



THE STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT

21 SOUTH FRUIT STREET SUITE 14  
CONCORD, NEW HAMPSHIRE 03301

42 JAC

Roger A. Sevigny  
Commissioner

Alexander K. Feldvebel  
Deputy Commissioner

February 19, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the New Hampshire Insurance Department (NHID) to enter into a contract in the amount of \$150,000 with Wowzilla, LLC, Milwaukee, Wisconsin (Vendor #257984), for the provision of consulting services in connection with the initiative to improve and expand the information available on the Department's HealthCost website, [www.nhhealthcost.org](http://www.nhhealthcost.org) for consumers and employers related to health insurance premiums and medical care costs in New Hampshire. This agreement is to be effective upon Governor & Council approval through June 30, 2015. 100% Federal Funds.

The funding is available in account titled Health Insurance Premium Review Cycle III Grant as follows.

	FY2014	FY2015
02-24-24-240010-88870000-046-500464 Consultants	\$75,000	\$75,000

**EXPLANATION**

The New Hampshire Insurance Department has received a federal grant to improve the health insurance premium rate review process and transparency related to health insurance premiums and medical care costs in New Hampshire. Under the grant, the Insurance Department will improve the health insurance rate review process by enhancing the quality of data collected on health insurance claims, improving the transparency of information for consumers, and enhancing the HealthCost website as a centralized location for health care price information, in order to best serve the people of New Hampshire.

The major deliverables for Wowzilla, LLC include:

1. Identify and recommend publicly available quality data to report, derived from the New Hampshire Comprehensive Health Information System (NHCHIS), and work with external organizations to integrate this information with carrier or provider specific systems.
2. Develop a content strategy for the creation, publication and ongoing management of the website's content.
3. Analyze the agreed-upon health care quality data from primary and secondary sources.
4. Draft content and provide copywriting and editing support to help make the content web and user-friendly.
5. Organize the data and supporting content, helping to develop an information architecture for the website
6. Work with the NHID, stakeholder groups and the web developer to design and refine visual aids, making the data and other content on the website easy to understand.
7. Work set out in the response to the RFP (attached).

After reviewing the bid responses, the Commissioner selected the Wowzilla's proposal as the most responsive to the Request for Proposals (RFP). The Request for Proposals was posted on the Department's website December 23, 2013 and sent to past bidders for Department contract work and companies doing work in this field. Three bids were received. Bids were evaluated by Department staff familiar with the project goals using a scoring system included in the RFP.

The department respectfully requests that the Governor and Council authorize funding for this consulting work. Your consideration of the request is appreciated.

In the event Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Roger A. Sevigny

**RFP 2013 RRG-305 PROPOSALS EVALUATIONS**

Evaluation Committee members: Tyler Brannen, Alain Couture, David Sky, Martha McLeod, Doris Lotz

Evaluation process: Every member reviewed and independently evaluated the bids.

On February 4, 2014 the Evaluation Committee members met, and as a group assigned points to each bid per the "Specific comparative scoring process" described in each RFP.

All members agreed with the points assigned to each category for each bid depicted in the table below.

<b>RFP/VENDOR</b>	<b>CONTRACTOR SKILL (30% of points)</b>	<b>CONTRACTOR EXPERIENCE &amp; QUALIFICATIONS (30% of points)</b>	<b>PLAN OF WORK (20% of points)</b>	<b>BID PRICE- BUDGET AMOUNT</b>	<b>COST (20% of points)</b>	<b>TOTAL SCORE (100% of Points)</b>	<b>Score without \$\$\$</b>	<b>NOTES</b>
<b>RFP 2013-RRG-305 HealthCost Enhancements</b>								
WowZilla, Inc	24.50%	22.00%	14.00%	\$150,000	20.00%	80.50%	60.50%	Vendor Selected by Evaluation Committee
Freedman Healthcare	21.75%	22.25%	14.00%	\$150,000	20.00%	78.00%	58.00%	
UMASS	20.25%	19.25%	11.25%	\$179,750	16.69%	67.44%	50.75%	

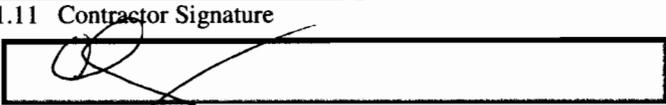
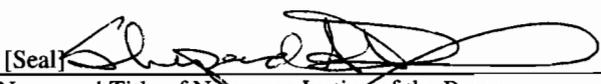
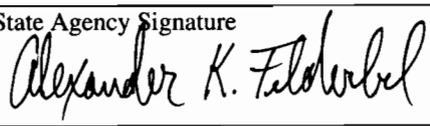
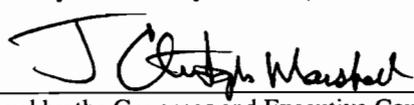
Subject: \_\_\_\_\_

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name <b>New Hampshire Insurance Department</b>		1.2 State Agency Address <b>21 South Fruit St. Suite 14, Concord, NH 03301</b>	
1.3 Contractor Name <b>Wowzilla, LLC</b>		1.4 Contractor Address <b>316 North Milwaukee Street, Suite 550, Milwaukee, WI 53</b>	
1.5 Contractor Phone Number <b>612.435.7102</b>	1.6 Account Number <b></b>	1.7 Completion Date <b>June 30, 2015</b>	1.8 Price Limitation <b>\$150,000.00</b>
1.9 Contracting Officer for State Agency <b>Alexander Feldvebel</b>		1.10 State Agency Telephone Number <b>603.271.7973 x257</b>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <b>Allen Cooper, Partner</b>	
1.13 Acknowledgement: State of <b>WI</b> , County of <b>Milwaukee</b> On <b>02-18-2014</b> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <b>Shepard A. Davis, Attorney + Notary Public. Commission is permanent.</b>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <b>Alexander Feldvebel, Deputy Commissioner</b>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <b>March 26, 2014</b>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials BC  
Date 2-18-2014

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials ABC  
Date 2/18/2014

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

# **Agreement with Wowzilla, LLC HealthCost Enhancements – Cycle III Rate Review**

## **Exhibit A**

### **Scope of Services**

**The consultant's primary responsibility will be to**

1. Finalize project objectives, requirements and solidify project timeline.
2. Identify and recommend publicly available quality data to report, derived from the New Hampshire Comprehensive Health Information System (NHCHIS), and work with external organizations to integrate this information with carrier or provider specific systems.
3. Develop a content strategy for the creation, publication and ongoing management of the website's content.
4. Analyze the agreed-upon health care quality data from primary and secondary sources.
5. Draft content and provide copywriting and editing support to help make the content web and user-friendly.
6. Organize the data and supporting content, helping to develop an information architecture for the website
7. Work with the NHID, stakeholder groups and the web developer to design and refine visual aids, making the data and other content on the website easy to understand.
8. Conduct consumer focus groups and/or qualitative paper prototype studies to gain a better understanding of the user's ability to use and understand the data, content and corresponding display.
9. Work set out in the response to the RFP (attached)



