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|---|---|--|-----------------------------------|---|--|
| SOLICITATION, OFFER, AND AWARD | | 1. Caption Upper Payment Limits Demonstrations (UPL) | | Page of Pages 1 82 | |
| 2. Contract Number | 3. Solicitation Number DCHT-2014-R-0014 | 4. Type of Solicitation <input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Human Care Agreements <input type="checkbox"/> Emergency | 5. Date Issued 8/1/2014 | 6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open with Sub-Contracting Set Aside | |
| 7. Issued By: Department of Health Care Finance (DHCF) 441 - 4th Street, N.W., 9th Floor Washington, DC 20001 | | 8. Address Offer to: Department of Health Care Finance (DHCF) 441 - 4th Street, N.W., 9th Floor Washington, DC 20001 ATTN: Annie R. White - 202/673-3561 | | | |

NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and **4** copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at **441-4th St. NW, Wash., DC 20001 Rm 900S** until **10:00** local time **15-Aug-14**
(Hour) (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

| | | | |
|-----------------------------|-------------------------------|---|---|
| 10. For Information Contact | A. Name Annie White | B. Telephone (Area Code) 202 (Number) 673-3561 (Ext) | C. E-mail Address annie.white4@dc.gov |
|-----------------------------|-------------------------------|---|---|

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OFFER

12. In compliance with the above, the undersigned agrees, if this offer is accepted within **120** calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

| | | | | |
|---------------------------------|---|---|---|--|
| 13. Discount for Prompt Payment | <input type="checkbox"/> 10 Calendar days % | <input type="checkbox"/> 20 Calendar days % | <input type="checkbox"/> 30 Calendar days % | <input type="checkbox"/> Calendar days % |
|---------------------------------|---|---|---|--|

| | | | | |
|---|------------------|------|------------------|------|
| 14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION): | Amendment Number | Date | Amendment Number | Date |
| | | | | |
| | | | | |

| | | | |
|--|---|---------------|----------------|
| 15A. Name and Address of Offeror | 16. Name and Title of Person Authorized to Sign Offer/Contract | | |
| | | | |
| 15B. Telephone (Area Code) (Number) (Ext) | 15C. Check if remittance address is different from above - Refer to Section G | 17. Signature | 18. Offer Date |

AWARD (TO BE COMPLETED BY GOVERNMENT)

| | | |
|-----------------------------------|------------|----------------------------------|
| 19. Accepted as to Items Numbered | 20. Amount | 21. Accounting and Appropriation |
| | | |

| | | |
|---|---|----------------|
| 22. Name of Contracting Officer (Type or Print) | 23. Signature of Contracting Officer (District of Columbia) | 24. Award Date |
| | | |

SECTION B

CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1. The District of Columbia (District), Department of Health Care Finance (DHCF) is seeking the services of a qualified contractor to conduct the annual Upper Payment Limit (UPL) demonstrations that is required by the Centers for Medicare and Medicaid Services (CMS) in the State Medicaid Directors Letter (SMD) # 13-003. UPL demonstrations are required for the following: inpatient hospital services, outpatient hospital services, psychiatric residential treatment facilities (PRTF), institutions for mental disease (IMD), physician services, clinics and nursing homes. See CMS guidance regarding state reporting of UPL demonstrations at facilities, and Intermediate Care Facilities for Intellectual Disabilities (ICF/IID) <http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Accountability-Guidance.html>

B.2 **Contract Type**

The District contemplates award of a firm fixed price contract.

B.3 **PRICE SCHEDULE**

| Contract Line Item No. (CLIN) | Line Item Description | Total Price |
|-------------------------------|---------------------------------------|-------------|
| 1 | Inpatient Hospital Services | \$ _____ |
| 2 | Outpatient Hospital Services | \$ _____ |
| 3 | Nursing Facilities Services | \$ _____ |
| 4 | ICFIID Services | \$ _____ |
| 5 | Clinics | \$ _____ |
| 6 | PRTFs | \$ _____ |
| 7 | IMD | \$ _____ |
| 8 | Physician Services | \$ _____ |
| 9 | Presentation to CMS | \$ _____ |
| 10 | Participation at Stakeholder Meetings | \$ _____ |

| | | |
|--|---|------------------------|
| 9 | Participation at Stakeholder Meetings | \$ _____ |
| Contract Line Item No. (CLIN) | Line Item Description OPTION YEAR 1 | Total Price |
| 1 | Inpatient Hospital Services | \$ _____ |
| 2 | Outpatient Hospital Services | \$ _____ |
| 3 | Nursing Facilities Services | \$ _____ |
| 4 | ICFIID Services | \$ _____ |
| 5 | Clinics | \$ _____ |
| 6 | PRTFs | \$ _____ |
| 7 | IMD | \$ _____ |
| 8 | Physician Services | \$ _____ |
| 9 | Presentation to CMS | \$ _____ |
| 10 | Participation at Stakeholder Meetings | \$ _____ |

| Contract Line Item No. (CLIN) | Line Item Description OPTION YEAR 2 | Total Price |
|----------------------------------|--|----------------|
| 1 | Inpatient Hospital Services | \$ _____ |
| 2 | Outpatient Hospital Services | \$ _____ |
| 3 | Nursing Facilities Services | \$ _____ |
| 4 | ICFIID Services | \$ _____ |
| 5 | Clinics | \$ _____ |
| 6 | PRTFs | \$ _____ |
| 7 | IMD | \$ _____ |
| 8 | Physician Services | \$ _____ |
| 9 | Presentation to CMS | \$ _____ |
| 10 | Participation at Stakeholder Meetings | \$ _____ |

| Contract Line Item No. (CLIN) | Line Item Description OPTION YEAR 3 | Total Price |
|----------------------------------|--|----------------|
| 1 | Inpatient Hospital Services | \$ _____ |
| 2 | Outpatient Hospital Services | \$ _____ |
| 3 | Nursing Facilities Services | \$ _____ |
| 4 | ICFIID Services | \$ _____ |
| 5 | Clinics | \$ _____ |
| 6 | PRTFs | \$ _____ |
| 7 | IMD | \$ _____ |
| 8 | Physician Services | \$ _____ |
| 9 | Presentation to CMS | \$ _____ |
| 10 | Participation at Stakeholder Meetings | \$ _____ |

| Contract Line Item No. (CLIN) | Line Item Description OPTION YEAR 4 | Total Price |
|----------------------------------|--|----------------|
| 1 | Inpatient Hospital Services | \$ _____ |
| 2 | Outpatient Hospital Services | \$ _____ |
| 3 | Nursing Facilities Services | \$ _____ |
| 4 | ICFIID Services | \$ _____ |
| 5 | Clinics | \$ _____ |
| 6 | PRTFs | \$ _____ |
| 7 | IMD | \$ _____ |
| 8 | Physician Services | \$ _____ |
| 9 | Presentation to CMS | \$ _____ |
| 10 | Participation at Stakeholder Meetings | \$ _____ |

SECTION C

SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

The District of Columbia (District), Department of Health Care Finance (DHCF) is seeking the services of a qualified contractor to conduct the annual Upper Payment Limit (UPL) demonstrations that is mandated by the Centers for Medicare and Medicaid Services (CMS) in the State Medicaid Directors Letter (SMD) # 13-003. UPL demonstrations are required for the following services: inpatient hospital, outpatient hospital, psychiatric residential treatment facilities (PRTF), institutions for mental disease (IMD), physician services, clinics, nursing facilities, and Intermediate Care Facilities for Intellectual Disabilities (ICF/IID). See CMS guidance regarding state reporting of UPL demonstrations <http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Accountability-Guidance.html>

C.2 DEFINITIONS

C.2.1 DEPARTMENT OF HEALTH CARE FINANCE (DHCF) is the District of Columbia Government agency responsible for the administering publicly-financed medical assistance benefits, including Medicaid services under Title XIX, the Children's Health Insurance Program, the Immigrant Children's Health Program, and the DC HealthCare Alliance.

