

Alabama Department of Public Health Bureau of Health Provider Standards

Request for Proposals (RFP)

FOR

Long Term Care and Acute and Continuing Care (ESRD) Surveys

Release Date: May 16, 2024

Overview and Purpose

The Alabama Department of Public Health, Bureau of Health Provider Standards (HPS) is currently accepting proposals for organizations possessing the knowledge and ability to conduct surveys required to determine compliance with federal rules and regulations of long-term care facilities (LTCFs), intermediate care facilities for individuals with an intellectual disability (ICFs/IID), and end stage renal disease (ESRD) facilities. HPS conducts inspections of health care providers in Alabama as an agency contracted by the Centers for Medicare and Medicaid Services (CMS). The organization must utilize staff who have completed the federally required training courses and are qualified for the surveys they are conducting, to include Qualified Mental Retardation Professional (QMRP) for ICFs/IID Facilities and have successfully passed the Surveyor Minimum Qualifications Test (SMQT) for LTCFs and ESRDs.

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified applicants to conduct surveys required to make recommendations to the Secretary of the Department of Health & Human Services for the certification of health care providers.

Eligible Applicants

Contractors with considerable background, training, experience, and expertise are needed to conduct surveys required to determine compliance with federal requirements of LTCFs, ICFs/IID, and ESRDs. Knowledge of CMS requirements for conducting investigations and regulations for provider compliance is required. Applicants should provide qualified staff and materials to perform the survey process outlined by CMS and applicable federal laws and regulations. Applicants should include the amount of survey work they would be available to accomplish over the contracted period. The selected Contractors will provide necessary personal protective equipment (PPE) to staff conducting survey visits. More than one Contract may be awarded under this RFP, should an Applicant seek to solely provide a single survey service pursuant to the terms and conditions of this RFP.

All proposals should be complete and carefully worded and must convey all the information requested by the Department.

Funding Available

Open/competitive proposals shall be submitted, and cost will be evaluated by the Department in accordance with the criteria in the RFP. Applicants must submit a response that provides a firm price. The Department seeks pricing for the entire period of the Contract based on survey-related activity and travel expenses. The Department assumes that all costs are included in the proposal and will pay no costs other than those presented in the Applicant's proposal for the requirements specified in the RFP. Funding is available for the fiscal year October 1, 2023, to September 30, 2024, and, contingent on the receipt of funding historically provided by CMS, for the fiscal year October 1, 2024, to September 30, 2025, with the possibility of Contract renewal for an additional two-year term. The State of Alabama, through the Department of Public Health, Bureau of Health Provider Standards, is designated as the State Agency responsible for identifying, surveying and making recommendations to the Secretary, Department of Health & Human Services, for the certification of health care providers and suppliers.

Project Description

ADPH is seeking organizations/providers/contractors/etc. to conduct surveys required to make recommendations to the Secretary of the Department of Health & Human Services for certification of health care providers. Services are to be provided in accordance with all current federal, state and local laws, rules, regulations, and deadlines, standards of performance governing the profession or occupation of the Applicant, and all rules and regulations of Department; and in accordance with any changes that may occur in any of the previously referenced laws, rules, regulations, standards of performance, and deadlines that may occur in the future. The Applicant must utilize staff with SMQT and the investigative techniques and processes relevant to state and federal requirements of health care providers.

Scope of Work or Required Activities

Objective: Conduct surveys required to make recommendations to the Secretary of the Department of Health & Human Services for the certification of health care facilities, specifically those regulated by CMS.

Federal Requirements: Contractors must:

- Uphold the public trust. Surveyors are entrusted by the public to evaluate whether health care providers/suppliers meet Medicare/Medicaid requirements; the public relies on surveyors to ensure the quality of care and services provided. In addition, in carrying out their responsibilities, surveyors have access to protected health information and contact with recipients of health care services who are in a vulnerable position.
- Be free from all potential and apparent conflicts of interest (see Sections 4008 and 4008A of the State Operations Manual (SOM)). Section 42 CFR 488.314(a)(4) describes specific circumstances that would disqualify a surveyor from surveying a particular skilled nursing facility or nursing facility (see also Section 7202.2 of the SOM). When there appears to be Medicare/Medicaid program involvement, the state survey agency immediately reports a case of impropriety involving conflicts of interest to CMS (see also Sections 4008B and 7202.3 of the SOM).
- Have a Data Use Agreement with CMS if accessing CMS records that are protected under the Privacy Act of 1974. This would include the Minimum Data Set (MDS) (when the contractor uses the Long Term Care Survey Protocol tool), OASIS (for HHA surveys), and ASPEN Complaints/Incidents Tracking System (ACTS). This would not apply to releases of data to law enforcement agencies, Medicaid Fraud Control Units, or other agencies that administer, or have the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds.
- Ensure that their investigation and survey documentation are consistent with CMS requirements (e.g., Interpretive Guidance in the SOM).
- Have completed all applicable training requirements available through CMS' Quality, Safety & Education Portal (QSEP), a self-directed online education platform that provides training and guidance on healthcare facility regulations for staff proficiency. All surveyors contracted with the state survey agency **must complete the same training** as their state survey agency surveyor counterparts prior to surveying independently onsite, which includes:
 - Completion of Pre-requisite and Basic Training Requirements Surveyor Skills Review Assessment (as eligible)
 - Foundational Refreshers (as eligible) Post-Basics Training (Mandatory)

Required Deliverables: Contractors will:

- Provide qualified and trained staff to conduct surveys of Intermediate Care Facilities with the process outlined by CMS and applicable federal laws and regulations.
- Provide qualified and trained staff to conduct surveys of Long-Term Care Facilities with the process outlined by CMS and applicable federal laws and regulations.
- Provide qualified and trained staff to conduct surveys of ESRD Facilities with the process outlined by CMS and applicable federal laws and regulations.
- Provide any necessary Personal Protective Equipment (PPE) to surveyors working pursuant to the Contract.
- Enter all LTCF and ICF/IID survey findings into the Automated Survey Processing Environment (ASPEN) shell, and ESRD survey findings into ASPEN. Submit to HPS no later than five (5) business days from the survey exit date.