316 NORTH MILWAUKEE STREET, SUITE 550, MILWAUKEE, WI 53202

**To: Alain Couture**

The New Hampshire Insurance Department  
Alain.couture@ins.nh.gov

**From: Jeff Rabkin**

Partner & Creative Director, WowZilla, Inc.  
jrabkin@wowza.biz  
612.435.7102

**Date: January 27, 2014**

**Re: RFP for HealthCost Enhancements**

**Overview of WowZilla and Subject Matter Expert: Institute for Health Policy and Practice at the University of New Hampshire**

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WowZilla is a joint venture between Minneapolis-based creative marketing and web communications agency, Wowza, Inc., and Milwaukee-based technology firm, Ancilla Partners. ~~\_\_\_\_\_~~

Wowza and Ancilla Partners are excited by the prospect of adding the New Hampshire Insurance Department (NHID) to our growing list of states and communities whom we are helping to increase transparency in public reporting of health care quality data and helping to provide valuable tools that aid consumers and employers in making better health care decisions.

Having first worked together to develop Minnesota's highly successful public data report, MN HealthScores, we know that the combined talents and experience of Wowza, Ancilla Partners and our subject matter expert, the Institute for Health Policy and Practice (IHPP) at the University of New Hampshire, will exceed the expectations that NHID

has for the HealthCost website. WowZilla will be NHID's primary point of contact, and will utilize the expertise and skills of the IHPP, where applicable.

To understand our approach, it is helpful to know a little about our origins. Unlike other web development firms whose roots are often in technology, Wowza began as an advertising and marketing communications agency - so our culture is more creative and our perspective tends to be more oriented toward consumers. While our process may not be as linear or structured as a technology-driven firm's may be, we find, and our clients would confirm, that our less formal approach provides the needed flexibility to navigate the unique challenges of this new and evolving industry.

For nearly seven years, Wowza has designed and developed public data reporting websites for seven Aligning Forces for Quality communities, including MN Community Measurement, Healthy Memphis Common Table, Greater Detroit Area Health Council, Aligning Forces Humboldt, the Health Improvement Collaborative, Kansas City Quality Improvement Consortium and Puget Sound Health Alliance. During these projects, Wowza has sourced, drafted, edited and designed content and PDF resources for the respective audiences. Most recently, Wowza joined the MONAHRQ 5.0 team, providing strategic consulting, information architecture and front-end user experience design and development for the website and user application. Wowza has also designed and developed a comprehensive health care quality data reporting website and physician directory for *HealthInsight*, as well as an end-of-life care website and mobile app, *Leaving Well*. Additionally, Wowza designed and developed a complex doctor rating website for the CAHPS III Reports Team, a project led by Yale University and the Rand Corporation. The site is an experimental prototype that is currently being used for research to discover how clinical measures, patient experience survey data and user-generated anecdotal data influence consumer choice.

Ancilla Partners has a culture much like Wowza's, although it is rooted in health care and technology consulting, with considerable experience in data management technology. Ancilla Partners' primary focus is on health care quality, data and reporting. Over the past seven years, Ancilla Partners' work has included building direct data submission (DDS) portals to manage complex data for MN Community Measurement, Wisconsin Collaborative for Healthcare Quality, Healthy Memphis Common Table, the Health Improvement Collaborative, Health Care Improvement Foundation of Pennsylvania, South Central Pennsylvania - Aligning Forces for Quality and Quality Quest for Health of Illinois. Additionally, Ancilla has developed and configured a content management system and public reporting website for Wisconsin Medical Society and Massachusetts Health Quality Partners, and reporting websites for Wisconsin Collaborative for Healthcare Quality, True Course and Pennsylvania Health Care Quality Alliance.

IHPP is an applied research institute located within the College of Health and Human Services (CHHS) at the University of New Hampshire. The IHPP staff has broad core competencies and professional training that include data analysis, statistics, epidemiology, public health, mental health, aging and disability, social science, and program evaluation. Since 2001, IHPP has worked with the Executive Branch of New Hampshire State government through both NHID and the New Hampshire Department of Health and Human Services (NH DHHS) to provide professional and technical assistance on a range of health and health care projects and programs. Of particular relevance to this project is IHPP's experience in creating consumer-directed content to promote better understanding of health care costs for both the Healthy UNH and NH Purchaser's Group on Health (NHPGH) projects.

In addition to a measurement tool that provides the University of New Hampshire with an understanding of the campus' health, Healthy UNH also provides health care cost and spending resources, including a video, specific to the medical benefits offered to employees and their families. Meanwhile, the NHPGH addresses challenges and barriers consumers and employees experience when interacting with both insurance carriers

and the health care system. NHPGH has conducted meetings with insurance carriers to stay informed of their pursuits toward more cost efficient care, and each Purchaser member has designed outreach programs and materials to educate employees about appropriately navigating the health care system.

Combining the design, copywriting, user experience and consumer-oriented approach of Wowza with the deep experience Ancilla Partners has with health care data, and the IHPP's expertise with New Hampshire's health care landscape, commercial health insurance and provider reimbursements, we are confident in our team's abilities to research and recommend appropriate data and content for the HealthCost website, as well as to design data displays and visual aids and develop and organize information to help consumers and employers make informed health care decisions.

### **HIPPA Experience**

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WowZilla understands the sensitivity of some of the data that may be used in this project and has significant experience working with protected health information (PHI) and HIPAA standards. Specifically, Wowza and Ancilla Partners have passed HIPAA audits conducted by MN Community Measurement and the Wisconsin Collaborative for Healthcare Quality.

### **Performance of Services**

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WowZilla will provide and perform the following services related to improving and expanding the information available on the NHID website, [www.nhhealthcost.org](http://www.nhhealthcost.org). The HealthCost website will be an unbiased, central source of information for consumers and employers, equipping them with the information on health care cost, health insurance and the health care delivery system, enabling them to make informed decisions.

The following provides a general picture of the process WowZilla will follow from initial discovery to launch. While much of our process is somewhat linear and follows a standard approach to website development, WowZilla

always offers some flexibility, creativity and circumspection.

