of Subcontractors

- i. Contractor will not subcontract or permit anyone other than Contractor personnel to perform any of the work, services, or other performance required of the Contractor under this Contract, or assign any of its rights or obligations hereunder, without the prior written consent of DCH. Prior to hiring or entering into an agreement with any subcontractor or affiliate of Contractor, any and all subcontractors or affiliates shall be approved by DCH. DCH must also approve any replacement subcontractors or affiliates in the same manner. Contractor shall, in writing, provide to DCH the names of all proposed or actual subcontractors, the scope of work of each subcontractor, and the percentage of work to be performed by each subcontractor relative to the total scope of the Contract. Contractor is solely responsible for all work contemplated and required by this Contract, whether Contractor performs the work directly or through a subcontractor. In addition, DCH reserves the right to terminate this Contract if Contractor fails to notify DCH in accordance with the terms of this paragraph.

- ii. All contracts must ensure that the Contractor evaluates the prospective Subcontractor's ability to perform the activities to be delegated; monitors the Subcontractor's performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by DCH and consistent with industry standards or State laws and regulations; and identifies deficiencies or areas for improvement and that corrective action is taken.
- iii. Contractor shall give DCH immediate notice in writing by registered mail or certified mail of any action or suit filed by any subcontractor and prompt notice of any claim made against Contractor by any subcontractor or vendor that in the opinion of Contractor, may result in litigation related in any way to this Contract.
- iv. Contractor shall make its subcontractor agreements available to DCH and the State upon request. For any subcontract, there must be a designated project manager who is a member of the subcontractor's staff that is directly accessible by the State. This individual's name and contact information must be provided to the State when the subcontract is executed.

B. Cost or Pricing by Subcontractors

- i. Contractor shall submit, or shall require any subcontractors hereunder to submit, cost or pricing data for any subcontract to this Contract prior to Contract Award. Contractor shall, also, certify that the information submitted by subcontractor is to the best of its knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the subcontract to the Contract or Amendment to the Contract. Contractor shall insert the substance of this section in each subcontract hereunder.
- ii. If DCH determines that any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing data, then such price and cost shall be reduced accordingly and this Contract and the subcontract shall be modified in writing to reflect such reduction.

13. INSPECTION OF WORK

DCH, the State Department of Audits and Accounts, the U.S. Department of Health and Human Services, the General Accounting Office, and the Comptroller General of the United States, if applicable, or their authorized representatives, shall have the right to enter into the premises of Contractor and/or all subcontractors, or such other places where duties under this Contract are being performed for DCH in order to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. All inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. In addition, all inspections and evaluations shall be performed in such a manner as will not unduly delay work.

Contractor agrees to sign and comply with Attachment A, Georgia DCH Non-Profit Organization Disclosure Form.

14. UNSATISFACTORY PERFORMANCE

- A. If DCH, in its sole discretion, determines that the Contractor's services and/or performance under the terms, conditions, and requirements of this Contract are insufficient, unacceptable, or unsatisfactory, the Contractor, after notice in writing from DCH, agrees that it will make every attempt to remedy the deficiency within ten (10) business days.

- B. Should Contractor at any time: 1) fail to provide the services in accordance with the timeframes, schedule or dates set forth in this Contract; 2) fail in the performance of any term or condition contained in this Contract; or 3) knowingly or unknowingly accept payment from DCH of an amount in excess of what it is owed at the time of the payment under the terms of this Contract, DCH may (in addition to any other contractual, legal or equitable remedies) proceed to take any one or more of the following actions after five (5) calendar days' written notice to Contractor:
 - i. withhold any monies then or next due to Contractor; or,
 - ii. withhold monies in the amount of any damage caused by any deficiency or delay in the services; or
 - iii. any combination of the above.

In addition to the consequences indicated above, if it is determined that Contractor knowingly submitted any false statement, invoice or other document to DCH, Contractor shall also be subject to the sanctions imposed by O.C.G.A. §16-10-20.

15. CORRECTIVE ACTION PLANS

- A. In the event of the Contractor's failure to perform timely or correctly a task, obligation, or responsibility required by the RFP or the Contract, DCH, in its sole discretion, may allow the Contractor to submit a detailed written Corrective Action Plan ("Plan"). Any Plan must provide: (1) a detailed explanation of the reasons for the cited deficiency; (2) the Contractor's assessment or diagnosis of the deficiency's cause; and (3) a specified proposal to cure or resolve the deficiency.

- B. The Contractor agrees that any Plan permitted by DCH must be submitted within five (5) calendar days following DCH's grant of permission for the Plan.

- C. The Contractor agrees that the Department's acceptance of the Plan will not: (1) excuse the Contractor's prior substandard performance; (2) relieve the Contractor of its duty to comply with performance standards; or (3) prohibit the Department from assessing additional tailored remedies or pursuing other appropriate remedies for continued

substandard performance.

16. DAMAGES/PERFORMANCE GUARANTEES

- A. The Contractor shall, at all times, comply with all terms, conditions and performance requirements specified in the RFP and this Contract.
- B. In the event that Contractor fails to meet the terms, conditions and/or requirements of this Contract and financial damages are difficult or impossible to ascertain exactly, Contractor agrees that DCH may assess Liquidated Damages against the Contractor for the deficiencies. The Parties acknowledge and agree that the specified Performance Guarantees in Attachment J, which is incorporated by this reference as if fully written herein, are reasonable and the result of a good faith effort by the Parties to estimate the actual harm caused by the Contractor's breach.
- C. The Performance Guarantees outlined in this section are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of the Department's projected financial loss and damage resulting from the Contractor's nonperformance, including financial loss as a result of project delays.
- D. Contractor acknowledges, affirms, ratifies, and agrees that the damage provisions set forth herein meet the criteria for enforceable damages that are reasonable, appropriate, and necessary.
- E. DCH will assess liquidated damages based on assessment of the Contractor's success in meeting required performance standards in accordance with Attachment J. Actual damages will be based upon the actual cost associated with Contractor's failure to perform in accordance with the terms and conditions set forth in this Contract. Contractor must provide evidence acceptable to DCH to challenge the reimbursement to the State for actual damages, or the amounts set forth as liquidated damages, within thirty (30) days of notice of the proposed damage assessment as further discussed in paragraph F below.
- F. DCH will notify the contractor in writing of the proposed damage assessment. The amounts due to DCH as actual or liquidated damages may be deducted from any fees or other compensation payable to the Contractor or DCH may require the Contractor to remit the damages within thirty (30) days following the notice of assessment or resolution of any dispute at DCH's sole discretion. At DCH's option, DCH may obtain payment of assessed actual damages through one (1) or more claims upon any performance bond or irrevocable letter of credit furnished by the Contractor.
- G. The Parties agree that disputes arising under this section shall be handled through negotiations with DCH Vendor Management. The Contractor shall be allowed to appeal the decision of DCH Vendor Management to the Commissioner of DCH or his or her designee. Pending final determination of any dispute, the Contractor shall proceed diligently with performance of the contract and in accordance with the direction of DCH.

H. The venue for any formal legal proceeding shall lie in Fulton County, Georgia

17. INSURANCE

Contractor shall, at a minimum, prior to the commencement of work, procure the insurance policies identified below at Contractor's own cost and expense and shall furnish DCH with an insurance certificate listing DCH as certificate holder and as an additional insured, and proof of coverage at least in the amounts indicated. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by Contractor includes contractual liability coverage applicable to this contract.

In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of notice of cancellation to DCH.

It shall be the responsibility of Contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for Contractor, and to obtain a certificate evidencing that such insurance is in effect. Upon request, Contractor shall provide evidence of such insurance to DCH. In addition, Contractor shall indemnify and hold harmless DCH and the State from any liability arising out of Contractor's or subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein:

- Workers' Compensation Insurance, the policies to insure the statutory limits established by the General Assembly of the State of Georgia. The Workers' Compensation Policy must include Coverage B – Employer's Liability Limits of:

| | |
|---------------------------|----------------------------|
| Bodily Injury by Accident | \$100,000.00 per employee |
| Bodily Injury by Disease | \$100,000.00 per employee |
| Policy Limits | \$500,000.00 policy limits |

- Commercial General Liability Policy(ies) as follows:

| | |
|--|----------------|
| General Aggregate including Products & Completed Operations | \$1,000,000.00 |
| Each Occurrence | \$1,000,000.00 |
| Aggregate Limit | \$3,000,000.00 |

| | |
|---|----------------|
| Business Automobile Liability Combined Singled Limit | \$1,000,000.00 |
|---|----------------|

- Professional Liability Insurance \$1,000,000.00

18. PAYMENT BOND

Contractor is required to furnish and maintain a bond to secure payment of all claims for materials furnished and/or labor performed by a subcontractor in the event one or more subcontractors are utilized by the awarded supplier in performance of the project. The payment bond shall be in an amount equal to the contract price for the portion of work and/or materials to be performed/provided by the subcontractor(s). The awarded supplier(s) must (1) receive prior approval from the DCH prior to utilizing the subcontractor and (2) submit the payment bond(s) to the DCH prior to permitting the approved subcontractor(s) to begin work. All payment bonds must remain in effect for the entire life of the contract, or as long as subcontractors will be used in performance of the work under this contract. Documentation verifying that the payment bond has been renewed at each State Fiscal Year must be submitted to the Issuing Officer no later than thirty (30) Calendar days from the end of the State Fiscal Year.

19. INDEMNIFICATION

Contractor hereby releases and agrees to indemnify and hold harmless DCH, the State of Georgia and its departments, agencies and instrumentalities (including the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, The State Employee Broad Form Liability Funds, the State Insurance and Hazard Reserve Fund, and other self-insured funds, all such funds hereinafter collectively referred to as the "Funds") from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of Contractor, its agents, employees, customers, invitees, licensees or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by Contractor, or due to the application or violation of any pertinent federal, state or local law, rule or regulation. This indemnification extends to the successors and assigns of Contractor, and this indemnification survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor.

20. TERMINATION OF CONTRACT

- A. This Contract may terminate or may be terminated by DCH for any or all of the following reasons:
- i. default by the Contractor, upon thirty (30) calendar days' notice;
 - ii. convenience of DCH, upon thirty (30) calendar days' notice;
 - iii. immediately, in the event of Contractor's insolvency or declaration of bankruptcy;
 - iv. determination by DCH that the instability of the Contractor's financial condition threatens delivery of services and continued performance of Contractor's responsibilities, upon five (5) calendar days' notice;

- v. immediately, when sufficient appropriated funds no longer exist for the payment of DCH's obligation under this Contract.

B. Termination Procedures

Contractor shall:

- i. Stop work under the Contract on the date and to the extent specified in the notice of termination;
- ii. Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- iii. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- iv. Assign to DCH, in the manner and to the extent directed by the Contract Administrator, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case DCH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- v. With the approval of the Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Contract;
- vi. Complete the performance of such part of the work as shall not have been terminated by the notice of termination; and,
- vii. Take such action as may be necessary, or as the Contract Administrator may direct, for the protection and preservation of any and all property or information related to the Contract that is in the possession of Contractor and in which DCH has or may acquire an interest.

C. Termination Claims

After receipt of a notice of termination, Contractor shall submit to the Contract Administrator any termination claim in the form and with the certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination. Upon failure of Contractor to submit its termination claim within the time allowed, the Contract Administrator may, subject to any review required by the state procedures in effect as of the date of execution of the Contract, determine, on the basis of information available, the amount, if any, due to Contractor by reason of the termination and shall thereupon cause to be paid to

Contractor the amount so determined.

Upon receipt of notice of termination, Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or any other contract. Upon termination, Contractor shall be paid in accordance with the following:

- i. At the contract price(s) for completed deliverables and services delivered to and accepted by DCH; and/or
- ii. At a price mutually agreed upon by Contractor and DCH for partially completed deliverables.

In the event of the failure of Contractor and DCH to agree in whole or in part as to the amounts with respect to costs to be paid to Contractor in connection with the total or partial termination of work pursuant to this article, DCH shall determine, on the basis of information available, the amount, if any, due to Contractor by reason of termination and shall pay to Contractor the amount so determined.