Perform a quality assurance review of deficiencies cited to verify the deficient practice is written to comply with principles of documentations and that documented evidence to support the F-tag is verified. Submit final report and all supporting documentation and forms for quality review to the Quality Assurance Director or designee at HPS no later than 5 days from the survey exit date. Submission of final report within specified timeframes is vital to meet mandated CMS timelines.

Submit the CMS Infection Control Tool along with the CMS-2567 no later than five (5) business days from the survey exit date.

Participate in meetings or conference calls, as requested by HPS, to assist in review of survey findings and/or the facility Plan of Correction.

Notify the Quality Assurance Director or designee at HPS as soon as possible of any suspected Immediate Jeopardy (IJ) situation in a LTC or ICF/IID facility being surveyed and follow procedures set forth in the State Operations Manual (SOM).

Notify the ACC Unit Supervisor or designee at HPS as soon as possible of any suspected Immediate Jeopardy (IJ) situation in an ESRD facility being surveyed and follow procedures set forth in the State Operations Manual (SOM).

Provide requested documentation and/or testimony regarding enforcement actions as needed to support federal or State counsel in any resulting litigation.

At the completion of each contracted survey, release to HPS all information, working papers, and reports required by federal and State law used in determining whether participating facilities met federal requirements.

Adhere to all federal and state requirements, including but not limited to forms, methods, policies and procedures, which are applicable to CMS survey and certification work, as well as federal laws and regulations.

Expected Outcomes:

Adherence to all federal and state requirements, including but not limited to forms, methods, policies and procedures, and timelines which are applicable to CMS survey and certification work, as well as federal laws and regulations.

Contractor competency and efficiency in investigating and substantiating regulatory violations according to federal requirements.

All surveys and related activity conducted by Contractors shall be carried out in conformance with governing federal standards and shall be completed using all necessary federal forms and software.

Teams of surveyors shall be assigned by Contractors according to federal requirements as needed to complete surveys in a timely and accurate manner.

Final reports and supporting documentation of findings are submitted to HPS no later than five (5) business days from the survey exit date.

Minimal challenges to findings of noncompliance.

Timeline: Survey activities will commence after execution of the Contract agreement with HPS. Contractors schedule surveys and follow-up visits, considering the survey dates identified on the survey priority list. Services must be provided prior to September 30, 2024, and September 30, 2025, contingent on funding.

Surveys will be conducted on site at the LTCF, ICF/IID, and ESRD facility locations as determined by the survey priority list.

Travel costs should be included in proposal.

Contract Terms and Conditions

State of Alabama laws, rules, and regulations specifically govern the format and requirements of contracts between state agencies and awardees. A pro forma contract and business associate agreement (BAA) is included as Attachment A. If awarded, Contractor agrees to include and meet all State of Alabama required clauses in the Contract and BAA, if required.

Budget

Applicants must submit a response that provides a breakdown of cost for services to be provided. The Department assumes that all costs are included in the proposal and will pay no costs other than those presented in the Applicant's proposal for the requirements specified in the RFP. Funding will be available for the fiscal year ending September 30, 2024, and contingent on the receipt of funding historically provided by CMS, for the fiscal year October 1, 2024, to September 30, 2025. Contractors agree to accept reimbursement by submitting an invoice to Department in a format specified by Department.

Proposal Format

One signed original and five copies of the proposal must be submitted to the address below and received by June 20, 2024, at 5:00 p.m. CST. Proposals submitted by email will not be accepted.

Proposal Submission

Deadline for Submission: Proposals must be received by Friday, June 20, 2024, 5:00 pm CST. All proposals received after this time will not be considered for award. Discussion may be conducted with Applicants who submit proposals determined to be reasonably sufficient for being selected for award, but proposals may be accepted without such discussions. If additional information or discussions are needed with any Applicant, the Applicant(s) will be notified.

Submit proposal to: Latasha Baker

Alabama Department of Public Health Bureau of Health Provider Standards RSA Tower,
Suite 700
201 Monroe Street
Montgomery, AL 36130

Proposal Evaluation

A review panel comprised of ADPH staff will evaluate all proposals based on the following criteria:

Technical expertise and experience with CMS provider regulations: (20 points)

Previous work completed with state survey agencies: (20 points)

Proposed Work Plan (including the amount of survey work the Applicant would be available to do over the contracted period) (20 points)

Ability to provide qualified staff that meet CMS requirements: (20 points)

Cost: Proposals will be evaluated on the cost of the service(s) based on the work to be performed in accordance with the scope of this project (20 points)

Awards will go to the proposals that conform to the solicitation and are the most advantageous to the State, taking into consideration price and evaluation factors.

Contact Information

Applicants requiring additional information or assistance related to the scope of work contact:

For LTCF and ICF/IID - Email: Felicia.Williams-Smith@adph.state.al.us For ESRD – Email: Leana.Rodgers@adph.state.al.us

Mail: Alabama Department of Public Health Bureau of Health Provider Standards RSA Tower, Suite 700
201 Monroe Street
Montgomery, AL 36130

Technical Assistance

Applicants requiring technical assistance contact Latasha Baker: Email: latasha.baker@adph.state.al.us Phone: 334-206-3389

BUSINESS ASSOCIATE AGREEMENT BETWEEN

THE ALABAMA DEPARTMENT OF PUBLIC HEALTH AND

This Agreement is entered into by and between the **Alabama Department of Public Health**, (“**Covered Entity**”), an agency of the State of Alabama, and _____, (“**Business Associate**”) and is effective as of _____.

