

Intent to Propose

RFP # _____

By signing this form, the contractor confirms that they have received the RFP and intend to submit a proposal in response to the RFP.

Printed Name of Authorized Representative _____

Title _____

Signature _____

Date _____

Contractor Name _____

Non-Disclosure Agreement

State of Alaska Department of Health (DOH)

(Note: Do not modify this form)

This Non-Disclosure Agreement (the "Agreement") applies to RFP _____ (RFP Number),

for _____ (Services) and is made effective upon signature of the Agreement. The Agreement is between the State of Alaska, Department of Health and the company named at the end of this document.

Background Information

- A. The Department is in the process of soliciting vendors for the above-mentioned RFP.
- B. The data and information that DOH expects to provide to Vendor for use in evaluating Vendor's proposal to provide the Services is confidential and not public data and the parties desire to enter into a Confidentiality Agreement to set forth their respective duties and obligations regarding Department of Health's data and information.

Provisions

In consideration of the foregoing Background Information, which is incorporated by this reference as if fully re-written herein and the mutual covenants and provisions set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. *Confidential Information*. As used in this Agreement, "Confidential Information" shall mean any and all technical and non-technical information about Department of Health, including, but not limited to data and information processed or provided by the Department of Health in connection with evaluating and assessing the Services. The Recipient hereby agrees to abide by the Department of Health's determination that such information is Confidential Information and that the same is of a special and unique nature and value, important and material, that it gravely affects the effective and successful conduct of the business.

Section 2. *Preservation of Confidentiality*. All Confidential Information (a) supplied by any employee, agent, consultant, or independent contractor of Department of Health ("Department of Health Representatives") to the Recipient or any employee, agent, officer, director, shareholder, independent contractor or representative of the Recipient (collectively, the "Recipient Representatives"), (b) obtained by the Recipient or any Recipient Representatives from any documents, meetings or telephone conversations with any Department of Health Representatives or from books or records of Department of Health , (c) obtained by the Recipient or any Recipient Representatives or in any other manner including through hosting the software evaluation on Recipient's website, or (d) jointly or individually developed by Department of Health and/or Recipient shall be protected and maintained by the Recipient on a confidential basis and the Recipient shall not use any of the Confidential Information for any purposes (other than as permitted by this Agreement). The Recipient shall refrain from directly or indirectly disclosing any of the Confidential Information to any person, firm, fund, or entity, or knowingly making any Confidential Information available to any others for any use (other than as permitted by this Agreement). Failure to mark any of the Confidential Information as confidential or proprietary shall not affect its status as Confidential Information. In furtherance and not in limitation of the foregoing provisions, the Recipient shall:

- (a) Restrict disclosure of the Confidential Information only to those persons as may be absolutely necessary;
- (b) Advise all persons to whom Confidential Information is disclosed of the strict obligations of confidentiality hereunder; and

- (c) Take such steps to protect the confidentiality of the Confidential Information as may be taken to protect the Recipient's own confidential materials, but in no event shall the Recipient use less than a reasonable degree of care.

In addition to the foregoing, Recipient agrees to use reasonable and appropriate administrative, physical and technological safeguards to: (i) prevent use or disclosure of the Confidential Information other than as provided for by this Agreement; and (ii) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Confidential Information. Recipient represents and warrants that it has implemented, and during the term of this Agreement shall maintain, comprehensive written privacy and security policies and procedures and the necessary administrative, technical and physical safeguards appropriate to the size and complexity of Recipient's operations and the nature and scope of its activities.

Section 3. *Recipient Representatives*. Recipient agrees to ensure that any Recipient Representative to whom it provides Confidential Information agrees in writing to the same restrictions and conditions that apply through this Agreement to Recipient with respect to Confidential Information. Such written agreement shall also require the Recipient Representative to implement reasonable and appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Confidential Information that it receives. Recipient, and not the Department of Health, is solely responsible for Recipient Representatives' uses and disclosures of Confidential Information.

Section 4. *Ownership of Information*. All information learned or developed pursuant to this Agreement shall be "Confidential Information" as defined in this Agreement and shall be the property of Department of Health.

