

ATTACHMENT B

INDEPENDENT CONTRACTOR AGREEMENT
For Complex Case Management System

This Independent Contractor Agreement (“**Agreement Terms and Conditions**”) is entered into as of _____, 2014 (“**Effective Date**”) by _____, a _____ with a tax identification number of _____ and a DUNS number of _____ (“**Contractor**”) and the Idaho Health Insurance Exchange, an independent body corporate and politic established by Idaho Code § 41-6101 et seq doing business as Your Health Idaho (“**YHI**”).

- A. YHI was established to implement an Idaho health insurance exchange, and has provided a Request for Proposals dated May 4 , 2015 for Complex Case Management System (“**CMS Services**”) , which has been posted at the following website: <http://www.yourhealthidaho.org/about-us/doing-business-with-your-health-idaho/procurement-policies-rfps-and-open-positions/> (the “**RFP**”).
- B. Contractor provides CMS Services, and submitted a proposal in response to the RFP (the “**Proposal**”).
- C. After a competitive process, and based on the Proposal and the representations made by Contractor therein, YHI selected the Proposal, and the parties desire to set forth in this Agreement the terms upon which they have agreed for Contractor to provide SAR services.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Contract. The contract between the parties (this “**Agreement**”) consists of the provisions set forth in these Agreement Terms and Conditions, any modification of the Proposal agreed to by the parties, the Proposal and the RFP. In the event of any conflict (provided that the provisions of this Agreement will as much as practicable be interpreted not to be in conflict), the provisions of these Agreement Terms and Conditions control over any other conflicting provisions, any modification of the Proposal agreed to by the parties controls over the provisions of the Proposal, and the provisions of the Proposal control over any conflicting provisions of the RFP. The purpose of this Agreement is the “**Project.**” Contractor represents and warrants that the information in the Proposal is on the Effective Date true, accurate and complete.

2. Engagement.

a. Subject to the terms of this Agreement, YHI hereby engages Contractor to perform, and Contractor hereby agrees to perform, the services (collectively, “**Services**”) described in this Agreement. Services will be provided by Contractor according to the terms of this Agreement, including the scope, schedule, budget and other requirements set forth herein. Services will only be directly provided by the personnel listed in this Agreement, and by no other person or through any other entity, except as agreed in writing by YHI in advance, not to be unreasonably withheld (for clarity, indirect efforts supporting the individuals directly providing the Services are not subject to this requirement). YHI may require any Contractor personnel to immediately and permanently leave YHI’s premises. YHI also may require Contractor to promptly replace an individual performing Services under this Agreement if, in YHI's opinion, the person does not meet the qualifications for the task assigned, or for any other reason.

b. During the Project initiation, Contractor and YHI will develop a mutually agreed upon work schedule consistent with the terms of this Agreement and the milestones and deadlines set forth herein, including the division of responsibility between YHI's staff and Contractor's staff (to the extent not set forth in this Agreement). The Project work schedule must be in place prior to any work being performed. Once the parties agree on the Project work schedule, which will identify specific time frames and deliverable target dates for this Project, the Project work schedule will become incorporated into and made part of this Agreement. The dates in the work schedule will define the agreed upon period of performance, subject to the terms of this Agreement. The work schedule may evolve and change from time to time with the written agreement of both parties, subject to YHI’s rights under Section 3. The Deliverables and schedule set forth in the latest version of the work schedule determined in accordance with this Section and Section 3 will take precedence over any prior plans.

c. Except as expressly provided in this Agreement and as otherwise agreed by YHI, Contractor will provide all facilities, equipment and services it requires to perform Services and comply with this Agreement, such as office space, computers, software, telephones, internet access and any other items or information of any nature, and Contractor will have all rights to software and other items used by Contractor necessary to lawfully use the same under this Agreement. YHI agrees that it will provide limited office space as available, and will provide wireless internet connectivity for Contractor personnel.

d. All Deliverables are subject to acceptance by YHI and any acceptance criteria established by the parties in or under this Agreement.

e. The Executive Director of YHI may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the Services. This stop order will be for a specified period not exceeding ninety (90) days after the stop order is delivered to the Contractor, unless the parties agree to any further period. Any such stop order will be identified specifically as a stop work order issued pursuant to this Section. Upon receipt of such an order, the Contractor will forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties will have agreed, the Executive Director will either: cancel the stop work order; or terminate the Services in whole or part as permitted herein. If the stop work order is cancelled, an appropriate adjustment will be made in the delivery schedule or Contractor price, or both, and this Agreement will be modified in writing accordingly, if (a) the stop work order results in an increase in the time required for the performance of any part of this Agreement, and (b) the Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Executive Director of YHI decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order will be allowed by adjustment or otherwise.

3. Changes. YHI may request in writing any change in Services. Within five (5) days of each such request, Contractor will provide in writing a description of the feasibility of the change and the necessary effect of such change on the Services, Deliverables, schedule and Contractor Fees, and a reasonable explanation for such changes such as the additional time, or reduction in time, to be required by such change. The change will be made by Contractor to the extent agreed by YHI in writing after receiving Contractor's written description, and this Agreement will be modified accordingly; provided that if the parties do not agree otherwise, the actual hours directly added or subtracted as a result of the change will be valued at the rates set forth in the Proposal. The parties may agree on additional Services outside the scope of this Agreement through one or more Statements of Work executed by the parties, the terms of which are incorporated into and made a part of this Agreement upon such execution, and if the parties do not agree otherwise, such additional Services will be provided at the rates set forth in the Proposal to the extent such rates cover such additional Services, and if not, then rates that are proportional to the rates set forth in the Proposal.

4. YHI. YHI will provide direction and requirements to Contractor, and as reasonably requested, information, documents, approvals, acceptance and other decision making relating to the provision of Services by Contractor hereunder

5. License. Contractor may be provided by or on behalf of YHI with access to, or possession of, software and related documentation, data, and other materials under this Agreement ("**Licensed Materials**"). Contractor is hereby granted the limited right during the Term to have its employees and permitted subcontractors use Licensed Materials solely to perform its obligations under this Agreement and not for any other purpose. Contractor will not make any copies of Licensed Materials without the consent of YHI, will comply with all terms and conditions governing use of Licensed Materials the relevant terms of which YHI has communicated to Contractor, whether imposed by YHI, the licensor or any third party, and will return Licensed Materials on request from YHI or upon completion of the Services for which such Licensed Materials were provided to Contractor.