WHEREAS, Covered Entity and Business Associate have entered into a Contract (“Contract”) in which Business Associate has agreed to provide certain services to Covered Entity. In connection with that Contract, Business Associate creates, receives, maintains or transmits Protected Health Information (“PHI”) from, to, or on behalf of Covered Entity. This information is protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, (the “HITECH Act”), and the associated regulations promulgated by the Secretary (“HIPAA Rules”).

WHEREAS, it is desirable, in order to further the continued efficient operations of Covered Entity to disclose to Business Associate certain PHI, and Business Associate has certain responsibilities with respect to that PHI; and

WHEREAS, in light of the foregoing requirements of HIPAA, the HITECH Act, and the HIPAA Rules, Business Associate and Covered Entity agree to be bound by the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

1. Definitions.

- a. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- c. **Covered Entity** shall have the meaning given to such term in 45 CFR § 160.103
- d. **HIPAA Rules** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

2. Permitted Uses and Disclosures.

- a. **Purposes.** Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure would not violate HIPAA or applicable state law if done by Covered Entity, or the minimum necessary and related Privacy and Security policies and procedures of Covered Entity. All such uses and disclosures shall be consistent with the minimum necessary requirements of HIPAA. Business Associate is directly liable under HIPAA for the impermissible Use or Disclosure of PHI it handles on behalf of Covered Entity.
- b. **De-Identified Data.** Business Associate is not authorized to de-identify PHI or to use or disclose any de-identified PHI of Covered entity except as otherwise provided in the Contract. If de-identification is specified in the Contract, Business Associate shall de-identify the information in accordance with 45 CFR 164.514(a) – (c).

- c. **Use for Administration of Business Associate.** Except as otherwise limited in this Agreement, the Business Associate may use PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate.
- d. **Disclosure for Administration of Business Associate.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that (i) the disclosure is Required by Law; or (ii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person; and, (iii) the person agrees to notify the Business Associate and Covered Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

3. **Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.**

- a. **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- b. **Restriction on Use or Disclosure.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that covered entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- c. **Revocation of Permission to Use or Disclose.** Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4. **Permissible Requests by Covered Entity.** Except as set forth in Section 2 of this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

5. **Obligations of Business Associate.**

- a. **Use and Disclosure.** Business Associate agrees not to use or disclose PHI other than as permitted or required by the Contract or as Required by Law. Business Associate shall comply with the provisions of the Agreement relating to privacy and security of PHI and all present and future provisions of HIPAA that relate to the privacy and security of PHI that are applicable to Covered Entity and/or Business Associate.
- b. **Appropriate Safeguards.** Business Associate will use appropriate safeguards as are necessary to prevent the use or disclosure of PHI, except as provided for in this Agreement, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information. Business Associate represents and warrants that Business Associate:
 - i. Has implemented and will continue to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI as required by the Security Rule; and
 - ii. Will comply with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. With regard to electronic PHI not covered by the Guidance published at 74 FR 19006, Business

Associate will protect electronic PHI at rest and in transit through encryption that complies with State of Alabama Information Technology Policy 683-00: Encryption.

iii. Shall ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

c. **Breach Notification.** Business Associate shall promptly, and in any event within three (3) business days, report to Covered Entity any of the following:

- i. Any use or disclosure of PHI not permitted by this Business Associate Agreement of which Business Associate becomes aware;
- ii. Any Security Incident of which Business Associate becomes aware; and
- iii. The discovery of a Breach of Unprotected Health Information.

A Breach is discovered as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate. Any notice of a Security Incident or Breach of Unsecured Protected Health Information shall include (1) the date of discovery;

(2) the data elements involved; (3) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Security Incident or Breach; (4) where the PHI or confidential data is believed to have been improperly transmitted; (5) the probable cause(s) of the improper use or disclosure; (6) a description of the proposed plan for preventing similar future incidents; and (7) whether any federal or state laws requiring breach notification are triggered. Any such notice shall be directed to Covered Entity's Privacy Officer.

d. **Investigation.** Business Associate shall reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Business Associate Agreement and/or any Security Incident or Breach.

e. **Mitigation.** Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate or its employees, officers, Subcontractors or agents of a use or disclosure of PHI by Business Associate in violation of this Agreement. Business Associate shall keep Covered Entity fully apprised of all mitigation efforts, and all associated costs shall be borne by the Business Associate. This includes, but is not limited to, costs associated with notifying affected individuals.

f. **Reports and Notices.** Business Associate shall reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual or other authorities required to be made under HIPAA, the HITECH Act, HIPAA Rules, or any other federal or state laws. Any such reports or notices shall be subject to the prior written approval of Covered Entity.

g. **Agents/Subcontractors.** Business Associate agrees to ensure that any agent and/or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees in writing to restrictions and conditions at least as stringent as those that apply to Business Associate pursuant to this Agreement

with respect to such PHI. Failure to include such requirement in any subcontract or agreement may result in Covered Entity's termination of the Agreement. If Business Associate becomes aware of a pattern of activity or practice of an agent and/or subcontractor that constitutes a material breach or violation of any such restrictions or conditions, Business Associate shall take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or

arrangement with such agent and/or subcontractor.

- h. Access to Designated Record Sets.** To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, in the time, format and manner reasonably requested by Covered Entity to PHI in a Designated Record Set to enable Covered Entity to fulfill its obligations under HIPAA. If an Individual makes a request directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.
- i. Amendment to Designated Record Sets.** To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity. If an Individual makes a request to amend PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.
- j. Access to Books and Records.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or to the Secretary, for the purpose of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA. Business Associate also agrees to make these records available to Covered Entity, or Covered Entity's contractor, for periodic audit of Business Associate's compliance with the Privacy and Security Rules. Upon Covered Entity's request, the Business Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Business Associate's subcontractors, if any.
- k. Accountings.** Business Associate agrees to document disclosures of PHI and information related to such disclosures that would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. This should include a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
- i. the date of disclosure;
 - ii. the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - iii. a brief description of the PHI disclosed; and
 - iv. a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- l. Requests for Accountings.** Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner reasonably requested by Covered Entity, information collected in accordance with Section 5.k. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. If an Individual

makes a request for an accounting of disclosures of PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual. The duty of the Business Associate and its agents and subcontractors to assist Covered Entity with any HIPAA required accounting of disclosures survives the termination of the Contract.