C.2.2 DISTRICT OF COLUMBIA (DISTRICT) refers to the government of the District of Columbia.

C.2.3 UPPER PAYMENT LIMIT (UPL) refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles.

C.2.4 STATE PLAN AMENDMENTS (SPA) State Plan is a contract between a state and the Federal Government describing how that state administers its Medicaid program. It gives an assurance that a state abides by Federal rules and may claim Federal matching funds for its Medicaid program activities. The state plan sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed and the administrative requirements that States must meet to participate.

C.3 BACKGROUND

C.3.1 Section 1902(a)(30)(a) of the Social Security Act requires that Medicaid payments be consistent with efficiency, economy, and quality of care; thereby establishing payment limits on Medicaid payments made to providers.

C.3.2 The UPL demonstrations are a mechanism used by CMS to ensure that reimbursement rates developed by states, does not exceed the parameters discussed in the paragraph

above. Further, the UPL demonstrations provide CMS with qualitative analysis to verify that a state's Medicaid reimbursement rates are consistent with efficiency, economy, and quality of care sufficient to enlist enough providers. Federal matching funds are not available for state expenditures that exceed the UPL.

C.3.3 Starting in fiscal year (FY) 2013, states are required to submit UPL demonstrations on an annual basis. Previously, this information was collected or updated only when a state was proposing an amendment to a reimbursement methodology in its Medicaid state plan (SPA). Specifically for FY15, CMS requires states to submit UPL demonstrations for the following services: inpatient hospital, outpatient hospital, psychiatric residential treatment facilities (PRTF), and institutions for mental disease (IMD), physician services, clinics and nursing homes.

C.3.4 DHCF as the single state agency responsible for the administration of Medicaid in the District, is required to submit the UPL demonstrations to CMS. With the District's FY15 starting on October 1, 2014, all UPL demonstrations must be completed and submitted to CMS prior to this start date.

C.3.2 **SPECIFIC SERVICES**

C.3.2.1. **INPATIENT HOSPITAL SERVICES**

C.3.2.1.1 Federal regulations 42 CFR § 447.272 defines the inpatient UPL as a reasonable estimate of the amount that would be paid for inpatient Medicaid services under Medicare payment principles. Pursuant to 42 CFR § 447.304, Federal funds are not available for Medicaid payments that exceed this limit.

C.3.2.1.2 The proposed FY15 program budget for the Medicaid Fee for Service inpatient hospital services is \$348.7 million. The budget is based on a number of strategic policy designs for the in-patient acute care hospitals: elimination of the hospital bed tax, implementing caps on the reimbursement for capital and graduate medical education (GME) expenditures, and changes to the reimbursement methodology. In addition key policy decisions for the in-patient Specialty hospitals includes assigning, specialty hospitals to a reimbursement category based on the nature of the hospital's license, patient case mix, and current billing practices.

C.3.2.1.3 Concerning the payment methodology, beginning in FY15 i.e. on October 1, 2014, DHCF will transition from the All Patient Diagnosis Related Groups (AP-DRG) to the All Patient Refined Diagnosis Related Groups (APR-DRG), for the eight acute care hospitals operating in the District. Under the new APR-DRG methodology, the payment rates will be designed not to exceed a rate that approximates an overall payment to cost ratio of ninety-eight (98%). To calculate the new payment rate for each hospital for FY15, DHCF will use each hospital's submitted cost report for FY13 along with an analysis of the FY13 claims data.

C.3.2.1.4 Also beginning on October 1, 2014, the reimbursement methodology for in-patient Specialty hospitals shall be based on the following categories:

- i. Per Diem
 - 1. Psychiatric hospitals,
 - 2. Pediatric hospitals not eligible for APR-DRG payment under Part I of this Attachment; and
 - 3. Rehabilitation hospitals.
- ii. Per Stay: Long-term care hospitals (LTCHs).

C.3.2.1.5 Under these categories, Specialty hospitals classified above as psychiatric hospitals shall be eligible for reimbursement for services that meet the definition at 42 C.F.R. § 440.160 and are provided to beneficiaries ages 21 and under. Further, Specialty hospitals classified as rehabilitation hospitals or LTCHs shall be eligible for reimbursement for services that meet the definition at 42 C.F.R. § 440.10.

C.3.2.2. OUTPATIENT HOSPITAL SERVICES

C.3.2.2.1 Federal regulations at 42 CFR § 447.321, define the outpatient UPL as a reasonable estimate of the amount that would be paid for outpatient Medicaid services under Medicare payment principles. Pursuant to 42 CFR § 447.304, Federal funds are not available for Medicaid payments that exceed this limit.

C.3.2.2.2 The proposed FY15 program budget for the Medicaid Fee for Service outpatient hospital services is \$59.8 million. Historically, the reimbursement rates for outpatient hospital services have been set not to exceed forty-seven (47%) of the cost to charge ratio. However, with the proposed FY15 budget and implementation of the new payment system, the target reimbursement rates would be increased to not exceed seventy-seven (77%) of the cost to charge ratio.

C.3.2.2.3 Beginning in FY15, DHCF will transition to the Enhanced Ambulatory Patient Groups (EAPG) system. The EAPG system will offer DHCF greater control over payment levels and flexibility in implementing payment policies, and fairness in payment for outpatient hospitals.

C.3.2.3. NURSING FACILITIES SERVICES

The District, under its Medicaid state plan administered by DHCF, currently reimburses enrolled nursing facilities based on a facility specific Per-diem and Peer groups system, plus add-on payments for ventilator care. There are nineteen (19) nursing facilities operating in the District and the FY15 budget for nursing facilities is approximately \$261 million.

C.3.2.4. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/IID)

C.3.2.4.1 The proposed FY15 budget for ICFIID services is \$103 million. There are presently seventy-two (72) licensed ICFIIDs providing residential care to approximately 345 beneficiaries.

C.3.2.4.2 In FY13, the District implemented a new reimbursement methodology that better aligns the reimbursement rates with the severity levels of beneficiary acuities. Under this

methodology, the total ICFIID reimbursement rates consists of several cost centers which are rebased every three years and annually adjusted by the Medicaid market basket Index inflation factor.

C.3.2.5. CLINICS

C.3.2.5.1 The proposed FY15 budget for clinic services is approximately \$150 million. Pursuant to the District's SPA, clinics are broadly defined under three categories: private, public and federally qualified health centers (FQHCs).

C.3.2.6 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES (PRTF)

C.3.2.6.1 A PRTF is a facility that meets the requirements set forth at 42 CFR § 441.151 through 441.182A, and is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, and provides inpatient psychiatric services for individuals under the age of twenty- two.

C.3.2.6.2 The proposed budget for PRTF's is approximately \$3.7 million. Reimbursement for PRTFs is a prospective, provider-specific per diem rate that is determined based on whether the PRTF is located within or outside the District. PRTF's located within the District are reimbursed at the average rate by Maryland program for comparable services. Similarly, out – of District PRTF's are reimbursed based on either the Medicaid rate paid by the state where the PRTF is located, or the rates paid to third party providers. There are currently xx District residents placed at xx number of facilities.