6. Contractor Compensation and Expenses.

a. Compensation. Subject to compliance with this Agreement, Contractor will receive the fees ("**Contractor Fees**") set forth in the Proposal according to the payment schedule set forth in the Proposal as full compensation for the Services, and Contractor will not be due any other payments under this Agreement or otherwise relating to the Services or the Project, except as changed in accordance with Section 3. Additional Services agreed to by the parties on a time and materials basis will be provided at the rates set forth in the Proposal. The Contractor certifies and

represents that the prices submitted in response to the RFP have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

b. Expenses. Except as set forth otherwise in this Agreement, all expenses incurred by Contractor in providing the Services will be borne by Contractor, and YHI will not be responsible for any of such expenses. The parties may agree in writing to certain expenses that will be reimbursed by YHI (“**Expenses**”). Expenses agreed by YHI to be reimbursed will only be reimbursed to the extent actually paid by Contractor, net of any discounts, credits or other value received by Contractor in connection with such Expenses. Travel related Expenses which the parties have agreed will be reimbursed will be reimbursed according to YHI’s then current travel reimbursement policy, a copy of which will be provided to Contractor on request. Submission of an invoice for Expenses is a representation by Contractor that the invoiced amount was actually incurred by Contractor and under the terms of this Agreement Contractor is due reimbursement of the amount invoiced.

7. Invoices and Payments. If Services are on a time-and-materials basis, Contractor will submit invoices describing for each day by each authorized person the specific time spent on each separate item or topic worked on, as directed by YHI. All Contractor Fees will be invoiced within sixty (60) days of performance of the Services upon which they are based, and all Expenses will be invoiced within sixty (60) days of being incurred, and only so long as the invoice therefor is accompanied by copies of actual receipts. Submission of an invoice is a representation by Contractor that it is true and complete, and any time for the period covered by the invoice that are not included therein will not be paid by YHI. If Services are on a fixed-price basis, Contractor will invoice YHI in accordance with this Agreement. Undisputed amounts will be paid within forty five (45) days of receipt by YHI of a proper invoice, subject to the terms of this Agreement. If YHI is unable to pay because of cash flow limitations arising from YHI’s reliance on release of federal grant funds to pay Contractor, this period will be extended. A proper invoice will contain the billing detail required by YHI and all supporting documentation, including actual receipts for all approved Expenses for which reimbursement is sought by Contractor hereunder. The Contractor will submit an original invoice and one copy for services performed to:

Ethan Owen, CIO & IT Director
Your Health Idaho
1010 West Jefferson Street
Suite 104
Boise, Idaho 83702

8. Taxes and other Charges. Contractor Fees and Expenses are the total amount due to Contractor, and the Contractor is responsible for paying all taxes and other charges, and making all withholdings, relating thereto and otherwise relating to the Services, its business and payments by Contractor to any other person or entity, and Contractor will file all documents, pay all amounts and otherwise comply with all government requirements relating thereto. YHI makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

9. Audit Rights. The Contractor will maintain appropriate detailed books and records to document its performance and amounts invoiced under this Agreement, and such books and records will be readily retrievable by the Contractor within three (3) workdays. During the Term and for at least seven (7) years thereafter (and thereafter during the term of any ongoing audit, investigation or lawsuit, including appeals and reviews thereof), YHI, CMS, HHS and any other government agency with appropriate jurisdiction may at any time during normal business hours enter the premises of the Contractor and its subcontractors or such other places where duties under the contract are being performed to inspect, monitor, or otherwise evaluate the work being performed and to audit, inspect and copy the books, records, systems and operations of Contractor relating to its performance of Services and its invoices relating thereto, including those of its subcontractors. YHI will conduct any such inspection and audit in a manner that does not unduly delay the Contractor’s work. Contractor will reimburse YHI for any overpayments demonstrated by such audit or inspection, and if such audit or inspection identifies overpayments of more than five percent (5%) of the total amount invoiced during the period subject to such audit or inspection, or reveals a material breach of this Agreement not previously disclosed to YHI, Contractor will also reimburse YHI for the reasonable actual costs of its audit. Contractor will maintain reasonable documentation regarding its performance of Services.

10. Warranties. Contractor hereby represents, warrants and agrees that at all times during the Term: (a) Contractor has, and any personnel providing Services have, or will have when required hereunder, all licenses and permits required for it to provide the Services, and performance under this Agreement will not violate or be restricted in any