## **Improving and Expanding the Information on the HealthCost Website**

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### **Discovery Phase**

Members of WowZilla's project team will meet with the team at the NHID in Concord, New Hampshire to kick-off the project by reviewing the project scope, discussing client expectations, formulating the timeline, discussing data and site content requirements, and addressing any other logistical issues. An important part of this meeting will include a review of the technical requirements, as well as an in-depth review of potential data sources that will drive the cost and quality reporting aspects of the site. In our experience, a face-to-face meeting at the beginning of a project improves the efficiency and effectiveness of the long distance communication and strengthens the working relationship.

At the end of this phase, WowZilla will deliver a brief report that details the project requirements and outlines the project goals and objectives, the hierarchy of information, the approach and primary features for the website, and potential information and content sources.

WowZilla will also establish regular weekly or bi-weekly calls with the NHID and provide monthly status reports, outlining accomplishments, progress and outstanding items.

The team at the NHID will need to approve the web communications brief before the next phase begins.

### **Schematic Design Phase**

Using the Discovery Phase report as a guide, WowZilla will identify and recommend publicly available quality data to report, derived from the New Hampshire Comprehensive Health Information System (NHCHIS), and work with external organizations to integrate this information with carrier or provider specific systems.

Once the NHID approves the data sources, WowZilla will explore creative

and visual approaches, based on modern trends and best practices, for reporting health care cost and quality data, along with the supporting content.

WowZilla will work with the NHID, as necessary, to develop a content strategy. A content strategy is a plan for the creation, publication and ongoing management of the website's content. As part of the content strategy, WowZilla will determine the specific content that will exist on the site and identify the intended users and purpose of each page or content area. In addition to helping organize the content and create an information architecture for the website, the content strategy also forms the basis for how the site content will be managed and the features and technologies required for the page templates in the website's content management system.

WowZilla will source external information to assist consumers in making health care decisions. This includes identifying relevant information from ChoosingWisely; National Institutes of Health, including Medline; Centers for Disease Control; Agency for Healthcare Research and Quality; and Healthfinder, among others. Additionally, WowZilla will draft content, provide copywriting and editing support to help make the content web and user-friendly, and recommend multimedia applications that translate well into the production on the website.

Utilizing the content strategy as a guide, WowZilla will explore visual approaches to presenting the cost and quality data that meets the goals and objectives set forth in the Discovery Phase. WowZilla will work with the NHID, stakeholder groups and the web developer, as necessary, to design data displays and visual aids to make the data and other content on the website easy to access and understand.

Prior to moving to the next phase, the NHID will need to approve the data sources, the content strategy and the visual approaches.

### **Design Development Phase**

In addition to providing consulting services to the NHID, during this phase

WowZilla will analyze the agreed-upon health care quality data from primary and secondary data sources.

WowZilla will also continue to:

- Draft content and provide copywriting and editing support to help make the content web and user-friendly.
- Organize the data and supporting content, helping to develop an information architecture for the website.
- Work with the NHID, stakeholder groups and the web developer, as necessary, to design and refine visual aids, making the data and other content on the website easy to understand.

WowZilla will conduct consumer focus groups and/or qualitative paper prototype studies to gain a better understanding of users ability to use and understand the data, content and corresponding displays. Findings from the qualitative research will be used to help guide revisions and finalize all elements of the project.

At the conclusion of this phase, the NHID will need to approve the final data elements, content and visual aids.

### **Construction and Content Management System Phase**

WowZilla will prepare and deliver the necessary files and materials to the NHID and any third-party vendors, including the web developer, and be available on an as-needed basis for questions and additional consulting.

### **References**

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#### **1. *HealthInsight***

WowZilla designed the site branding, front-end user interface, data displays and overall user experience, along with a custom back-end data portal and content management system that allows *HealthInsight* to manage data and provides secure access to medical groups and hospitals for directly submitting data. The website is also bilingual, using the same content management system to present all

information in Spanish.

Clare Lence  
clence@healthinsight.org  
801.892.6629  
[utahhealthscape.org](http://utahhealthscape.org)  
[leaving-well.org](http://leaving-well.org)

## **2. MN Community Measurement**

Wowza and Ancilla Partners have worked together for more than six years on the design, development and ongoing growth for MNCM's public reports, including front-end user interfaces and a robust direct data submission portal. In addition to designing and developing MNCM's corporate website, Wowza has also created and implemented promotional materials and strategies supporting their public reporting efforts, such as The D5.

Anne McGeary Snowden, Director of Performance Measurement and Reporting  
snowden@mncm.org  
612.454.4811  
[mnhealthscores.org](http://mnhealthscores.org)  
[mncm.org](http://mncm.org)

## **3. Healthy Memphis Common Table**

Wowza has been working with HMCT for four years on branding and continually enhancing their corporate and health care quality public reporting websites.

Ancilla has been working with HMCT for three years. Ancilla was brought on to construct a data portal for HEDIS measures, allowing health plans to securely submit their data. The data portal consists of a provider directory that allows health plans to submit their provider data (clinicians, clinics, specialties, etc.) to formulate a centralized provider repository. Once the conflict reports are completed, the provider data is ready to link with its HEDIS results via the physician's

NPI. The provider directory also has a hierarchy established from clinician, to clinic, to practice. This hierarchy allows the HEDIS results to be aggregated at many different levels. The portal displays many different result levels, with actual rates, denominators, etc. for the health plans and clinics to review prior to the data becoming public. The public view displays the results at the practice level, with a star rating.

Renee Frazier, MHSA, FACHE, Chief Executive Officer  
renee.frazier@healthymemphis.org  
724.503.8433  
[healthymemphis.org](http://healthymemphis.org)  
[healthcarequalitymatters.org](http://healthcarequalitymatters.org)

#### **4. Office of Medicaid Business and Policy, New Hampshire Department of Health and Human Services**

IHPP has been working with the Office of Medicaid Business and Policy (OMBP) for over ten years. Currently, IHPP is working with OMBP on a project to build a system to manage and publish summary statistics about the quality and performance of the New Hampshire Medicaid program. This work will be used to update the functionality and content of the NH Medicaid Quality Indicators website.

Andrew Chalsma, Chief, Bureau of Data and Systems Management  
AChalsma@dhhs.state.nh.us  
603.271.9425  
<http://nhmedicaidquality.org/>

#### **5. NH Purchasers Group on Health (NHPGH)**

IHPP has facilitated NHPGH for over 5 years. IHPP manages the NHPGH meetings, leads the work for the NH Scorecard, and oversaw the development of consumer-facing videos.