21. DCH PROPERTY

- A. Contractor agrees that any papers, materials, and other documents that are produced or that result, directly or indirectly, from or in connection with Contractor's provision of the services under this Contract shall be the property of DCH upon creation of such documents, for whatever use that DCH deems appropriate, and Contractor further agrees to execute any and all documents, or to take any additional actions that may be necessary in the future to effectuate this provision fully. In particular, if the work product or services include the taking of photographs or videotapes of individuals, Contractor must obtain the written consent from such individuals authorizing the use by DCH of such photographs, videotapes, and names in conjunction with such use. Contractor shall also obtain necessary written releases from such individuals, releasing DCH from any and all damages, claims, or demands arising from such use.
- B. The Parties agree that access to or review of documents or materials by DCH or any other agency of State Government for informational or educational purposes shall not be regarded as having been "received" by DCH or such other agency within the meaning of O.C.G.A. Section 50-18-70 (a), except insofar as (1) copies of such documents or materials are retained and maintained by a State agency for future reference or use in the performance of State functions, or (2) the creation of such documents or materials, and approval of the specific content of such documents or materials, is expressly required by this Contract or any amendment thereto. The Parties further agree that Manuals, instructions, or other documents or materials created by Contractor for the use, information, and /or direction of its own employees, and that describe Contractor's internal procedures, policies, staffing, systems, operations, methodologies, or the like, shall not be regarded as records received or maintained by Contractor in the performance of a service or function for or on behalf of DCH, notwithstanding that such documents or materials may describe procedures, policies, systems, methodologies, operations, or the

like that are applied or followed by Contractor in the course of fulfilling its obligations under this Contract.

- C. Contractor shall be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this Contract. Contractor will also reimburse DCH for its loss or damage, normal wear and tear excepted, while such property is in the Contractor's custody or use.

22. OWNERSHIP AND USE OF DATA AND RELATED MATTERS

A. Ownership and Use of Data

All data created from information, documents, messages (verbal or electronic), reports, or meetings involving or arising out of this Contract is owned by DCH ("DCH Data"). Contractor is expressly prohibited from sharing or publishing DCH Data without the prior written consent of DCH. In the event of a dispute regarding what is or is not DCH Data, the Department's decision on this matter shall be final and not subject to appeal.

If DCH consents to the publication of its data by Contractor, Contractor shall display the following statement within the publication in a clear and conspicuous manner:

"This publication is made possible by the Georgia Department of Community Health (DCH) through a contract managed by (Contractor's name). Neither DCH or (Contractor's name) is responsible for any misuse or copyright infringement with respect to the publication."

The statement shall not be considered clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

B. Infringement and Misappropriation

The Contractor represents that all Deliverables provided by the Contractor do not and will not knowingly infringe or misappropriate any right of any third party based on copyright, patent, trade secret, or other intellectual property rights. In case the deliverables or any one or part thereof is held or alleged to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to the Contractor to be likely to be brought, the Contractor will, at its own expense, either:

- i. Procure for the Department the right to continue using the deliverables; or,
- ii. Modify or replace the deliverables to comply with the specifications so that no violation of any intellectual property right occurs. If Contractor fails to comply with the terms and conditions set forth in this section, DCH shall have the option to terminate the Contract.

C. Discharge of Liens

The Contractor shall immediately discharge or cause to be discharged any lien or right in lien of any kind, other than in favor of DCH, which at any time exists or arises in connection with work done or equipment or other instrumentality furnished under this contract. If any such lien or right in lien is not immediately discharged, DCH may discharge or cause to be discharged such lien or right at the expense of the Contractor.

23. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

DCH shall own any Inventions or Works of Authorship that may be (i) made by Contractor personnel in the course of performance of this Contract; or (ii) made by DCH personnel.

Each party shall be responsible for all costs and expenses associated with filing, prosecuting and maintaining patent and/or trademark applications and granted patents and trademarks which it solely and exclusively owns.

24. NOTICE

- A. All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand, or three (3) calendar days after posting, if sent by registered or certified mail, return receipt requested, to a party hereto at the addresses set forth below or to such other address as a party may designate by notice pursuant hereto.

For DCH:

Contract Administration:

XXX XXXXXXXX

Georgia Department of Community Health

2 Peachtree Street NW – 40th floor

Atlanta, Georgia 30303-3159

Phone: 404-XXX-XXXX

Fax: 404-XXX-XXXX

E-mail address: XXXX@dch.ga.gov

Program Director

Programmatic Issues:

XXXX XXXXXXXX

Georgia Department of Community Health

2 Peachtree Street NW – 32nd floor

Atlanta, Georgia 30303-3159

Phone: 404- XXX-XXXX

E-mail address: XXXXXX@dch.ga.gov

For Contractor:

XXXXXXX

It shall be the responsibility of Contractor to inform the Contract Administrator of any change in address in writing no later than five (5) business days after the change.

- B. Within two (2) business days of receipt of notice, the Contractor shall inform DCH of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, which is instituted against the Contractor by a subcontractor, sub-subcontractor, vendor, supplier, or manufacturer.
- C. The Contractor shall inform DCH immediately of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, that it knows, knew, or should have known would be instituted or brought against the Contractor by a subcontractor, sub-subcontractor, vendor, supplier, or manufacturer for work based on, arising from, or related to this Contract.

25. AMENDMENT IN WRITING

- A. No amendment, waiver, termination or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either Party unless confirmed in writing. Nothing may be modified or amended, except by writing executed by both Parties.
- B. If the Contractor desires an amendment or modification to any provision, condition, or obligation contained in this Contract, it must deliver a timely and written change order request to the Department that includes a detailed explanation of the proposed change, justification, and any and all potential cost implications, if any, for the proposed change.
- C. Additionally, the Contractor understands and agrees that CMS and DOAS approval may be required before any such amendment or proposed amendment can become effective. DCH shall determine, in its sole discretion, when such approval is required.
- D. Any agreement of the Parties to amend, modify, eliminate or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein.

26. COMPLIANCE WITH ALL LAWS

A. Non-Discrimination

Contractor agrees to comply with applicable federal and state laws, rules and regulations, and the State's policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical handicap, age, or national origin. Nondiscrimination in employment practices is applicable to employees for employment,

promotions, dismissal and other elements affecting employment.

B. Delivery of Service and Other Federal Laws

- i. Contractor agrees that all work performed pursuant to this Contract shall comply fully with all applicable laws, statutes, case law, codes, rules, regulations, guidelines, and procedures (whether administrative or otherwise) whether federal or State. The Contractor further agrees to comply with laws, statutes, case law, codes, rules, regulations, guidelines, and procedures, including but not limited to §1902(a)(7) of the Social Security Act and DCH Policies and Procedures and the Contractor assumes responsibility for full compliance with all such applicable laws, statutes, case law, codes, rules, regulations, guidelines, and procedures, and agrees to fully reimburse DCH for any loss of funds or resources or overpayment resulting from non-compliance by Contractor, its staff, agents or subcontractors, as revealed in subsequent audits.
- ii. The provisions of the Fair Labor Standards Act of 1938 (29 USC § 201 et seq.) and the rules and regulations as promulgated by the United States Department of Labor in Title XXIX of the Code of Federal Regulations are applicable to this Contract. Contractor shall agree to conform with all Federal laws as they affect the delivery of services under this Contract including but not limited to Titles VI, VII, XIX of the Social Security Act, the Federal Rehabilitation Act of 1973, the Davis Bacon Act (40 USC § 276a *et seq.*), the Copeland Anti-Kickback Act (40 USC § 276c), and the Americans with Disability Act of 1993 (including but not limited to 28 C.F.R. § 35.100 *et seq.*). Contractor will agree to conform to any requirements or regulations as the United States Department of Health and Human Services may issue from time to time.

C. Compliance of Applicable Laws

The Contractor agrees that it will bear any and all costs (including but not limited to attorneys' fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and state statutes, case law, precedent, codes, rules, regulations, policies, guidelines and procedures which: 1) exist at the time of the execution of this Contract; and 2) which become effective or are amended throughout the life of the Contract. In the event of a disagreement on this matter, the Department's determination on this matter shall be conclusive and not subject to appeal.

D. General Compliance

Additionally, the Contractor agrees to comply and abide by all statutes, case law, precedent, codes, rules, regulations, policies, guidelines, or procedures that may govern the Contract, the deliverables in the Contract, or either Party's responsibilities. To the extent that applicable statutes, case law, precedent, codes, rules, regulations, policies, guidelines, or procedures – either those in effect at the time of the execution of this Contract, or those which become effective or are amended during the life of the Contract

- require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely.

27. CONTRACT ASSIGNMENT

All rights, privileges and obligations arising under this Contract shall be assigned to the Georgia Department of Community Health (DCH). The rights of the DCH under this Contract may be assigned to any other agency of the State of Georgia, with ten (10) calendar days' prior notice to Contractor.

Contractor shall not assign this Contract, in whole or in part, without the prior written consent of DCH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect. Any assignment or transfer of any interest under the Contract, by Contractor, shall be made explicitly subject to all rights, defenses, set-offs, or counterclaims, which would have been available to DCH against the Contractor in the absence of such assignment or transfer of interest. This provision includes reassignment of Contract due to change of ownership of Contractor's company.

28. REQUIRED TRAVEL EXPENSES AND USE OF STATE VEHICLES

- A. Should DCH formally request Contractor's participation in activities on DCH's behalf, which require travel, Contractor will be reimbursed for travel necessary to that activity in accordance with the State and DCH travel policies, procedures and prevailing per diem rates which may be found at <http://sao.georgia.gov>, and are incorporated herein by reference and made a part of this Contract as if completely restated herein. The travel must be specifically required and approved, in writing, by the DCH Program Director listed in Section 24, at least five (5) business days prior to such travel, with the duration, purpose, and location of travel and any other pertinent information requested by the Program Director needed for approval.
- B. In all cases, DCH will only reimburse the Contractor for travel away from DCH worksites. If the specified worksite is a DCH office, (whether it is a central, satellite, secondary, or temporary office or worksite) no reimbursement will be paid for a Contractor to travel to or from such location.
- C. State vehicles shall not be used in the performance of this Contract.

29. LICENSE, CERTIFICATE AND PERMIT REQUIREMENT

- A. Contractor shall have, obtain, and maintain in good standing any licenses, certificates and permits, whether State or federal, that are required prior to and during the performance of work under this Contract. Contractor agrees to provide DCH with certified copies of all licenses, certificates and permits that may be necessary, upon DCH's request.
- B. The Contractor warrants that it is qualified to do business in the State of Georgia and is

not prohibited by its articles of incorporation, bylaws or any law of the State under which it is incorporated from performing the services under this Contract.

- C. Loss of any required licenses, certificates, or permits shall be cause for termination of the Contract pursuant to Section 20 of this Contract. If any license, certificate, or permit is cancelled, revoked, suspended or expired during the term of this Contract, the Contractor shall inform the State immediately and cease all activities under this Contract, until further instruction from DCH.
- D. DCH reserves the right to require Contractor, its employees, or its subcontractor's employees to submit to a background test or check prior to performing the services under this Contract.
- E. The Contractor warrants that there is no claim, legal action, counterclaim, suit, arbitration, governmental investigation or other legal, administrative, or tax proceeding, or any order, decree or judgment of any court, governmental agency, or arbitration tribunal that is in progress, pending, or threatened against or relating to Contractor or the assets of Contractor that would individually or in the aggregate have a material adverse effect on Contractor's ability to perform the obligations contemplated by this Agreement. Without limiting the generality of the representation of the immediately preceding sentence, Contractor is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not presently contemplate filing any such voluntary petition, and is not aware of any intention on the part of any other person, or entity, to file such an involuntary petition against it.