Section 5. *Information Not Covered Under This Agreement*. This Agreement shall not apply to specific information if:

- (a) The information is or later becomes generally available to the public, except as a result of an unauthorized disclosure by the Recipient or Recipient Representatives;
- (b) Department of Health gives its prior written consent to the disclosure of information or the waiver of any provision of this Agreement; or
- (c) The information is disclosed to the Recipient by a third party (except an employee or former employee of Recipient or its affiliates) who is not under a legal restriction not to so disclose such information.

Section 6. *Fulfillment of Purpose*. When requested by Department of Health, the Recipient shall:

- (a) Return all documents, copies of documents, computer records and other means of recording or storing Confidential Information in Recipient's or Recipient Representatives' possession to Department of Health within five (5) calendar days or, at Recipient's option, destroy all such items;
- (b) Certify in writing to Department of Health that the Recipient has so complied; and
- (c) Not use or disclose the Confidential Information or transact business in any manner based upon the Confidential Information.

Section 7. *Indemnification of Department of Health*. The Recipient shall indemnify and hold Department of Health harmless from and against all liability, loss, cost or expense (including attorneys' fees) which Department of Health may sustain or incur by reason of the breach of any agreements, representations, warranties or covenants of or relating to Recipient or any of the Recipient Representatives contained in this Agreement or by reason of the enforcement by Department of Health of any such agreements, representations, warranties or covenants set forth herein.

Section 8. *Survival*. The restrictions and obligations under this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind Recipient, its successors and assigns.

Section 9. *Injunctive Relief.* The Recipient agrees that this Agreement is necessary to protect the value of the Confidential Information, and the Recipient covenants that any breach of this Agreement shall result in irreparable damage to Department of Health to which Department of Health shall have no adequate remedy at law, and the Recipient consents to an injunction by any court of competent jurisdiction in Juneau City and Borough, Alaska in favor of Department of Health enjoining any breach of this Agreement without the necessity of posting bond, or if bond is required, the same shall not exceed one hundred dollars, without prejudice to any other right or remedy to which Department of Health may be entitled.

Section 10. *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alaska (regardless of the laws that might be applicable under principles of conflicts of law) as to all matters, including but not limited to, matters of validity, construction, effect and performance.

Section 11. *References.* All references in this Agreement to particular sections, subsections or articles shall, unless expressly otherwise provided, or unless the context otherwise requires, be deemed to refer to the specific sections or articles in this Agreement. The words "herein", "hereof", "hereunder", "hereinabove" and other words of similar import refer to this Agreement as a whole and not to any particular section, subsection or article hereof. Whenever a party to this Agreement agrees or is under an obligation not to unreasonably withhold its consent or approval to any matter, it shall be construed that such party is obligated not to unreasonably withhold, delay or condition its consent or approval.

Section 12. *Illustrative Terms.* Whenever the word "including", "includes" or any variation thereof is used herein, such term shall be construed as a term of illustration and not a term of limitation. For example, the term "including" shall be deemed to mean "including, without limitation", and the term "includes" shall be deemed to mean "includes, without limitation".

Section 13. *Joint Preparation.* This Agreement shall not be construed more strictly against any party because the party or its legal representatives participated in its drafting.

Section 14. *Response to Subpoena.* Recipient shall promptly notify Department of Health if it receives a subpoena or other legal process seeking the disclosure of Confidential Information. Such notification shall be provided in a timeframe that allows Department of Health a reasonable amount of time to respond to the subpoena, object to the subpoena, or to otherwise intervene in the action to which the subpoena pertains.

Section 15. *Notification of Claims.* Recipient shall promptly notify Department of Health upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Agreement or the Confidential Information, regardless of whether Department of Health and/or Recipient are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.

Section 16. Assistance in Litigation or Administrative Proceedings. Recipient shall make itself and any Recipient Representatives, available to Department of Health to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Department of Health based upon a claimed violation of any laws protecting the use or disclosure of the Confidential Information.

Section 17. No Third-Party Beneficiaries. It is the intent of the Parties that this Agreement is to be effective only regarding their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this Agreement and no privity of contract shall exist between third parties and each Party.

Agree

I have read and agree to the terms of this Agreement and represent and warrant that I have authority to bind this entity named below to these terms and conditions.

Disagree

Printed Name of Authorized Representative _____

Title _____

Signature _____

Date _____

Contractor Name _____