C.3.2.7 PHYSICIAN SERVICES

C.3.2.7.1 Federal regulations at 42 CFR § 440.50, refers to physicians services as services that is furnished either in the office, the beneficiary's home, a hospital, a skilled nursing facility, or elsewhere, by a physician.

C.3.2.7.2 While the rates for physician services for procedure codes within the Medicare fee schedule (MFS) is 80% of the Medicare Fee Schedule, the FY15 budget is approximately \$61.2 million.

C.4 REQUIREMENTS

C.4.1 The contractor shall conduct the UPL demonstrations for each of the specific service under C.3.2, make recommendation(s) and provide all necessary documentations to ensure compliance with the CMS UPL regulations in line with the timeline provided at section F.1.1. At a minimum the UPL demonstrations should include a comprehensive narrative description of the methodology (step by step) used to determine the UPL. The demonstration should also include a spreadsheet with provider specific information that starts with the source data and identifies the numerical result of each step of the UPL calculation. All source data should be clearly referenced (i.e., cost report year, columns, and claims reports).

C.4.1.1 As needed, the contractor shall respond to all CMS inquiries and questions regarding the UPL demonstrations.

C.4.2 PROJECT APPROACH

The contractor shall develop and provide an overall project plan to document the contractor's overall project approach and strategy to perform the analysis, and make recommendations. The contractor's plan shall include the contractor's procedures to successfully complete this project. The contractor's plan shall require the approval of the Contract Administrator (CA) and contain at a minimum the following:

- a) Sufficient detail to demonstrate the contractor's understanding of the DHCF reimbursement methodology for each service area
- b) Identification of the relevant CMS regulations and State Plan Amendment(SPA) provisions governing the calculation of the reimbursement rates
- c) Schedule of weekly conference calls; and
- d) Description of the quality assurance process to be used to ensure the integrity and accuracy of data and final recommendations.

C.4.3 PROJECT MANAGEMENT

The contractor shall participate in weekly conference calls with the CA and other District officials of the progress made in the completion of the tasks.

C.4.4 FINAL REPORT – DRAFT

The contractor shall develop and provide a draft of the Final Report. The contractor shall ensure that the draft of the Final Report shall include and addresses at a minimum the following:

- a) A review of the existing reimbursement methodologies
- b) The methodology /methodologies for calculating the UPL
- c) Calculation of the UPL
- d) An aggregation of cost report data for all DHCF participating nursing facilities to be included in the UPL calculation
- e) A cross-walk of the MMIS Data
- f) Comparison of the provided DHCF rates to the computed UPL
- g) All relevant supporting documentation and work papers used to complete the analysis; and
- h) A recommendation based on the findings from the analysis conducted.
- i) The completed CMS UPL Guidance Forms for each service area.

C.5.1 **FINAL REPORT**

C.5.1.1. The contractor shall develop and provide the Final Report. The contractor shall ensure that the Final Report includes the items described in the draft of the Final Report, and any revisions required by the District.

The Contractor shall be prepared to present and explain the methodologies, analysis and recommendations in the final reports in a clear and concise manner at meetings requested by DHCF and CMS.

SECTION D

PACKAGING AND MARKING

The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION E

INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF WORK PERFORMED

The inspection and acceptance requirements for the resultant Contract shall be Governed by the Inspection of Services Clause in Section 6 of the Government of The District of Columbia's Standard Contract Provisions for use with Supplies And Services Contracts, dated July 2010, Attachment J.2.

E.2 RIGHT TO ENTER PREMISES

The Department of Health Care Finance (DHCF) or any authorized representative of the District of Columbia, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, or their authorized representatives will, at all reasonable times, have the right to enter the Contractor's premises or such other places where duties under the Contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor and all subcontractors shall provide reasonable access to all facilities and assistance to the District and Federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay the services.

SECTION F

PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of one (1) year from date of award specified on the cover page of this contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of four (4) one year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

F.3 DELIVERABLES

F.3.1 The contractor shall perform the required services and tasks, develop, and submit one (1) electronic copy of the following deliverables to the CA in accordance with the due dates identified in the Deliverable Schedule, as described below. The Contractor shall provide hard copies of any deliverable upon request of the CA.

| Deliverable No. | Deliverable | Due Date |
|-----------------|------------------------------|---|
| 1 | Project Management Plan | Within 1 Week of Award |
| 2 | Draft Report of Final | Within 1 Week prior to due date of the final report |
| 3 | Final Reports : | |
| 4 | Inpatient Hospital Services | September 15, 2014 |
| 5 | Outpatient Hospital Services | September 15, 2014 |
| 6 | Nursing Facilities Services | September 15, 2014 |
| 7 | ICFIID Services | September 15, 2014 |
| 8 | Clinics | September 15, 2014 |
| 9 | PRTFs | September 15, 2014 |

| | | |
|----|---------------------|--------------------|
| 10 | Physician Services | September 15, 2014 |
| 11 | Presentation to CMS | As Needed |

- F.3.2** Weekly status reports will at a minimum contain status of the UPL Demonstrations, any issues with the vendor and other issue that hinder the progress of the audit.
- F.3.3** The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.3.2.

SECTION G

CONTRACT ADMINISTRATION

G.1 **INVOICE SUBMITTAL**

- G.1.1** The Contractor shall submit proper invoices on a monthly basis electronically to the Accounts Payable recipient, Garland Singletary at Garland.Singletary@dc.gov and to the Contract Administrator (CA) at dhcf.invoices@dc.gov. The Contractor shall ensure the purchase order number appears in the subject line of the e-mail (See Invoice Payment, Section 28 of the Standard Contract Provisions, July 2010).
- G.1.2** The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.
- G.1.3** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.1.4** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.1.5** Contract number and invoice number;
- G.1.6** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.1.7** Other supporting documentation or information, as required by the Contracting Officer;
- G.1.8** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.1.9** Name, title, phone number of person preparing the invoice;
- G.1.10** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.1.11** Authorized signature.

G.2 **FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- G.2.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.2.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's

compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.3 **PAYMENT**

G.3.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.3.2 The District will pay the Contractor on or before the thirtieth 30th business day after receiving a proper invoice from the Contractor. Payment of invoices will be withheld pending a signed acceptance and approval of all services by the COTR. The District reserves the right to conduct post payment reviews or audits.

G.4 **ASSIGNMENT OF CONTRACT PAYMENTS**

G.4.1 In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

G.4.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

G.4.3 Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee).”

G.5 **THE QUICK PAYMENT CLAUSE**

G.5.1 **Interest Penalties to Contractors**

G.5.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.5.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.5.2 **PAYMENTS TO SUBCONTRACTORS**

G.5.2.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.5.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.5.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.5.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.5.3 **SUBCONTRACT REQUIREMENTS**

G.5.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.6 **CONTRACTING OFFICER (CO)**

G.6.1 **CONTRACTING OFFICER**

Contracts may be entered into and signed on behalf of the District Government only by contracting officers.