Jeff Kantorowski, Coordinator of Benefit Programs, NEA NH / SchoolCare

jkantorowski@nhnea.org  
603.715.9315  
<http://www.nhpgh.org/>

## **Proposed Budget**

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If the project is modified or expanded, budget and schedule adjustments will be reviewed with the NHID and a change order document will be sent to the NHID for review and approval, prior to any modifications or expansions. The NHID is responsible for proofreading all copy and artwork.

<b>WowZilla's Professional Fees:</b>	<b>\$130 per hour (blended agency rate)</b>
<b>Out-of-Pocket Expenses:</b>	<b>\$12,000</b>

Together, WowZilla and the NHID will finalize the not-to-exceed limits through the contract's termination. However, based on WowZilla's initial understanding of the project, the project estimate is \$100,000, with a not-to-exceed limit of \$150,000.

*The out-of-pocket expenses are an estimate only and will be billed as incurred.* The out-of-pocket expenses include travel, artwork and any other administrative expenses related to the scope of work described in the proposal. The estimate for out-of-pocket expenses does not include anything related to the purchase of data or integrating with carrier or provider specific systems.

## **Timeline**

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A detailed work plan, based upon mutually agreed upon deliverables and dates, will be created once the Agreement is signed and the kick-off meeting takes place. A sample timeline for the work, which includes the deliverables described above, is as follows:

Discovery Phase:	2-3 weeks (March)
Schematic Design Phase:	6-12 weeks (April-June)

Design Development Phase: 10-14 weeks (July-October)  
Construction Phase: 1 week, plus additional consulting, as needed  
(November)

The contract will terminate on June 30, 2015 or when the proposed actions are complete, whichever comes sooner.

**Agreement with Wowzilla, LLC  
HealthCost Enhancements – Cycle III Rate Review**

**Exhibit B**

**Contract Price, Price Limitations and Payment**

The services will be billed at the hourly rates set forth in the Contractors Proposal, dated January 27, 2014. Including any out-of-pocket expenses for travel, artwork and any other administrative expenses related to the scope of work, the total reimbursable amount shall not exceed the total contract price of \$150,000. The services and out-of-pocket expenses shall be billed at least monthly and the invoice for the services shall identify the person or persons providing the service. Payment shall be made within 30 days of the date the invoiced is received.

# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that WowZilla, LLC a(n) Wisconsin limited liability company registered to do business in New Hampshire on March 3, 2014. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 6<sup>th</sup> day of March, A.D. 2014

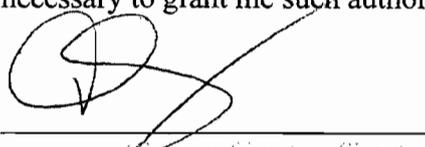
A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**CERTIFICATE OF AUTHORITY/VOTE**  
(Limited Liability Company)

I, Allen Cooper, hereby certify that:

1. I am the Member of the Company of WowZilla, LLC
2. I hereby further certify and acknowledge that the State of New Hampshire will rely on this certification as evidence that I have full authority to bind WowZilla, LLC and that no corporate resolution, shareholder vote, or other document or action is necessary to grant me such authority.

  
\_\_\_\_\_  
(Signature)

03/13/2014

STATE OF Wisconsin

COUNTY OF Milwaukee

On this 13th day of March, 2014, before me Shepard A. Davis,  
the undersigned officer, personally appeared Allen Cooper,  
known to me (or satisfactorily proven) to be the person whose name is subscribed to the  
within instrument and acknowledged that he/she executed the same for the purposes  
therein contained. In witness whereof, I hereunto set my hand and official seal.

(NOTARY SEAL)

  
\_\_\_\_\_

*My commission is permanent.*

Commission is permanent

## JOINT VENTURE OPERATING AGREEMENT

THIS AGREEMENT is made, effective as of the 2 day of February, 2010 by Wowza LLC, a Minnesota limited liability company ("Wowza"), having a principal office located at 2601 Second Avenue South - Studio One, Minneapolis, Minnesota 55408, and Ancilla Partners, Inc., a Wisconsin corporation ("Ancilla"), having a principal office located at 1101 N. Old World Third Street - Suite 102, Milwaukee, Wisconsin 53203.

WHEREAS, Wowza is an advertising agency which specializes in healthcare reporting; and

WHEREAS, Ancilla specializes in software and other services relating to healthcare quality information transmitted via the Internet; and

WHEREAS, the Members intend to pursue and jointly develop new client relationships for the benefit of both Members; and

WHEREAS, for the purpose of preparing proposals for, and providing services to, Clients (as defined herein), the Members desire to enter into a Joint Venture for the limited purpose as further detailed in Article 2.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, and other good and valuable consideration, the Members hereby agree as follows:

### ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- 1.1 "Agreement" shall mean this document, including any exhibits and appendices.
- 1.2 "Client" shall mean a person, business or organization to which the Joint Venture has submitted a Proposal.
- 1.3 "Contract" shall mean the contractual document or documents executed by and between the Joint Venture and the Client pursuant to which the Client has engaged the Joint Venture to provide services to the Client.
- 1.4 "Joint Venture" shall mean the limited association of the Members as defined herein. The mailing address of the Joint Venture shall be c/o Ancilla, at 1101 N. Old World Third Street - Suite 102, Milwaukee, Wisconsin 53203.
- 1.5 "Members" shall mean Wowza and Ancilla; each individually shall be called a Member."

- 1.6 "Proposal" shall mean an offer by the Joint Venture to a Client, which details the scope, nature and extent of the services, materials, equipment, supplies or products proposed to be provided to the Client in response to the Client requirements.
- 1.7 "Scope of Work" shall mean the document executed by the Members in connection with each Proposal, specifying their respective roles, as further described in Section 3.1.

## **ARTICLE 2 - RELATIONSHIP OF THE MEMBERS**

### **2.1 FORMATION OF JOINT VENTURE**

The Members agree to name the Joint Venture, WowZilla, LLC and have caused WowZilla, LLC to be formed as a Wisconsin limited liability company, effective January 4, 2010. The Members agree that this Agreement shall serve as the "Operating Agreement" of WowZilla, LLC. The Members hereby associate themselves as a Joint Venture for the sole and limited purposes of: (a) preparing and submitting Proposals to Clients; (b) negotiating and executing a Contract with Clients based on Proposals which are accepted; (c) performing Contracts; and (d) defining the rights, duties, responsibilities and obligations between the Members in connection with the performance of Contracts. The Members hereby agree to perform all work for Contracts in accordance with the terms of this Agreement and on an exclusive basis.