- m. **Privacy Requirements.** To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the covered Entity in the performance of such obligation(s).
- n. **Data Ownership.** The PHI, and any related information created or received from or on behalf of Covered Entity, is and shall remain the property of Covered Entity. Neither Business Associate nor its agents or subcontractors shall hold any data ownership rights with respect to the PHI.
- o. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, workforce or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its officers or employees based upon claimed violations of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, which involves action or inaction by Business Associate, except where Business Associate or its subcontractor, workforce or agent is a named as an adverse party.
- p. **Remuneration for PHI.** Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI without the written authorization of the individual. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act.

6. Term and Termination.

- a. **Term.** This Agreement shall be effective as of the date of the Contract and shall terminate upon termination of the Contract or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement. Covered Entity may, at its sole discretion, allow Business Associate a reasonable period of time to cure the material breach before termination.
- c. **Duties at Termination.**
 - i. Upon termination of the Contract for any reason, Business Associate shall return or destroy, at Covered Entity's option, all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains such PHI. This shall also apply to all agents and subcontractors of Business Associate.

d. **Judicial or Administrative Proceedings.** Covered Entity may terminate this Agreement, effective immediately, if (1) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, or other security or privacy laws or (2) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate is a party or has been joined. Business

Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.

e. **Notices.** Any notices required under this Agreement will be sent in writing via certified mail, return receipt requested and also via electronic mail.

For Business Associate: For Covered Entity:

Pamela Kendrick, CHPC Privacy Officer
Alabama Department of Public Health
201 Monroe Street
Montgomery, AL 36104
Phone: (334) 206-9324
Fax: (334) 206-5874
pamela.kendrick@adph.state.al.us

f. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

7. Miscellaneous.

a. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

b. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

c. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

d. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA rules and any other applicable law.

IN WITNESS WHEREOF, the authorized representatives of the parties sign effective the date above.

BUSINESS ASSOCIATE COVERED ENTITY

_____ Alabama Department of Public Health

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**BUSINESS ASSOCIATE AGREEMENT BETWEEN
THE ALABAMA DEPARTMENT OF PUBLIC HEALTH AND**

This Agreement is entered into by and between the **Alabama Department of Public Health**, (“**Covered Entity**”), an agency of the State of Alabama, and _____, (“**Business Associate**”) and is effective as of _____.

WHEREAS, Covered Entity and Business Associate have entered into a Contract (“Contract”) in which Business Associate has agreed to provide certain services to Covered Entity. In connection with that Contract, Business Associate creates, receives, maintains or transmits Protected Health Information (“PHI”) from, to, or on behalf of Covered Entity. This information is protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, (the “HITECH Act”), and the associated regulations promulgated by the Secretary (“HIPAA Rules”).

WHEREAS, it is desirable, in order to further the continued efficient operations of Covered Entity to disclose to Business Associate certain PHI, and Business Associate has certain responsibilities with respect to that PHI; and

WHEREAS, in light of the foregoing requirements of HIPAA, the HITECH Act, and the HIPAA Rules, Business Associate and Covered Entity agree to be bound by the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

1. Definitions.

- a. Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- c. **Covered Entity** shall have the meaning given to such term in 45 CFR § 160.103
- d. **HIPAA Rules** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

2. Permitted Uses and Disclosures.

- a. **Purposes**. Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure would not violate HIPAA or applicable

state law if done by Covered Entity, or the minimum necessary and related Privacy and Security policies and procedures of Covered Entity. All such uses and disclosures shall be consistent with the minimum necessary requirements of HIPAA. Business Associate is directly liable under HIPAA for the impermissible Use or Disclosure of PHI it handles on behalf of Covered Entity.

- b. **De-Identified Data.** Business Associate is not authorized to de-identify PHI or to use or disclose any de-identified PHI of Covered entity except as otherwise provided in the Contract. If de-identification is specified in the Contract, Business Associate shall de-identify the information in accordance with 45 CFR 164.514(a) – (c).
- c. **Use for Administration of Business Associate.** Except as otherwise limited in this Agreement, the Business Associate may use PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate.
- d. **Disclosure for Administration of Business Associate.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that (i) the disclosure is Required by Law; or (ii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person; and, (iii) the person agrees to notify the Business Associate and Covered Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

3. **Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.**

- a. **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- b. **Restriction on Use or Disclosure.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that covered entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- c. **Revocation of Permission to Use or Disclose.** Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4. **Permissible Requests by Covered Entity.** Except as set forth in Section 2 of this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

5. **Obligations of Business Associate.**

- a. **Use and Disclosure.** Business Associate agrees not to use or disclose PHI other than as permitted or required by the Contract or as Required by Law. Business Associate shall comply with the provisions of the Agreement relating to privacy and security of PHI and all present and future provisions of HIPAA that relate to the privacy and security of PHI that are applicable to Covered Entity and/or Business Associate.
- b. **Appropriate Safeguards.** Business Associate will use appropriate safeguards as are necessary to prevent the use or disclosure of PHI, except as provided for in this Agreement, and comply with

Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information. Business Associate represents and warrants that Business Associate:

- i. Has implemented and will continue to maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI as required by the Security Rule; and
 - ii. Will comply with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. With regard to electronic PHI not covered by the Guidance published at 74 FR 19006, Business Associate will protect electronic PHI at rest and in transit through encryption that complies with State of Alabama Information Technology Policy 683-00: Encryption.
 - iii. Shall ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- c. **Breach Notification.** Business Associate shall promptly, and in any event within three (3) business days, report to Covered Entity any of the following:
- i. Any use or disclosure of PHI not permitted by this Business Associate Agreement of which Business Associate becomes aware;
 - ii. Any Security Incident of which Business Associate becomes aware; and
 - iii. The discovery of a Breach of Unprotected Health Information.