material manner by any agreement to which Contractor or any of its employees or subcontractors are bound, (b) it is currently active, in good standing and qualified in all applicable jurisdictions to conduct its business as it is presently conducted and of sufficient financial solvency to assure YHI of its ability to perform its obligations under this Agreement, (c) it will remain in compliance with all requirements applicable to its existence and activities, and it has the experience, personnel and financial resources to provide the Services according to the terms of this Agreement, (d) there are no claims, demands, investigations, lawsuits or other matters pending against Contractor, its employees, owners or others that could materially adversely impact Contractor's ability to provide the Services, (e) the Services will be performed promptly in good faith, in a professional manner, and at a professional level of quality, according to good industry practices (as used in this Agreement, the relevant industry is well-run state-based health insurance exchanges), and in compliance with all laws, regulations, codes, ordinances, and other binding government requirements, including all requirements, guidance and policies of CMS, HHS and any other government agency, and federal law regarding health exchanges ("Laws") and the terms of this Agreement and any other contract to which Contractor is a party related to this Agreement or to which YHI is a party and the relevant terms of which YHI has communicated to Contractor, (f) all Services when performed and any items delivered by Contractor, such as specifications, programs, code, notes, documentation, documents, designs, plans, information, or other items of any nature tangible or intangible (collectively, "Deliverables") will, except as agreed to in writing by YHI in advance, be the original work of Contractor with no third party materials included in such Deliverable, and will for one hundred eighty (180) days after acceptance, or such other period agreed to by the parties in writing, have no defects and comply in all respects with all specifications, designs, drawings, plans, material lists, acceptance criteria and other requirements and documents included or described in this Agreement or otherwise agreed to by Contractor and YHI, and all Laws and good industry standards, (g) all Services will be provided solely by Contractor and any subcontractors approved by YHI in this Agreement or in writing (for clarity, indirect efforts supporting the individuals directly providing the Services are not subject to this requirement), and all Services will be performed in the United States and no YHI Confidential Information will be stored, or accessed, outside the United States, (h) regardless of whether Contractor will be reimbursed hereunder for any of such amounts, Contractor will timely pay and make proper filings relating to all taxes and other government charges due based on its provision of the Services, its payments to its employees and contractors, the conduct, revenue and profits of its business and otherwise, (i) Contractor will not act or fail to act in any way that results in a lien in favor of any party on any property of YHI, and if any such lien arises, it will immediately take all actions necessary to remove such lien at no cost to YHI, (j) Contractor will promptly provide notice to YHI of any change in circumstances that may adversely impact the Services and of any claim made against Contractor or YHI, or any third party that may have an adverse impact on YHI or its activities, (k) upon delivery, except as provided otherwise herein, YHI will own all right, title and interest in and to each Deliverable free of any claims or encumbrances of any nature, (l) Services, including all Deliverables, and the use of each Deliverable as reasonably contemplated by YHI, will not infringe upon, misappropriate or violate the rights of any third party, including IP Rights, and any other rights arising at Law, in equity or otherwise, (m) Contractor will not violate any rights of YHI, including the IP Rights, the rights of YHI under Section 18 relating to YHI Confidential Information, and any other rights set forth in this Agreement or provided at Law, in equity or otherwise, (n) Deliverables have not been created with and do not contain or require for their operation any free or open source software except as agreed to in writing in advance by YHI, and in any event are not subject to any license terms requiring any Deliverable or other YHI software, data or other property to be made public or licensed to any third party without the consent of YHI, (o) no Deliverables or electronic communications from Contractor will contain any computer virus, worm, Trojan, timebomb, logic bomb, backdoor, exploit, keylogger, timer, infector, instruction, routine, rootkit, surveillance software, disabling code, or other malware or malicious code intended to or that does cause the computers or systems of YHI or any third party to fail to act properly or to function in an unintended manner or permit access to such computers or systems by any person, computer or process not intended by YHI.

11. Corrections. Without limiting the rights of YHI in any way, upon notice by YHI of any failure of Contractor to meet its obligations under this Agreement, Contractor will within seven (7) days (not including delays outside the reasonable control of Contractor), or such other period set forth in this Agreement, at no cost to YHI correct such failure and all damage caused by such failure. If Contractor does not correct such failure or damage within such period, YHI may contract with another contractor to correct such failure or damage and deduct the cost of such contract from amounts otherwise owing to Contractor hereunder, and Contractor will on request from YHI pay the difference to YHI, if any.

12. Employment and Contracting Practices.

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age, marital status, political affiliations, or disability. The Contractor must act affirmatively to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age, marital status, political affiliation, or disability. Such action will include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor will comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor will also comply with the Civil Rights Act of 1964 and related State laws and regulations, if any. If YHI finds that the Contractor is not in compliance with any of these requirements at any time during the term of this Contract, YHI may take such steps as it deems appropriate, in its sole discretion, considering the interests and welfare of YHI.

b. YHI encourages the employment of small business and minority business enterprises. Therefore, the Contractor will report, separately, the involvement in this Agreement of small businesses and businesses owned by minorities and women. Such information will be reported on an invoice annually on the Effective Date anniversary and will specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this Agreement.

13. Offset. YHI may offset any amount owed to Contractor against any amounts Contractor owes to YHI.

14. Subcontractors. Contractor will only directly provide Services through employees and only those subcontractors expressly set forth herein or approved in writing in advance by YHI (for clarity, indirect efforts supporting the individuals directly providing the Services are not subject to this requirement). Contractor is responsible for the actions and omissions of each subcontractor and its personnel as though they were employees of Contractor, and references to Contractor in this Agreement include all of such personnel. Contractor will obtain from each subcontractor written agreement to substantially the same provisions of this Agreement (other than terms relating to payment) as though each was Contractor. Upon request from YHI, Contractor will provide copies of all such agreements to YHI, but may redact the payment terms therein. To the fullest extent practicable, Contractor will enter into contracts with businesses conducting business in Idaho and employing citizens of Idaho to staff and provide support and other services for the YHI. Each of the Contractor's subcontractors will submit to the Contractor evidence or other documentation from the State Tax Commission, State of Idaho, showing that all delinquent taxes, if any, levied or accrued under State law against the subcontractor have been paid. The Contractor will provide YHI immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor, and prompt notice of any claim made against the Contractor that may result in litigation related in any way to this Agreement. The Contractor will designate itself as the sole point of recovery for any subcontractor. Any use of subcontractors by the Contractor will not obligate YHI as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against YHI, its agents, employees, representatives, or successors.

15. Nonexclusivity. This Agreement is not exclusive. Contractor may represent others in any capacity and perform services for others, except as set forth in this Agreement otherwise and except that if this Agreement provides that any efforts of any personnel are full-time, then to that extent such personnel will not during the Term perform services for others. YHI may in its discretion hire others in addition to or in lieu of Contractor, without any restriction or obligation to Contractor.