### **2.2 COMMENCEMENT AND TERMINATION**

This Joint Venture will commence on the date of signing of this Agreement by all Members and shall continue in full force and effect until terminated pursuant to this Section 2.2. This Agreement and the Joint Venture may be terminated by either Member for any reason upon at least sixty (60) days prior written notice given to the other Member. This Agreement and the Joint Venture may be terminated immediately upon the provision of written notice to the other Member if the other Member: (a) breaches this Agreement and fails to cure such breach within thirty (30) days following written notice thereof; (b) ceases to function as a going concern or to conduct operations in the normal course of business; (c) has a petition or action filed by or against it under any federal bankruptcy or state insolvency law which petition or action has not been dismissed or set aside within sixty (60) days of its filing; or (d) makes an assignment for the benefit of its creditors. Termination of this Agreement shall not terminate rights and obligations of the Members which arose prior to such termination.

### **2.3 DECISIONMAKING**

All decisions regarding the Joint Venture are to be made mutually by both Members. Those decisions shall be made and implemented by a committee consisting of one representative from each Member who is authorized to act on behalf of the Member with regard to the Joint Venture. The initial Member representatives shall be Jeffrey A. Rabkin of Wowza and Joel D. Walker of Ancilla. The Member representatives shall

consult on all matters affecting the relationship between the Joint Venture as a whole and Clients or third parties. They shall use their best efforts to resolve any disputes among the Members with respect to this Agreement and the Contract. Should either of the foregoing representatives die, become disabled, resign, or for any reason cease to be connected with the Member which he represents, such Member shall promptly, by written notice served upon the other Members, name a successor.

## 2.5 NO PARTNERSHIP

Nothing contained in this Agreement shall be construed as creating a partnership among the Members, nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment between the Members except as set forth in this Agreement.

## 2.6 MEMBER'S PROPERTY

Any individually-owned property that any Member may provide for use in connection with the performance of a Contract shall remain the individual property of said Member and shall not be the property of the Joint Venture.

## 2.7 NO AGENCY

2.7.1 Nothing contained in this Agreement shall be construed as creating any representative, agency, or employment relationship between any Members.

2.7.2 Nothing contained in this Agreement shall be construed as creating any fiduciary relationship of any nature between any Members as individual entities except as provided herein.

2.7.3 No Member shall have the authority or right, nor shall any Member hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, expressed or implied, on behalf of or in the name of the Joint Venture or any other Member without the express prior written consent of such other Member except as otherwise specifically provided for in this Agreement.

2.7.4 No member shall have the authority or right, nor shall any Member hold itself out as having the authority or right, to accept service of any legal process addressed to or intended for the other Member.

2.7.5 No Member shall have the authority or right to borrow money on behalf of or in the name of the Joint Venture or any other Member, nor shall any Member pledge the credit of the Joint Venture or any other Member without the express prior written consent of the other Member.

2.7.6 Nothing herein contained shall in any manner limit the Members, or any of them, in the

conduct of their respective business or corporate activities in the making of other contracts or the performance of other work, except as specifically provided herein.

2.7.7 The Joint Venture shall have no employees. All necessary personnel shall be provided from the staffs of the Members.

2.7.9 Upon termination of the Joint Venture, all Joint Venture facilities and property shall be disposed of at the best possible price and the proceeds shared equally by the Members.

### **ARTICLE 3 – HOW THE JOINT VENTURE WILL OPERATE**

#### **3.1 SUBMISSION OF PROPOSALS**

All Proposals will be created with joint input from Wowza and Ancilla, and must be mutually agreed upon by the Members before submission to a Client. Prior to submitting a Proposal to a Client, the Members will prepare and sign a Scope of Work relating to the particular Proposal. The Scope of Work will specify the specific tasks to be performed by each Member, the personnel and equipment to be provided by each, the allocation of costs between the Members, a description of the flow of communication to/from the Client, and how much each Member will be paid upon the Joint Venture's receipt of payment from the Client. Each Scope of Work will be used for internal Joint Venture purposes only and will not be distributed to or shared with the Clients.

#### **3.2 JOINT VENTURE COSTS AND SERVICES**

All general overhead costs incurred by the Joint Venture itself will be split equally among the Members, including but not limited to costs related to formation of the Joint Venture, legal and other professional fees. The individual entities will pay for these costs directly, not the Joint Venture. For example, Wowza and Ancilla will each pay half of the legal fees associated with forming and structuring the Joint Venture. All billable costs will be incurred by either Ancilla or Wowza and then invoiced to the Joint Venture. The Joint Venture will then invoice the client. All non-billable client costs, such as travel not paid for by the client, will be incurred by either Ancilla or Wowza.

#### **3.3 JOINT VENTURE BILLING**

Each Member will provide the Joint Venture with complete and accurate billing for the goods and services each has provided with regard to a Contract, as provided in the Scope of Work. The Client will be billed by WowZilla, according to the payment schedule outlined in the Contract with the Client. The Joint Venture will establish a bank account, receive checks from Client and pay the Members as the Joint Venture is paid by Clients in accordance with each Scope of Work.

### **ARTICLE 4 – LEGAL ISSUES**

#### 4.1 TAXES

The Joint Venture is structured as a limited liability company to be taxed as a partnership with the intention that it is a pass-through entity which will have no tax liability for itself. The Joint Venture itself will distributed to the Members all income received by it. Each Member will have tax liability for monies distributed by the Joint Venture to it. Each Member shall have full and sole responsibility for the payment of any taxes, duties, fees or assessments of any nature whatsoever levied upon it individually in connection with the Joint Venture.

Each Member shall arrange its financial affairs and tax reporting procedures to enable inclusion of its respective share of Joint Venture profit or loss hereunder in its federal, state, municipal or other required tax returns as required by applicable laws and regulations.

#### 4.2 INTELLECTUAL PROPERTY

If during the term of the Joint Venture any copyrightable works, ideas, discoveries, inventions, patents, products, or other information in tangible form, including but not limited to source code and creative designs, along with concepts or ideas ("Intellectual Property") are made exclusively by the employees of one Member in connection with the Joint Venture, title to said intellectual property shall be in said Member. However, if both Members (or employees of each Member) make contributions to Intellectual Property with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole, the Intellectual Property shall be jointly owned by both Members. Any ownership rights provided for by this paragraph shall survive the termination of this Agreement. No license under any intellectual property of either Member is granted by this Agreement or by any disclosure of proprietary information hereunder. Each Member shall be solely responsible for any claim or damages due to infringement which arises out of or is connected with the Joint Venture and shall indemnify and save harmless the other Members against any loss or damage that may result from such claims..