G.6.2 The address and telephone number of the Contracting Officer for this contract is:

Franklin Austin
Contracting Officer
Department of Health Care Finance
Contracts and Acquisitions Division
441 – 4TH Street, N.W., Room 972
Washington, DC 20001
202-442-8996
Franklin.austin2@dc.gov

G.7 **CONTRACT ADMINISTRATOR (CA)**

G.7.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.7.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.7.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.7.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.7.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.7.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.7.2 The address and telephone number of the CA is:

Bidemi Isiaq
Reimbursement Analyst
Department of Health Care Finance
Office of Rates, Reimbursement and Financial Analysis

One Judiciary Square
441 4th Street, N.W.
9th Floor, Suite 900S
Washington, DC 20001
(202) 442-9202
Bidemi.isiaq@dc.gov

The responsibilities of the CA are listed in the Standard Contract Provisions, Attachment J.1 of this document.

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No.: 2005-2103, Revision No.: 13, dated June 19, 2013, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Attachment J.3 of this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before it, any of its officers, agents, employees or subcontractor, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private Contractor to perform a public function, to the same extent as if the record were maintained by the agency on

whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA designated in subsection G.9 who shall provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA shall forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility shall determine the releasability of the records. The District shall reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.5 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. § 794 *et seq.*

H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq.*

H.7 WAY TO WORK AMENDMENT ACT OF 2006

H.7.1 Except as described in Section H.8.8 below, Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 9, 2006, (D.C. Law 16-118, D.C. Official Code § 2-220.01 *et seq.*) “Living Wage Act of 2006” for contracts for services in the amount of one-hundred thousand dollars (\$100,000) or more in a twelve (12) month period.

H.7.2 Contractor shall pay its employees and subcontractor who perform services under the Contract no less than the current living wage described in Attachment J.4.

H.7.3 Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.7.4 The Department of Employment Services may adjust the living wage annually.

H.7.5 Contractor shall provide a copy of the Fact Sheet attached as Attachment J.6 to each employee and subcontractor who performs services under the contract. Contractor shall also post the Notice attached as Attachment J.5 in a conspicuous place in its place of business. Contractor shall include in any subcontract for fifteen thousand dollars

(\$15,000) or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.7.6 Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for fifteen thousand dollars (\$15,000) or more under the Contract.

H.7.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code § 32-1301 *et seq.*

H.7.8 The requirements of the Living Wage Act of 2006 do not apply to:

- a. Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- b. Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- c. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- d. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- e. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- f. An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- g. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District; and
- h. Employees of nonprofit organizations that employ not more than fifty (50) individuals and qualify for taxation exemption pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)).

H.7.9 The Mayor may exempt a Contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.8 DISTRICT RESPONSIBILITIES

H.8.1 The District through the CA shall provide feedback regarding required Deliverables. The CA shall review and provide approval or disapproval.

H.8.2 The District through the CA shall provide on-going oversight and monitoring of the Contractor's performance.

H.8.3 The District, through the CA, shall maintain adequate liaison and cooperation with the Contractor.

H.8.4 The District shall attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and other specific agenda items.

H.9 CONTRACTOR RESPONSIBILITIES

H.9.1 STAFFING AND SUPERVISION

The Contractor shall provide the staff and supervision required to successfully perform the required services.

H.9.1.1 The Contractor shall ensure that its staff responds to the CA's requests for documents and information. The Contractor's staff shall respond to the CA's questions and requests in a timely and efficient manner.

H.9.2 RECORDS RETENTION

H.9.2.1 The Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for the length of the Contract in addition to a period of six (6) years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

H.9.2.2 If any litigation, claim, financial management review, or audit is started before the expiration of the record retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

H.9.2.3 Records for real property and equipment acquired with federal funds shall be retained for six (6) years after final disposition; and

H.9.2.4 When records are transferred to or maintained by the HHS awarding agency, the record retention requirement is not applicable to the recipient.

H.10 HIPAA COMPLIANCE – BUSINESS ASSOCIATE AGREEMENT

DHCF is a "Covered Entity" as that term is defined in the Privacy Rule and Security Rules and Contractor, as a recipient of Protected Health Information and/or Electronic

Protected Health Information from DHCF, is a “Business Associate” as that term is defined in the Privacy and Security Rules.

H.10.1 Definitions

The following definitions shall apply to this Section:

H.10.2 Administrative Safeguards: administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Covered Entity's workforce in relation to the protection of that information.

H.10.3 Business Associate: a person or entity, who performs, or assists in the performance of a function or activity on behalf of a Covered Entity or an organized health care organization in which the Covered Entity participates, involving the use or disclosure of individually identifiable health information, other than in the capacity of a workforce member of such Covered Entity or organization. A business associate is also any person or organization that provides, other than in the capacity of a workforce member of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for the Covered Entity and receives individually identifiable health information from a Covered Entity or another business associate on behalf of a Covered Entity. In some instances, a Covered Entity may be a business associate of another Covered Entity.

H.10.4 Covered Entity: a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of the Privacy and Security Rules. Covered Entity is also referred to as Covered Agency within this HIPAA Compliance Clause. With respect to this Compliance Clause, Covered Entity shall also include the designated health care components of a hybrid entity.

H.10.5 Data Aggregation: with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a Covered Entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.

H.10.6 Designated Record Set: a group of records maintained by or for the Covered Entity that is:

- a. The medical records and billing records about individuals maintained by or for a covered health care provider;
- b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- c. Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.

- H.10.7** HIPAA: the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and it's implementing regulations at 45 C.F.R. Parts 160, 162, and 164..
- H.10.8** **Electronic Media:**
- H.10.8.1** Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
- H.10.8.2** Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- H.10.9** **Electronic Protected Health Information:** Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- H.10.10** **Health Care:** care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
- H.10.10.1** Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- H.10.10.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.10.11** **Health Care Components:** a component or a combination of components of a hybrid entity designated by a hybrid entity in accordance with 45 C.F.R. §164.105(a)(2)(iii)(C). Health Care Components must include non-covered functions that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.10.12** **“Health Care Operations:** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.10.13** **Hybrid Entity:** a single legal entity that is a Covered Entity and whose business activities include both covered and non-covered functions, and that designates health care components in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). A Hybrid Entity is required to designate as a health care component, any other components of the entity that provide services to the covered functions for the purpose of facilitating the sharing

of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.

- H.10.14** **Individual:** the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- H.10.15** **Individually Identifiable Health Information:** a subset of health information, including demographic information collected from an individual, and:
- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
 - b. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual;
 - c. Identifies the individual; or
 - d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.10.16** **National Provider Identifier (NPI) Rule:** the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.10.17** **Physical Safeguards:** security measures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- H.10.18** **Privacy Official:** person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy Rule, and other applicable federal and District of Columbia privacy laws.
- H.10.19** **Privacy Officer:** person designated by the Privacy Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District's Privacy policies and procedures as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rule, and other applicable federal and District of Columbia privacy laws. The Covered Agency's privacy officer shall follow the guidance of the District's Privacy Official, and shall be responsive to and report to the District's Privacy Official.
- H.10.20** **Privacy Rule:** Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- H.10.21** **Protected Health Information:** individually identifiable health information that is:
- a. Transmitted by electronic media;
 - b. Maintained in electronic media;
 - c. Transmitted or maintained in any other form or medium;

- d. Limited to the information created or received by the Business Associate from or on
- e. behalf of the Covered Entity; and
- f. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R.
- g. §160.103.