30. CRIMINAL BACKGROUND, EXCLUSIONS, AND DEBARMENT

- A. Contractor shall, upon request, provide DCH with a résumé or satisfactory criminal background check or both of any members of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.
- B. The Contractor also agrees to abide by 42 USCS § 1320a-7 and all other related provisions or laws. To that end, the Contractor shall not employ or use any company, entity, or individual that is on the Federal Exclusions List or any company, entity, or individual subject to 42 USCS § 1320a-7.
- C. By signing or executing this Contract, the Contractor states and certifies that it is in compliance with and that it will continue to comply with the Anti-Kickback Act of 1986, 41 USCS § 51-58, and Federal Acquisition Regulation 52.203-7.
- D. Additionally, by signing or executing this Contract, the Contractor states and certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department or agency.
- E. Contractor agrees to sign and comply with Attachment B, Certification Regarding

Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

31. RISK OF LOSS AND REPRESENTATIONS

- A. DCH takes no title to any of Contractor's goods used in providing the services and/or deliverables hereunder and Contractor shall bear all risk of loss for any goods used in performing work pursuant to this Contract.
- B. The Parties agree that DCH may reasonably rely upon the representations and certifications made by the Contractor, including those made by the Contractor in the Contractor's Proposal and this Contract, without first making an independent investigation or verification.
- C. The Parties also agree that DCH may reasonably rely upon any audit report, summary, analysis, certification, review, or work product that the Contractor produces in accordance with its duties under this Contract, without first making an independent investigation or verification.
- D. By submitting a deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner, which will, in concert with other tasks, meet the objectives stated or referred to in the Contract.
- E. By approving a deliverable, the DCH represents only that it has reviewed the deliverable and detected no errors or omissions of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding or denial of payment for the work completed. DCH's approval of a deliverable does not discharge any of the Contractor's contractual obligations with respect to that deliverable.

32. PROHIBITION OF GRATUITIES AND LOBBYIST DISCLOSURES

- A. Contractor, in the performance of this Contract, shall not offer or give, directly or indirectly, to any employee or agent of the State of Georgia any gift, money or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the term of this Contract, and shall comply with the disclosure requirements set forth in O.C.G.A. § 45-1-6.
- B. Contractor also states and represents that it has complied with all disclosure and registration requirements for vendor lobbyists as set forth in O.C.G.A. § 21-5-1, *et seq.* and all other applicable law, including but not limited to registering with the State Ethics Commission. For the purposes of this Contract, vendor lobbyists are those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the State or oppose such Contract.
- C. As required by applicable Federal law, Contractor states and warrants that no federal money has been used for any lobbying of State officials, as required under applicable federal law.

- D. Contractor agrees to sign and comply with Attachment C, Vendor Lobbyist Disclosure and Registration Certification Form.

33. CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE

- A. No official or employee of the State of Georgia or the Federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the responsibilities set forth in this Contract shall, prior to the termination of the Contract, voluntarily acquire any personal interest, direct or indirect, in this Contract.
- B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with, or have a material adverse effect on the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.
- C. All of the Parties hereby certify that the provisions of O.C.G.A. §45-10-20 through §45-10-28, which prohibit and regulate certain transactions between state officials and employees and the State of Georgia, have not been violated and will not be violated in any respect throughout the term.
- D. In addition, it shall be the responsibility of the Contractor to maintain independence and to establish necessary policies and procedures to assist the Contractor in determining if the actual Contractors performing work under this Contract have any impairment to their independence. To that end, the Contractor shall submit a written plan to DCH within five (5) business days of the execution of this Contract in which it outlines the Contractor's policies and procedures relating to how it monitors and enforces Contractor impartiality and independence. The Contractor further agrees to take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing or terminating Contractors.

34. RECORDS REQUIREMENTS

Contractor agrees to maintain books, records, documents, invoices and any other evidence pertaining to the costs and expenses of this Contract and/or any document that is a part of this Contract by reference or inclusion. This includes, but is not limited to, Contractor's balance sheets, income statements and invoices from subcontractors, Contractor's affiliates or other vendors. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles and the costs properly applicable to the Contract shall be readily ascertainable therefrom. This includes, but is not limited to, payment (with respect to salary), overhead and subcontractors.

A. Records Retention Requirements

Contractor shall preserve and make available all of its records pertaining to the

performance under this Contract for a period of seven (7) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute or by any other section of this Contract. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of seven (7) years from the date of termination or of any resulting final settlement. Records that relate to appeals, litigation, or the settlement of claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by the State Contractor, or any of his duly authorized representatives shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of.

B. Access to Records

The State and federal standards for audits of DCH agents, contractors and programs are applicable to this section and are incorporated by reference into this Contract as though fully set out herein.

Pursuant to the requirements of 42 C.F.R. § 434.6(a)(5) and 42 C.F.R. § 434.38, Contractor shall make all of its books, documents, papers, provider records, medical records, financial records, data, surveys and computer databases available for examination and audit by DCH, the State Attorney General, the State Health Care Fraud Control Unit, the State Department of Audits, and/or authorized state or federal personnel. Any records requested hereunder shall be produced immediately for review at DCH or sent to the requesting authority by mail within fourteen (14) calendar days following a request. All records shall be provided at the sole cost and expense of Contractor. DCH shall have unlimited rights to access, use, disclose, and duplicate all information and data received in accordance with applicable State and Federal laws and regulations. DCH shall not be restricted in the number of times it may audit, visit, inspect, review or otherwise monitor Contractor and any subcontractors during the term of this Contract. DCH will only conduct audits as determined reasonably necessary by the Department.

C. Subpoenas for Records or Other Documents

The Department may issue subpoenas to Contractor, which require the Contractor or its agents (e.g. employees, subcontractors) to: produce and permit inspection and copying of designated books, papers, documents, or other tangible items; and/or attend and give testimony at a deposition or hearing. The Contractor agrees to comply with all subpoenas issued by the Department or parties acting on behalf of the Department. The Contractor understands that it is ultimately responsible for its agents' compliance with the subpoenas described herein.

D. Financial Records

During the entire life of the Contract, the Contractor and all subcontractors shall provide DCH with copies of its annual report and all disclosure or reporting statements or forms

filed with the State of Georgia and/or the Securities and Exchange Commission (SEC) as soon as they are prepared in final form and are otherwise available for distribution or filing. In the event that the Contractor is not required to or does not prepare either an annual report or SEC disclosure or reporting statements or forms by virtue of being a subsidiary of another corporation, it shall fulfill the requirements of this section, with respect to all such documents for any parent corporation, which reflect, report or include any of its operations on any basis. In addition, upon the written request of the Program Manager, the Contractor and all subcontractors shall furnish DCH with the most recent un-audited and audited copies of its current balance sheet within fourteen (14) calendar days of its receipt of such request.

E. Independent Service Auditor's Report

At its discretion, DCH may request a third party be engaged to prepare an Independent Service Auditor's Report. This report would meet the standards articulated by the American Institute of Certified Public Accountants including, but not limited to, the Statement on Standards for Attestation Engagements (SSAE) No. 16. Contractor shall bear the cost of obtaining the report. In addition, Contractor shall provide the Auditor with complete access to the records described in this section.

35. CONFIDENTIALITY REQUIREMENTS

A. General Confidentiality Requirements

- i. Contractor shall treat all individually identifiable health information that is obtained or viewed by its employees, agents, or authorized subcontractors in the performance of this Contract as confidential information and shall not use any information so obtained, in any manner, except as may be necessary for the proper discharge of its obligations.
- ii. Employees or authorized subcontractors of Contractor who have a reasonable need to know such information for purposes of performing their duties under this Contract may use personal or patient information, provided such employees and/or subcontractors have first signed an appropriate non-disclosure agreement that has been approved and maintained by DCH.
- iii. Contractor shall remove any person from performance of services hereunder upon notice that DCH reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract. In such cases, Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract set forth in Section 11 of this Contract.
- iv. DCH, the Georgia Attorney General, federal officials as authorized by federal law or regulations, or the authorized representatives of these parties shall have access to all confidential information in accordance with the requirements of State and Federal laws and regulations.

B. HIPAA Compliance

Contractor warrants to DCH that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its accompanying regulations. Upon the execution of this Contract, Contractor must provide DCH with a written description of the policies and procedures used by it to achieve and maintain compliance with HIPAA. These policies and procedures are subject to DCH approval.

The Contractor also agrees to assist DCH in its efforts to comply with HIPAA and its amendments, rules, procedures, and regulations. To that end, the Contractor will abide by any requirements mandated by HIPAA or any other applicable laws in the course of this Contract. Contractor warrants that it will cooperate with DCH, including cooperation with DCH privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of this Contract so that both parties will be in compliance with HIPAA. The Contractor also acknowledges that HIPAA may require the Contractor and DCH to sign documents for compliance purposes, including but not limited to a Business Associate Agreement. Contractor agrees to sign and comply with Attachment D, Business Associate Agreement in the event DCH determines the Contractor is required to have access to Protected Health Information in order to perform the required services. Contractor further agrees to sign any other documents that may be required for HIPAA compliance and to abide by their terms and conditions. Contractor also agrees to abide by the terms and conditions of current DCH policies and procedures.

C. Contractor agrees to sign and comply with Attachment E, Confidentiality Statement for Safeguarding Information.

D. HIPAA Performance Guarantee

Failure to achieve or maintain compliance with the requirements of HIPAA or its amendments, rules, procedures and regulations and with the DCH Business Associate Agreement will constitute failure to substantially perform and will result in the assessment of liquidated damages. These liquidated damages will be assessed in the amount of \$1,000.00 for each day the Contractor fails to achieve or maintain compliance. If DCH incurs penalties and/or fines as a result of Contractor’s non-compliance with HIPAA (including any amendments, rules, procedures or regulations) and Contractor indemnifies DCH as required by Section 19 of this Contract with respect to such penalties and/or fines, any liquidated damages due and payable at the time will be set off by the amount that the Contractor paid to indemnify the Department.

E. Enhanced Privacy and Security Provisions of the AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (“ARRA”)

The Contractor shall comply with all requirements of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), specifically related to improved privacy and security provisions. Contractor is subject to the provisions in effect as of the signing of the Act, and any provisions made effective during the term of this Contract,

including increased penalties for HIPAA violations as contemplated in 42 U.S.C. §1320d *et seq.*

36. CONFLICT RESOLUTION

A. Good Faith Efforts

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract, including but not limited to payment disputes, through negotiations between senior management of the parties.

B. Resolution

If the dispute cannot be resolved within thirty (30) calendar days of initiating such negotiations, the dispute shall be decided by the DCH Contract Administrator, who shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Contractor.

C. Appeal

The written decision of the Contract Administrator shall be final and conclusive, unless the Contractor mails or otherwise furnishes a written appeal to the Commissioner of DCH within ten (10) calendar days from the date of receipt of such decision. The decision of the Commissioner or his duly authorized representative for the determination of such appeal shall be final and conclusive.

D. Other Remedies

If either Party is dissatisfied after exhausting the administrative process described above, that party may pursue its available legal and equitable remedies.

E. Continuation of Work

Contractor and DCH agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract.

37. MISCELLANEOUS

A. Choice of Law or Venue

This Contract shall be governed in all respects by the laws of the State of Georgia. Any lawsuit or other action brought against DCH or the State based upon or arising from this

Contract shall be brought in a court or other forum of competent jurisdiction in Fulton County in the State of Georgia.

B. Attorney's Fees

In the event that either Party deems it necessary to take legal action to enforce any provision of the Contract, and in the event DCH prevails, Contractor agrees to pay all expenses of such action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, hearing officer or administrative law judge. If Contractor prevails in any such action, the court or hearing officer, at its discretion, may award costs and reasonable attorney's fees to the Contractor. Absent such an award, DCH shall not be liable for costs or attorney's fees. The term "legal action" shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

C. Survivability

The terms, provisions, representations and warranties contained in this Contract shall survive the delivery or provision of all services or deliverables hereunder.