16. Term and Termination.

a. The “**Term**” of this Agreement will begin on the Effective Date and continue until the earliest to occur of completion of all Services or termination under the terms of this Section. The parties intend that the Services will be performed on the schedule described in the RFP; if the Services are not completed within such time, at the written request of YHI, the Term will be extended for six (6) additional months. Thereafter, the Term will renew to the extent the parties agree in writing on any such renewal.

b. Either party may terminate this Agreement if the other party breaches any of its obligations hereunder and fails to cure such breach within seven (7) days after notice from the non-breaching party.

c. YHI may terminate this Agreement, in whole or in part, in the event that the Contractor will cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or

permit the appointment of a receiver for its business or its assets or will avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights or creditors. YHI may terminate any or all Services without any reason on at least ten (10) days advance written notice.

d. The parties understand that the YHI is an independent body corporate and politic established by Idaho Code § 41-6101 *et seq.* According to Idaho law, YHI will be financially self-supporting and will not request any financial support from the State of Idaho and will not have the power to tax or encumber assets of the State of Idaho. The obligations of YHI are not those of the State of Idaho. It is expressly understood and agreed that the obligation to proceed under this Agreement is conditioned upon YHI's receipt of federal funds. YHI may terminate this Agreement pursuant if sufficient federal funds are not received as anticipated by YHI.

e. On termination other than for the uncured material breach by Contractor, (a) Contractor will be due Contractor Fees for Services prior to termination and reimbursement of Expenses incurred prior to termination, and YHI may condition final payment on execution by Contractor (and any other applicable person or entity) of a release of all claims relating to YHI and the Services, and any certificates of originality or other documents required by YHI documenting its ownership of all Deliverables and IP Rights therein, (b) Contractor will immediately deliver to YHI or, if directed by YHI, to a third party, all work then in process, and (c) Contractor will provide reasonable assistance requested by YHI to transition each Project, including execution of documents, and to the extent requested, assignment of subcontracts to another Contractor (and Contractor hereby appoints YHI its attorney in fact to execute such documents and assign such subcontracts). The obligations under the following Sections of this Agreement will survive termination of this Agreement for any reason whatsoever: 5, 7-14, 16-20, and 23.

17. Insurance. Contractor will maintain commercially reasonable insurance coverage, including all insurance required by Law, and will comply with the provisions of Exhibit 1.

18. Grants and other Requirements. Contractor acknowledges that payments made by YHI under this Agreement will be paid out of funds from one or more grants (the "**Grants**") from the Centers for Medicare and Medicaid Services ("**CMS**") within the U.S. Department of Health and Human Services ("**HHS**") and may be funded by other financial sources. YHI will provide a copy of each Grant to Contractor at its request. The provisions of each Grant required to be included in this Agreement, and the provisions of federal law required by each Grant to be flowed through to Contractor as obligations under this Agreement, and any other provisions of federal or state Law binding on Contractor because it is paid out of Grant funds, any other provisions arising from any other source of funds for YHI, and any Laws applicable because of YHI's activities including the operation of a health insurance exchange, are hereby incorporated into and made a part of this Agreement, and control over any conflicting provisions, and Contractor will comply with all of such requirements. Without limitation, the Contractor will comply with the federal contract clauses set forth in Exhibit 2. The Contractor agrees that all work performed as part of this Agreement will comply fully with administrative and other requirements established by federal and state laws, regulations, and guidelines, and assumes responsibility for full compliance with all such laws, regulations, and guidelines, and agrees to fully reimburse YHI for any loss of funds, resources, overpayments, duplicate payments, or incorrect payments resulting from noncompliance by the Contractor, its employees, contractors, or agents.

19. Confidential Information, Security and Recovery.

a. Confidential Information. Subject to the terms of this Agreement, all nonpublic confidential or proprietary information of each party, in any form whatsoever, whether oral, written or otherwise (collectively, a party's "**Confidential Information**"), including any information relating to software, source code, object code, services, products, technology, personnel, methodologies, practices, business, finances, pricing, ownership, plans, documents and documentation, profits, policies and procedures, customers, employees, or otherwise, is the Confidential Information of the party disclosing such information hereunder ("**Disclosing Party**," and the party receiving such information hereunder is the "**Receiving Party**"). All Confidential Information in each Deliverable is the Confidential Information of YHI. All information received by YHI through its health insurance exchange or in connection therewith that identifies any individual or that relates to an identified or identifiable person is "**Personal Information**," and all Personal Information is YHI Confidential Information. Any document or written communication provided by Contractor to YHI, either in hard copy or in electronic form, will be marked as "Confidential" or "Proprietary" if it contains Contractor Confidential Information, and if not so marked the information therein will not be Contractor Confidential Information. Information disclosed verbally to YHI that is Contractor Confidential Information will be confirmed by Contractor in writing within fifteen (15) days after such disclosure, describing in reasonable detail the

Contractor Confidential Information so disclosed, and any information not included in such description will not be Contractor Confidential Information. Notwithstanding anything to the contrary herein, Deliverables do not contain any Contractor Confidential Information.

b. General Obligations. In the course of providing the Services, Contractor or YHI will acquire the other party's Confidential Information. Each party will hold in confidence the other party's Confidential Information, not use Confidential Information for purposes other than for its performance under this Agreement and not disclose Confidential Information to any third party except those authorized and who have agreed in writing to be bound to confidentiality provisions no less restrictive than those in this Section 18. Contractor will not use or bring onto the premises of YHI any proprietary or confidential information of any third party without the written agreement of YHI. The Parties will employ good industry practices, and abide by Federal and state regulations to maintain the confidentiality of Confidential Information in accordance with the requirements of this Section 18. Contractor will also comply with the policies of YHI regarding its Confidential Information provided in advance in writing by YHI. Any Contractor Confidential Information provided by Contractor in accordance with this Section 18 will only be used by YHI in connection with its business activities, and YHI will not disclose Contractor Confidential Information to any third party except those who have agreed in writing to be bound to confidentiality provisions no less restrictive than those in this Section 18 applicable to YHI, except as YHI is required to disclose otherwise.

c. Unauthorized Acts. Upon actual knowledge by Receiving Party of any unauthorized possession, use or knowledge of Confidential Information ("**Unauthorized Act**"), Receiving Party will at no cost to Disclosing Party: (a) notify Disclosing Party promptly of the details of the Unauthorized Act, (b) use reasonable efforts to assist Disclosing Party in investigating, and preventing the recurrence of the Unauthorized Act within its responsibilities under this Agreement, and (c) use reasonable efforts to cooperate with Disclosing Party in any litigation and investigation against third parties deemed necessary by Disclosing Party to protect its Confidential Information. If the Unauthorized Act was caused by the breach of this Agreement or the negligence or willful misconduct of Disclosing Party, Disclosing Party will at its expense, mitigate to the extent practicable the adverse effects of the Unauthorized Act and provide any notices required by applicable Law, after approval by the Disclosing Party of the content of each notice.

