CONTRACT TO OPERATE A QUALIFIED HIGH RISK POOL

CONTRACT AGREEMENT: Between the Department of Health and Human Services (HHS) and (Name of Contractor)

PROJECT TITLE: Temporary High Risk Insurance Pool Program

CONTRACT NUMBER:

CONTRACTOR:

Contract Overview:

The statutory authority for this contract agreement is set out at section 1101(b) of the Patient Protection and Affordable Care Act ("Affordable Care Act," Public Law 111-148), which authorizes the Secretary of the Department of Health and Human Services (HHS) to enter into contracts with States to establish and operate temporary high risk health insurance pool programs to provide coverage for eligible individuals beginning in 2010 and ending on December 31, 2013.

The Center for Consumer Information and Insurance Oversight in the Centers for Medicare & Medicaid Services in HHS awards this contract to _____ (hereinafter "Contractor") to establish and operate a temporary high risk health insurance pool and serve eligible individuals according to the terms and conditions set forth below and agreed upon by both HHS and the Contractor.

This contract between HHS and the Contractor is not subject to the Federal Acquisition Regulation (FAR) except where referenced herein.

SECTION A: SUPPLIES OR SERVICES AND PRICES/COSTS

A.1 BRIEF DESCRIPTION OF SUPPLIES OR SERVICES

The purpose of the contract is to establish and operate a temporary high risk health insurance pool program in {STATE NAME} to provide coverage for eligible individuals.

A.2 PRICES/COSTS

In consideration of performance of the work described in SECTION B, HHS agrees to compensate the Contractor the amount that is the difference between premiums collected and claims plus allowable administrative costs incurred, for the work described in SECTION B, unless the contract is otherwise modified, for which estimated amounts are shown below:

Table 1: <<State>> PCIP - Calculation of Contract Obligation Amount for Operation of Temporary High Risk Insurance Pool Program through April 30, 2013	
Obligations	
Cumulative Contract Obligations to Date	
Estimated Costs	
Cumulative Reimbursable Costs for Base Period through first three months of Year 3 Option Period 1 (January 1, 2013 through March 31, 2013) plus Close-out Option Period	
Reimbursable Costs for 1-month Extension (April 1, 2013 through April 30, 2013)	
Total Reimbursable Costs of Base Period through April 30, 2013 plus Close-out Option Period	
Total Reimbursable Costs less Cumulative Obligations to Date	
Contract Obligation Amount for 1-Month Contract Extension (equal to $0, if Cumulative Obligations exceed Estimated Total Costs)	
Future Year 3 Option Periods (May 1, 2013 through December 31, 2013)	To Be Determined

HHS reserves the right to reallocate unobligated funds based on actual cost experience of the state's administration of the Temporary High Risk Health Insurance Pool Program. HHS also reserves the right to order the contractor to limit enrollment in the program.

The estimated contract amounts for subsequent Year 3 Option Periods will be based on a cost proposal submitted by the Contractor on a date to be determined by HHS that will include cost assumptions based on anticipated administrative costs, per member claims

costs experienced by the Contractor, and future enrollment trend assumptions, subject to guidance provided by HHS.

A.3 EXERCISE OF OPTIONS UNDER A.2

HHS shall exercise each of the option periods in Year 3 described in section A.2 of this Contract by giving a notice of its intent to the Contractor at least 45 days prior to the end of each option period. The notice will state HHS's intent to exercise the option, but does not commit HHS to exercising the option. The Contractor's right to terminate is governed by section G.6. of this Contract.

A.4 EXTENDING THE TERM OF THE CONTRACT

HHS may extend the term of this contract for an additional period of performance beyond December 31, 2013, by written notice to the Contractor no later than 120 days prior to that date. The close out period will be extended by the length of any additional period of performance. If the Contractor does not agree to extend the period of performance, the Contractor must provide written notice to HHS of its intention not to do so within 60 days of the notice from HHS.

SECTION B: DESCRIPTIONS/SPECIFICATIONS/WORK STATEMENT

B.1 DEFINITIONS

Administrative costs refer to reasonable costs incurred by the Contractor to administer the pool.

Contracting Officer refers to the Government Official delegated responsibility to sign the contract and negotiate and issue changes.

Creditable coverage has the meaning given such term under both section 2701(c)(1) of the Public Health Service Act before enactment of the Affordable Care Act and 45 CFR 146.113(a)(1).

Enrollee refers to an individual receiving coverage from the federal high risk pool established under this section.

High risk pool or Pool refers to a program which provides coverage in accordance with the requirements of section 1101 of the Affordable Care Act, as determined by HHS.

Nonprofit entity refers to a nonprofit insurer or other organization capable of operating a high risk pool.

Pre-existing condition exclusion has the meaning given such term in 45 CFR 144.103.

Resident means an individual who is legally domiciled in the Contractor’s State.

Service Area refers to the geographic area encompassing an entire State or States in which a high risk pool furnishes benefits.

State refers to any one of the 50 States or the District of Columbia.

Subcontractor refers to any person or entity from whom the Contractor obtains goods or services for the performance of this Contract Agreement.

B.2 BACKGROUND

On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Public Law 111-148), hereafter referred to as the Affordable Care Act, as amended by the Health Care and Education Recovery Act of 2010 (Public Law 111-152). Section 1101 of the Affordable Care Act establishes a "temporary high risk health insurance pool program" to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The Affordable Care Act authorizes HHS to carry out the program directly or through contracts with States or private, nonprofit entities.

B.3 SPECIFIC SERVICE AND DELIVERY TASKS OF CONTRACTED STATE HIGH RISK POOL PROGRAMS

B.3.1 General Requirements: The Contractor agrees to perform all functions necessary to design, implement, and operate a high risk pool program, as set forth in section A.4 of the HHS "Solicitation for State Proposals to Operate Qualified High Risk Pools," (hereafter, "the Solicitation") and consistent with the Contractor's proposal submitted in response to the solicitation (as amended, if applicable). Such solicitation, proposal and amendments are hereby incorporated into this contract by reference unless otherwise inconsistent with the terms of this contract.

Contractor also agrees to comply with the implementation plan and progress report requirements set forth in section A.7 of the Solicitation. If the Contractor operates another high risk pool, the Contractor shall segregate funding and expenditures for the two programs and track all benefits and services separately for enrollees in each program, consistent with section C.4.1 of its proposal and the general rules regarding Non-Commingling of Funds set forth in section G.4 of this contract. The basic requirements of the temporary high risk pool program are set forth below, beginning at section B.3.2.