D. Drug-Free Workplace

Contractor must certify to DCH that a drug-free workplace will be provided by Contractor's employees during the performance of the Contract as required by the "Drug-Free Workplace Act", O.C.G.A. § 50-24-1, *et seq.* and certify compliance with applicable federal law as set forth in Attachment F. Contractor agrees to sign and comply with Attachment F. Any false certification by Contractor or violation of such certification, or failure to carry out the requirements set forth in State of Georgia or federal statutes, rules, regulations, policies, or guidelines relating to a drug free workplace may result in Contractor being suspended, terminated or debarred from the performance of this Contract.

E. Certification Regarding Debarment, Suspension, Proposed Debarment and Other Matters

Contractor certifies that it is not presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency or department.

F. Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party, in any regard whatsoever, shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding

any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under the Contract.

G. Force Majeure

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

H. Binding

This Contract and all of its terms, conditions, requirements, and amendments shall be binding on DCH and Contractor and their respective successors and permitted assigns.

I. Time is of the Essence

Time is of the essence in this Contract. Any reference to “days” shall be deemed calendar days unless otherwise specifically stated.

J. Authority

DCH has full power and authority to enter into this Contract, and the person acting on behalf of and signing for Contractor has full authority to enter into this Contract, and the person signing on behalf of Contractor has been properly authorized and empowered to enter into this Contract on behalf of Contractor and to bind Contractor to the terms of this Contract. Each party further acknowledges that it: has had the opportunity to consult with and/or retain legal counsel of its choice; read this Contract; understands this Contract; and agrees to be bound by it.

K. Ethics in Public Contracting

- i. Contractor understands, states, and certifies that it made its proposal without collusion or fraud and that it did not offer or receive any kickbacks or other inducements from any other contractor, supplier, manufacturer, or subcontractor in connection with its proposal.
- ii. Contractor agrees to sign and comply with Attachment G, Statement of Ethics, Attachment H, DCH Ethics in Procurement Policy, and Attachment I, Code of Ethics and Conflict of Interest Policy.

Note: The Georgia Procurement Manual released by DOAS in September 2011 supersedes the Georgia Vendor Manual and the previously published Georgia Procurement Manual. All references to the DOAS Vendor Manual in Attachment H, DCH Ethics in Procurement Policy, refer to the Georgia Procurement Manual released in September 2011.

L. Contract Language Interpretation

The Contractor and the Department agree that in the event of a disagreement regarding, arising out of, or related to contract language interpretation, the Department's interpretation of the contract language in dispute shall control and govern. The Department's interpretation of the contract language in dispute shall not be subject to appeal under any circumstance.

M. Assessment of Fees

The Contractor and the Department agree that the Department may elect to deduct any assessed fees from payments due or owing to the Contractor or direct the Contractor to make payment directly to the Department for any and all overpayments previously made to Contractor by DCH or any fees or penalties assessed against DCH as a result of Contractor's negligence, acts or omissions. The method of collection of assessed fees is solely and strictly at the Department's discretion.

N. Cooperation with Other Contractors

- i. In the event that the Department has entered into or enters into agreements with other Contractors for additional work related to the services rendered hereunder, the Contractor agrees to cooperate fully with such other Contractors. The Contractor shall not commit any act that will interfere with the performance of work by any other Contractor.
- ii. Additionally, if the Department eventually contracts with another Contractor for the goods/services contained in this Contract, the Contractor agrees that it will not engage in any behavior or inaction that prevents or hinders the other Contractor's work related thereto. The Contractor agrees to submit a written turnover plan and/or transition plan to the Department within thirty (30) days of receiving the Department's intent to terminate notice. The Parties agree that the Contractor has not successfully met this obligation until the Department accepts its turnover plan and/or transition plan.
- iii. The Contractor's failure to cooperate and comply with this provision, shall be sufficient grounds for the Department to halt all payments due or owing to the Contractor until it becomes compliant with this or any other contract provision. The Department's determination on the matter shall be conclusive and not subject to appeal.

O. Section Titles not Controlling

The section titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract.

P. Cooperation with Audits

- i. The Contractor agrees to assist and cooperate with the Department in any and all matters and activities related to or arising out of any audit or review, whether federal, private, or internal in nature, at no cost to the Department.
- ii. The Parties also agree that the Contractor shall be solely responsible for any costs it incurs for any audit-related inquiries or matters specific to this Contract. Moreover, the Contractor may not charge or collect any fees or compensation from DCH for any matter, activity, or inquiry related to, arising out of, or based on an audit or review.

Q. Homeland Security Considerations

- i. Contractor shall perform the services to be provided under this Contract entirely within the boundaries of the United States. Also, Contractor will not hire any individual to perform any services under this Contract if that individual is required to have a work visa approved by the U.S. Department of Homeland Security and such individual has not met this requirement.
- ii. If Contractor performs services or uses services in violation of the foregoing paragraph, Contractor shall be in material breach of this Contract and shall be liable to the Department for any costs, fees, damages, claims, or expenses it may incur. Additionally, the Contractor shall be required to hold harmless and indemnify the Department pursuant to the indemnification provisions of this Contract.
- iii. The prohibitions in this section shall also apply to any and all agents and subcontractors used by the Contractor to perform any services under this Contract.

R. Ownership and Financial Disclosures

- i. The Contractor shall disclose financial statements for each person, corporation, or entity with an ownership or control interest of five percent (5%) or more in the Contractor's entity for the prior twelve (12) consecutive calendar month period. For the purposes of this section, a person, corporation, or entity with an ownership or control interest shall mean a person, corporation, or entity that:
 - a. owns directly or indirectly five percent (5%) or more of the Contractor's capital or stock or received five percent (5%) or more of its profits;
 - b. has an interest in any mortgage, deed of trust, note, or other obligation secured in whole or in part by the Contractor or by its property or assets, and that interest is equal to or exceeds five percent (5%) of the total property and assets of the Contractor; and,
 - c. is an officer or director of the Contractor (if it is organized as a corporation) or is

a partner in the Contractor's organization (if it is organized as a partnership).

- ii. All ownership and financial disclosures shall occur when the Contractor's Proposal is submitted and updated or amended at least once every quarter, unless otherwise requested by DCH.

S. Enforceability

If, for any reason, a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

T. Legal Considerations

The contractor agrees to be bound by the laws of the State of Georgia and this Contract shall be constructed and interpreted in accordance with Georgia law, regardless of where services are performed, in the event a choice of law situation arises. The Contractor further acknowledges that nothing contained in this Contract shall be construed as a waiver of the immunity from liability, which would otherwise be available to the State of Georgia under the principles of sovereign immunity. In particular, the Contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising out of this Contract, shall be in accordance with all applicable Georgia statutes and the Contractor further covenants not to initiate legal proceedings in any State or Federal court in addition to, or in lieu of, any proceedings available under Georgia statutes.

U. Contract Drafting

The Parties agree that each Party had an opportunity to have the legal counsel of its choice review, revise, edit, negotiate, and modify this Contract as needed or desired.

38. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The following clauses are specific to the use of ARRA funds and are intended to supplement, not replace any existing terms and conditions. Contractor agrees to comply with the following provisions and all other rules, laws, and regulations applicable to the use of ARRA funds that may be enacted and/or modified.

A. Limit on Funds

None of the funds appropriated or otherwise made available in the ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

B. Buy American – Use of American Iron, Steel, and Manufactured Goods

None of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

Notwithstanding the foregoing, this requirement shall not apply in the event the head of the Department of Health and Human Services finds that:

- i. applying the “Buy American” requirement would be inconsistent with the public interest;
- ii. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- iii. inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

C. Wage Rate Requirements

Subject to further clarification issued by the Office of Management and Budget and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Contractor pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

D. Whistleblower Protection

An employee of any Contractor receiving funds made available under the ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- i. gross mismanagement of an agency contract or grant relating to covered funds;
- ii. a gross waste of covered funds;
- iii. a substantial and specific danger to public health or safety related to the

- implementation or use of covered funds;
- iv. an abuse of authority related to the implementation or use of covered funds; or
 - v. violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

The Contractor shall post notice of employees' rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

Nothing in this section may be construed to preempt, preclude, or limit the protections provided for public or private employees under State whistleblower laws.

E. Right to Inspect

It is hereby agreed that the Office of the State Inspector General shall have access to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, and any other materials of DCH and shall be deemed to be an authorized representative and agent of DCH for the purposes of examining and investigating the records of all contractors, subcontractors or consultants whose records related to contracts and/or subcontracts with DCH for the purposes of determining whether fraud, waste, corruption and abuse has occurred. Contractor agrees to the following:

1. Contractor agrees to make available, at all reasonable times, during the term of this contract plus an additional three (3) years thereafter, any and all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, and other materials relating to this contract, for inspection by the Office of the Inspector General.
2. Contractor agrees to include the substance of this clause in all subcontracts related to this contract.

F. Health Information Technology System

If Contractor is a health care provider, health plan, or health insurance issuer, as defined in Section 3000 of the ARRA, as each health care provider, health plan, or health insurance issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under Section 3004 of the Public Health Service Act.

G. Publicizing Contract Actions

In the interest of transparency and accountability, Contractor acknowledges that detailed data on contracts funded by ARRA will be made available to the public via the Internet. The information posted for public view may include, but is not limited to: findings from audits, inspectors general, and the Government Accountability Office; relevant economic, financial, grant, and contract information; information about the contracting process; and those data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) as prescribed by the Director of the Office of Management and Budget.

The Recovery Accountability and Transparency Board may exclude posting contractual or other information on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

H. Reporting requirements

Contractor agrees to provide DCH with any information necessary for DCH to comply with the reporting requirements under Section 1512 of ARRA, including, but not limited to all data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).

39. PROHIBITION OF CERTAIN CONTRACT PROVISIONS

Contractor acknowledges that pursuant to Georgia Constitution Article 3, Section 6, Paragraph 6, the Department is prohibited from entering into any contract that grants any donation or gratuity or forgives any debt or obligation owing to the public.

40. SEVERABILITY

Any section, subsection, paragraph, term, condition, provision, or other part of this Contract that is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein. The Contract shall not be interpreted for or against any party on the basis that such party or its legal representatives caused part of or the entire Contract to be drafted.

41. COUNTERPARTS

This Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

42. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representations, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the Parties.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

**STATE OF GEORGIA
DEPARTMENT OF COMMUNITY HEALTH**

David A. Cook, Commissioner

Date

XXXXXX XXXXXX, State HIT Coordinator

Date

**XXX XXXXXXXX
COMPANY NAME HERE**

BY: _____
Signature

Date

Print/Type Name

*TITLE

* Must be President, Vice President, CEO or Other Officer Authorized by Corporate Resolution to Execute on Behalf of and Bind the Corporation to a Contract

ATTACHMENT A

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
NON-PROFIT ORGANIZATION DISCLOSURE FORM**

Notice to all DCH Contractors: Pursuant to Georgia law, non-profit organizations that receive funds from a state organization must comply with audit requirements as specified in O.C.G.A. § 50-20-1 *et seq.* (hereinafter “the Act”) to ensure appropriate use of public funds. “Non-profit Organization” means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve or expand its operations. The term non-profit organization includes non-profit institutions of higher education and hospitals. For financial reporting purposes, guidelines issued by the American Institute of Certified Public Accountants should be followed in determining non-profit status.

The Department of Community Health (DCH) must report contracts with non-profit organizations to the Department of Audits and must ensure compliance with the other requirements of the Act. Prior to execution of any contract, the potential contractor must complete this form disclosing its corporate status to DCH. This form must be returned, along with proof of corporate status, to: Director, Contract Administration, Georgia Department of Community Health, 40th Floor, 2 Peachtree Street, N.W., Atlanta, Georgia 30303-3159.

Acceptable proof of corporate status includes, but is not limited to, the following documentation:

- Financial statements for the previous year;
- Employee list;
- Employee salaries;
- Employees’ reimbursable expenses; and
- Corrective action plans.

Entities that meet the definition of non-profit organization provided above and are subject to the requirements of the Act will be contacted by DCH for further information.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____ **FAX:** _____

CORPORATE STATUS: (check one) For Profit _____ Non-Profit _____

I, the undersigned duly authorized representative of _____ do hereby attest that the above information is true and correct to the best of my knowledge.