- H.10.22** **Record:** any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.
- H.10.23** **Required By Law:** same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.10.24** **Secretary:** the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.10.25** **Security Incident:** attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- H.10.26** **Security Official:** person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Security policies and procedures as required by the Security Rule and oversee full compliance the District's Security policies and procedures, as well as other applicable federal and District of Columbia security law.
- H.10.27** **Security Officer:** person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District Security Rule policies and procedures as well as overseeing full compliance with the Covered Agency's Security Policies and Procedures, the Security Rule, and other applicable federal and District of Columbia security law(s). The Covered Agency's security officer shall follow the guidance of the District's Security Official, and shall be responsive to and report to the District's Security Official.
- H.10.28** **Security Rule:** the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- H.10.29** **Technical Safeguards:** the technology and the policies and procedures for its use that protect electronic protected health information and control access.
- H.10.30** **Workforce:** employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or business associate, is under the direct control of such entity, whether or not they are paid by the Covered Entity or business associate.

H.11 **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- H.11.1** The Business Associate agrees not to use or disclose Protected Health Information and Electronic Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required by Law.
- H.11.2** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and Electronic Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Compliance Clause.
- H.11.3** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate in violation of the requirements of this Compliance Clause.
- H.11.4** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information and Electronic Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or the DHCF Privacy Officer immediately, but no later than (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.
- H.11.5** The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Compliance Clause with respect to Protected Health Information and Electronic Protected Health Information received from the Business Associate, Protected Health Information and Electronic Protected Health Information created by the Business Associate, or Protected Health Information and Electronic Protected Health Information received by the Business Associate on behalf of the Covered Entity.
- H.11.6** The Business Associate agrees to provide access, at the request of the Covered Entity or an Individual, at a mutually agreed upon location, during normal business hours, and in a format as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, in compliance with applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14. Individual's Information Rights - Access, attached hereto as Exhibit A and incorporated by reference, and within five (5) business days of the request to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.
- H.11.7** The Business Associate agrees to make any amendment(s) to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format or as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, in compliance with applicable portions of the Department of

Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15 Individual's Information Rights, attached hereto as Exhibit B and incorporated by reference, and within five (5) business days of the directive in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.

- H.11.8** The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedure, attached hereto as Exhibit C and incorporated by reference.
- H.11.9** The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Administration Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures attached hereto as Exhibit D and incorporated by reference.
- H.11.10** The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or the DHCF Privacy Officer and the duly authorized Business Associate workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual; Policy Number IV.16 Individual's Information Rights - attached hereto as Exhibit E and incorporated by reference.
- H.11.11** The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or the DHCF Privacy Officer and the duly authorized Business Associate workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule and Security Rule.

H.11.12 The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to said other Covered Entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer or a duly authorized workforce member of the Covered Entity.

H.11.13 Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this HIPAA Compliance Clause.

H.12 **PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE**

H.12.1 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided

that such use or disclosure would not violate the Privacy Rule or the Security Rule if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

H.12.2 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

H.12.3 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it shall remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality and security of the information has been breached.

H.12.4 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

H.12.5 Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

H.13 **ADDITIONAL OBLIGATIONS OF THE BUSINESS ASSOCIATE**

H.13.1 Business Associate shall submit a written report to the Covered Entity that identifies the files and reports that constitute the Designated Record Set of the Covered Entity. Business Associate shall submit said written report to the Privacy Officer no later than thirty (30) days after the commencement of the HIPAA Compliance Clause. In the event that Business Associate utilizes new files or reports which constitute the Designated Record Set, Business Associate shall notify the Covered Entity of said event within thirty (30) days of the commencement of the file's or report's usage. The Designated Record Set file shall include, but not be limited to the identity of the following:

- a. Name of the Business Associate of the Covered Entity;
- b. Title of the Report/File;
- c. Confirmation that the Report/File contains Protected Health Information (Yes or No);
- d. Description of the basic content of the Report/File;
- e. Format of the Report/File (Electronic or Paper);
- f. Physical location of Report/File;
- g. Name and telephone number of current member(s) of the workforce of the Covered Entity or other District of Columbia Government agency responsible for receiving and processing requests for Protected Health Information; and
- h. Supporting documents if the recipient/personal representative has access to the Report/File.

H.13.2 Business Associate must provide assurances to the Covered Entity that it shall continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) EPHI entrusted to it. These safeguards include:

H.13.2.1 The Business Associate agrees to develop, maintain, implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.

H.13.2.2 The Business Associate agrees to ensure that any agents or subcontractor of the Business Associate also agree to implement the appropriate security safeguards.

H.13.2.3 The Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware, including any attempts to access EPHI, whether those attempts were successful or not.

H.13.2.4 This Business Associate Agreement may be terminated if the Covered Entity determines that the business associate has materially breached this Compliance Clause, consistent with the terms and conditions outlined in Section 9, Term and Termination.

H.13.2.5 The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Covered Entity or Secretary of HHS for the purposes of determining the Covered Entity's compliance with the Privacy and Security Rules. Notwithstanding the above, Business Associate has identified some security policies and procedures as confidential and which do not get distributed to third parties. In the event the Covered Entity or Secretary of HHS makes a request for such security policies and procedures, Business Associate shall work with the Covered Entity and the Secretary of HHS to arrange a meeting at the Business Associate's premises, at a time and place mutually agreeable to the parties involved, to view such security policies and procedures.

H.13.2.6 This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.

H.14 **SANCTIONS**

H.14.1 Business Associate agrees that its workforce members, agents and subcontractor who violate the provisions of the Privacy Rule, the Security Rule or other applicable federal or District of Columbia privacy law shall be subject to discipline in accordance with Business Associate's disciplinary rules and applicable collective bargaining agreements. Business Associate agrees to impose sanctions consistent with Business Associate's personnel policies and procedures and applicable collective bargaining agreements with respect to its workforce members, agents, employees and subcontractor.

H.14.2 Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of District of Columbia Privacy and Security policies and procedures as set forth in this Compliance Clause.

H.14.3 In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractor for violation of the provisions of the Privacy and Security Rules or other applicable federal or District of Columbia Privacy and Security laws, regulations, and policies and procedures, the Business Associate shall inform the District Privacy and Security Officials or the DHCF Privacy and Security Officers of the imposition of sanctions.

H.15 **OBLIGATIONS OF THE COVERED ENTITY**

H.15.1 The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.15.2 The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information and Electronic Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.

H.15.3 The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information and Electronic Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.16 **PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request the Business Associate to use or disclose Protected Health Information and Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by the Covered Entity.

H.17 **REPRESENTATIONS AND WARRANTIES**

H.17.1 The Business Associate represents and warrants to the Covered Entity:

H.17.1.1 That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees, agents, subcontractor, representatives and members of its workforce are licensed and in good standing with the applicable agency, board, or governing body to perform its obligations hereunder, and that the performance by it of its obligations under this HIPAA Compliance Clause has been duly authorized by all necessary corporate or other actions and shall not violate any provision of any license, corporate charter or bylaws;

H.17.1.2 That it, its employees, agents, subcontractor, representatives and members of its workforce are in good standing with the District of Columbia, that it, its employees, agents, subcontractor, representatives and members of its workforce shall submit a letter of good standing from the District of Columbia, and that it, its employees, agents, subcontractor, representatives and members of its workforce have not been de-barred from being employed as a Contractor by the federal government or District of Columbia;

H.17.1.3 That neither the execution of this HIPAA Compliance Clause, nor its performance hereunder, shall directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. The Business Associate represents and warrants to the Covered Entity that it shall not enter into any agreement the execution or performance of which would violate or interfere with this HIPAA Compliance Clause;

H.17.1.4 That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;

H.17.1.5 That all of its employees, agents, subcontractor, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA

Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regard to the use and disclosure of Protected Health Information and Electronic Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule and Security Rule shall be communicated to the Business Associate, in writing, and in a timely fashion;

H.17.1.6 That it shall reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;

H.17.1.7 That neither the Business Associate, nor its shareholders, members, directors, officers, agents, subcontractor, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or District healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or District law (including without limitation following a plea of *nolo contendere* or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to:

- a. The neglect or abuse of a patient;
- b. The delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or District healthcare program;
- c. Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, District or local government agency;
- d. The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or

H.17.7.2 Interference with or obstruction of any investigation into any criminal offense.