B.3.2 Basic Requirements: The Contractor shall develop and implement a high risk pool program that meets the basic requirements to operate the program, as described in section A.4.2 of the Solicitation, and consistent with sections C.4.1 and C.4.2 of the Contractor's approved proposal. Contractor shall provide response to the following additional questions to C.4 of the Technical Approach Content section of the Solicitation:

C.4.2 8) Describe the premium grace period and nonpay termination appeal process.

C.4.2.8 9) Provide the actual initial 2010 premium rates being proposed, by age.

C.4.2.8 10) How often will state propose to adjust premiums for changes in market rates?

C.4.2.8 11) Is state proposing to accept premium payments from third party payers? If so please describe which major entities, organizations and agencies such payments are received.

C.4.2.8 12) Is the state's proposed plan year on a calendar year basis for accumulation of member deductibles and out of pocket limits, or some other time period.

B.4 PROGRAM REQUIREMENTS

B.4.1 Eligibility Criteria: The Contractor shall develop eligibility criteria, consistent with section C.4.2.1 of its proposal. Thus, the criteria will require that an individual:

1. Is a citizen or national of the United States or lawfully present in the United States and resides in the high risk pool's service area;

2. Has not been covered under creditable coverage for a continuous 6-month period of time prior to the date on which such individual is applying for coverage in the high risk pool program; and

3. Meets the preexisting condition requirements specified in the Contractor's proposal and approved by HHS.

B.4.2 Benefits: Consistent with section C.4.2.2 of its proposal, the Contractor shall offer one or more benefit plans that are actuarially consistent with the statutory requirement that the issuer's share of the costs is not less than 65 percent (65%) of the total costs of the benefit.

B.4.3 Pre-Existing Conditions: Consistent with section C.4.2.3 of its proposal, the contractor shall provide to all eligible individuals that it enrolls in a high risk pool health coverage that does not impose any pre-existing condition exclusions with respect to such coverage, and may not deny enrollment based on a pre-existing condition.

B.4.4 Premiums: Consistent with section C.4.2.4 of its proposal, the contactor shall establish premiums designed not to exceed 100 percent (100%) of the premium for the applicable standard risk rate that would apply to the coverage offered in the State. The Contractor shall determine a standard risk rate by considering the premium rates charged for similar benefits and cost-sharing by other insurers offering health insurance coverage to individuals in the applicable State or States. The standard risk rate shall be established using reasonable actuarial techniques. A high risk pool may not use other methods of determining the standard rate, except with the approval of the Secretary. Premiums charged to enrollees in the high risk pool may vary on the basis of age, by a factor not greater than 4 to 1.

B.4.5 Cost-Sharing Structure: Consistent with section C.4.2.5 of its proposal, the Contractor shall establish a cost-sharing structure designed so that the high risk pool's average share of the total allowed costs of the required benefits is at least 65 percent (65%) of such costs, and that the out-of-pocket limit of coverage for cost-sharing for the

required benefits is not greater than the applicable amount described in section 223(c)(2) of the Internal Revenue Code of 1986 for the year involved.

B.4.6 Provider Access: Consistent with section C.4.2.6 of its proposal, the Contractor shall use best efforts to ensure that the high risk pool program includes a sufficient number and range of providers to ensure that all covered services are reasonably available and accessible to its enrollees.

B.4.7 Appeals: Consistent with section C.4.2.7 of its proposal, the Contractor shall establish and maintain procedures for individuals to appeal eligibility and coverage determinations. Minimally, the appeals procedures must provide enrollees and potential enrollees the right to a timely redetermination by the high risk pool or its designee of a determination concerning eligibility or coverage, and the right to a timely reconsideration of a coverage redetermination by an entity independent of the high risk pool or the entity designated to make that redetermination.

B.4.8 Eligibility Determinations and Enrollment Procedures: Consistent with section C.4.3 of its proposal, the Contractor shall perform all eligibility determination and enrollment functions, including but not limited to the following:

1. The Contractor shall develop and utilize an eligibility determination process and will use best efforts to assure that only individuals eligible for coverage receive benefits from the program.

2. As part of the enrollment application process, the Contractor will obtain the name, address, date of birth and Social Security number of a person applying for coverage.

3. The Contractor shall implement a process to determine that the enrollee is a citizen or national of the United States or an alien lawfully present in the United States.

4. The Contractor shall develop and operate an enrollment process and will use best efforts to ensure eligible individuals timely access to benefits under the high risk pool.

5. The Contractor shall develop and operate a disenrollment process, including a process for disenrolling an individual if the monthly or other periodic premium is not paid on a timely basis; when an individual no longer resides in the high risk pool's service area; when an individual obtains other creditable coverage; and, in the case of a death of the individual.

6. To the extent that HHS determines that maximum enrollment capacity for the State has been reached, the Contractor shall implement procedures to discontinue new enrollments, as directed by HHS, after being given at least 15 days' notice by HHS. The Contractor may accept and process for coverage all applications received on or before the 15th day after such notice is provided.

B.4.9 Customer Service: Consistent with section C.4.4 of its proposal, the Contractor shall provide all necessary customer service functions on behalf of high risk pool enrollees, including but not limited to:

1. Application forms, information brochures, and related enrollee communication materials (subject to review by HHS at its discretion). Contractor shall provide or modify its Certificate of Coverage or equivalent (subject to review by HHS at its discretion), which is to be issued to each enrollee at the time of enrollment, and annually thereafter at renewal if high risk pool program benefits are modified, and/or as otherwise directed by HHS.

2. Contractor shall also develop and distribute to each enrollee a membership card that is consistent with industry standards.

3. Contractor shall respond to all enrollee correspondence within 20 calendar days.

B.4.10 Technical Support: Consistent with section C.4.5 of its proposal, the Contractor shall operate a technical support center to respond to health care and pharmacy providers seeking information related to an enrollee's benefits, coverage determinations (including exceptions and prior authorizations) and enrollee appeals.

B.4.11 Premium Administration: Consistent with section C.4.6 of its proposal, the Contractor shall operate a system to bill, collect and account for enrollee premiums, including:

1. The Contractor shall calculate the appropriate premium amount, bill, and collect premiums from high risk pool program enrollees or enrollee's designee.

2. The Contractor shall use premiums collected and any interest earned on premiums held by the high risk pool program solely to offset the approved administrative expenses and high risk pool program enrollee claims for health services as included in this Contract.