d. Excluded Information. Even if marked as confidential, the obligations in this Section 18 will not apply to information other than Personal Information that is generally available to or known to the public, known by the Receiving Party without obligation of confidentiality before the negotiations leading to this Agreement as demonstrated by the Receiving Party's written records, independently developed by Contractor outside the scope of this Agreement as demonstrated by Contractor's written records, or lawfully disclosed to Contractor without restriction by a third party having the right to make the disclosure or required to be publicly disclosed to a tribunal. In the case of required disclosures by Contractor to tribunals, Contractor will promptly notify YHI and at no charge to YHI fully assist (but not itself pursue) YHI to obtain protective orders maintaining the confidentiality of the information.

e. Return of Confidential Information. Promptly upon expiration or termination of this Agreement, or, as to Contractor, earlier if requested by YHI, except as otherwise directed, Receiving Party will return, erase or destroy all Confidential Information of the other party in its possession or control, including Confidential Information stored in any computer memory or data storage apparatus, and, at Disclosing Party's request, provide a certification that Receiving Party retains no YHI Confidential Information in any form whatsoever. Notwithstanding the foregoing, in the event it is not reasonably feasible to retrieve and destroy Confidential Information on the Receiving Party's system, the Receiving Party will retain the Confidential Information in compliance with its record retention policies and in conformance with the terms of this Agreement until it is destroyed.

f. Ownership. All Deliverables and any idea, invention, information, data, work of authorship, document, or design created by or for Contractor under this Agreement, and any patent, copyright, trade secret, confidentiality, moral, authors or other rights of any nature whatsoever arising from or relating in any way thereto (collectively "**IP Rights**"), will be owned by YHI, except Contractor will retain the perpetual right to use and create derivative works from its templates and notes on use pre-existing this Contract, specifically not including any of YHI's Confidential Information, and Contractor will promptly and at no cost to YHI take all efforts requested by YHI to document and assist (but not itself pursue) YHI in perfecting such ownership of all IP Rights by YHI. Contractor hereby appoints YHI its attorney in fact to complete such documents and take such actions as YHI determines to document and perfect such ownership of such items. Contractor will not have any right to (i) Deliverables, except Contractor's right to use and create derivative works from its templates and notes on use, (ii) IP Rights, or (iii) YHI Confidential Information

or the trademark, logos or other property of YHI. Contractor will not use, register or apply for any name, logo, URL or trademark the same or confusingly similar (as provided under applicable Law) to any name, logo, URL or trademark used by YHI (but nothing herein obligates Contractor to cease using a name, logo, URL or trademark it was using prior to the time first used by YHI). For clarity, nothing contained in a Deliverable is Contractor's Confidential Information and YHI is not required to maintain any Deliverable in confidence, but each Deliverable contains YHI Confidential Information and will remain YHI Confidential Information as long as YHI determines and takes appropriate steps therefor.

g. Infringement. If a demand, claim, lawsuit or proceeding is made or pending alleging that any Deliverable infringes, misappropriates or violates the intellectual property rights or other rights of any third party, the Contractor will at no cost to YHI modify the Deliverable so that it functions substantially the same but does not violate any such rights or obtain the legal right for YHI to use the Deliverable for its business purposes; provided that if after best efforts the Contractor is unable to do either of the foregoing, it will then refund the amount paid by YHI for the Deliverable, determined equitably based on the amount of effort that such Deliverable required by the Contractor.

h. Security. The Receiving Party will implement and maintain at all times during the Term appropriate administrative, technical and operational safeguards consistent with good industry practices and applicable law, but not less than reasonable care, to ensure the security, confidentiality and integrity of all of the Disclosing Party's Confidential Information in the possession or under the control of the Receiving Party. To the extent Contractor is a business associate of YHI under the Health Insurance Portability and Accountability Act of 1996 and the regulations thereunder (as amended from time to time, "HIPAA"), Contractor will comply with all requirements of HIPAA applicable to a business associate and will execute YHI's Business Associate Agreement, the terms of which are incorporated into and made a part of this Agreement.

i. Disaster Recovery. Contractor will implement and maintain at all times during the Term a disaster recovery and business continuity plan consistent with good industry practices and applicable law, and any other provisions set forth in this Agreement relating thereto, to recover its operations relevant to this Agreement and enable it to perform Services following any disaster that causes it to lose the use of its facilities, equipment, systems, personnel or other items.

j. Personal Information. Contractor will comply with the privacy and security standards and related definitions set forth in Appendixes 1 and 2, which are incorporated into and made part of this Agreement and all federal, state and local laws protecting the privacy, security or integrity of Personal Information

20. Indemnification.

a. The Contractor agrees to indemnify, defend (with counsel acceptable to the indemnified party), save, and hold harmless YHI, the State of Idaho, their officers, agents, employees, representatives, assignees, and contractors (each is an "indemnified party") against any and all liability, loss, damage, costs, or expenses that YHI may sustain, incur, or be required to pay: (1) arising from or relating to any and all claims made by or on behalf of any person or entity based on the actions or omissions of Contractor in the performance of this Agreement; (2) by reason of any person suffering personal injury, death, or property loss or damage of any kind either while participating with, or receiving services from, the Contractor under this Agreement, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the Contractor or any officer, agent, or employee thereof; (3) by reason of the Contractor or its employee, agent, or person within its scope of authority of this Agreement causing injury to, or damage to the person or property of a person including, but not limited to, YHI or the Contractor, their employees or agents, during any time when the Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this Agreement, (4) infringing, misappropriating or violating any copyright, patent, trademark, trade secrete or other intellectual property right of any nature; or (5) breaching any Law, including confidentiality or privacy obligations required pursuant to federal and state Law and regulations, and including HIPAA, ACA and other Laws administered or enforced by HHS; (6) arising from a breach of this Agreement by or on behalf of Contractor, including any breach by its employees, contractors and agents; and (7) arising from the negligence or willful misconduct of the Contractor, its employees, contractors and agents.

b. Upon demand by an indemnified party, the Contractor will assume at its sole expense the defense of a claim for which the Contractor is obligated to provide indemnification under Section 20.a. YHI and any other indemnified party will have the right to participate at its own expense in the defense of any indemnified claims. The Contractor will not settle any such indemnified claim without the approval of the indemnified party subject to the claim, which

approval will not be unreasonably withheld. The Contractor will not make any admissions on behalf of any indemnified party.

c. If, in the reasonable judgment of YHI, a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by YHI or by another resource without unduly interfering with the continued performance of the Contractor, YHI may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor will reimburse YHI for the cost of those services. YHI may deduct the cost of those services from the Contractor's monthly invoices. The Contractor will cooperate with YHI or those procured resources in allowing access to facilities, equipment, data, or any other Contractor resources to which access is required to correct the default. The Contractor will remain liable for ensuring all performance required under this Agreement.