Signature

Date

ATTACHMENT B

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



Federal Acquisition Regulation 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (March 1996)

- (A) The Contractor certifies, to the best of its knowledge and belief, that:
- (1) The Contractor and/or any of its Principals:
 - A. Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal agency;
 - B. Have have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, evasion, or receiving stolen property; and
 - C. Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.
 - (2) The Contractor has has not within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.
 - (3) "Principals," for purposes of this certification, means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment; and similar positions).

This certification concerns a matter within the jurisdiction of an Agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

- (B) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (C) A certification that if any of the items in paragraph (a) of this provision exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Contractor's responsibility. Failure of the Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Contractor nonresponsible.
- (D) 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 paragraph (a) of this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (E) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

[CONTRACTOR]

By: _____

Signature

Date

Name and Title

ATTACHMENT C

VENDOR LOBBYIST DISCLOSURE AND REGISTRATION CERTIFICATION FORM



Pursuant to Executive Order Number 10.01.03.01 (the "Order"), which was signed by Governor Sonny Perdue on October 1, 2003, Contractors with the state are required to complete this form. The Order requires "Vendor Lobbyists," defined as those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the state or those who oppose such a contract, to certify that they have registered with the State Ethics Commission and filed the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. Consequently, every vendor desiring to enter into a contract with the state must complete this certification form. False, incomplete, or untimely registration, disclosure, or certification shall be grounds for termination of the award and contract and may cause recoupment or refund actions against Contractor.

In order to be in compliance with Executive Order Number 10.01.03.01, please complete this Certification Form by designating only one of the following:

- Contractor does not have any lobbyist employed, retained, or affiliated with the Contractor who is seeking or opposing contracts for it or its clients. Consequently, Contractor has not registered anyone with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.
Contractor does have lobbyist(s) employed, retained, or affiliated with the Contractor who are seeking or opposing contracts for it or its clients. The lobbyists are:

Three horizontal lines for listing lobbyists.

Contractor states, represents, represents, and certifies that it has registered the above named lobbyists with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

[Contractor]

Date

Signature

Title of Signatory

**ATTACHMENT D
BUSINESS ASSOCIATE AGREEMENT**

(Note: DCH does not anticipate that this Contract will involve the release or use of Protected Health Information (“PHI”). In the event DCH determines that PHI is involved in the performance of this work, the Contractor must sign and comply with this attachment.)

This Business Associate Agreement (hereinafter referred to as “Agreement”), effective this _____ day of _____, _____ is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH”) and _____ (hereinafter referred to as “Contractor”) as Attachment D to **Contract No. 2011xx** between DCH and Contractor dated _____ (“Contract”).

WHEREAS, DCH is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information (“PHI”);

WHEREAS, Contractor, under Contract No. _____ (hereinafter referred to as “Contract”), may provide functions, activities, or services involving the use of PHI;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

1. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule and the Security Rule, published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164 (“Privacy Rule” and “Security Rule”).
2. Except as limited in this Agreement, Contractor may use or disclose PHI only to extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule or the Security Rule, if done by DCH.
3. **Unless otherwise Provided by Law, Contractor agrees that it will:**
 - A. Not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or as required by law.
 - B. Establish, maintain and use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or the Contract.
 - C. Implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic

protected health information that it creates, receives, maintains, or transmits on behalf of DCH.

- D.** Mitigate, to the extent practicable, any harmful effect that may be known to Contractor from a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract or applicable regulations.
- E.** Ensure that its agents or subcontractors are subject to at least the same obligations that apply to Contractor under this Agreement and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement and the Contract.
- F.** Ensure that its agents and subcontractors, to whom it provides protected health information, agree to implement reasonable and appropriate safeguards to protect the information.
- G.** Report to DCH any use or disclosure of PHI that is not provided for by this Agreement or the Contract and to report to DCH any security incident of which it becomes aware. Contractor agrees to make such report to DCH in writing in such form as DCH may require within three (3) business days after Contractor becomes aware of the unauthorized use or disclosure or of the security incident.
- H.** Make any amendment(s) to PHI in a Designated Record Set that DCH directs or agrees to pursuant to 45 CFR 164.526 at the request of DCH or an Individual, within five (5) business days after request of DCH or of the Individual. Contractor also agrees to provide DCH with written confirmation of the amendment in such format and within such time as DCH may require.
- I.** Provide access to PHI in a Designated Record Set, to DCH upon request, within five (5) business days after such request, or, as directed by DCH, to an Individual. Contractor also agrees to provide DCH with written confirmation that access has been granted in such format and within such time as DCH may require.
- J.** Give the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or the Secretary's designees access to Contractor's books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DCH within five (5) business days after the Secretary or the Secretary's designees request such access or otherwise as the Secretary or the Secretary's designees may require. Contractor also agrees to make such information available for review, inspection and copying by the Secretary or the Secretary's designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to the Secretary or the Secretary's designees in such form, format or manner as the Secretary or the Secretary's designees may require.
- K.** Document all disclosures of PHI and information related to such disclosures as would be

required for DCH to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

- L. Provide to DCH or to an Individual, information collected in accordance with Section 3. I. of this Agreement, above, to permit DCH to respond to a request by an Individual for an accounting of disclosures of PHI as provided in the Privacy Rule.

4. Unless otherwise Provided by Law, DCH agrees that it will:

- A. Notify Contractor of any new limitation in DCH's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such limitation will affect Contractor's use or disclosure of PHI.
- B. Notify Contractor of any change in, or revocation of, permission by an Individual for DCH to use or disclose PHI to the extent that DCH determines in the exercise of its sole discretion that such change or revocation will affect Contractor's use or disclosure of PHI.
- C. Notify Contractor of any restriction regarding its use or disclosure of PHI that DCH has agreed to in accordance with the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such restriction will affect Contractor's use or disclosure of PHI.
- D. Prior to agreeing to any changes in or revocation of permission by an Individual, or any restriction, to use or disclose PHI as referenced in subsections b. and c. above, DCH agrees to contact Contractor to determine feasibility of compliance. DCH agrees to assume all costs incurred by Contractor in compliance with such special requests.

- 5. The **Term of this Agreement** shall be effective as of _____, and shall terminate when all of the PHI provided by DCH to Contractor, or created or received by Contractor on behalf of DCH, is destroyed or returned to DCH, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

- A. **Termination for Cause.** Upon DCH's knowledge of a material breach by Contractor, DCH shall either:
 - i. Provide an opportunity for Contractor to cure the breach within a reasonable period of time, which shall be within 30 days after receiving written notification of the breach by DCH;
 - ii. If Contractor fails to cure the breach, terminate the contract upon 30 days' notice; or

- iii. If neither termination nor cure is feasible, DCH shall report the violation to the Secretary of the Department of Health and Human Services.

B. Effect of Termination.

- i. Upon termination of this Agreement, for any reason, DCH and Contractor shall determine whether return of PHI is feasible. If return of the PHI is not feasible, Contractor agrees to continue to extend the protections of Sections 3 (A) through (J) of this Agreement and applicable law to such PHI and limit further use of such PHI, except as otherwise permitted or required by this Agreement, for as long as Contractor maintains such PHI. If Contractor elects to destroy the PHI, Contractor shall notify DCH in writing that such PHI has been destroyed and provide proof, if any exists, of said destruction. This provision shall apply also to PHI that is in the possession of subcontractors or agents of Contractor. Neither Contractor nor its agents nor subcontractors shall retain copies of the PHI.
 - ii. Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes DCH may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional actions as DCH may require for the protection of patient privacy and the safeguarding, security and protection of such PHI.
 - iii. If neither termination nor cure is feasible, DCH shall report the violation to the Secretary. Particularly in the event of a pattern of activity or practice of Contractor that constitutes a material breach of Contractor's obligations under the Contract and this agreement, DCH shall invoke termination procedures or report to the Secretary.
 - iv. Section 5. B. of this Agreement, regarding the effect of termination or expiration, shall survive the termination of this Agreement.
6. **Interpretation. Any ambiguity in this Agreement shall be resolved to permit DCH to comply** with applicable laws, rules and regulations, the HIPAA Privacy Rule, the HIPAA Security Rule and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable laws, rules and regulations and the laws of the State of Georgia shall supersede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Privacy Rule.
7. **All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.**

(Signatures on following page)

IN WITNESS WHEREOF, Contractor, through its authorized officer and agent, has caused this Agreement to be executed on its behalf as of the date indicated.

COMPANY NAME HERE

BY: _____
SIGNATURE DATE

TITLE

* Must be President, Vice President, CEO or Other Officer Authorized by Corporate Resolution to Execute on Behalf of and Bind the Corporation to a Contract

ATTACHMENT E

**STATE OF GEORGIA
THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH
2 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303-3159**

***CONFIDENTIALITY STATEMENT
FOR SAFEGUARDING INFORMATION***

I, the undersigned, understand, and by my signature agree to comply with Federal and State requirements (**References: 42 CFR 431.300 – 431.306. Chapter 350-5 of Rules of Georgia Department of Community Health**) regarding the safeguarding of Medicaid information in my possession, including but not limited to information which is electronically obtained from the Medicaid Management Information System (MMIS) while performing contractual services with the Department of Community Health, its agents or contractors.

Individual's Name: (typed or printed): _____

Signature: _____ **Date:** _____

Telephone No.: _____

Company or Agency Name and Address: _____

ATTACHMENT F

DRUG-FREE WORKPLACE CERTIFICATE

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988 and O.C.G.A. § 50-24-1 *et seq.* The certification set out below is a material representation of fact upon which DCH relied when entering into Contract # [insert contract number] with [insert vendor name] (hereinafter referred to as the “Contract”). False certification or violation of the certification shall be grounds for suspension of payments, termination of the contract, or government-wide suspension or debarment.

By signing this Drug-Free Workplace Certificate, Contractor certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession or use of a controlled substance or marijuana is prohibited in Contractor’s workplace and specifying the actions that will be taken against employees for violations of such policy;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. Contractor’s policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Providing each employee with a copy of the statement provided for in paragraph (1) of this certification;
4. Notifying each employee in the statement provided for in paragraph (1) that, as a condition of employment, the employee shall:
 - a. Abide by the terms of the statement; and
 - b. Notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five calendar days after such conviction;
5. Notifying DCH within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within 30 days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law

enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

Further, Contractor certifies that it will include in any agreement or contract with a subcontractor a provision that such subcontractor will provide a drug-free workplace for his employees by complying with the provisions of paragraphs (1), (2), (3), (4), and (6) of this subsection and by notifying Contractor of any criminal drug statute conviction for a violation occurring in the workplace involving the subcontractor or its employees within five calendar days of receiving notice of the conviction. Contractor will notify the contracting principal representative pursuant to paragraph (5) of this subsection.

[CONTRACTOR]

BY: _____
SIGNATURE DATE

TITLE

* Must be President, Vice President, CEO or Other Officer Authorized by Corporate Resolution to Execute on Behalf of and Bind the Corporation to a Contract

ATTACHMENT G
STATEMENT OF ETHICS

Preamble

The Department of Community Health has embraced a mission to improve the health of all Georgians through health benefits, systems development, and education. In accomplishing this mission, DCH employees must work diligently and conscientiously to support the goals of improving health care delivery and health outcomes of the people we serve, empowering health care consumers to make the best decisions about their health and health care coverage, and ensuring the stability and continued availability of health care programs for the future. Ultimately, the mission and goals of the organization hinge on each employee's commitment to strong business and personal ethics. This Statement of Ethics requires that each employee:

- Promote fairness, equality, and impartiality in providing services to clients
- Safeguard and protect the privacy and confidentiality of clients' health information, in keeping with the public trust and mandates of law
- Treat clients and co-workers with respect, compassion, and dignity
- Demonstrate diligence, competence, and integrity in the performance of assigned duties
- Commit to the fulfillment of the organizational mission, goals, and objectives
- Be responsible for employee conduct and report ethics violations to the DCH Inspector General and to the DCH Ethics Officer
- Engage in carrying out DCH's mission in a professional manner
- Foster an environment that motivates DCH employees and vendors to comply with the Statement of Ethics
- Comply with the Code of Ethics set forth in O.C.G.A. Section 45-10-1 et seq.