B.4.12 Utilization Management (if applicable): Consistent with section C.4.7 of its proposal, the Contractor shall implement disease and utilization management that will assure high risk pool program enrollees have access to necessary health care services and prescription drugs in a cost-effective manner.

B.4.13 Claims Payment: Consistent with section C.4.6(2)of its proposal, the Contractor shall develop and implement a system for processing and paying covered health claims on behalf of the high risk pool program.

1. This system shall encompass claims receipt through final payment, or denial, through a fully automated claim adjudication system that is consistent with industry standards for comparable commercial health insurance carriers or health plan administrators, such that claims are adjudicated in a timely and accurate manner, and all necessary functions are performed to assure timely and accurate claims adjudication, and timely and accurate claims payment. Claims handling and claims payment processes and policies in all respects shall comply with State and federal law. The system shall have at a minimum the following capabilities:

a) automated eligibility verification that coverage has not terminated on the date of loss;

b) benefit plan information stored on the system;

c) automatic calculation of deductibles, co-insurance, co-pays, out-of-pocket limits, and lifetime maximum accumulations;

d) individual claim history stored on the system and automatically updated;

e) ability to distinguish claims by diagnosis code;

f) automated calculation of cost containment provisions;

g) identification and collection of claim overpayments;

h) procedures for review of “medically necessary” determinations;

i) automated production of an Explanation of Benefits; and

j) automated tracking of individual deductible limits, annual individual out of pocket limits, and any other internal limits such as limits on days, sessions, visits, etc., consistent with industry standards.

2. xx percent (xx%) of all eligible claims, which contain all information necessary for an accurate adjudication (“Clean Claims”), shall be paid within 30 calendar days of receipt.

3. xx percent (xx%) of individual Clean Claim payments for a month shall be accurate.

4. During or after the claim adjudication process, if a claim overpayment occurs or is discovered by the Contractor, the Federal government or its designee, a provider, the participant or any other party, the Contractor will make all reasonable efforts to recover the overpayment on behalf of the high risk pool program.

5. The Contractor shall also be responsible for making available information relating to the proper manner of submitting a claim for benefits to the high risk pool program and distributing forms upon which claim submissions shall be made, or making provision for the acceptance and processing of electronically-filed claims.

6. Contractor shall provide pharmacy benefit management services for the high risk pool program, including:

a) Administration of a benefit structure consistent with section C.4.8 of its proposal.

b) Perform pharmacy claim processing and payment functions on behalf of the high risk pool program from receipt of both paper and electronic claims, through final payment or denial on a fully automated claim adjudication system in a timely and accurate manner and all other necessary functions to assure timely adjudication of claims and payment of benefits to eligible persons under the high risk pool program;

c) A formulary that promotes therapeutic and economic value for enrollees and the high risk pool program and covers all therapeutic diagnostic categories;

d) Drug utilization review designed to effectively and efficiently identify and address instances of potential fraud and abuse, as well as key prescribing and utilization patterns;

e) Administration of pharmacy benefits shall at all times comply with all standards required under state and federal laws and regulations, in a manner consistent with industry standards for comparable commercial health insurance carriers, or health plan administrators; and

f) Procedures to ensure that manufacturer rebates earned from prescriptions covered by the federal high risk pool shall accrue to the benefit of the federal program, and shall be separately tracked and credited.

7. Claims Database--Contractor will use best efforts to ensure that adequate information is captured during the claim payment process to allow HHS to evaluate individual and overall high risk pool program health care utilization. Contractor shall provide HHS reports upon request concerning utilization that are in a mutually agreeable electronic format, to include the ability to routinely update claims files as necessary, report individual claims histories as well as claims experience by category of condition or treatment, and fully document the claims adjudication process. The Claims database shall contain for each claimant an identification number, claim number, date(s) of service, treatment by descriptor and treatment code, provider name and provider number, date and type of service, amount billed, amount allowed, and amount paid, enrollee responsibility. In all respects, claims and utilization data shall be maintained, and available for reporting to and analysis by HHS or any designee, in a manner consistent with industry standards for comparable commercial health insurance carriers, or health plan administrators.

B.4.14 Marketing and Outreach: Consistent with C.4.9 of its proposal, the Contractor shall implement marketing and outreach procedures for the high risk pool program to make potentially eligible individuals and organizations and providers that interact with potentially eligible individuals aware of the high risk pool program and the coverage offered by the high risk pool.

B.4.15 Anti-Dumping Procedures: Consistent with section C.4.10 of its proposal, the Contractor shall establish procedures to identify and report to HHS instances where health insurance issuers or group health plans are discouraging high-risk individuals from remaining enrolled in their current coverage (or discouraging enrollment in available coverage) in instances in which such individuals subsequently are eligible to enroll in the high risk pool.

B.4.16 Fraud, Waste, and Abuse: Consistent with section C.4.11 of its proposal, the Contractor shall develop operating procedures to prevent, detect, recover (when applicable or allowable), and promptly report to HHS incidences of waste, fraud, and abuse and shall cooperate with Federal law enforcement authorities in cases involving waste, fraud, and abuse.

B.4.17 Compliance Risks: Consistent with section C.4.12 of its proposal, the Contractor shall establish and implement an effective system for routine monitoring and identification of compliance risks, including internal monitoring and audits. Compliance risks must be reported to the HHS Contracting Officer Representative ("COR").

B.4.18. Coordination of Benefits: Consistent with section C.4.13 of its proposal, the Contractor shall develop and implement a system for coordinating benefits for health and prescription drug claims with other payers as needed. Claims shall be payable under the high risk pool program on a secondary basis to all other coverage.

B.4.19 Maintenance of Effort: Consistent with section 1101(b)(3) of the Affordable Care Act, a state must agree not to reduce the annual amount the State expended for the operation of one or more State high risk pools during the year preceding the year in which such contract is entered into, as described in section C.5 of the Contractor's approved proposal. The Contractor shall notify HHS of any change in the state spending that would impact the description provided in section C.5 of its proposal.

B.5. GOVERNMENT CONTRACTOR

In undertaking the responsibility for operating the federal risk pool program under this contract in the state identified in section A.1, above, as a contractor of HHS, Contractor and its officers, employees, agents and subcontractors are carrying out uniquely federal interests and, to the fullest extent allowed by federal law, are entitled to the protection of the government contractor defense to liability arising from operation of the high risk pool program.

SECTION C: PAYMENT TO CONTRACTOR

C.1 PAYMENT TO CONTRACTOR

The Contractor shall receive actual cost payments from HHS for allowable and allocable administrative costs and claims costs incurred in the development and operation of the high risk pool. Administrative costs for the life of the program may not exceed 10 percent (10%) of total program expenses (including program expenses paid through premiums), absent advance approval from HHS.