21. Contractor Cooperation. In connection with its performance under this Agreement, Contractor will promptly execute or obtain the execution of documents and take such actions as reasonably requested by YHI to accomplish the intentions of the parties under this Agreement.

22. Independent Contractor. The parties intend to create an independent contractor relationship and nothing contained in this Agreement will be construed to make Contractor or any of its employees or subcontractors the partner, joint venturer, principal, agent, or employee of YHI. Contractor will have no right to and will not take any actions to obligate YHI in any way. Subject to the requirements of this Agreement, Contractor will determine the daily work schedule, method, details and means of performing the Services, and will be responsible for all training, education and materials and supplies, and all supervision of Contractor's personnel.

23. Miscellaneous.

a. **Negotiated Terms.** The provisions of this Agreement are the result of negotiations between the parties, and this Agreement is being signed after each party has had the opportunity to consult with legal counsel. Each party has read and carefully considered the terms of this Agreement, and agrees that the terms of this Agreement are fair and reasonable. This Agreement will not be construed in favor of or against any party by reason of the extent to which any party participated in the preparation of this Agreement.

b. **Assignment.** Contractor will not assign or transfer this Agreement or delegate any of Contractor's obligations hereunder without the prior consent of YHI, not to be unreasonably withheld, and any purported assignment, transfer or delegation without such consent is void, of no effect and a breach of this Agreement. If Contractor is a legal entity, a change in ownership of more than fifty percent (50%) of the voting equity of Contractor, or a change in the right to control or direct the management of Contractor, is an assignment hereunder. This Agreement is binding on the parties hereto and their respective successors and permitted assigns.

c. **Counterparts, Certain Terms.** This Agreement may be executed in any number of counterparts, all of which taken together will constitute one agreement between the parties. The term "**including**" means by way of example and not of limitation. The term "it" means he, she or it as the context requires.

d. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, it will be deemed to be modified to the minimum extent necessary to be valid and enforceable. If it cannot be so modified, it will be deleted and the deletion will not affect the validity or enforceability of any other provision unless, as a result, the rights of either party are materially diminished or the obligations and burdens of either party are materially increased so as to be unjust or inequitable.

e. **Entire Agreement.** This Agreement represents the entire agreement between the parties regarding the provision by Contractor of services to YHI, and supersedes and terminates any prior communications, representations, understandings, or agreements between the parties relating to such subject matter. No amendment to, or change, or discharge of, any provision of this Agreement will be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, or discharge is sought to be enforced. No delay or omission by either party to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

f. **Discretion and Notices.** Any decision, consent, approval or other action that may be taken by YHI hereunder is left to the sole discretion of YHI to determine whether and to what extent it will do so, except to the extent YHI is specifically required to take or refrain from acting under the express terms of this Agreement. All notices, requests, approvals, and consents and other communications required or permitted under this Agreement will be in writing, sent

to the other party at the following address by certified or registered mail, return receipt requested, or Express Mail, Federal Express, or other, similar overnight mail delivery services, or delivered by hand or transmitted by confirmed fax. Notice will be effective on the date of receipt. Either party may change its address or fax number for notification purposes by giving the other party notice of the new address or fax number.

YHI: Idaho Health Insurance Exchange
dba Your Health Idaho
Ethan Owen, CIO & IT Director
1010 West Jefferson Street
Suite 104
Boise, ID 83702

Phone: 208-991-4955

Contractor:

Phone: Fax:

g. Disputes. This Agreement will be construed in accordance with and be governed by the laws of the State of Idaho applied to contracts entered into and to be performed in Idaho and excluding choice or conflict of law principles. Any provision of this Agreement in conflict with the Affordable Care Act (“ACA”) or other federal or state Law, or CMS or HHS policy guidance is hereby amended to conform to the provisions of such Laws. Any dispute arising under or relating to this Agreement will, except as set forth in the next Section, be resolved exclusively in the courts located in Ada County, Idaho, and each party agrees to the subject matter and personal jurisdiction and venue of such courts for all such disputes. The prevailing party in any legal action relating to or arising from this Agreement will be entitled, in addition to any other remedy or relief, to recover its reasonable attorneys fees and actual expenses relating thereto, whether or not incurred prior to, in connection with litigation, on appeal, discretionary review or otherwise. So long as Contractor receives payment of amounts invoiced by it hereunder that are not disputed in good faith by YHI, except as otherwise agreed by YHI, Contractor will continue performing all of its obligations hereunder notwithstanding any dispute between the parties.

h. Cumulative Remedies; Equitable Relief and Specific Performance. Except as otherwise provided, the rights and remedies in this Agreement are cumulative and in addition to any other remedies available at law, in equity or otherwise, all of which may be pursued concurrently or consecutively. The parties agree that a breach by Contractor of its obligations under the following Sections will cause YHI to suffer irreparable harm for which damages will not be an adequate remedy: Sections 5, 9, 14, 16, 18-20, and 23.b and h. For the actual or attempted violation of the Sections listed in the preceding sentence, YHI may obtain temporary, preliminary and permanent equitable relief and specific performance without the posting of bond or security, or if required, then the minimum bond or security required.

i. Timeliness. Time is of the essence of Contractor’s obligations under this Agreement. For each day that the Security Assessment Report Deliverable meeting the requirements of this Agreement is late, the Contractor will be liable for liquidated damages in the amount of \$2,500 per day until that Deliverable is delivered in a form that meets the requirements of this Agreement. The parties agree that such liquidated damages are a reasonable estimate of damages that are difficult to estimate, and are not a penalty. YHI may elect not to receive such liquidated damages, and instead recover actual damages it incurs because of such late delivery.

j. Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond the reasonable control of the party, so long as the party uses all reasonable efforts to avoid and minimize such delay or failure, and provided that unavailability of employees or contractors of the party is not an excuse under this Section.

k. Background Check. Contractor will at its expense conduct a background check of its personnel prior to their commencement of work on the Services, and thereafter as required by applicable Law or the regulations promulgated by, or other requirements of, the U.S. Department of Health and Human Services. Contractor will not permit any person who has been convicted of any crime or is the subject of an arrest warrant to be assigned to perform Services without the advance written approval of YHI. If Contractor or any person performing Services is later subject to any criminal charges, Contractor will immediately notify YHI in writing and remove such person from performing the Services, except as YHI agrees otherwise in writing.