Not only should DCH employees comply with this Statement of Ethics, but DCH expects that each vendor, contractor, and subcontractor will abide by the same requirements and guidelines delineated. Moreover, it is important that employees and members of any advisory committee or commission of DCH acknowledge the Statement of Ethics.

Ethical Guidelines

1. Code of Conduct

All employees of DCH are expected to maintain and exercise at all times the highest moral and ethical standards in carrying out their responsibilities and functions. Employees must conduct themselves in a manner that prevents all forms of impropriety, including placement of self-interest above public interest, partiality, prejudice, threats, favoritism and undue influence. There will be no reprisal or retaliation against any employee for questioning or reporting possible ethical issues.

2. Equal Employment

The Department is committed to maintaining a diverse workforce and embraces a personnel management program which affords equal opportunities for employment and advancement based on objective criteria. DCH will provide recruitment, hiring, training, promotion, and other conditions of employment without regard to race, color, age, sex, religion, disability, nationality, origin, pregnancy, or other protected bases. The Department expects employees to support its commitment to equal employment. The failure of any employee to comply with the equal employment requirements provided in DCH Policy #21 may result in disciplinary action, up to and including termination.

3. Harassment

DCH will foster a work environment free of harassment and will not tolerate harassment based on sex (with or without sexual conduct), race, color, religion, national origin, age, disability, protected activity (*i.e.*, opposition to prohibited discrimination or participation in a complaint process) or other protected bases from *anyone* in the workplace: supervisors, co-workers, or vendors. The Department strongly urges employees to report to the Human Resources Section any incident in which he or she is subject to harassment. Additionally, any employee who witnesses another employee being subjected to harassment should report the incident to the Human Resources Section. If DCH determines that an employee has engaged in harassment, the employee shall be subject to disciplinary action, up to and including termination, depending on the severity of the offense.

4. Appropriate Use of DCH Property

Employees should only use DCH property and facilities for DCH business and not for any type of personal gain. The use of DCH property and facilities, other than that prescribed by departmental policy, is not allowed. Furthermore, the use of DCH property and facilities for any purpose which is unlawful under the laws of the United States, or any state thereof, is strictly prohibited.

Employees who divert state property or resources for personal gain will be required to reimburse the Department and will be subject to the appropriate disciplinary action, up to and including, termination.

5. Secure Workplace

DCH is committed to maintaining a safe, healthy work environment for its employees. Accordingly, it is DCH's expectation that employees refrain from being under the influence of alcohol or drugs in the workplace because such conduct poses a threat to the employee, as well as others present in the workplace. Additionally, DCH has a zero tolerance policy regarding violence in the workplace. Specifically, DCH will not condone the threat of, or actual assault or attack upon, a client, vendor, or other employee. If an employee engages in violent behavior which results in an assault of another person, he or she will be immediately terminated.

6. Political Activities

Although the DCH recognizes that employees may have an interest in participating in political activities and desires to preserve employees' rights in participating in the political process, employees must be aware of certain allowances and prohibitions associated with particular political activities. DCH encourages employees to familiarize themselves with DCH Policy #416 to gain understanding about those instances when a political activity is disallowed and/or approval of such activity is warranted.

7. Confidentiality

DCH has a dual mandate in terms of confidentiality and privacy. Foremost, as a state agency, DCH must comply with the Georgia Open Records Act and Open Meetings Act. The general rule that is captured by those laws is that all business of the agency is open to the public view upon request. The exceptions to the general rule are found in various federal and state laws. In order to protect the individuals' health information that is vital to the delivery of and payment for health care services, DCH sets high standards of staff conduct related to confidentiality and privacy. Those standards are reinforced through continuous workforce training, vendor contract provisions, policies and procedures, and web-based resources.

8. Conflicts of Interest

Employees should always strive to avoid situations which constitute a conflict of interest or lend to the perception that a conflict of interest exists. Specifically, employees must avoid engaging in any business with the DCH which results in personal financial gain. Similarly, employees must encourage family members to avoid similar transactions since they are subject to the same restrictions as employees. DCH encourages its employees to seek guidance from the Office of General Counsel regarding questions on conflicts of interest.

9. Gifts

Employees are strictly prohibited from individually accepting gifts from any person with whom the employee interacts on official state business. Gifts include, but are not limited to, money, services, loans, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. Any such item received must be returned to the sender with an explanation of DCH's Ethics Policy.

10. Relationships with Vendors and Lobbyists

DCH values vendors who possess high business ethics and a strong commitment to quality and value. Business success can only be achieved when those involved behave honestly and responsibly. Therefore, it is critical that employees ensure that vendors contracting with DCH are fully informed of DCH policies concerning their relationships with DCH employees and that these policies be uniformly applied to all vendors. Among other requirements, DCH expects that each vendor will honor the terms and conditions of its contracts and agreements. If DCH determines that a vendor has violated the terms and conditions of a contract or agreement, the vendor shall be held responsible for its actions.

Employees must ensure that fair and open competition exists in all procurement activities and contracting relationships in order to avoid the appearance of and prevent the opportunity for favoritism. DCH strives to inspire public confidence that contracts are awarded equitably and economically. DCH will apply the state procurement rules, guidelines, and policies. Open and competitive bidding and contracting will be the rule.

DCH recognizes that lobbyists, both regulatory and legislative, may from time to time seek to meet with DCH employees to advance a particular interest. DCH recognizes that employees may have personal opinions, even those that may be contrary to a position that DCH has adopted. DCH employees, however, must recognize that the public, including legislators and lobbyists, may have difficulty differentiating between the official DCH position and a personal opinion. Accordingly, employees should always work directly with the Director of Legislative Affairs in preparing any responses to requests or questions from elected officials and their staff or lobbyists.

11. Mandatory Reporting

If I have knowledge of any ethics violation, I am aware that I am responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer. My good faith reports will be free from retaliation. If I am a supervisor, I am aware that I am responsible for reporting such violation and for forwarding any such report from a member of my staff to the DCH Inspector General and the DCH Ethics Officer. As a supervisor, I am additionally responsible for ensuring that the employees who report to me are aware of and comply with the ethical standards and policies that are applicable to their positions.

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

A. I have received, read, and understand the Georgia Department of Community Health *Statement of Ethics*;

B. I agree to comply with each provision of the Georgia Department of Community Health *Statement of Ethics*;

C. I am a:

- Member of the Board of the Department of Community Health
- Member/employee of advisory committee or commission
- Department Employee
- Vendor/Contractor/Subcontractor

COMPANY NAME HERE

Authorized Signature*

Date

Print Name

* Must be President, Vice President, CEO or Other Officer Authorized by Corporate Resolution to Execute on Behalf of and Bind the Corporation to a Contract

ATTACHMENT H

Georgia Department of Community Health

| | |
|--|-----------------------|
| DCH Ethics In Procurement Policy | Policy No. 402 |
| Effective Date: April 10 , 2006 Revision Date: March 25, 2008 | Page 1 of 8 |

I. THE COMMITMENT

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, is fully compliant with all instruments of governance and has the complete confidence and trust of the public it serves. To achieve these important public purposes, it is critical that potential and current vendors, as well as employees, have a clear understanding of and an appreciation for, the DCH Ethics in Procurement Policy (the “Policy”).

II. SCOPE

This Policy is applicable to all Vendors and Employees, as those terms are defined below.

III. CONSIDERATIONS

Procurement ethics must include, but is not limited to, the following considerations:

A. Legitimate Business Needs

The procurement of goods and services will be limited to those necessary to accomplish the mission, goals, and objectives of the Department.

B. Conflicts of Interest

A “conflict of interest” exists when personal interest interferes in any way with the interests of the Department. A conflict situation can arise when an individual takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest also arise when an individual, or a member of his or her Family Member, receives improper personal benefits as a result of his or her action, decision, or disclosure of Confidential Information in a Procurement.

C. Appearance of Impropriety

Employees must take care to avoid any appearance of impropriety and must disclose to their supervisors any material transaction or relationship that reasonably

could be expected to give rise to a conflict of interest. Similarly, anyone engaged in a business relationship with the Department should avoid any appearances of impropriety.

D. Influence

An impartial, arms' length relationship will be maintained with anyone seeking to influence the outcome of a Procurement.

E. Gifts

DCH Employees are prohibited from soliciting, demanding, accepting, or agreeing to accept Gifts from a Vendor.

F. Misrepresentations

Employees and Vendors may not knowingly falsify, conceal or misrepresent material facts concerning a Procurement.

G. Insufficient Authorization

Employees may not obligate the Department without having received prior authorization from an approved official. Engaging in such activity is a misrepresentation of authority.

An Employee's failure to adhere to these considerations, as well as the guidelines set forth herein shall be grounds for disciplinary action, up to and including, termination. Similarly, a Vendor's failure to comply with this Policy will result in appropriate action as determined by governing state and/or federal law, rules and regulations, and other applicable Department policies and procedures.

IV. DEFINITIONS

For purposes of this policy:

“Affiliate Vendor Team” shall mean employees, directors, officers, contractors, and consultants of a Vendor that directly or indirectly assist the Vendor in the preparation of response to a Procurement.

“Confidential Information” shall mean all information not subject to disclosure pursuant to the Open Records Act, O.C.G.A. §50-18-70 et seq. that a current Vendor or potential Vendor might utilize for the purpose of responding to Procurement or that which is deemed disadvantageous or harmful to the Department and to the citizens of the State of Georgia in that such disclosure might lead to an unfair advantage of one Vendor over another in a Procurement.

“Contracting Officer” shall mean the Department Employee maintaining oversight of the Procurement process that may also be designated as the Point of Contact as described below.

“Department” shall mean the Georgia Department of Community Health.

“Employee” shall mean any person who is employed by the Department.

“Evaluation Team” shall mean a designated group of Department Employees who review, assess, and score documents submitted to the Department in response to a Procurement solicitation.

“Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.

“Financial Interest” shall mean, for purposes of this Policy, an ownership interest in assets or stocks equaling or exceeding 0%.

“Gifts” shall mean, for purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.

“Kickback” shall mean compensation of any kind directly or indirectly accepted by an Employee from a Vendor competing for or doing business with the Department, for the purpose of influencing the award of a contract or the manner in which the Department conducts its business. Kickbacks include, but are not limited to, money, fees, commissions or credits.

“Procurement” shall mean buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term also includes all activities that pertain to obtaining any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, as well as the disposition of any Protest.

“Protest” shall mean a written objection by an interested party to an RFQ or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.

“Protestor” shall mean an actual bidder/offeror who is aggrieved in connection with a contract award and who files a Protest.

“Point of Contact” shall mean the individual designated to be a Vendor’s only contact

with the DCH following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote, until the award of a resulting contract and resolution of a Protest, if applicable.

“Prohibited Contact” shall mean contact with any officer, member of the Board or other Employee of the DCH, other than the Point of Contact, whereby it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the outcome of a Procurement. This prohibition includes, without limitation, personal meetings, meals, entertainment functions, telephonic communications, letters, faxes and e-mails, as well as any other activity that exposes the Employee to direct contact with a Vendor. This prohibition does not include contacts with Employees solely for the purpose of discussing existing on-going Department work which is unrelated to the subject of the Procurement. Inquiries regarding the status of a Procurement should also be directed to the Point of Contact.

“Vendor” shall mean any individual or entity seeking to or doing business with the Department within the scope of this Policy, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and Employees of the foregoing, any subcontractors, sub consultants and sub suppliers at all lower tiers, as well as any person or entity engaged by the Department to provide a good or service.

“DOAS Vendor Manual” shall mean the Georgia of Department of Administrative Services’ vendor manual.