C.2 CONTRACTOR/HHS RESPONSIBILITY

1. The Contractor will not be responsible for the costs of covered health insurance claims filed by (or on behalf of) enrollees in the high risk pool program or for the administrative expenses of operating those programs to the extent that those claims and administrative expenses are in excess of the premiums collected by the high risk pool program. The Contractor will be responsible for operating the high risk pool program in accordance with the terms of the contract. HHS will pay or reimburse the Contractor for claims for covered services and for administrative expenses that are in excess of the premiums collected by the Contractor. Contractor agrees to use its best efforts, in consultation with HHS, to limit the amount of anticipated expenses to the amounts identified in this contract or any modification thereto, for Contractor's operation of the high risk pool program.

2. The Contractor acknowledges that HHS, as are all Government agencies, is bound by certain laws limiting the available funds for programs and, in particular the appropriation set out in section 1101 of the Affordable Care Act, as may be amended from time to time. For this reason the Contractor has the following responsibilities:

(a) The Contractor must terminate coverage within 45 calendar days if notice to do so is provided by HHS. The Contractor shall not change the benefits provided to enrollees or the cost-sharing requirements for enrollees upon receipt of such notice, absent guidance provided by HHS.

(b) As part of each monthly report, the Contractor will provide HHS with an estimate of incurred liability through the most recent prior month of performance. The Contractor shall also notify HHS if its available claims data indicate that the projected claims for the option period to date would result in the Contractor exceeding the costs projected in the most recent Table 2 of the Cost Proposal.

3. In the event an action is brought against the Contractor in any court or administrative forum regarding the operation or performance of this Contract, the Contractor shall immediately, as described in section G.18 of this Contract, notify HHS and provide a copy of the complaint and summons or other documentation to HHS. HHS will, upon notification and after consultation with the U.S. Department of Justice, determine whether it will intervene in, or otherwise defend, the action brought against the Contractor and promptly notify the Contractor of this decision in writing.

4. The Contractor will not be responsible for the defense of, or the cost to defend any action brought against HHS, the Contractor, or HHS and the Contractor relating to (1) the constitutionality or legality of the Affordable Care Act or this contract; (2) any policies, procedures or operational requirements implemented by HHS or by Contractor at HHS's direction, or actions undertaken or omissions made by HHS, in relation to this contract; (3) inability to cover individuals or pay claims because of the unavailability of federal funding; or (4) the Contractor's operation of the high risk pool program in accordance with the terms of this Contract.

5. The Contractor will provide information and support to assist HHS in defending any such action as requested by HHS.

6. The Contractor's costs associated with any law suit, including monetary judgment, will be an allowable expense insofar as permitted under OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments, and will not be subject to the 10 percent limitation under section C.3, below.

7. Nothing in this Contract shall be deemed a waiver of HHS's right to prosecute any claim under the False Claims Act, any Federal criminal violation, or any violation of the Internal Revenue Code.

8. This provision shall survive termination of this Contract for any reason, so long as the action stems from, or is the result of, the operation of the program or the performance of this Contract.

C.3 ALLOWABLE ADMINISTRATIVE COSTS

As is noted in section C.1 above, administrative costs cannot exceed a total of 10 percent (10%) of total program expenses (including program expenses paid through premiums) over the life of the contract and no more than the amount set forth in its cost proposal over the first performance period, absent advance approval of HHS. The allowable administrative costs include those associated with implementing the high risk pool program, including expenses directly related to the tasks outlined in section B.3 as well as other expenses including, but not limited to the use of actuarial services, accounting and auditor fees, agent referral fees, assessment operations, bank charges, board of director expenses, staff salary and expenses, legal expenses, marketing and outreach, office rent, equipment and supplies, postage, and printing and other administrative costs as approved by HHS consistent with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." This includes administrative costs incurred before the effective date of the contract directly pursuant to negotiation with HHS and in anticipation of contract award, when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see FAR 31.205-32).

On at least a monthly basis, the Contractor shall submit a Statement of costs indicating:

1. The contract line item number;

2. The administrative expenses of the Contractor;

3. The number of high risk pool program enrollees and the claims paid on behalf of high risk pool enrollees;

4. The amount of premiums billed and the amount of premiums collected; and

5. A summary of amount of Federal funds drawn down during that month.

The Contractor's Statement shall not contain personally identifiable information describing the enrollees in the high risk pool.

C.4 RECEIPT OF PAYMENT

Funds to pay the difference between premiums and the total of allowable administrative costs and claims will be placed in an account established with the Payment Management System (PMS). PMS is administered by the Division of Payment Management (DPM), an office of U.S. Department of Health & Human Services' (HHS) Program Support Center, Financial Management Service (http://www.dpm.psc.gov). The Contractor may submit a request for payment for the claims and allowable administrative costs for review and approval, as often as daily, on a Standard Form 270.

The Contractor's request may not contain personally identifiable information describing the enrollees in the high risk pool.

Upon approval, funds will be disbursed to the Contractor via electronic funds transfer. HHS will reimburse costs incurred under the terms of this contract, but shall not pay the Contractor a fee or profit for performing this contract.

C.5 MONITORING OF AVAILABLE FUNDS

The Contractor shall monitor the total expenses submitted to HHS, as well as the anticipated expenses of the high risk pool. The Contractor shall work with HHS to implement mitigation strategies should the actual or projected expenses reimbursable under this contract be projected to exceed the amounts established in this contract or modifications to this contract. If HHS determines that the amounts available in this contract for expenses of the high risk pool may be less than the projected amount of Contractor expenses, the Contractor shall at HHS direction stop enrolling new members or terminate coverage for existing members. HHS will reimburse the Contractor for all claims and administrative expense in excess of the amounts established in the contract or modification to the contract insofar as permitted under Section 1101 of the Affordable Care Act. HHS reserves the right to adjust the aggregate amounts available for payment of expenses in the high risk pool as are necessary to eliminate an aggregate deficit as provided in 1101(g)(2) of the Affordable Care Act and to direct the Contractor to cease taking applications for participation in the program as provided in 1101(g)(4) of the Affordable Care Act.

SECTION D IMPLEMENTATION

D.1 PROMPT IMPLEMENTATION REQUIREMENT

The Contractor shall begin to accept enrollments into the qualified high risk pool and provide coverage to enrollees within the timeframe specified in the Contractor's proposal and approved by HHS.