#### 4.3 INSURANCE

Each Member shall be responsible for arranging the insurance coverages for its firm. Such coverages shall include the following or whatever greater amount is required pursuant to a Contract (1) General Liability Insurance, with a combined single limit and aggregate of not less than a combined single limit of \$1 million for each occurrence and \$1 million annual aggregate; (2) Automobile Liability Insurance, with a combined single limit of not less than required by applicable statutes; and (3) Worker's Compensation Insurance, in accordance with statutory requirements.

Each Member shall submit to the other Member certificates of insurance indicating the coverages specified herein. The policies shall, where allowed by the carriers, name the Joint Venture as additional insured and all certificates shall provide that the insurance

company shall give written notice to the Joint Venture at least thirty days prior to cancellation or any material change in any policy.

#### 4.4 CONFIDENTIALITY

Each Member agrees that it will not at any time disclose to anyone any "Confidential Information or trade secret of the Joint Venture, any other Member hereto (including such Member's respective affiliates) or any client of any Member hereto, or utilize such confidential information or trade secret for its own benefit, or for the benefit of third Members, in each case, except as may be required by law. Confidential Information shall be defined as means information not generally known to third parties and which is proprietary to the Member which possesses the information, including proprietary information relating to: information protected by patent or copyright, works of authorship, models, intellectual property, algorithms, software programs, software source documents, financial information, customer lists, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.

The foregoing obligations with respect to handling and using confidential information, as set forth in this Agreement, is not applicable to the following:

- (1) Information that is or becomes available to third parties, to the Client, or to the general public without restriction and without breach of this Agreement by the receiving Member.
- (2) Information that was in possession of the receiving Member prior to receipt from the disclosing Member or becomes known to the receiving Member independently of the disclosing Member, without breach of this Agreement by the receiving Member.
- (3) Information that is independently developed or becomes available to any Member by inspection or analysis of products offered for sale.
- (4) Information disclosed after expiration of this Agreement.

#### 4.5 PROPER BUSINESS PRACTICES

No Member shall pay, promise, offer or authorize payment of anything of value in any form to any person or organization, either directly or indirectly, through an agent, representative, subcontractor or other third Member, to obtain or retain business, where such payment, promise, offer or authorization is contrary to applicable law.

#### 4.6 MUTUAL FIDELITY

The Members shall deal with each other in all matters relating to or affecting the Joint Venture with the highest degree of good faith. Each will give to the other full

information as to all work being done by it on behalf of the Joint Venture and of all matters of which it has knowledge affecting Joint Venture business and affairs.

#### 4.7 NON-SOLICITATION; NON-COMPETITION

During the period from the date hereof through the one-year anniversary of the termination of this Agreement for any reason, Wowza and Ancilla agree that they shall not persuade or attempt to persuade any employee of the other company to terminate his or her employment with the other Member, or otherwise employ or attempt to employ or assist anyone else to employ any person who is then in the other Member's employ, or who was in the other company's employ at any time during the lesser of (i) the preceding one year period and (ii) the term of this Agreement.

During the three year period following the termination of this Agreement, neither Member shall (directly or indirectly), solicit, render advice to, or otherwise provide services to, any person or business enterprise (whether a corporation, limited liability company, partnership, trust or otherwise) who either is a client or customer of the other Member on the date of the effective date of the this Agreement.

#### 4.8 DUTY TO INFORM

Each Member shall keep the other Members fully and promptly informed of all progress, events and matters affecting or relating to the other Member's Contract performance and Scopes of Work and shall, without delay, provide all relevant information and cooperation reasonably requested by the other Members as relates to such contract performance, Scope of Work to be completed and any other reasonably required coordination and communication required to professionally and expeditiously complete the work as set out in the Contract.

### **ARTICLE 5 - BREACH; DEFAULT**

#### 5.1 DEFAULTING MEMBER

In the event any Member ("Defaulting Member") is in material breach or default under this Agreement or a Contract and such material breach or default is not cured within 30 days after written notice thereof from any of the other Members not in default under this Agreement or the Contract, or reasonable action to cure has not been diligently initiated and pursued in the event that a cure cannot be effected within sixty days, the other Members shall have the right to take over and complete the Defaulting Member's Scope of Work. In such event, the other Members shall automatically have the right to receive any and all payments, including fees, which would otherwise be due the Defaulting Member and apply the proceeds thereof (i) to cover all expenses incurred by the other Members in taking over and completing the Defaulting Member's obligations under a Contract or Scope of Work and (ii) to establish a contingency fund to cover any and all outstanding obligations of the Defaulting Member.

## 5.2 INDEMNITY

In the event of a material breach or default as described above, the Defaulting Member shall indemnify and hold the other Member harmless from any and all liability associated with completing the Defaulting Member's role as defined by each Scope of Work, incurred by the other Member as a result of such material breach or default.

## ARTICLE 6 – REPS AND WARRANTIES, LIABILITY AND INDEMNIFICATION

### 6.1 REPRESENTATIONS AND WARRANTIES

Each Member represents and warrants to the other that: (a) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby to be performed by it will not result in a breach of violation of, or default under (i) any agreement or other document by which it is bound, or (ii) any law, administrative regulation or court decree, applicable to it which could materially adversely affect the purpose of the Joint Venture or the other Member; and (b) this Agreement constitutes the valid and bonding agreement of the Member, enforceable against it in accordance with its terms.

### 6.2 CLAIMS OF A CLIENT OR THIRD PARTIES

The Members of the Joint Venture shall be jointly and severally liable to the Client under the Contract. However, it is the express intention of this Agreement that each Member's responsibility and liability to the Client or other third parties be limited to its respective obligations under each Scope of Work. Therefore, except as expressly provided otherwise herein, the Members shall indemnify each other as follows: each Member (Indemnifying Member) agrees to indemnify and hold each other Member (Indemnified Member) harmless from any claim made against the Indemnified Member by the Client or other third parties to the degree that such claim arises in connection with said Indemnifying Member's Scope of Work or is due to the Indemnifying Member's fault or negligence, including personal injury or death of any person and property damage of whatever kind and nature whether or not damages for such liability shall be payable by the Indemnifying Member's Insurance as provided herein. In the event that claims are made by the Client or by third parties under such circumstances that it is not possible to establish that fault or cause lies with a particular Member's Scope of Work or is due to a particular Member's fault or negligence, liability for such claims under such circumstances will be borne by the members in proportion to their respective right to profits under each Scope of Work.