I. Debarment from Federal Contracts and Termination. Contractor represents and warrants that except to the extent approved in writing by YHI under Section 23.k, during the Term, neither Contractor nor any of Contractor's owners and officers, or those employees, agents, contractors, or subcontractors providing Services have been convicted of any criminal offense or found culpable in any civil action of a tort involving violence, dishonesty or wrongfully taking any property, or listed by any state or federal agency as debarred, suspended or excluded from providing services to any agency or from eligibility for any government program, contract or other matter. Contractor represents that on the Effective Date there are no notices, claims, demand or proceedings pending or threatened that could cause a breach of the preceding sentence, and agrees that it will promptly notify YHI in writing if (i) any such notice, claim, demand or proceeding is issued or commenced that could cause a breach of the preceding sentence, or (ii) there is any breach of the preceding sentence. The Contractor represents and warrants that no elected or appointed officer or other employee of the federal government, the State of Idaho or YHI will benefit financially or materially from this Agreement, and no individual employed by YHI or the State of Idaho will be permitted any share or part of this Agreement or any benefit that might arise therefrom.

/Signature Page Follows/

INDEPENDENT CONTRACTOR AGREEMENT SIGNATURE PAGE

IDAHO HEALTH INSURANCE EXCHANGE

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

Exhibit 1 Insurance
Exhibit 2 Federal Contract Clauses

EXHIBIT 1 INSURANCE

Required Coverage. For the Duration and for a period of 3 years thereafter, Contractor will procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

- Commercial general liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability. The commercial general liability coverage will also:
 - Include contractual liability coverage insuring the activities of Contractor under this Agreement, including without limitation Contractor's indemnification obligations provided in this Agreement;
- Worker's compensation with (i) limits no less than the minimum amount required by law and (ii) a waiver of any subrogation right of the insurers against YHI Exchange or the Exchange's board members, employees, volunteers, or other agents.
- Errors and omissions with limits no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- Data breach and cyber liability with limits no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- Umbrella follow-form coverage for the coverages listed above with limits of no less than \$10,000,000.

Each insurance policy of the Contractor will:

- Except to the extent the insurer refuses to do so, name YHI and its board members, officers, employees, contractors, volunteers, and other agents, including, in each case, all successors and permitted assigns, as additional insureds;
- Provide that the policy is primary insurance and any similar insurance in the name of or for the benefit of YHI or its board members, officers, employees, contractors, volunteers, or other agents will be excess and non-contributory;
- Be issued by insurance companies with a Best's Rating of no less than A-.

The Contractor hereby waives all rights of subrogation against YHI and its board members, officers, employees, contractors, volunteers, and other agents, including, in each case, all successors and permitted assigns, including, in each case, all successors and permitted assigns, and the insurers of each.

Certifications of Coverage. Contractor will provide YHI with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Exhibit, and will not do anything to invalidate such insurance. This Exhibit will not be construed in any manner as waiving, restricting or limiting the liability of the Contractor party for any obligations imposed under this Agreement, including without limitation the indemnification obligations provided in the Agreement.

**EXHIBIT 2
FEDERAL CONTRACT CLAUSES**

The following provisions apply to this Agreement except when in express conflict with the other provisions of this Agreement, in which case the provisions more favorable to YHI will govern:

1. REMEDIES.

- (a) Continued Performance. Unless otherwise directed by YHI, the Contractor will continue performance under this Agreement while matters in dispute are being resolved.
- (b) Notice of Injury. Should either party suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore will be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (c) Governing Law. This Agreement and the rights and obligations of the parties hereto will be governed by, and construed according to, the laws of the State of Idaho, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The Parties consent to the exclusive jurisdiction of the Fourth Judicial District Court, in Ada County, Idaho for enforcement of this Contract.
- (d) Remedies Cumulative. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by YHI or Contractor will constitute a waiver of any right or duty afforded any of them under this Agreement, nor will any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2. TERMINATION.

- (a) Termination for Convenience. YHI may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. YHI will be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination. If termination occurs before payment would be due under the Agreement, the Contractor will be entitled to the reasonable compensation for services accepted through the effective date of termination. The Contractor will promptly submit its termination claim to YHI to be paid to the Contractor. If the Contractor has any property in its possession belonging to YHI, the Contractor will account for the same and return it or dispose of it in any manner YHI directs.
- (b) Termination for Breach. Either party may terminate for failure of the other party to fulfill its obligations, as set forth within the Agreement. Reasonable allowances will be made for circumstances beyond the control of the Contractor or YHI as set forth in the Agreement. Written notice of the intent to terminate is required and will specify the reasons supporting termination.
- (c) Termination for Default. If Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, the Contractor fails to perform in the manner called for in the Agreement, or if Contractor fails to comply with any other provisions of the Agreement, YHI may terminate the Agreement for default. Termination will be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement. If it is later determined by YHI that Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, YHI, after setting up a new delivery of performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

- (d) Termination Opportunity to Cure. YHI in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to YHI's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by the Contractor of written notice from YHI setting forth the nature of said breach or default, YHI will have the right to terminate the Agreement without any further obligation to the Contractor. Any such termination for default will not in any way operate to preclude YHI from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- (e) Non-Waiver of Remedies. In the event that YHI elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this contract, such waiver by the YHI will not limit the YHI's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