D.2 IMPLEMENTATION PLAN AND PROGRESS REPORTS

1. Within calendar 10 days of award of this contract, the Contractor shall submit to the COR a project implementation plan that highlights each step of implementation of this contract and that is consistent with the Contractors' proposal. The implementation plan, at a minimum, shall include a copy of the Contractor's draft enrollment application as well as the specific dates on which the Contractor will:

a) Announce the availability of the high risk pool program to the public;

b) Begin accepting high risk pool program enrollments; and

c) Begin to cover the claims submitted by or on behalf of high risk pool program enrollees.

2. The Contractor shall submit weekly reports to HHS, beginning on the last day of the second week of each performance period that will provide the following information current through the prior week of the performance period:

a) Number of current enrollees with active coverage in the program; and

b) Number of newly approved applicants whose enrollment is not yet effective.

3. The Contractor shall submit monthly reports to HHS beginning on the last day of the month following the execution of the contract and continuing until the expiration of the contract. The monthly reports shall include information on the operation of the temporary high risk pool and shall include information related to applications received by the Contractor, enrollment into the temporary high risk pool program, and financial data related to the Contractor's operation of the temporary high risk pool program during the previous month. Acceptance of these monthly reports by HHS will constitute that the Contractor has also met the financial reporting requirements outlined in section D.3 of this Contract. Monthly reports are due not later than the last day of the month following the month for which the data is reported and will be provided by the Contractor to HHS in a format provided to the Contractor by HHS.

4. The Contractor shall submit monthly reports to HHS, beginning on the last business day of the month following the month of the effective date of the contract and continuing on the last business day of the month after the month being reported until the expiration of the contract. The monthly reports shall provide information on the previous calendar month of operations and contain a complete accounting of temporary high risk pool expenditures and revenue, as follows:

a) Medical claims paid on behalf of high risk pool enrollees;

b) Prescription drug claims paid on behalf of high risk pool enrollees;

c) Estimated claims incurred but not reported;

d) The total number of high risk pool program enrollees;

e) The amount of premiums billed and the amount of premiums collected;

f) The amount of administrative costs;

g) The number of new enrollments and disenrollments,

The Contractor must certify that all information submitted to HHS in these reports is true, accurate, and complete. The monthly reports shall not contain personally identifiable information about the enrollees in the high risk pool program.

5. No later than March 15 of the year following each option year or option period, as described in Section E.1, Contractor shall provide an annual reconciliation of the difference between premiums collected plus federal payments under this Contract and claims plus allowable administrative expenses. After such reconciliation, Contractor shall report to HHS with necessary changes. To the extent the Contractor has received an excess of payments, the payments will be credited or returned to HHS. To the extent the Contractor identifies any underpayment for administrative costs, it will bill to and receive from HHS such underpayments subject to the limitations of the appropriation in Section 1101 of the Affordable Care Act and the estimated cost provisions of this Contract.

6. By June 30, 2011, and each June 30 thereafter, the Contractor shall submit an independently audited financial report detailing the finances of the high risk pool program operated by the Contractor.

D.3 MEETINGS

The Contractor shall participate in monthly meetings or teleconferences with HHS to be scheduled by HHS until the expiration of the contract and as may be necessary thereafter to provide for the exchange of information relative to the implementation of high risk pool programs.

D.4 DATA USE AGREEMENTS

The Contractor shall enter into and comply with provisions of data use agreements with HHS and other Federal agencies as may be required for the implementation of the high risk pool program.

D.5 TRANSITION TO HEALTH BENEFIT EXCHANGES

The Contractor shall use all reasonable efforts to cooperate with and assist HHS in providing for the transition of eligible enrollees in high risk pool programs into qualified health plans offered through Health Benefit Exchanges as provided in section 1311 of the Affordable Care Act so that there is no lapse in coverage for the individual involved. The Contractor shall complete the following activities specifically related to the transition to health benefit exchanges:

a) Print and mail three separate notices to individuals enrolled in the high risk pool program during the fall of 2013. The text and format of those notices must be provided to HHS for review and approval.

b) Update high risk pool program websites with information related to the transition to exchanges.

c) Provide training to customer serve staff to enable them to assist enrollees during the transition to exchanges.

d) Provide adequate staffing at high risk pool call centers during the last quarter of 2013 and first quarter of 2014 to handle calls for transitioned enrollees.

All reasonable costs associated with the specific activities listed in this section are allowable administrative costs to the extent permitted under Section C.3 above. No other costs associated with this transition are allowable under this contract, unless specifically approved by HHS.

D.6 NON-DISCRIMINATION

The Contractor shall not discriminate based on race, ethnicity, religion, gender, age, or disability.

SECTION E: DELIVERIES OF PERFORMANCE/TERM OF AGREEMENT

E.1 PERIOD OF PERFORMANCE

This contract includes a start-up period of performance that will run until December 31, 2010, which will be referred to as the contract Base Period. There will be two additional option years which will run January 1, 2011, through December 31, 2011, and January 1, 2012, through December 31, 2012. There will be a four-month option period that will run January 1, 2013 through April 30, 2013. The length of subsequent Year 3 Option Periods covering the period that begins May 1, 2013 and ends December 31, 2013 will be determined at a later date. No claim for any covered service provided after 11:59 PM of the final day of the final executed option period of this contract is an allowable cost under this contract. There will be a contract closeout period which will run for 18 months, beginning the day after the last period of performance of the contract ends (projected as January 1, 2014 through June 30, 2015, assuming all option periods are exercised). All terms and conditions applicable to the base period shall extend to the option periods unless otherwise mutually agreed upon by HHS and the Contractor.

E. 2 DELIVERABLE SCHEDULE

The Contractor shall comply with the following delivery schedule:

Deliverable	ITEM (Task #)	DUE DATE
Project Implementation Plan	A.7 of Solicitation	Within 10 days of Date of Contract Award
Monthly Reports	C.2.2, D.2.3 and D.2.4 of Contract	Due not later than the last business day of the month following the month being reported on.
Audited Financial Report	D.2.6 of Contract	Annually, beginning on June 30, 2011
Weekly Reports	D.2.2 of Contract	Due the last day of each week, beginning the last day of the second week of each option period in Year 3

E.3 PLACE OF DELIVERY

All deliverables and correspondence shall be delivered electronically to the COR and the Contracting Officer concurrently. Paper mail and email addresses shall be set forth in any contract resulting from this solicitation.

SECTION F CONTRACT ADMINISTRATION DATA

F.1 INSPECTION AND ACCEPTANCE

The Contractor's performance and the quality of services provided hereunder shall be subject to final inspection and acceptance by the Contracting Officer in conjunction with the COR.