V. EMPLOYEE RESPONSIBILITIES

A. Evaluation Team Members

1. The Contracting Officer must ensure that employees participating in any Procurement activities have sufficient understanding of the Procurement and evaluation process and the applicable DCH and DOAS rules and regulations and policies associated with the processes.
2. Evaluation team members are tasked with conducting objective, impartial evaluations, and therefore, must place aside any personal and/or professional biases or prejudices that may exist. Additionally, Employees serving on an Evaluation Team must not allow personal relationships (i.e. friendships, dating) with Employees, principals, directors, officers, etc. of a Vendor or individuals on the Affiliate Vendor Team to interfere with the ability to render objective and fair determinations. Such interference may constitute the appearance of, and/or an actual conflict of interest and should be immediately disclosed to the Contracting Officer prior to the Employee’s participation on the evaluation team. The Contracting Officer shall consult with the Ethics Officer to make a determination as to whether the Employee should participate on the evaluation team.

3. In the event that the Department determines that a conflict of interest does exist and the Employee failed to make the appropriate disclosure, the Department will disqualify the Employee from further participation on the evaluation team. Furthermore, in the event that the Department determines that the conflict of interest did impact the outcome of a Procurement; such Employee may be subject to disciplinary action, up to and including termination.
4. In the event that the Department identifies that the employee maintains a relationship of any sort that lends to an appearance of a conflict of interest with respect to a Procurement, the Department may, in its discretion, take appropriate action to eliminate such an appearance, up to and including the disallowance of the Employee's participation in any Procurement activities. In such instances, the employee most likely will not be subject to disciplinary action.
5. Prior to participating on an evaluation team, each DCH Employee must execute a statement attesting and acknowledging that:
 - a. The Employee shall not participate in a decision or investigation, or render an approval, disapproval, or recommendation with respect to any aspect of a Procurement, knowing that the Employee, or member of their Family Member has an actual or potential Financial Interest in the Procurement, including prospective employment;
 - b. The Employee shall not solicit or accept Gifts, regardless of whether the intent is to influence purchasing decisions;
 - c. Neither the Employee nor a Family Member of an Employee shall be employed by, or agree to work for, a Vendor or potential Vendor or Affiliate Vendor Team during any phase of a Procurement;
 - d. The Employee shall not knowingly disclose Confidential Information;
 - e. The Employee is precluded from engaging in Prohibited Contact upon the release of a Procurement solicitation, during the Evaluation Process, and throughout a Protest period, period of stay or court injunction related to procurement with which Employee was associated or at any time prior to the final adjudication of the Protest;
 - f. The Employee is responsible for reporting any violations of this Policy in accordance with this Policy;
 - g. The Employee will be responsible for complying with all DOAS rules and regulations, as well as Georgia law pertaining to procurements and conflicts of interest; and

- h. The Employee shall not assist a potential Vendor in the Procurement process in evaluating the solicitation, preparing a bid in response to the evaluation, or negotiating a contract with the Department. This prohibition shall not prohibit the Contracting Officer from carrying out his or her prescribed duties as allowed by DCH policy and procedures or the DOAS Vendor Manual.

B. Responsibilities of Non-Evaluation Team Members

All Employees should be mindful of the importance of confidentiality during any Procurement. Even if an Employee is not serving in the capacity of a member on the Evaluation Team, the Employee must refrain from engaging in conduct with a Vendor that could result in a conflict of interest or be considered a Prohibited Contact.

VI. VENDOR RESPONSIBILITIES

A. Gifts and Kick-Backs

Vendors may neither offer nor give any Gift or Kick-backs, directly or indirectly, to an Employee. Similarly, no Vendor may offer or give any Gift or Kick-backs, directly or indirectly, to any member of an Employee's Family Member. Such prohibited activity may result in the termination of the contract, in those cases where the Vendor has executed a contract with the Department. In the event that a potential Vendor who has submitted a response to a Procurement solicitation engages in such activity, the Department shall act in accordance with DOAS protocol.

B. Family Relationships with Department Employees

If a Vendor has a family or personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and Employee shall be considered. However, regardless of the family or personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

C. Vendor Submittals

The Department expects all potential Vendors and current Vendors to be forthcoming, always submitting true and accurate information in response to a Procurement or with regard to an existing business relationship. If the Department determines that the Vendor has intentionally omitted or failed to provide pertinent information and/or falsified or misrepresented material information submitted to the

Department, the Department shall act in accordance with applicable state law and DOAS procurement policies and procedures.

Vendors must calculate the price(s) contained in any bid in accordance with Section 5.11 of the DOAS Vendor Manual.

D. Business Relations

A Vendor may not be allowed to conduct business with the Department for the following reasons:

1. Falsifying or misrepresenting any material information to the Department as set forth hereinabove;
2. Conferring or offering to confer upon an Employee participating in a Procurement (which the entity has bid or intends to submit a bid) any Gift, gratuity, favor, or advantage, present or future; and
3. Any other reasons not explicitly set forth herein that are contained in the DOAS Vendor Manual.

VII. USE OF CONFIDENTIAL INFORMATION

Employees will not use Confidential Information for their own advantage or profit, nor will they disclose Confidential Information during a Procurement to any potential Vendor or to any other unauthorized recipient outside DCH.

VIII. ADDRESSING VIOLATIONS

A. The Process

Adherence to this policy makes all DCH staff responsible for bringing violations to the attention of the Contracting Officer under Procurement protocols or to a supervisor/manager if the affected Employee is not a part of the Procurement. If for any reason it is not appropriate to report a violation to the Contracting Officer or the Employee's immediate supervisor, Employees will report such violations or concerns to the DCH Inspector General and the DCH Ethics Officer. The Contracting Officer and managers are required to report suspected ethics violations to the Inspector General, who has specific responsibility to investigate all reported violations.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Confirmed violations will result in appropriate disciplinary action, up to and including termination from employment. In some circumstances, criminal and civil penalties may be applicable.

The Inspector General will notify the employee making the report of the suspected violation of receipt of such report within five (5) business days. All reports will be

promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

B. Good Faith Filings

Anyone filing a complaint concerning a violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

C. Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation. Additionally, all Employees are expected to cooperate in the investigation of such violations. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination from employment.

IX. MANDATORY REPORTING

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the Ethics Officer. Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor’s staff to the DCH Inspector General and the Ethics Officer. Reports of violations made to the Ethics Officer will be forwarded to the DCH Inspector General. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Employees and Board members are encouraged to contact the DCH Inspector General about any concerns regarding standards of conduct, ethics and conflicts of interest.

| | |
|--|--------------|
| Approved By: Commissioner | Date: |
|--|--------------|

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health’s *Ethics In Procurement Policy*;
- B. I agree to comply with each provision of the Georgia Department of Community Health’s *Ethics In Procurement Policy*;
- C. I am a (please check which applies):
 - Vendor/Contractor
 - Subcontractor

COMPANY NAME HERE

Authorized Signature*

Date

Print Name

* Must be President, Vice President, CEO or Other Officer Authorized by Corporate Resolution to Execute on Behalf of and Bind the Corporation to a Contract

ATTACHMENT I

Georgia Department of Community Health

| | |
|---|-----------------------|
| Code of Ethics and Conflict of Interest Policy | Policy No. 401 |
| Effective Date: November 1, 2006 Revision Date: January 26, 2011 | Page 1 of 10 |

- References:**
1. O.C.G.A. §45-10-1 et seq.;
 2. O.C.G.A. § 21-5-1, et seq.;
 3. Governor’s Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees, January 10, 2011;
 4. DCH Ethics Statement
 5. DCH Ethics in Procurement Policy

I. Purpose

The purposes of this policy are to assist DCH Employees and Board members in maintaining the highest standards of ethics and to provide guidelines that DCH Employees and Board members should follow in order to avoid a conflict of interest or the appearance of conflict.

II. Definitions

For the purposes of this policy, the following terms shall have the following meanings:

- A. “Agency” shall mean any agency, authority, department, board, bureau, commission, corporation, committee, office, or instrumentality of the State of Georgia.
- B. “Board member” shall refer to all members of the Board of Community Health established under O.C.G.A. § 31-2-3.
- C. “Commissioner” shall mean the Commissioner of the Department of Community Health.
- D. “Department” shall refer to the Department of Community Health established under O.C.G.A. § 31-2-4.

- E. “Employee” shall mean any person who is employed by the Department.
- F. “Expenses” shall mean the provision of food, beverages, travel, lodging, and registration fees that are attendant to an Employee’s participation in a public meeting related to official or professional duties. Expenses are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.
- G. “Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.
- H. “Gifts” shall mean, for the purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.
- I. “Honorarium” shall mean payment to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy.
- J. “Indirectly” is intended to cover, but not be limited to, any scheme, device or plan which circumvents the literal language of this Policy but provides material financial benefits to a Board member or an Employee or such person’s Family Member. “Limited powers” shall mean those powers exercised by Public Officials, which affect and influence a specific agency. “Lobbyist” shall have the meaning set forth in O.C.G.A. Section 21-5-70(5).
- K. “Nepotism” shall mean demonstrating favor on the basis of Family Member relationship in employment decisions such as hiring, promotions, transfers, or terminations.
- L. “Part time” shall mean employed for less than thirty (30) hours per week for a continuous period of fewer than twenty-six (26) weeks.
- M. “Public Official” shall mean any person elected or appointed to a state office wherein the person has administrative and discretionary authority to receive and expend public funds and perform certain duties that impact the public.
- N. “State-wide powers” shall mean those powers exercised by Public Officials which affect and influence all of state government.

- O. "State" shall mean the State of Georgia.
- P. "Substantial interest" shall mean the direct or indirect ownership of more than 25 percent of the assets or stock of any business.
- Q. "Transacting business" shall mean to sell or lease any personal or real property, surplus personal or real property, or services on one's behalf or on behalf of any third party as an agent, broker, dealer, or representative.
- R. "Vendor" shall mean the definition set forth in O.C.G.A. Section 45-1-6(a)(5), as well as any person seeking or opposing a certificate of need.
- S. "Value" shall mean actual retail price or cost attributable to a gift minus taxes and/or gratuities or a reasonable estimate based upon customary charges for like goods or services.

III. Code of Ethics

In fulfilling designated duties and responsibilities, Employees and Board members should be mindful of the following principles:

- A. Uphold the Constitution, laws, and legal regulations of the United States and the State.
- B. Give a full day's labor for a full day's pay and perform duties with earnest effort and best thought.
- C. Never discriminate unfairly by extending special favors or privileges, whether for remuneration or not, and never accept, for personal gain or for a Family Member, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
- D. Make no private promises of any kind binding upon the duties of office, since a government Employee has no private word, which can be binding on public duty.
- E. Refrain from engaging in business with the government, either direct or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- F. Never use confidential information in the performance of governmental duties as a means of making a profit.
- G. Expose corruption.

H. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

I. Uphold these principles, ever conscious that public office is a public trust.

IV. Transacting Business

A. DCH Board members and Employees

1. DCH Board members and Employees must refrain from transacting business with the Department for personal gain or on behalf of another party. However, it is allowable for DCH Board members and Employees to conduct business with other Agencies as long as the business transaction does not result in a benefit for the Department.
2. Part-time Employees, however, are allowed to transact business with the Department under the following circumstances:
 - a. the transaction resulted from a sealed competitive bid; or
 - b. the transaction does not exceed \$250.00 in benefit to the Employee, or transactions in a given calendar year do not, in the aggregate, exceed \$9,000.
3. A business in which DCH Board members or Employees maintain a substantial interest may not transact business with the Department.

B. Family Members

If a Family Member of a Public Official or Employee maintains a substantial interest in a business, that business may not engage in a business relationship with the Department. Because Family Members are subject to the same ethical constraints as Public Officials and/or Employees, Family Members may conduct business with other Agencies only as long as the business transaction does not result in a benefit for the Department. This prohibition stems from the presumption that the Public Official or Employee, by virtue of his or her Family Member's relationship, has benefited from the business transaction.

C. Exceptions

The following transactions are permitted:

1. A transaction by a full-time or part-time Public Official or part-time Employee that does not exceed \$250.00, or in the alternative,

transactions, which in the aggregate in any given year, do not exceed \$9000 in value.