H.17.3 The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

H.18 **TERM AND TERMINATION**

H.18.1 **Term**

H.18.1.1 The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.

H.18.1.2 The requirements of this HIPAA Compliance Clause shall terminate when:

H.18.1.2.1 All of the Protected Health Information and Electronic Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request, with the Protected Health Information returned in a format mutually agreed upon by and between the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable, and the appropriate and duly authorized workforce member of the Business Associate; or,

H.18.1.2.2 If it is infeasible to return or confidentially destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section and communicated to the appropriate District personnel, whether the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable.

H.19 **TERMINATION FOR CAUSE**

H.19.1 Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:

H.19.2 Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

H.19.3 Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or

H.19.4 If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.20 **EFFECT OF TERMINATION**

H.20.1 Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractor, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information and Electronic Protected Health Information in any media form.

H.20.2 In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible.

H.20.3 Upon determination by the DHCF Privacy and Security Officer that the return or confidential destruction of the Protected Health Information is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or confidential destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and Electronic Protected Health Information. The obligations outlined in Section 2, Obligations and Activities of Business Associate, shall remain in force to the extent applicable.

H.21 **MISCELLANEOUS**

H.21.1 **Regulatory References**

A reference in this HIPAA Compliance Clause to a section of HIPAA, including the Privacy Rule or the Security Rule means the section as in effect or as amended.

H.21.2 **Amendment**

H.21.2.1 The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.

H.21.2.2 Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one (1) event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.

H.21.3 **Survival**

The respective rights and obligations of the Business Associate under Section 9, Term and Termination, of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions (Attachment J.2) for use with the District of Columbia Government Supply and Services Contracts shall survive termination of the Contract.

H.21.4 **Interpretation**

H.21.4.1 Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit the Covered Entity to comply with applicable federal and District of Columbia laws, rules and regulations, and the Privacy Rule and Security Rule, and any requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable federal and District of Columbia laws, rules and regulations shall supersede the Privacy Rule and Security Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or

safeguarding of Protected Health Information and Electronic Protected Health Information than those of HIPAA and its Privacy Rule and Security Rule .

- H.21.4.2** The terms of this HIPAA Compliance Clause amend and supplement the terms of the Contract, and whenever possible, all terms and conditions in this HIPAA Compliance Clause are to be harmonized. In the event of a conflict between the terms of the HIPAA Compliance Clause and the terms of the Contract, the terms of this HIPAA Compliance Clause shall control; provided, however, that this HIPAA Compliance Clause shall not supersede any other federal or District of Columbia law or regulation governing the legal relationship of the Parties, or the confidentiality of records or information, except to the extent that the Privacy Rule preempts those laws or regulations.
- H.21.4.3** In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule and Security Rule, the Privacy Rule and Security Rule shall control.
- H.21.5** **No Third-Party Beneficiaries**
- H.21.5.1** The Covered Entity and the Business Associate are the only parties to this HIPAA Compliance Clause and are the only parties entitled to enforce its terms.
- H.21.5.2** Except for the rights of Individuals, as defined herein, to access to and amendment of their Protected Health Information and Electronic Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this HIPAA Compliance Clause.
- H.21.6** **Compliance with Applicable Law**
- The Business Associate shall comply with all federal, District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.
- H.21.7** **Governing Law and Forum Selection**
- H.21.7.1** The Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia.
- H.21.7.2** The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract

Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be.

H.21.7.3 The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.

H.21.8 Indemnification

H.21.8.1 The Business Associate shall indemnify, hold harmless and defend the covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with:

H.21.8.1.1 Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

H.21.8.1.2 Any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.

H.21.9 Injunctive Relief

H.21.9.1 Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate, its workforce, any of its subcontractor, agents, or any third party who has received Protected Health Information and Electronic Protected Health Information from the Business Associate.

H.21.9.2 Assistance in litigation or administrative proceedings

H.21.9.3 The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractor or its workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance Clause and the Contract, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the Privacy Rule, Electronic Protected Health Information or other laws relating to security and privacy, except where the Business Associate or its agents, affiliates, subsidiaries, subcontractor or its workforce are a named adverse party.

H.21.10 Notices

H.21.10.1 Any notices between the Parties or notices to be given under this HIPAA Compliance Clause shall be given in writing and delivered by personal courier delivery or overnight courier delivery, or by certified mail with return receipt requested, to the Business

Associate or to the Covered Entity, to the addresses given for each Party below or to the address either Party hereafter gives to the other Party.

H.21.10.2 Any notice being address and mailed in the foregoing manner shall be deemed given five (5) business days after mailing. Any notice delivered by personal courier delivery or overnight courier delivery shall be deemed given upon notice upon receipt.

| If to the Business Associate, to: | If to the Covered Entity, to: |
|-----------------------------------|--|
| | Department of Health Care Finance |
| | 441 4 th Street NW, Suite 900 South |
| | Washington, DC 20001 |
| | Attention: DHCF General Counsel |
| | Fax: 202-442-4790 |

H.21.11 Headings

Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.21.12 Counterparts; Facsimiles

This HIPAA Compliance Clause may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

H.21.13 Successors and Assigns

The provisions of this HIPAA Compliance Clause shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, if any.

H.21.14 Severance

H.21.14.1 In the event that any provision of this HIPAA Compliance Clause is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this HIPAA Compliance Clause shall remain in full force and effect.

H.21.14.2 In addition, in the event a Party believes in good faith that any provision of this HIPAA Compliance Clause fails to comply with the then-current requirements of the Privacy Rule, such party shall notify the other Party in writing, in the manner set forth in Section 10. Miscellaneous, Paragraph k. Notices.

H.21.14.3 Within ten (10) business days from receipt of notice, the Parties shall address in good faith such concern and amend the terms of this HIPAA Compliance Clause, if necessary to bring it into compliance. If, after thirty (30) days the HIPAA Compliance Clause fails

to comply with the Privacy Rule and the Security Rule then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

H.21.15 Independent Contractor

H.21.15.1 The Business Associate shall function as an independent Contractor and shall not be considered an employee of the Covered Entity for any purpose.

H.21.15.2 Nothing in this HIPAA Compliance Clause shall be interpreted as authorizing the Business Associate workforce, its subcontractor(s) or its agent(s) or employee(s) to act as an agent or representative for or on behalf of the Covered Entity.

H.21.15 Entire Agreement

H.21.15.1 This HIPAA Compliance Clause, as may be amended from time to time pursuant to Section 10 Miscellaneous, Paragraph b. Amendment, which incorporates by reference the Contract, and specific procedures from the Medical Assistance Administration Privacy Policy Operations Manual, constitutes the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements and understandings between them with respect to applicable District of Columbia and federal laws, rules and regulations, HIPAA and the Privacy Rule and Security Rule, and any rules, regulations, requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary.