F.2 ELECTRONIC FUNDS TRANSFER

The Contractor shall forward electronic funds transfer information in writing to the COR Program Support Center, Financial Management Branch (PSC/FMB).

SECTION G – STANDARD TERMS AND CONDITIONS

G.1 DESIGNATION OF CONTRACTING OFFICER REPRESENTATIVE (COR)

HHS will designate in writing a COR who will be responsible for monitoring the Contractor's progress in the implementation of the high risk pool program, interpret the Statement of Work and any other technical performance requirement, perform technical evaluation as required, and assist in the resolution of technical problems encountered during performance. HHS may change its COR designation in writing and will provide such notice in advance, if reasonably possible.

G.2 REGULATORY GUIDANCE

HHS will provide guidance on regulations that it may promulgate that will govern requirements and operations of high risk pool programs. The Contractor must follow such guidance for the duration of the contract, as well as other applicable laws and regulations. HHS agrees that it will provide written notification of regulations or other guidance that may impact this contract. If the regulations or guidance have a material impact on the costs of this contract, the Contractor has the right to notify HHS within 10 working days of receipt of such regulations or guidelines. HHS will reasonably negotiate any additional costs related to implementation of necessary changes to the contract.

G.3 HHS RIGHT TO AUDIT

The Contractor agrees that, with prior written notice and during normal business hours, HHS, other Federal agencies in the citizenship verification process, the Comptroller General, any Federal law enforcement agency, or their designee may evaluate, through inspection, audit or other means:

1. The quality, appropriateness and timeliness of services furnished to high risk pool enrollees under the Contract;

2. Enrollment records and claims data;

3. Compliance with HHS and other Federal requirements for maintaining the privacy and security of protected health information and other personally identifiable information of high risk pool enrollees, including, but not limited to the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, et seq.), Computer Matching and Privacy Protection Act of 1988, and The Privacy Act of 1974 (5 U.S.C. §552a);).

4. The facilities of high risk pool programs to include computer and other electronic systems;

5. Any books, contracts, computer or other electronic systems, including medical records and documentation of sub-contractors related to the HHS Contract with the high risk pool program. The financial accounting system and/or methods employed by the Contractor must establish and leave a clear audit trail of all financial transactions and records executed and maintained by the Contractor on behalf of the high risk pool program. The Contractor shall maintain all financial records consistent with sound business practices and based upon accounting principles consistent with industry standards for comparable commercial health insurance carriers or health plan administrators, and shall clearly identify all business revenue and disbursements by type of transaction. Contractor shall maintain all federal funds, premium payments, interest, reimbursements, credits and prescription drug rebates in a separate bank account. The Contractor at a minimum will be responsible for determining net written and earned premiums, the expense of administration, the paid and incurred losses, interest paid to providers, and any other business conducted on behalf of the temporary high risk health insurance pool program. Such information shall be reported to HHS in a form and manner prescribed by HHS, and in full good-faith cooperation with HHS or its designee.

6. Contractor will maintain a general ledger and supporting accounting records and systems for the temporary high risk pool that are adequate to meet the needs of an insurance carrier of comparable size. This will include, at a minimum, the ability to separately report the temporary federal high risk pool financial statements, as specified in section E.2, in accordance with the financial reporting requirements mandated by the State's Insurance Commissioner, including:

a) Summarized annual income and expense statement;

b) Unassigned surplus roll forward;

c) Journal entries;

d) Interest paid on claims;

e) Balance sheet showing the balances at the end of the previous year, the transactions for the year, and the balances at the end of the year;

f) Detailed backup for each of the assets and liabilities;

g) Entire bank statement for the year; and

h) A statement as to how bad debt expense was calculated.

Nothing in this Agreement shall be interpreted as a requirement for prior written notice of inspection in the event inspection is executed by any Federal law enforcement agency in the investigation of suspected fraud, false claims, violations of the Internal Revenue Code, or any criminal activity.

G.4 NON-COMMINGLING OF FUNDS

1. The Contractor shall keep all funds for this contract physically separate from funds obtained from other sources. Accounting for such funds shall not be based on allocations or other sharing mechanisms and shall agree with the Contractor's accounting records.

2. In certain instances the physical separation of funds may not be practical or desirable. In such cases, the Contractor may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Contractor shall demonstrate that accounting techniques have been established that will clearly measure cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

3. The Contractor shall incorporate this clause in all subcontracts that exceed $25,000.

G.5 RECORD RETENTION

The Contractor is required to retain records that the Contractor or sub-contractors create, collect or maintain while participating in the high risk pool program for at least six years following termination. This retention period may be extended by the Secretary if a high risk pool's records relate to an ongoing investigation, litigation or negotiation by the Secretary, the Office of the Inspector General, the Department of Justice or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law. The Contractor shall return or destroy protected health information created or received in the Contractor's capacity in operating a high risk pool program under this contract.

G.6 TERMINATION OF CONTRACT

1. Termination for HHS's convenience. HHS reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers, service providers and subcontractors to cease work. The Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, consistent with section G.6.4 below, plus reasonable charges the Contractor can demonstrate to the satisfaction of HHS using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or

contract cost principles for this purpose. This paragraph does not give HHS any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

2. Termination for Default. HHS may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, provisions of law pertaining to contract performance (including, but not limited to, applicable provisions of the Social Security Act), or fails to provide HHS, upon request, with adequate assurances of future performance. In the event of termination for default, HHS shall not be liable to the Contractor for any amount for supplies or services not authorized by this contract, and the Contractor shall be liable to HHS for any and all rights and remedies provided by law. If it is determined that HHS improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

3. Termination by Contractor. The Contractor may not terminate this Agreement except at the end of an option period. If the Contractor chooses to terminate this Agreement at the end of an option period, it must notify HHS 90 calendar days before the planned day of termination. It also must notify the enrolled beneficiaries 60 calendar days before the planned day of termination.

4. Unpaid Claims and Expenses at Termination. In the event of any termination, HHS shall pay the Contractor for all in-process and incurred but not reported claims that would otherwise be eligible for payment under the contract and for reasonable costs of administration as provided in this Contract.

5. Corrections. Should a Contractor receive notice from HHS that HHS intends to terminate the contract under the terms of this contract, the high risk pool will have 30 days to cure its failure(s) that were the basis for the termination and to notify HHS in writing at the address specified in the notification letter. HHS will review the correction and notify the entity in writing of its decision to either find the contractor has cured its failure(s) or to proceed with the termination.