A Breach is discovered as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate. Any notice of a Security Incident or Breach of Unsecured Protected Health Information shall include (1) the date of discovery;

(2) the data elements involved; (3) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Security Incident or Breach; (4) where the PHI or confidential data is believed to have been improperly transmitted; (5) the probable cause(s) of the improper use or disclosure; (6) a description of the proposed plan for preventing similar future incidents; and (7) whether any federal or state laws requiring breach notification are triggered. Any such notice shall be directed to Covered Entity's Privacy Officer.

- d. **Investigation.** Business Associate shall reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Business Associate Agreement and/or any Security Incident or Breach.
- e. **Mitigation.** Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate or its employees, officers, Subcontractors or agents of a use or disclosure of PHI by Business Associate in violation of this Agreement. Business Associate shall keep Covered Entity fully apprised of all mitigation efforts, and all associated costs shall be borne by the Business Associate. This includes, but is not limited to, costs associated with notifying affected individuals.
- f. **Reports and Notices.** Business Associate shall reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual or other authorities required to be made under HIPAA, the HITECH Act, HIPAA Rules, or any other federal or state laws. Any such reports or notices shall be subject to the prior written approval of Covered Entity.

g. **Agents/Subcontractors.** Business Associate agrees to ensure that any agent and/or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees in writing to restrictions and conditions at least as stringent as those that apply to Business Associate pursuant to this Agreement

with respect to such PHI. Failure to include such requirement in any subcontract or agreement may result in Covered Entity's termination of the Agreement. If Business Associate becomes aware of a pattern of activity or practice of an agent and/or subcontractor that constitutes a material breach or violation of any such restrictions or conditions, Business Associate shall take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement with such agent and/or subcontractor.

h. **Access to Designated Record Sets.** To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, in the time, format and manner reasonably requested by Covered Entity to PHI in a Designated Record Set to enable Covered Entity to fulfill its obligations under HIPAA. If an Individual makes a request directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

i. **Amendment to Designated Record Sets.** To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity. If an Individual makes a request to amend PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

j. **Access to Books and Records.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or to the Secretary, for the purpose of the Secretary determining Covered Entity's or Business Associate's compliance with HIPAA. Business Associate also agrees to make these records available to Covered Entity, or Covered Entity's contractor, for periodic audit of Business Associate's compliance with the Privacy and Security Rules. Upon Covered Entity's request, the Business Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Business Associate's subcontractors, if any.

k. **Accountings.** Business Associate agrees to document disclosures of PHI and information related to such disclosures that would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. This should include a process that allows for an

accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:

i. the date of disclosure;

ii. the name of the entity or person who received the PHI, and if known, the address of the entity or person;

- iii. a brief description of the PHI disclosed; and
 - iv. a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- l. **Requests for Accountings.** Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner reasonably requested by Covered Entity, information collected in accordance with Section 5.k. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. If an Individual makes a request for an accounting of disclosures of PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual. The duty of the Business Associate and its agents and subcontractors to assist Covered Entity with any HIPAA required accounting of disclosures survives the termination of the Contract.
- m. **Privacy Requirements.** To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the covered Entity in the performance of such obligation(s).
- n. **Data Ownership.** The PHI, and any related information created or received from or on behalf of Covered Entity, is and shall remain the property of Covered Entity. Neither Business Associate nor its agents or subcontractors shall hold any data ownership rights with respect to the PHI.
- o. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, workforce or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its officers or employees based upon claimed violations of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, which involves action or inaction by Business Associate, except where Business Associate or its subcontractor, workforce or agent is a named as an adverse party.
- p. **Remuneration for PHI.** Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI without the written authorization of the individual. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act.

6. Term and Termination.

- a. **Term.** This Agreement shall be effective as of the date of the Contract and shall terminate upon termination of the Contract or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement. Covered Entity may, at its sole discretion, allow Business Associate a reasonable period of time to cure the material breach before termination.
- c. **Duties at Termination.**
 - i. Upon termination of the Contract for any reason, Business Associate shall return or destroy, at Covered Entity's option, all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any

form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

ii. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains such PHI. This shall also apply to all agents and subcontractors of Business Associate.

d. **Judicial or Administrative Proceedings.** Covered Entity may terminate this Agreement, effective immediately, if (1) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, or other security or privacy laws or (2) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate is a party or has been joined. Business

Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.

e. **Notices.** Any notices required under this Agreement will be sent in writing via certified mail, return receipt requested and also via electronic mail.

For Business Associate: For Covered Entity:

Pamela Kendrick, CHPC Privacy Officer
Alabama Department of Public Health
201 Monroe Street
Montgomery, AL 36104
Phone: (334) 206-9324
Fax: (334) 206-5874
pamela.kendrick@adph.state.al.us

f. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Agreement.

7. Miscellaneous.

a. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

b. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

c. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

d. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA rules and any other

applicable law.

IN WITNESS WHEREOF, the authorized representatives of the parties sign effective the date above.

BUSINESS ASSOCIATE COVERED ENTITY

_____Alabama Department of Public Health

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

**CONTRACT BETWEEN
THE ALABAMA DEPARTMENT OF PUBLIC HEALTH AND
(CONTRACTOR NAME - ALL CAPS AND BOLD)**

This Contract entered into by and between the **Alabama Department of Public Health**, hereinafter "**Department**," and **(Contractor Name - Bold)**, hereinafter "**Contractor**," is effective **(Begin Date - Bold)**, or upon approval by the Governor, and terminates **(End Date - Bold)**.