H.22 HIPAA PRIVACY COMPLIANCE

DHCF is a “Covered Entity” as that term is defined in the Privacy and Security Rules and ACS State Healthcare, LLC as a recipient of Protected Health Information and/or Electronic Protected Health Information from DHCF, is a “Business Associate” as that term is defined in the Privacy and Security Rules.

H.22.1 Definitions

H.22.1.1 **Administrative Safeguards** mean the administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Covered Entity's workforce in relation to the protection of that information.

H.22.1.2 **Business Associate** means a person or entity, who performs, or assists in the performance of a function or activity on behalf of a Covered Entity or an organized health care organization in which the Covered Entity participates, involving the use or disclosure of individually identifiable health information, other than in the capacity of a workforce member of such Covered Entity or organization. A business associate is also any person or organization that provides, other than in the capacity of a workforce member of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for the Covered Entity and receives individually identifiable health information from a

Covered Entity or another business associate on behalf of a Covered Entity. In some instances, a Covered Entity may be a business associate of another Covered Entity.

- H.22.1.3** **Covered Entity** means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of the Privacy and Security Rules. Covered Entity is also referred to as Covered Agency within this HIPAA Compliance Clause. With respect to this HIPAA Compliance Clause, Covered Entity shall also include the designated health care components of a hybrid entity.
- H.22.1.4** **Data Aggregation** means, with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a Covered Entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- H.22.1.5** **Designated Record Set** means a group of records maintained by or for the Covered Entity that is:
- H.22.1.5.1** **The medical records and billing records** about individuals maintained by or for a covered health care provider;
- H.22.1.5.2** The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- H.22.1.5.3** **Used**, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- H.22.1.6** **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164.
- H.22.1.7** **Electronic media** means:
- H.22.1.7.1** Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
- H.22.1.7.2** **Transmission media** used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

- H.22.1.8** **Electronic Protected Health Information** means Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- H.22.1.9** **Health Care** means care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
- H.22.1.9.1** Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- H.22.1.9.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.22.1.10** **Health Care Components** means a component or a combination of components of a hybrid entity designated by a hybrid entity in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). Health Care Components must include non-covered functions that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.22.1.11** **Health Care Operations** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.22.1.12** **Hybrid Entity** means a single legal entity that is a Covered Entity and whose business activities include both covered and non-covered functions, and that designates health care components in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). A Hybrid Entity is required to designate as a health care component, any other components of the entity that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.22.1.13** **Individual** means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- H.22.1.14** **Individually Identifiable Health Information** is information that is a subset of health information, including demographic information collected from an individual, and:
- H.22.1.14.1** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- H.22.1.14.2** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual; and
- H.22.1.14.3** That identifies the individual; or

- H.22.1.14.4** With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.22.1.15** **National Provider Identifier (NPI) Rule** means the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.22.1.16** **Physical Safeguards** means the security measures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- H.22.1.17** **Privacy Official** means the person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy Rule, and other applicable federal and District of Columbia privacy laws.
- H.22.1.18** **Privacy Officer** means the person designated by the Privacy Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District's Privacy policies and procedures as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rule, and other applicable federal and District of Columbia privacy laws. The Covered Agency's privacy officer will follow the guidance of the District's Privacy Official, and shall be responsive to and report to the District's Privacy Official.
- H.22.1.19** **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- H.22.1.20** **Protected Health Information** means individually identifiable health information that is:
- H.22.1.20.1** Transmitted by electronic media;
- H.22.1.20.2** Maintained in electronic media; or
- H.22.1.20.3** Transmitted or maintained in any other form or medium;
- H.22.1.20.4** Limited to the information created or received by the Business Associate from or on behalf of the Covered Entity; and
- H.22.1.20.5** Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.
- H.22.1.21** **Record** shall mean any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

- H.22.1.22** **Required By Law** shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.22.1.23** **Secretary** means the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.22.1.24** **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- H.22.1.25** **Security Official** shall mean the person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Security policies and procedures as required by the Security Rule and oversee full compliance the District's Security policies and procedures, as well as other applicable federal and District of Columbia security law.
- H.22.1.26** **Security Officer** means the person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District Security Rule policies and procedures as well as overseeing full compliance with the Covered Agency's Security Policies and Procedures, the Security Rule, and other applicable federal and District of Columbia security law(s). The Covered Agency's security officer will follow the guidance of the District's Security Official, and shall be responsive to and report to the District's Security Official.
- H.22.1.27** **Security Rule** means the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. Part 164.
- H.22.1.28** **Technical Safeguards** means the technology and the policies and procedures for its use that protect electronic protected health information and control access.
- H.22.1.29** **Workforce** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or business associate, is under the direct control of such entity, whether or not they are paid by the Covered Entity or business associate.
- H.22.2** Obligations and Activities of Business Associate
- H.22.2.1** The Business Associate agrees not to use or disclose Protected Health Information and Electronic Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required By Law.
- H.22.2.2** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and Electronic Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Compliance Clause.

- H.22.2.3** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate in violation of the requirements of this Compliance Clause.
- H.22.2.4** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information and Electronic Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or agency Privacy Officer immediately, but no later than **(10) days** from the time the Business Associate becomes aware of such unauthorized use or disclosure.
- H.22.2.5** The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Compliance Clause with respect to Protected Health Information and Electronic Protected Health Information received from the Business Associate, Protected Health Information and Electronic Protected Health Information created by the Business Associate, or Protected Health Information and Electronic Protected Health Information received by the Business Associate on behalf of the Covered Entity.
- H.22.2.6** The Business Associate agrees to provide access, at the request of the Covered Entity or an Individual, at a mutually agreed upon location, during normal business hours, and in a format as directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, in compliance with applicable portions of the DHCF Access Policy, attached hereto as Exhibit A and incorporated by reference, and **within five (5) business days** of the request to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.
- H.22.2.7** The Business Associate agrees to make any amendment(s) to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, in compliance with applicable portions of DHCF Amendment Policy, attached hereto as Exhibit B and incorporated by reference, and **within five (5) business days** of the directive in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.
- H.22.2.8** The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of the DHCF Identity And Procedure Verification Policy, attached hereto as Exhibit C and incorporated by reference.
- H.22.2.9** The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and Electronic Protected Health Information and

information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the DHCF Logging Disclosures for Accounting Policy attached hereto as Exhibit D and incorporated by reference.

- H.22.2.10** The Business Associate agrees to provide to the Covered Entity or an Individual, **within five (5) business days** of a request at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or agency Privacy Officer and the duly authorized Business Associate workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the DHCF Disclosure Accounting Policy attached hereto as Exhibit E and incorporated by reference.
- H.22.2.11** The Business Associate agrees to make internal practices, books, and records, including policies and procedures (subject to Section 4.b.iv below), and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Secretary, **within five (5) business days** of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or agency Privacy Officer and the duly authorized Business Associate workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule and Security Rule.
- H.22.2.12** The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to said other Covered Entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer or a duly authorized workforce member of the Covered Entity.
- H.22.2.13** Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this HIPAA Compliance Clause.

H.22.3 Permitted Uses and Disclosures by the Business Associate

H.22.3.1 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

H.22.3.2 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

H.22.3.3 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality and security of the information has been breached.