G.7 DISPUTES

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification

requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by HHS against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes HHS is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by HHS is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.

(h) HHS shall pay interest on the amount found due and unpaid from: (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

G.8 RIGHTS IN DATA

The Contractor agrees to the extent that it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

G.9 SECURITY

The Contractor shall comply with any security requirements established by HHS to ensure proper and confidential handling of data and information. The Contractor shall refer to 'Secure ONE HHS', which is HHS' Information Security Program Policy, dated December 15, 2004. Data obtained for this contract shall not be used to create databases or any other product not intended for use specifically in this project. All data containing personal identifiers shall be handled in accordance with the Privacy Act of 1974 (Public Law 93-579). No data is to be released to anyone without the specific approval of the Contracting Officer's Representative and the Contracting Officer.

G.10 PRIVACY ACT

Performance of this effort may require the Contractor to access and use data and information proprietary to a Government agency or Government contractor which is of such a nature that its dissemination or use, other than in performance of this effort would be adverse to the interests of HHS and/or others.

Neither the Contractor nor contractor personnel shall divulge or release data or information developed or obtained in performance of this effort, until made public by HHS, except to authorized Government personnel or upon written approval of the Contracting Officer (CO). The Contractor shall not use, disclose, or reproduce proprietary data that bears a restrictive legend, other than as required in the performance of this effort. Nothing herein shall preclude the use of any data independently acquired by the Contractor without such limitations or prohibit an agreement at no cost to HHS between the Contractor and the data owner which provides for greater rights to the Contractor.

G.11 ANTI-KICKBACK REQUIREMENTS

(a) *Definitions*.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to HHS unless HHS has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed $100,000.

G.12 COVENANT AGAINST CONTINGENT FEES

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, HHS shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

G.13 SUBCONTRACTS

The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification to the subcontracting plan contained in its response to the solicitation.

G.14 CHANGES

a) Changes in the terms and conditions of this contract may be made only by written agreement of the parties. HHS may request changes to the work to be done by providing Contractor a written request for change(s) which specifies the change(s) and the timeframe within which the federal government desires the change(s) to be implemented. Contractor shall provide a written response within no more than twenty (20) calendar days indicating the timeframe required for implementing the change.

b) Changes, which shall be issued by the Contracting Officer and bilaterally agreed to by both parties, are deemed a "Change Order." The Contractor will implement the change within the agreed timeframe. An appropriate amendment to this Agreement will be executed if the Change Order does not otherwise constitute a valid amendment under the terms of this Agreement.

c) Contractor may also assert that a material change in cost will result from implementing a Change Order, in which case Contractor's written response shall also include a description of the basis for the claimed change in cost, and indicate whether the change in cost should be recovered by Contractor as a one-time fee, an installment-type fee, or a change to the ongoing administrative cost.

d) Any such additional or increased payment(s) shall be an Equitable Adjustment. In all cases, the Parties agree that any Equitable Adjustment is intended to, and shall be calculated to, cover the increased cost that results from a Change Order, and to restore Contractor to its financial position prior to the Change Order. Any change in the cost pursuant to this section shall be billed and payable on succeeding invoice(s), as appropriate.

G.15 ORDER OF PRECEDENCE

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

a) This contract, or amendments to the contract;

b) Contractor's Proposal; and

c) The solicitation.

G.16 ACCEPTANCE OF CONTRACT

An individual with legal authority to bind the organization shall sign this Agreement below indicating acceptance of all provisions contained within this contract.

G.17 HIPAA PROVISIONS

In carrying out its HIPAA responsibilities, the Contractor shall comply with all of the following:

a) Use of Protected Health Information. Contractor shall not use, and shall ensure that its directors, officers, employees, sub-contractors and agents and representatives do not use Protected Health Information (PHI), within the meaning of 45 CFR § 160.103, in

any manner that would constitute a violation of the Health Insurance Portability and Accountability Act ("HIPAA"), or Title 45 Code of Federal Regulations, parts 160 and 164 (“Privacy Regulations” or “Privacy Rule”) if that use were made by HHS directly. Contractor (and others on its behalf) may only use PHI for the purpose of fulfilling its obligations under this Agreement with respect to treatment, payment, or health care operations for a plan or its enrollees; as required by law or as needed for proper management and administration and for the Contractor to carry out its legal responsibilities.

b) Disclosure of PHI. Contractor shall not disclose, and shall ensure that its directors, officers, employees, sub-contractors and agents and representatives do not disclose PHI in any manner that would constitute a violation of HIPAA or the Privacy Regulations if that disclosure were made by HHS directly. This provision applies to any third party, subcontractor, agent or employee of Contractor. Contractor (and others on its behalf) may only disclose PHI for the purpose of fulfilling its obligation under this Agreement with respect to treatment, payment, or health care operations for a plan or its enrollees; as required by law or as needed for proper management and administration and for the Contractor to carry out its legal responsibilities.

c) Reporting of Uses or Disclosures of PHI. Contractor shall, within ten (10) working days of becoming aware of a use or disclosure of PHI in violation of this Agreement by Contractor, its directors, officers, employees, sub-contractors and agents or representatives, or by a third party to which Contractor disclosed PHI pursuant to G.17(d) of this Agreement, report any such disclosure to HHS and the relevant health plan. Contractor shall also, following the discovery of a breach of unsecured PHI, notify HHS of such breach as provided in 45 CFR 164.410.

d) Agreements with Third Parties. Contractor shall enter into an agreement with any agent, subcontractor or representative that will have access to PHI to be bound by the same restrictions and conditions that apply to Contractor pursuant to this Agreement with respect to PHI.

e) Access to Information. In the event an individual requests access to PHI in a designated record set directly from Contractor (or where HHS forwards a request it receives to the Contractor), the Contractor shall provide the individual with access to the extent required under 45 CFR 164.524. Contractor shall meet all other access requirements in 45 CFR 164.524.

f) Availability of PHI for Amendment. Within ten (10) working days of receipt of a request for the amendment of an individual’s PHI in a designated record set, Contractor shall incorporate any such amendments in the PHI if required by 45 CFR section 164.526, and shall otherwise meet the requirements of 164.526.

g) Accounting for Disclosures. Within ten (10) working days of receipt of a notice by HHS (or an HHS contractor acting as HHS' agent) that HHS has received a request for an accounting of disclosures of PHI regarding an individual, Contractor shall make such information available to HHS (or its agent) so as to allow HHS or its agent to make the accounting required by 45 CFR section 164.528. At a minimum, Contractor shall provide

HHS or its agent with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Contractor, Contractor shall, within two (2) days of receipt of such request by Contractor, forward such request to HHS and the relevant health plan. It shall be the responsibility of HHS or its agent to prepare and deliver any such accounting requested. Contractor hereby agrees to implement an appropriate record keeping process to enable it to comply with this requirement.

h) Administrative Standards. Contractor shall implement the following administrative standards to ensure its compliance with the requirements of this Agreement to protect PHI in accordance with HIPAA and the Privacy Regulations:

1) Contractor shall designate a privacy official who is responsible for the development and implementation of the policies and procedures through which Contractor carries out its responsibilities to protect PHI under this Agreement.