WHEREAS, the purposes of this Contract are to conduct surveys required to make recommendations to the Secretary, Department of Health & Human Services for the certification of health care providers and suppliers, and

WHEREAS, the State of Alabama, through the Department of Public Health, Bureau of Health Provider Standards, is designated as the State Agency responsible for identifying, surveying and making recommendations to the Secretary, Department of Health & Human Services for the certification of health care providers and suppliers, and

WHEREAS, long-term care facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities, and end stage renal disease facilities, hereinafter referred to as "LTCFs, ICFs/IID, and ESRDs," are required to be surveyed for compliance with Federal laws, rules and regulations, and

WHEREAS, Contractor possesses the qualifications necessary to conduct surveys and related activities for LTC, ICFs/IID, and ESRD providers to determine compliance with applicable federal laws, rules and regulations, and

WHEREAS, funding for activities performed under this Contract was provided by the Department, (Bureau or County) through a cooperative agreement with the (Federal Grantee), being grant number (Grant Number, Grant Name) for budget period (Grant Period). The program was authorized through the following Acts: (Acts through which the program was authorized).

WHEREAS, this Contract is entered into following a request for proposal process in accordance with Code of Ala.1975, § 41-4-133.

WHEREAS, the Contractor will fully comply with the request for proposal, Contractor's proposal, Department's acceptance thereof and the plan or scope of work, which are herein incorporated by reference.

NOW THEREFORE, in consideration of the mutual covenants herein below specified and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties herein agree to the following:

The Department shall:

(1.....Insert specific tasks for the Department to complete use as many bullets/numbers as needed)
(2.....) (3.....).

The Contractor shall:

(1.....Insert specific tasks for the Contractor to complete) (2.....)
(3.....).

Under no circumstances shall the maximum amount payable under this Contract exceed \$ (Max Amount shall not exceed) for the Contract period.

CONTINGENCY CLAUSE. Funding for the activities to be performed under this Contract has historically been provided by the Department's Bureau of Health Provider Standards through a cooperative agreement with the Centers for Medicare & Medicaid Services, CFDA 93.777, State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare, for grant budget period October 1, 2023 through September 30, 2024, as authorized through the Social Security Act. The funding source is 4GA418300S through 4GF18300S, grant # NOA 2405-AL-5000, and the Department anticipates receipt of additional federal funding from the Centers for Medicare & Medicaid Services for the contract period October 1, 2024 through September 30, 2025, as in years previous.

The Department will not provide any services under this Contract absent such funding, but needs to be fully prepared to provide the above-described services immediately upon receipt of a Notice of Award from the federal government, to avoid a lapse in service.

The parties acknowledge and agree that this Contract shall be rendered null and void should the Notice of Award fail to issue, and the Department shall not be responsible to render payment for any services performed by Contractor in advance of written notice by the Department that the Contract is effective. The Department shall append a copy of the Notice of Award to this Contract upon receipt for the Department's records.

FEDERAL DISCLOSURES CLAUSE. The Contract must meet the Federal requirements for pass-through entities in 2 C.F.R. § 200.332 which require the Department to notify Contractor of the following:

- a. This Contract constitutes a subaward. The identification information required to be provided under the subaward is enumerated in 2 C.F.R. § 200.332(a)(1);
- b. All requirements imposed by the Department on Contractor so that the Federal award is used in accordance with Federal statutes, regulations, and terms and conditions of the Federal award, as set forth below:
 - (1) Insert specific requirements for Contractor, using as many bullets/numbers as needed.
- c. Any additional requirements the Department imposes on Contractor in order for the Department to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, as set forth below:
 - (1) ...Insert specific requirements for Contractor, using as many bullets/numbers as needed.
- d. An approved federally recognized indirect cost rate negotiated between Contractor and the Federal Government, or, if no such rate exists, either a rate negotiated between the Department and Contractor (in compliance with 2 C.F.R. Part 200), or a de minimis indirect cost rate, as defined in 2 C.F.R. § 200.414(f), as set forth below:
 - (1)

- e. Contractor must permit the Department, including the Office of Program Integrity, and auditors access to Contractor's records and financial statements as necessary for the Department to meet the requirements of 2 C.F.R. Part 200;
- f. Additional terms and conditions concerning closeout of the subaward, as set forth below:
 - (1) ...Insert specific requirements for Contractor, using as many bullets/numbers as needed.
- g. Contractor's use of the subaward will be monitored by the Department for compliance with the conditions of the award, Federal law and regulations, and for achievement of performance goals. As part of its compliance monitoring, the Department must:
 - (1) Review financial and performance reports required by the Department;
 - (2) Follow up and ensure that Contractor takes timely and appropriate action on all deficiencies pertaining to the subaward detected through audits, onsite reviews, and other means;
 - (3) Issue a management decision for audit findings pertaining to the subaward, as required by 2 C.F.R. § 200.521;
 - (4) ...Insert any additional monitoring requirements, using as many bullets/numbers as needed. Compliance monitoring may include conduction of onsite visits and requests for documents.
- h. Any additional specific subaward conditions imposed on Contractor by the Department, as described in 2 C.F.R. § 200.208, and as set forth herein, including, if applicable, the reasons for imposition of such conditions and any actions required by Contractor for their removal:
 - (1) ...Insert specific requirements for Contractor, using as many bullets/numbers as needed.
- i. Contractor's failure to comply with the requirements of 2 C.F.R. Part 200 may result in the imposition of additional special conditions by the Department, as provided under 2 C.F.R. § 200.208, or additional remedies for non-compliance, as provided under 2 C.F.R. § 200.339.
- j. Whether the subaward is for research and development. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.
 - (1) ...State whether the subaward is for research and development.

The Department must also notify Contractor of the requirement to adhere to the Federal property standards in 2 C.F.R. Part 200 for any equipment purchased with subaward funding, including the standards in 2 C.F.R. § 200.313 for the use of all such equipment.