2. A transaction involving the sale of real property through eminent domain.
3. A transaction involving the purchase of health, life, disability, retirement or pension benefits as a part of compensation.
4. A transaction involving a Public Official or Employee and the sale of property or services, where State funds pay for the transaction, and the property or service remains with a third party who is restricted from selling the property or services to an Agency.
5. A transaction between a DCH Board member or Employee and a public contractor.
6. Any transaction involving an emergency purchase by the Department which must be made to protect the health, safety, or welfare of the citizens or property of Georgia; provided, however, that such emergency shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the purchase is made.
7. A transaction wherein a Public Official or DCH Board member is the only source of supply within the State; provided, however, that the limitation to such exclusive, sole source shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the transaction is made.
8. A transaction occurring before March 1, 1983.
9. A transaction involving the provision of Medicaid or Medicare related services and benefits to an Employee or his Family Member; provided, however, in the case of an Employee, he or she shall have no decision-making authority or influence over the determination of eligibility for or amount of such services or benefits.
10. Any transaction between a DCH board member or Employee and an entity within the University System wherein the transaction has been approved by the unit of the University System.
11. Any transaction occurring prior to a Public Official's qualification to run for office or acceptance of an appointment to a public office if the transaction predates the qualifying or acceptance date.
12. Any transaction, wherein the course of business, a DCH Board member

or Employee collects sales tax, license fees, excise taxes, or commission as compensation for the performance of a service or good.

D. Disciplinary Actions and Other Remedial Actions

In the event that a DCH Board member or Employee participates in impermissible transactions and/or fails to comply with the reporting requirements in Paragraph V, the following consequences may result:

1. Removal from the Board by the Governor;
2. Termination from employment;
3. Civil fines not to exceed \$10,000; and
4. Restitution to the State for any financial benefit received as a result of the business transaction.

Similarly, if any business in which the DCH Board member's or Employee's Family Member has a substantial interest participates in an impermissible transaction, the business may be subject to the following consequences:

1. Civil fines not to exceed \$10,000; and
2. Restitution to the State for any financial benefit received a result of the business transaction.

V. Other Conflicts of Interest

A. Procurement

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, and enjoys the complete confidence of the public. To achieve these important public purposes, it is critical that Employees and Board members have a clear understanding of, and an appreciation for, the ethics in procurement. See DCH Policy No. 402, "Ethics in Procurement" for further guidance.

B. Gifts

Employees are prohibited from accepting gifts from any person with whom the Employee interacts on official state business. To the extent that gifts of nominal value are offered, (i.e., gifts with value of less than \$25.00), they may be shared with other members of the DCH. Exceptions shall include perishable items, such

as a basket of fruit, which may be accepted and promptly placed in a common area of state property for sharing among a group.

Employees are allowed, however, to accept a gift on behalf of any Agency or the Office of the Governor or when ceremonial courtesies require such an acceptance. Upon acceptance, the Employee should transfer the gift to DCH, the Office of the Governor, or in the alternative, to a charitable organization on behalf of DCH or the Office of the Governor.

If a Vendor has a personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and Employee shall be considered. However, regardless of the personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

C. Honoraria

Honoraria are payments to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy. Employees are not allowed to accept honoraria.

D. Service on Boards

In general, Employees are restricted from serving as a corporate officer or director of for-profit or publicly held organizations. Notwithstanding the foregoing, each circumstance may be assessed on a case-by-case basis to determine if an actual conflict of interest exists, which would determine whether the Employee could provide such service.

Employees may provide pro bono services to non-profit organizations as long as such services do not negatively impact the Employee's ability to perform his or her duties effectively and with objectivity.

E. Dual Employment

See DCH Policy No. 411 for guidance regarding secondary employment.

F. Political Activities

See DCH Policy No. 416 for guidance regarding political activities.

G. Nepotism

The manner in which Family Members are employed in any organization may lend to an appearance of conflict of interest. The Governor's Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees prohibits an Employee from advocating for or causing the advancement, appointment, employment, promotion, or transfer of a Family Member to a position within the Department. Additionally, Georgia law restricts the Commissioner and Board members from engaging in that same activity wherein the salary of the Employee is \$10,000 annually or more.

In that the Department desires to assist supervisors in making equitable decisions regarding work assignments, promotions, performance evaluations, disciplinary actions, and all other actions which have a direct impact on an individual's employment, the Department reserves the right to impose the following restrictions:

1. Family Members of individuals currently employed by the Department may be hired only if they will not be working directly for or supervising a Family Member.
2. If Family Members are currently employed, they cannot be transferred into a direct reporting relationship.
3. If the Family Member relationship is established after employment and there is a direct reporting relationship, the manager shall make the determination as to which Employee shall be subject to transfer, if such transfer does not adversely affect the business needs of the Department.

This policy shall in no means violate state and federal laws regarding discrimination on the basis of marital status.

VI. Lobbyists

Employees must ensure that any vendor who submits bids and/or responses to request for proposals, submits an application for a certificate of need, or seeks confirmation of status, letter of non-reviewability, or opposition has certified on forms prescribed by the Department that any lobbyist employed or retained by the vendor has registered with the Government Transparency and Campaign Finance Commission and made the appropriate disclosures.

VII. Reporting Requirements

A. Annual Filing by All Board Members

Each Board member is required to file an annual affidavit relating to the

impact of official actions on the member's private, financial and business interests. This affidavit must be filed with the Government Transparency and Campaign Finance Commission by January 31 of each year.

B. Annual Filing by Board Members and Employees Who Engaged in Certain Business Transactions

DCH Board members and Employees must report, on a form prescribed by the Government Transparency and Campaign Finance Commission, an itemized list of business transactions with the State of Georgia or any state agency. This disclosure statement, containing the previous year's business transactions, must be submitted to the Government Transparency and Campaign Finance Commission no later than January 31 of each year. A copy of this report should be submitted to the General Counsel.

Board members and Employees are not required to submit such disclosure statements if they have not transacted business or if such transactions include only those set forth in Paragraph IV(C)(1).

C. Annual Personal Financial Disclosure Filing by Commissioner

The Commissioner shall be required to file, on an annual basis, a financial disclosure statement, including all information contained in O.C.G.A. Section 21-5-50.

D. Report of Expenses and Fees

As a rule, all expenses for an Employee to participate in conferences, meetings and other activities on behalf of DCH shall be paid by DCH. Expenses include food, beverages, travel and lodging. In limited exceptions, a person or entity, on behalf of an Employee, may offer to pay or waive registration fees when such fees are attendant to the Employee's participation in a public meeting related to official or professional duties; provided, however, that in no event may such fees be paid or waived by a contractor, vendor, potential bidder or lobbyist. Fees are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.

A report of such fees must be filed with DCH's Ethics Officer no later than thirty (30) days after the fees have been paid or waived. The report should include:

1. Name and address of the person paying the registration fees; and
2. The description and value of each registration fee.

E. Report of Gifts

If an Employee receives a gift on behalf of DCH or the Office of the Governor, the Employee must file a report with DCH's Ethics Officer no later than thirty (30) days after the receipt of the gift. The report should include:

1. Name and address of the person giving the gift
2. The date the gift was given

3. The monetary value of the gift
4. An explanation of the disposition of the gift

VIII. Guidance

In the event that a DCH Board member or Employee has reason to believe that a conflict of interest might exist in a particular circumstance, the Board member or Employee should seek guidance from the DCH Inspector General.

In those situations where a DCH Board member has in fact identified a conflict involving a matter before the DCH Board, the Board member should immediately recuse himself or herself from any discussion or voting on the matter. The withdrawal of the Board member from consideration of the matter should be entered in the minutes of the meeting of the Board and made a part of the permanent records of the Department.

IX. Mandatory Reporting

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer. Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor's staff to the DCH Inspector General and the DCH Ethics Officer. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Anyone reporting a possible violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation.

Any Department employee may report information, in good faith, concerning the possible violations of this policy in any Department programs or operations. No DCH employee will take action against, direct others to take action against, recommend personnel action against, approve personnel action against, or threaten another Department employee for questioning or reporting in good faith possible violations of this policy.

X. Acknowledgement of Policy

Each Board member and Employee shall sign an acknowledgement that he or she:

- A. Has received a copy of the policy;
- B. Has read and understands the policy or, at least, is aware of the policy and is

accountable for compliance with it;

- C. Agrees to comply with the policy;
- D. Agrees to submit the Financial Disclosure Statement as required by this policy, if required.
- E. Agrees to the disclosure of business transactions with the State

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health, **Code of Ethics and Conflict of Interest Policy**;
- B. I agree to comply with each provision of the Georgia Department of Community Health, **Code of Ethics and Conflict of Interest Policy**;
- C. I am a Contractor.

[INSERT CONTRACTOR NAME]

Signature

Date

Title

**ATTACHMENT J
PERFORMANCE GUARANTEES**

| PERFORMANCE MEASUREMENT | STANDARD | PERFORMANCE GUARANTEE |
|--|---|--|
| <p>Prepare and submit final detailed work plan addressing all requirements identified in the RFP, Sections 3.3, Detailed Services Required; and Section 3.4, Deliverables.</p> | <p>Contractor must submit FINAL, <u>detailed Work Plan</u> due to DCH within twenty (20) calendar days after the Notice of Award, addressing all requirements outlined in the following RFP Sections: 3.3, Detailed Services Required; and Section 3.4, Deliverables.</p> | <p>The Contractor will pay the Department \$500 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |
| <p>Conduct benchmarking and produce findings regarding the use of electronic health information by providers and patients, including, but not limited to, secure exchange of health data, consumer privacy and security concerns, provider and patient awareness of available technology and access to health information as described in Sections 3.3.2 and 3.4.2 of the RFP.</p> | <p>Contractor must submit a draft benchmarking report no later than December 31, 2011, or an alternative date agreed upon by the parties.</p> | <p>The Contractor will pay the Department \$500 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |
| | <p>Contractor must submit a final benchmarking report within fifteen (15) calendar days of receipt of DCH feedback from the draft report.</p> | <p>The Contractor will pay the Department \$700 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |
| <p>Prepare a draft Marketing Communications Plan (MCP) as described in Sections 3.3 and 3.4.3 of the RFP.</p> | <p>Contractor must submit the draft MCP within thirty (30) days of DCH approval of the final benchmarking report.</p> | <p>The Contractor will pay the Department \$500 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |

| PERFORMANCE MEASUREMENT | STANDARD | PERFORMANCE GUARANTEE |
|---|--|---|
| <p>Prepare final MCP as described in Sections 3.3 and 3.4.3 of the RFP.</p> | <p>Contractor must submit final MCP within fifteen (15) calendar days of receipt of DCH feedback from the draft MCP.</p> | <p>The Contractor will pay the Department \$700 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |
| <p>Contractor shall implement a fully operational website dedicated to providing innovative consumer related-Georgia HIT information as described in Sections 3.3.7 and 3.4.4 of the RFP.</p> | <p>Contractor must have website fully operational within fifteen (15) days of DCH approval of the final MCP or an alternative date agreed to by both parties.</p> | <p>The Contractor will pay the Department \$1000 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |
| <p>Contractor shall operate and maintain a website dedicated to providing innovative consumer related-Georgia HIT information as described in Sections 3.3 and 3.4.4 of the RFP and this Performance Measurement. Contractor must formally request DCH approval and notify DCH prior to any scheduled system down time. DCH will consider any down time not approved by DCH or any down time where the Contractor does not notify DCH as unscheduled down time.</p> <p>The website must be accessible and functional 24 hours a day, 7 days a week except for DCH-approved time for system maintenance.</p> | <p>Upon implementation of the website, the website must be accessible and functional twenty-four hours a day, seven days a week except for DCH-approved time for system maintenance.</p> | <p>The Contractor will pay the Department \$1000 per business day that it fails to meet this standard.</p> <p>The Contractor will pay the above fees to the Department monthly.</p> |

Exhibit 1
RFP
(to be placed here)

Exhibit 2

**Contractor's Proposal
(to be placed here)**