3. CIVIL RIGHTS (TITLE VI, EEO). During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest, agrees as follows:

- (a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Title IX of the Education Amendments of 1972, as amended, Section 303 of the Age Discrimination Act of 1975, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, the Contractor agrees that it will not (i) discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability or (ii) operate any programs or activities for YHI in a manner that limits participation or access or otherwise discriminates against any person on the basis of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements HHS may issue, including any certifications of compliance required as a condition of using federal grant funds to pay the Contractor.
- (b) Equal Employment Opportunity. The Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in the U.S. Department of Labor (DOL) regulations, 41 C.F.R. 60 et seq.
- (c) Subcontractor Selection. In the event YHI permits the Contractor to contract with any third party to perform any of Contractor's obligations to YHI, Contractor must make positive efforts to use small businesses, minority-owned firms, and women-owned businesses as sources of goods and services whenever possible. To this end, Contractor must place qualified small, minority-owned, and women-owned business enterprises on solicitation lists; ensure that small, minority-owned, and women--owned business enterprises are solicited whenever they are potential sources; consider contracting with consortia of small, minority-owned, or women-owned business enterprises when an intended contract is too large for any one such firm to handle on its own or, if economically feasible, divide larger requirements into smaller transactions for which such organizations might compete; make information on contracting opportunities available and establish delivery schedules that encourage participation by small, minority-owned, and women- owned business enterprises; and use the services and assistance of the Small Business Administration and the Minority Business Development Agency, as appropriate.

4. COPELAND ANTI-KICKBACK ACT. The Contractor agrees to comply with the Copeland Anti-Kickback Act, as amended, 18 U.S.C. 874, et seq., as supplemented in the DOL regulations 29 C.F.R. Part 3, which are hereby incorporated by reference.

- (a) **DAVIS-BACON ACT.** If the Contractor performs more than \$2,000 in construction, alteration, or repair services on public buildings or public works on behalf of YHI, it must comply with the Davis-Bacon Act, 40 U.S.C. 3141 et seq., and implementing DOL regulations, 29 C.F.R. 5. The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in

a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once per week.

- 5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the Contractor performs more than \$2,000 in construction, alteration or repair services for YHI, or more than \$2,500 for other contracts which involve the employment of mechanics or laborers, then the Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327-330, and as supplemented by DOL regulations, 29 C.F.R. Part 5.
- (a) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics will require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
 - (b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of this section, the Contractor and any subcontractor responsible therefore will be liable for the unpaid wages. In addition, Contractor and subcontractor will be liable to the United States for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth above.
 - (c) Withholding for Unpaid Wages. The Contractor will upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this Section 6.
- 7. NOTICE OF AWARDING AGENCY REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING.** YHI will monitor the Contractor's activities, and the Contractor will cooperate with YHI and furnish all information necessary to fulfill all reporting requirements imposed upon YHI under 45 C.F.R. 92.40 and 92.41. The Contractor will inform YHI as soon as the following types of conditions become known: (i) problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Agreement, and (ii) favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated, or producing more beneficial results than originally planned. The Contractor will permit YHI and any appropriate Federal agency to make site visits as warranted by program needs.
- 8. PATENT RIGHTS.** Irrespective of the status of the Contractor (for example, a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, and so forth), the Contractor agrees to comply with HHS requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Agreement.
- 9. COPYRIGHTS AND RIGHTS IN DATA.** This Agreement is governed by the requirements of Federal law and regulations concerning ownership and licensing of copyrights and rights in data. Pursuant to 45 C.F.R. 92.36, HHS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for Federal Government purposes: (i) the copyright of any work developed under this Agreement or any subcontract thereunder, and (ii) any rights of copyright to which YHI or the Contractor purchases ownership of with Federal grant support. If, for any reason, the Project is not completed, all data developed under the Project is required to be delivered as YHI or HHS may direct.

10. **ACCESS TO RECORDS AND RETENTION.** The Contractor agrees to develop and retain records identifying the basis for determining the valuation of personal services, materials, equipment, buildings, and land.
- (a) Inspection of Records. The Contractor agrees that the relevant books, documents, papers, and records of the Contractor which are directly pertinent to the Agreement will be subject to inspection, examination, review, audit, transcription and summarization by YHI, HHS, the Comptroller General of the United States, or any of their duly authorized representatives. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. This right of access will last as long as the records are retained by the Contractor in accordance with 45 C.F.R. 92.42.
- (b) Maintenance of Records. The Contractor agrees to maintain all books, records, accounts, and reports related to Contractor's work for YHI for a period of not less than three (3) years after the date of termination or expiration of this contract, except that in the event of litigation or settlement of claims arising from the performance of this contract, Contractor agrees to maintain same for any longer period required for YHI, HHS, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
11. **CLEAN AIR ACT, CLEAN WATER ACT AND EPA REGULATIONS.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to: (i) the Clean Air Act, as amended, 42 U.S.C. 1875(b), et seq.; (ii) the Clean Water Act, as amended, 33 U.S.C. 1368, et seq.; and (iii) Executive Order 11738 and Environmental Protection Agency regulations, as amended, 40 C.F.R. Part 15. The Contractor agrees to report each violation to YHI and understands and agrees that YHI will, in turn, report each violation as required to assure notification to HHS and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by HHS.
12. **ENERGY EFFICIENCY.** The Contractor will comply with mandatory standards and policies relating to energy efficiency that are defined in Idaho's energy conservation plans issued in accordance with the Energy Policy and Conservation Act.
13. **GOOD STANDING.** The Contractor certifies, by signing the Agreement that neither the Contractor nor the Contractor's principals are presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, "Debarment and Suspension," 28 C.F.R. 67.510, and any relevant program-specific regulations. The Contractor will require this certification from every subcontractor receiving any payment in whole or in part from federal funds.
14. **SUBCONTRACTS.** The Contractor or subcontractor will insert in any subcontracts the clauses set forth in this Exhibit and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with these terms, and any other clauses required by federal statute or executive order, and their implementing regulations.
15. **COST PRINCIPLES.** If the agreement between YHI and the Contractor is a "cost-type" contract, then allowable costs will be determined in accordance with the appropriate cost principles required as a condition of using federal grant funds, as set forth in the HHS Grants Policy Statement or other federal regulations, policies, or agreements between YHI and the applicable federal funding agency.