Insert the following clause when equipment will be purchased by Contractor with subaward funding: EQUIPMENT USE AND PROCUREMENT CLAUSE. The Contractor shall adhere to the requirements of 2 C.F.R. § 200.313 for the use of all equipment purchased by Contractor with subaward funding, to include the following:

- a. Use all equipment purchased with subaward funding for the project's authorized purposes and in accordance with state laws and procedures;
- b. Not encumber or dispose of the property without the written approval of the Department and the Federal awarding agency. Disposition of any equipment will be made in accordance with instructions provided by the Federal awarding agency;
- c. Maintain property records that include a description of the property, a serial number, or other identification number, the source of funding, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project cost, the location, use and condition of the property, and any ultimate disposition data, including the date of disposal and sale price of the property;
- d. Physical inventory of the property must be taken and the results reconciled with the property records at least once every two years;
- e. Adequate safeguards to protect against loss, damage or theft of the property and investigation of

any lost, damaged or stolen property;

- f. Develop procedures to ensure program staff forward invoices for equipment purchases of \$500 or more to Contractor's employee in charge of maintaining records for equipment inventory tracking;
- g. Recognize that title to materials and supplies, including computing devices, will vest in Contractor upon acquisition, subject to the requirements of 2 C.F.R. § 200.314 for compensation to the Federal awarding agency for residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program.

BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT.

By signing this Contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

OFFICE OF INSPECTOR GENERAL EXCLUSION PROVISION. Section 6501 of the Patient Protection and Affordable Care Act ("PPACA") regarding exclusions from federal health care programs took effect on January 1, 2011. This Section of PPACA amends the Social Security Act to provide that State Medicaid agencies must exclude or terminate from participation any individual or entity excluded from participating in any Federal healthcare program, such that, if an individual or entity is excluded or terminated by Medicare or by Medicaid in any state, that individual or entity must be excluded from all other states' Medicaid programs.

Pursuant to that provision, if the Contractor is entering into this agreement for a federal health care program, Contractor agrees to screen all employees and subcontractors against the OIG list of excluded individuals and entities upon engagement and at least monthly. *This includes screening of former names and variations of names.*

CLOSEOUT CLAUSE. Contractor acknowledges that all invoices or other demands for payment must be received by the Department by (Invoice Closeout Date). Invoices or demands for payment received after that date cannot be paid and are forfeited.

ANTI-DISCRIMINATION CLAUSE. Contractor will comply with Titles IV, VI, and VII of the Civil Rights Act of 1964, the Federal Age Discrimination in Employment Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all applicable Federal and State laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination on the basis of race, creed, color, religion, national origin, age, sex, or disability, as defined in the above laws and regulations. Contractor shall not discriminate against any otherwise qualified disabled applicant for, or recipient of aid, benefits, or services or any employee or person on the basis of physical or mental disability in accordance with the Rehabilitation Act of 1973 or the Americans With Disabilities Act of 1990.

(Insert the following clause when the total amount of Contract is \$15,000 and greater: ANTI-BOYCOTT CLAUSE. Contractor represents that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade. Additionally, in compliance with Ala. Act No. 2023-409, by signing this Contract, Contractor provides written verification that Contractor, without violating controlling law or regulation, does not and will not, during the term of the Contract engage in economic boycotts as the term "economic boycott" is defined in Section 1 of the Act.)

GOVERNOR'S PRORATION CLAUSE. It is agreed that the Department may terminate this Contract providing a thirty (30) day written notice to Contractor should the Governor of Alabama declare proration of the

fund from which payment under this Contract is to be made. This termination for cause is supplemental to other rights the Department may have under this Contract or otherwise to terminate this Contract.

TERMINATION CLAUSE. This Contract may be terminated by either party providing a thirty (30) day written notice to the other party.

AMENDMENT CLAUSE. This Contract may be amended only by mutual agreement in writing, signed by Department and Contractor, and processed through and approved by all necessary authorities.

STANDARD OF PRACTICE CLAUSE. Contractor agrees to observe and comply at all times with all Federal and State laws and rules in effect during the term of this Contract which in any manner affect performance under this Contract. Contractor agrees to perform services consistent with customary standard of practice and ethics in the profession.

WHISTLEBLOWER PROTECTION CLAUSE. Pursuant to 41 U.S.C. § 4712, an employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for whistleblowing. The statute defines whistleblowing as making a disclosure that the employee reasonably believes is evidence of:

- Gross mismanagement of a Federal contract or grant; A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant; A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract or grant.

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee; An Inspector General; The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice or other law enforcement agency; A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has responsibility to investigate, discover or address misconduct.

ASSIGNMENT CLAUSE. The rights, duties, and obligations arising under the terms of this Contract shall not be assigned by any of the parties hereto without the written consent of all other parties.

ENTIRE AGREEMENT CLAUSE. This Contract contains the entire agreement of the parties and there are no other agreements, verbal or written, affecting this Contract that have not been incorporated herein or attached hereto.

SEVERABILITY CLAUSE. Each provision of this Contract is intended to be severable. If any term or provision of this Contract is illegal or invalid for any reason whatsoever, said illegality or invalidity shall not affect the legality or validity of the remainder of this Contract.

HEADINGS CLAUSE. Headings in this Contract are for convenient reference only and shall not be used to interpret or construe the provisions of this Contract.

DO NOT WORK CLAUSE. Contractor acknowledges and understands that this Contract is not effective until it has received all requisite State government approvals and Contractor shall not begin performing work under this Contract until notified to do so by the Department. Contractor is entitled to no compensation for work performed prior to the effective date of this Contract.