### 6.3 CLAIMS AMONG THE MEMBERS

Each Member shall be solely responsible for the performance of its Scope of Work and any and all liabilities that may arise in connection therewith unless specifically provided otherwise herein. Any loss sustained by any Member in connection with its Scope of

Work shall be solely the responsibility of and for the account of such Member.

Each Member shall mitigate its damages in the event of any other Member's default under this Agreement or a Contract. If one Member becomes aware of a situation in which any other Member may be damaged by default of such Member under a Contract, the Member with such knowledge will meet with the other Member and will attempt to come to an agreement on the best way to mitigate or avoid such damages including the possibility of doing extra work (at the expense of the Defaulting Member) to avoid or to mitigate such damages.

Any dispute or claim which the Members cannot be resolved through discussion and negotiation shall be resolved fully and finally by binding arbitration in Milwaukee, Wisconsin by a single arbitrator. The arbitrator, who need not be a member of the American Arbitration Association, shall be mutually determined by the Members. If they cannot decide on an arbitrator, the American Arbitration Association will appoint the arbitrator. Such arbitration shall be conducted in accordance with the then current Commercial Dispute Resolution Procedures of the American Arbitration Association. The Members shall split the fee and expenses of the arbitrator but each Member otherwise shall bear its own expenses relating to the arbitration. The decision of the arbitrator may be enforced by any court of competent jurisdiction. The Members agree that work under any contract or project jointly performed by the Members shall not be interrupted on account of arbitration.

Pending resolution of such dispute or difference, and without prejudice to their rights, the Members shall continue to respect all their obligations and to perform all their duties under this Agreement and the Contract.

## **ARTICLE 7 - GENERAL PROVISIONS**

### **7.1 NOTICES**

All notices to be given pursuant to this Agreement shall be in writing, and may be given by registered or certified mail or by telegram, telex, or facsimile at the addresses set forth at the beginning of this Agreement, and shall be effective upon receipt.

## 7.2 WAIVER

No member shall be deemed to have waived any provision of this Agreement unless such waiver shall be in writing and signed by such Member. No waiver shall be deemed to be a continuing waiver unless so stated writing.

## 7.3 ADDITIONAL MEMBERS

No third party shall become a Member of the Joint Venture under this Agreement without the prior written consent of all the Members.

## 7.4 ASSIGNMENT

No Member may assign or delegate this Agreement or any of its rights or obligations under this Agreement or any Contract, without prior written consent of the other Member.

## 7.5 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin..

## 7.6 ENTIRE AGREEMENT

This Agreement contains the entire Agreement among the Members with respect to the subject matter hereof and supersedes any and all prior understandings, correspondence and agreements, oral or written, among the Members other than those agreements which may be attached hereto and made a part hereof. The rights and remedies of the Members as stated in this Agreement are to the exclusion of any other rights or remedies that may be available at law or in equity.

## 7.7 SEVERABILITY

Every part, term or provision of this Agreement is severable from others. Notwithstanding any possible future finding by duly constituted authority or court of competent jurisdiction that a particular part, term or provision is invalid, void or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby. The validity and effect of this Agreement, its interpretation, operation and all questions arising with respect to performance shall be determined by the Management Committee. Any unresolved disputes shall be decided in accordance with the provisions of Section 6.3 herein.

7.8 AMENDMENTS

No change, amendment or modification of this Agreement shall be valid or binding upon the Members unless such change, amendment or modification shall be in writing and duly executed by all Members.

7.9 TITLES

Heading titles contained herein shall in no way be construed as limited the intent of the subject matter they introduce and shall not be used in construing this Agreement.

7.10 DRAFTER OF DOCUMENT

This Agreement has been drafted by Burton & Davis, LLP as counsel for Ancilla. The other Member acknowledges and agrees that: (a) Burton & Davis, LLP has not represented the Member in any way in connection with this Agreement; (b) each Member has been advised by Burton & Davis, LLP that this Agreement can have material and income tax consequences for a Member, but that Burton & Davis, LLP has not rendered tax advice to the Members; and (c) each Member has been advised to seek advice of independent legal counsel and has had the opportunity to do so.

IN WITNESS WHEREOF, the Members hereto have caused this Agreement to be executed by their respective authorized representatives as of the dates set forth below.

**Wowza LLC**

**Ancilla Partners, Inc.**

By: Jeffrey A. Rabkin

By: Joel D. Walker

Its: \_\_\_\_\_

Its Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: Jeffrey A. Rabkin  
Jeffrey rabkin (Feb 2, 2010)

Signature: Joel Walker  
Joel Walker (Feb 2, 2010)

Email: jrabkin@wowza.biz

Email: joel@ancillapartners.com









# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/14/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>		<b>CONTACT NAME:</b> Beth	
Americana Insurance Agency		<b>PHONE (A/C, No, Ext):</b> 320-826-2553	<b>FAX (A/C, No):</b> 320-826-2630
PO Box 428		<b>E-MAIL ADDRESS:</b> insuranceagency@mchsi.com	
Danube MN 56230		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> North Star Mutual Insurance Agency	<b>NAIC #</b> 14850
<b>INSURED</b>		<b>INSURER B:</b>	
Wowza Inc.		<b>INSURER C:</b>	
2601 2nd Ave. S		<b>INSURER D:</b>	
Suite 1		<b>INSURER E:</b>	
Minneapolis MN 55408		<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b>			BP19060	12/15/2013	12/15/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b>						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> ANY AUTO						\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per person) \$
	<b>UMBRELLA LIAB</b>	<input type="checkbox"/> OCCUR					BODILY INJURY (Per accident) \$
	<b>EXCESS LIAB</b>	<input type="checkbox"/> CLAIMS-MADE					PROPERTY DAMAGE (Per accident) \$
	<b>DED</b>	<b>RETENTION \$</b>					\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						EACH OCCURRENCE \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				AGGREGATE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						\$
							WC STATUTORY LIMITS OTH-ER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

New Hampshire Insurance Department  
21 South Fruit St., Suite 14  
Concord, NH 03301  
Attn: Alexander Feldvebel

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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WowZilla, LLC  
Allen Cooper  
316 N. Milwaukee Street, Suite 550  
Milwaukee, WI 53202  
March 26, 2014

Alexander Feldvebel  
New Hampshire Insurance Department  
21 South Fruit St., Suite 14  
Concord, NH 03301

Dear Alexander Feldvebel:

I am writing to inform you about how the company is structured, as it relates to Workman's Compensation Insurance.