2) Contractor shall train all members of its workforce engaged in work under this Agreement on the policies and procedures with respect to PHI as necessary and appropriate for them to carry out their functions. Such training shall be documented.

3) Contractor shall use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of protected health information to prevent use or disclosure of PHI in violation of the requirements of this Agreement, or federal or State law.

4) With respect to any protected health information that is transmitted by electronic media, or maintained in electronic media, Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity, and ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect such electronic protected health information, and report to HHS any security incident concerning such electronic protected health information of which it becomes aware at any time.

5) Contractor shall provide a process for individuals to make complaints concerning Contractor's compliance with the requirements of HIPAA and the Privacy Regulations. Contractor shall document all complaints received. Contractor shall not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against an individual for the filing of a complaint.

6) Contractor shall have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of

Contractor related to the protection of PHI and shall document the sanctions that are applied.

7) Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI in violation of its policies and procedures or the requirements of HIPAA and the Privacy Regulations.

i) Availability of Books and Records. Contractor hereby agrees to make its internal practices, books and records, including such practices, books, and records received from any source, relating to the use and disclosure of PHI, available to HHS for purposes of determining the compliance with HIPAA.

j) Definitions. The terms used in this Provision shall be defined as in 45 CFR parts 160 and 164.

k) Amendment. Upon the enactment of any law or regulation affecting the use and/or disclosure of PHI, or the publication of any court decision relating to any such law, or the publication of any interpretive policy, opinion or guidance of any governmental agency charged with the enforcement of any such law or regulation, HHS may, by written notice to Contractor, amend this Agreement to comply with such law or regulation, court decision or opinion. If Contractor agrees with any such amendment, it shall so notify HHS in writing within thirty (30) calendar days of the written notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, HHS may terminate this Agreement as provided herein.

l) Breach. Without limiting the rights of the parties pursuant to this Agreement, if Contractor breaches its obligations under this provision, HHS may, at its option: (a) exercise any of its rights of access and inspection under paragraph (i) of this Provision; (b) require Contractor to submit to a plan of monitoring and reporting, as HHS may determine necessary to maintain compliance with this Agreement, and such plan shall be made part of this Agreement; or (c) terminate this Agreement, with or without opportunity to cure the breach. HHS' remedies under this Section and any other part of this Agreement or provision of law shall be cumulative, and the exercise any remedy shall not preclude the exercise of any other.

m) Procedure Upon Termination. Upon termination of this Agreement, or partial termination, Contractor shall return or destroy all PHI that it maintains in any form and shall retain no copies of such information, if so directed by HHS. If the parties agree that return or destruction is not feasible, Contractor shall continue to extend the protections of this Agreement to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible. The respective rights and obligations of Contractor concerning the HIPAA Privacy Rule and its implementing regulations shall survive the termination of this Agreement.

n) Interpretation. Any ambiguity in this Agreement shall be resolved to permit HHS to comply with the Privacy Rule.

G.18 RECOVERED FUNDS AND NOTICE OF CLAIM OR SUIT

As stated in section B.4.13.4, above, Contractor will make reasonable efforts to recover any claim overpayment made on behalf of the high risk pool program, and further shall use reasonable efforts to recover other overpayments known to Contractor. Such overpayments may include, but are not limited to, duplicative claims payments, payments to an administrator or other subcontractor for services not actually performed or similar circumstances. To the extent such funds are recovered, Contractor will credit such funds to HHS. At the end of all contract performance periods, and after any necessary reconciliation, any recovered funds will be returned to HHS.

Contractor shall immediately notify HHS of any claim or suit made or filed against Contractor or its subcontractors regarding any matter resulting from or relating to Contractor's obligations under the Agreement, and will cooperate, assist, and consult with HHS in the defense or investigation of any claim, suit, or action made or filed against HHS as a result of or relating to Contractor's performance under this Agreement.

G.19 CENTRAL CONTRACTOR REGISTRATION

The Contractor shall be registered in the CCR database, which requires that:

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) HHS has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to HHS as a part of the CCR registration process.

(3) Although the term “Contractor” is used herein to designate the state high risk pool that is a party to this Agreement for the purpose of implementing Section 1101 of the Affordable Care Act in its home state(s), it is understood that this Agreement is in the nature of an intergovernmental agreement, and that this contract is not subject to the Federal Acquisition Regulation (FAR), except as otherwise specifically referenced herein. Furthermore, as a state entity, or as a state contractor acting pursuant to state law which establishes a high risk pool, it is understood that Contractor handles membership and claims operations pursuant to a contract with a third party administrator (as referenced more particularly in the proposal incorporated herein by reference), which imposes comprehensive requirements pertaining to the third party administrator’s qualification to engage in business based on compliance with all applicable state and federal laws, rules, and regulations, including those concerning minority business enterprises, small business utilization, wage and hour laws, workplace safety, and other similar requirements.

G.20 ORGANIZATIONAL CONFLICT OF INTEREST

The contractor shall notify the HHS of all situations involving organizational conflicts of interest. Such conflicts mean that because of other activities or relationships with other

persons, a person is unable or potentially unable to render impartial assistance or advice to HHS or the person's objectivity in performing the contract work is or might be impaired, or a person has an unfair competitive advantage.

G.21 WHOLE AGREEMENT

This contract and documents incorporated by reference in whole or in part, constitute the whole agreement of the parties. If any portion of the Agreement is found by a court or administrative forum of competent jurisdiction to be unenforceable, the remainder of the contract remains in full force and effect.

SECTION H – CONTRACT APPROVAL

The following officials are authorized to sign this contract and hereby mutually agree to the Whole Agreement:

For the Contractor:

_____ _____
Type in Name Date
Type in Title

For the Department of Health and Human Services:

_____ _____
E.J. Holland, Jr. Date
Assistant Secretary for Administration