EMERGENCY CANCELLATION CLAUSE. Notwithstanding any other provision of this Contract, upon the issuance of a Declaration of Financial Necessity by the State Health Officer, this Contract may be canceled immediately upon notice of such cancellation being given in writing to the Contractor. Notwithstanding such cancellation, the Contractor shall be recompensed for work and labor performed and completed prior to the issuance of such notice on principles of quantum meruit.

FINANCIAL NECESSITY CLAUSE. All terms and conditions of this Contract notwithstanding, the parties agree that upon the issuance of a Declaration of Financial Necessity by the State Health Officer, the maximum amount payable under this Contract may be unilaterally reduced by the Department to an appropriate amount to be determined by the Department upon notice of such being given in writing to the Contractor. Notwithstanding such reduction, the Contractor shall be recompensed for work and labor performed and completed prior to the issuance of such notice on principles of quantum meruit.

DEBT OF STATE CLAUSE. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213 of the Constitution of Alabama of 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the Contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this Contract shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

DISPUTES. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

MERIT SYSTEM CLAUSE. Contractor shall not be entitled to receive any benefits under this Contract that merit system employees receive by virtue of their status or employment, nor may Contractor nor any of its officers, agents, servants or employees be employed as a merit system employee during the term of this Contract. Any such employment automatically voids this Contract.

HOLD HARMLESS CLAUSE. Contractor hereby indemnifies and holds harmless the State of Alabama and the Department and their officers, agents, servants, and employees from any and all claims arising out of acts or omissions committed by the Contractor or any Subcontractor, agent, servant or employee of Contractor while in performance hereunder.

FUND APPROPRIATION CLAUSE. It is agreed that the Department may terminate this Contract by providing a thirty (30) day written notice to Contractor should the Legislature of Alabama fail to appropriate funds for the continued payment of this Contract. This termination for cause is supplemental to any other rights Department may have under this Contract or otherwise to terminate this Contract.

TOBACCO SMOKE CLAUSE. Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal

programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to one-thousand dollars (\$1000) per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this Contract the Contractor certifies that it will comply with the requirements of the Act.

The Contractor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for the children's services and that all Subcontractors shall certify accordingly.

LOBBYING CLAUSE. The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub- recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten- thousand dollars (\$10,000) and not more than one-hundred-thousand dollars (\$100,000) for each such failure.

DEBARMENT, SUSPENSION CLAUSE. For the purposes of this clause, "prospective lower tier participant" or "lower tier participant" refers to the Contractor.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as

used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions.

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

RECORD RETENTION. The Contractor is aware that it must retain all records pertinent to expenditure incurred under this Contract for a period of three (3) years after the termination of all activities funded under this Contract. Records for any displaced person must be kept three (3) years after he/she has received final payment.

Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolutions of all issues, or the expiration of the three-year period, plus the current year whichever occurs later. See Department of Public Examiners for its record retention policy.

AVAILABILITY OF FINANCIAL STATEMENTS. All records and financial statements, to include a copy

of the independent audit report, shall be made available to authorized personnel from the State or Federal Program Office, the Examiners of Public Accounts or their representatives, for audit and inspection purposes.

AUDIT REQUIREMENTS. A non-Federal Contractor that expends \$750,000 in federal awards or more during the Contractor's fiscal year must have a single audit conducted in accordance with the Uniform Administrative Requirements, 2 CFR Part 200, Subpart F.

Use the following clause when the Federal Grant comes from CDC. If the Federal funding comes from an agency other than CDC or the FAPIIS clause in the Notice of Award includes disclosures in addition to those provided below, contact ADPH Legal for further instruction before proceeding.

REQUIRED DISCLOSURES FOR FEDERAL AWARDEE PERFORMANCE AND INTEGRITY INFORMATION SYSTEM (FAPIIS). Consistent with 45 C.F.R. 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services Name, Grants Management Specialist
Centers for Disease Control and Prevention Address

Email: _____ (Include "Mandatory Grant Disclosures" in subject line)

AND

U.S. Department of Health and Human Services Office of the Inspector General
ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW
Cohen Building, Room 5527 Washington, DC 20201

Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or Email:

MandatoryGranteeDisclosures@oig.hhs.gov

Recipients must include this mandatory disclosure requirement in all subawards and contracts under this award.

Failure to make required disclosures can result in any of the remedies described in 45 C.F.R. 75.371. Remedies for noncompliance include suspension or debarment (See 2 C.F.R. parts 180 and 376, and 31 U.S.C. 3321).

CDC is required to report any termination of a federal award prior to the end of the period of performance due to material failure to comply with the terms and conditions of this award in the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS). (45 C.F.R. 75.372(b)). CDC must also notify the recipient if the federal award is terminated for failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. (45 C.F.R. 75.373(b)).

HIPAA CLAUSE. This clause is necessitated by the application of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). References to this clause are to the Code of Federal Regulations, hereinafter "CFR."

The parties agree to use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”). The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501). The Parties likewise agree to take all necessary precautions to protect the integrity of electronic protected health information (e-PHI) by complying with the HIPAA Security Rule.

INTERPRETATION CLAUSE. Where there is an apparent conflict among the Contract documents which cannot be resolved by interpretation, this document controls.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

Contractor:
(Contractor Name)

Signed: _____(Owner or Authorized Representative)

Date: _____

Alabama Department of Public Health
This Contract has been reviewed as to content

Signed: _____(Bureau Director/District Administrator)

Date: _____

Address:
(Company Address) (Second Address Line) (City, State, Zip)

Telephone: (Telephone Number) Fax: (Fax Number)

Contractor please type or print your email address: (Email Address)

Social Security or FEIN:
(SS# or FEIN#)

(Insert the following signature block when the total amount of the Contract is greater than \$25,000)

APPROVED:
Chief Procurement Officer

APPROVED:
Alabama Department of Public Health

Signed: _____Scott Harris, M.D., M.P.H. State Health Officer

Date: _____APPROVED:

State of Alabama

Signed: _____Kay Ivey, Governor

Date: _____