WowZilla, LLC ("WowZilla") is made up of two member entities (Companies), Ancilla Partners, Inc and Wowza Inc. At this time, WowZilla, the entity, has no employees. The personnel working on the project under WowZilla will be from each of our member companies, of which, each has Workman's Compensation Insurance for their personnel.

Let me know if you have any additional questions related to Workman's Compensation Insurance.

Sincerely,



Allen Cooper

## CERTIFICATE OF LIABILITY INSURANCE

American Family Insurance Company

American Family Mutual Insurance Company if selection box is not checked.  
6000 American Pky Madison, Wisconsin 53783-0001

Insured's Name and Address  
Ancilla Partners Inc  
W59n456 Hilgen Ave  
Cedarburg, WI 53012

Agent's Name, Address and Phone Number (Agt./Dist.)  
Michael Campbell  
3529 E Washington Ave  
Madison, WI 53704-4112  
(608) 241-5556 (025/012)

**This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder.  
This certificate does not amend, extend or alter the coverage afforded by the policies listed below.**

COVERAGES				
This is to certify that policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY DATE		LIMITS OF LIABILITY
		EFFECTIVE (Mo, Day, Yr)	EXPIRATION (Mo, Day, Yr)	
<b>Homeowners/ Mobilehomeowners Liability</b>				Bodily Injury and Property Damage Each Occurrence \$ ,000
<b>Boatowners Liability</b>				Bodily Injury and Property Damage Each Occurrence \$ ,000
<b>Personal Umbrella Liability</b>				Bodily Injury and Property Damage Each Occurrence \$ ,000
<b>Farm/Ranch Liability</b>				Farm Liability & Personal Liability Each Occurrence \$ ,000 Farm Employer's Liability Each Occurrence \$ ,000
<b>Workers Compensation and Employers Liability †</b>	48-XN4983-90-00	04/16/2013	04/16/2014	Statutory ***** Each Accident \$ 100,000 Disease - Each Employee \$ 100,000 Disease - Policy Limit \$ 500,000
<b>General Liability</b> <input type="checkbox"/> Commercial General Liability (occurrence) <input type="checkbox"/> <input type="checkbox"/>				General Aggregate \$ ,000 Products - Completed Operations Aggregate \$ ,000 Personal and Advertising Injury \$ ,000 Each Occurrence \$ ,000 Damage to Premises Rented to You \$ ,000 Medical Expense (Any One Person) \$ ,000
<b>Businessowners Liability</b>				Each Occurrence †† \$ ,000 Aggregate †† \$ ,000
<b>Liquor Liability</b>				Common Cause Limit \$ ,000 Aggregate Limit \$ ,000
<b>Automobile Liability</b> <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Auto <input type="checkbox"/> Nonowned Autos <input type="checkbox"/>				Bodily Injury - Each Person \$ ,000 Bodily Injury - Each Accident \$ ,000 Property Damage \$ ,000 Bodily Injury and Property Damage Combined \$ ,000
<b>Excess Liability</b> <input type="checkbox"/> Commercial Blanket Excess <input type="checkbox"/>				Each Occurrences/Aggregate \$ ,000
<b>Other (Miscellaneous Coverages)</b>				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / RESTRICTIONS / SPECIAL ITEMS				
†The individual or partners shown as <input type="checkbox"/> Hav <input type="checkbox"/> Have not insured ††Products-Completed Operations aggregate is equal to each occurrence limit and is included in policy aggregate.				
<b>CERTIFICATE HOLDER'S NAME AND ADDRESS</b>			<b>CANCELLATION</b>	
New Hampshire Insurance Dept 21 S Fruit St Ste 14 Concord, NH 03301			<input checked="" type="checkbox"/> Should any of the above described policies be cancelled before the expiration date thereof, the company will endeavor to mail *(        days) written notice to the Certificate Holder named, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. *10 days unless different number of days shown. <input type="checkbox"/> This certifies coverage on the date of issue only. The above described policies are subject to cancellation in conformity with their terms and by the laws of the state of issue.	
DATE ISSUED 02/12/2014			AUTHORIZED REPRESENTATIVE Michael Campbell ( sd)	



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: LS

DATE (MM/DD/YYYY)

02/14/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>DYSTE WILLIAMS</b> 6465 Wayzata Blvd, #700 Minneapolis, MN 55426-1751 Daniel M Ribnick	<b>CONTACT NAME:</b> Nancy Poeschl <b>PHONE (A/C, No, Ext):</b> 952-843-4425 <b>FAX (A/C, No):</b> 952-593-5026 <b>E-MAIL ADDRESS:</b> npoeschl@dystewilliams.com	
	<b>PRODUCER CUSTOMER ID #:</b> WOWZA-1	
<b>INSURED</b> <b>Wowza Inc.</b> 2601 2nd Ave S, Studio 1 Minneapolis, MN 55408	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> SFM Mutual Companies	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		<b>NAIC #</b>

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER. <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$ \$	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ \$ \$	
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$	
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	020848.210	12/18/2013	12/18/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

NEWHA-1

New Hampshire Insurance  
 Department  
 Attn: Alexander Feldvebel  
 21 South Fruit St Ste 14  
 Concord, NH 03301

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2009 ACORD CORPORATION. All rights reserved.

## STANDARD EXHIBIT I

The Contractor identified as “Wowzilla, LLC” in Section A of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, “Business Associate” shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and “Covered Entity” shall mean the New Hampshire Insurance Department.

### BUSINESS ASSOCIATE AGREEMENT

(1) **Definitions.**

- a. “Breach” shall have the same meaning as the term “Breach” in Title XXX, Subtitle D. Sec. 13400.
- b. “Business Associate” has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. “Covered Entity” has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR Section 164.501.
- e. “Data Aggregation” shall have the same meaning as the term “data aggregation” in 45 CFR Section 164.501.
- f. “Health Care Operations” shall have the same meaning as the term “health care operations” in 45 CFR Section 164.501.
- g. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. “Individual” shall have the same meaning as the term “individual” in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR Section 164.501.

- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.
- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the

changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.

- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

NH Insurance Dept.  
The State

Alexander K. Feldvebel  
Signature of Authorized Representative

Alexander Feldvebel  
Name of Authorized Representative

Deputy Commissioner  
Title of Authorized Representative

2/19/14  
Date

Wow Zilla, LLC  
Name of the Contractor

[Signature]  
Signature of Authorized Representative

Allen Cooper  
Name of Authorized Representative

Partner  
Title of Authorized Representative

2-18-2014  
Date