H.22.3.4 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

H.22.3.5 Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

H.22.4 Additional Obligations of the Business Associate

H.22.4.1 Business Associate shall submit a written report to the Covered Entity that identifies the files and reports that constitute the Designated Record Set of the Covered Entity. Business Associate shall submit said written report to the Privacy Officer no later than thirty (30) days after the commencement of the HIPAA Compliance Clause. In the event that Business Associate utilizes new files or reports which constitute the Designated Record Set, Business Associate shall notify the Covered Entity of said event within thirty (30) days of the commencement of the file's or report's usage. The Designated Record Set file shall include, but not be limited to the identity of the following:

H.22.4.1.1 Name of the Business Associate of the Covered Entity;

H.15.4.1.2 Title of the Report/File;

- H.22.4.1.3 Confirmation that the Report/File contains Protected Health Information (Yes or No);
- H.22.4.1.4 Description of the basic content of the Report/File;
- H.22.4.1.5 Format of the Report/File (Electronic or Paper);
- H.22.4.1.6 Physical location of Report/File;
- H.22.4.1.7 Name and telephone number of current member(s) of the workforce of the Covered Entity or other District of Columbia Government agency responsible for receiving and processing requests for Protected Health Information; and
- H.22.4.1.8 Supporting documents if the recipient/personal representative has access to the Report/File.
- H.22.4.2 Business Associate must provide assurances to the Covered Entity that it will continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) EPHI entrusted to it. These safeguards include:
 - H.22.4.2.1 The Business Associate agrees to develop, maintain, implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.
 - H.22.4.2.2 The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.
 - H.22.4.2.3 The Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware, including any attempts to access EPHI, whether those attempts were successful or not.
 - H.22.4.2.4 This Business Associate Agreement may be terminated if the Covered Entity determines that the business associate has materially breached this HIPAA Compliance Clause, consistent with the terms and conditions outlined in Section 9, Term and Termination.
 - H.22.4.2.5 The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Secretary of HHS for the purposes of determining the Covered Entity's compliance with the Privacy and Security Rules. Notwithstanding the above, Business Associate has identified some security policies and procedures as confidential and which do not get distributed to third parties. In the event the Secretary of HHS makes a request for such security policies and procedures, Business Associate will work with Covered Entity and the Secretary of HHS to arrange a meeting at the Business Associate's premises at a time and place mutually agreeable to the parties involved, for the Secretary to view such security policies and procedures.
 - H.22.4.2.6 This HIPAA Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity EPHI.

H.22.4.3 The Business Associate's responsibilities under the National Provider Identifier Rule will be determined by the Covered Entity before May 23, 2007.

H.22.5 Sanctions

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rule, the Security Rule or other applicable federal or District of Columbia privacy law will be subject to discipline in accordance with Business Associate's policies. Business Associate agrees to impose sanctions consistent with Business Associate's personnel policies and procedures and applicable collective bargaining agreements with respect to persons employed by it. Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of District of Columbia Privacy and Security policies and procedures as set forth in this Compliance Clause. In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy and Security Rules or other applicable federal or District of Columbia Privacy and Security laws, regulations, and policies and procedures, the Business Associate shall inform the District Privacy and Security Officials or the agency Privacy and Security Officers of the imposition of sanctions.

H.22.6 Obligations of the Covered Entity

H.22.6.1 The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.22.6.2 The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information and Electronic Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.

H.22.6.3 The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information and Electronic Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.22.7 Permissible Requests by Covered Entity

Covered Entity shall not request the Business Associate to use or disclose Protected Health Information and Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by the Covered Entity.

H.22.8 Representations and Warranties

The Business Associate represents and warrants to the Covered Entity:

- H.22.8.1** That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees, agents, subcontractors, representatives and members of its workforce are licensed and in good standing with the applicable agency, board, or governing body to perform its obligations hereunder, and that the performance by it of its obligations under this HIPAA Compliance Clause has been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws;
- H.22.8.2** That it, its employees, agents, subcontractors, representatives and members of its workforce are in good standing with the District of Columbia, that it, its employees, agents, subcontractors, representatives and members of its workforce will submit a letter of good standing from the District of Columbia, and that it, its employees, agents, subcontractors, representatives and members of its workforce have not been de-barred from being employed as a contractor by the federal government or District of Columbia;
- H.22.3** That neither the execution of this HIPAA Compliance Clause, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. The Business Associate represents and warrants to the Covered Entity that it will not enter into any agreement the execution or performance of which would violate or interfere with this HIPAA Compliance Clause;
- H.22.8.4** That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;
- H.22.8.5** That all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information and Electronic Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule and Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion;
- H.22.8.6** That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this HIPAA Compliance Clause;

H.22.8.7 That neither the Business Associate, nor its shareholders, members, directors, officers, agents, subcontractors, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or District healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or District law (including without limitation following a plea of nolo contendere or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or District healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, District or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

H.22.9 Term and Termination

H.22.9.1 Term

The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award, and shall terminate when all of the Protected Health Information and Electronic Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request, with the Protected Health Information returned in a format mutually agreed upon by and between the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable, and the appropriate and duly authorized workforce member of the Business Associate; or, if it is infeasible to return or confidentially destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section and communicated to the appropriate District personnel, whether the Privacy and Security Officials or Privacy and Security Officers or their designees, when applicable.

H.22.9.2 Termination for Cause

Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:

H.22.9.2.1 Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

H.22.9.2.2 Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or

H.22.9.2.3 If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.22.9.3 Effect of Termination

H.22.9.3.1 Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information and Electronic Protected Health Information in any media form.

H.22.9.3.2 In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible. Upon determination by the agency Privacy and Security Officer that the return or confidential destruction of the Protected Health Information is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or confidential destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and Electronic Protected Health Information. The obligations outlined in Section 2. Obligations and Activities of Business Associate will remain in force to the extent applicable.

H.22.10 Miscellaneous

H.22.10.1 Regulatory References

A reference in this HIPAA Compliance Clause to a section of HIPAA, including the Privacy Rule or the Security Rule means the section as in effect or as amended.

H.22.10.2 Amendment

The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA. Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with

respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.

H.22.10.3 Survival

The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.

H.22.10.4 Interpretation

Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit the Covered Entity to comply with applicable federal and District of Columbia laws, rules and regulations, and the Privacy Rule and Security Rule, and any requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable federal and District of Columbia laws, rules and regulations shall supersede the Privacy Rule and Security Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or safeguarding of Protected Health Information and Electronic Protected Health Information than those of HIPAA and its Privacy Rule and Security Rule.

H.22.10.5 The terms of this HIPAA Compliance Clause amend and supplement the terms of the Contract, and whenever possible, all terms and conditions in this HIPAA Compliance Clause are to be harmonized. In the event of a conflict between the terms of the HIPAA Compliance Clause and the terms of the Contract, the terms of this HIPAA Compliance Clause shall control; provided, however, that this HIPAA Compliance Clause shall not supersede any other federal or District of Columbia law or regulation governing the legal relationship of the Parties, or the confidentiality of records or information, except to the extent that the Privacy Rule preempts those laws or regulations. In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule and Security Rule, the Privacy Rule and Security Rule shall control.

H.22.10.6 No Third-Party Beneficiaries

The Covered Entity and the Business Associate are the only parties to this HIPAA Compliance Clause and are the only parties entitled to enforce its terms. Except for the rights of Individuals, as defined herein, to access to and amendment of their Protected Health Information and Electronic Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this HIPAA Compliance Clause.

H.22.10.7 Compliance with Applicable Law

The Business Associate shall comply with all federal, District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.

H.22.10.8 Governing Law and Forum Selection

This Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia. The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be. The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.

H.22.10.9 Indemnification

The Business Associate shall indemnify, hold harmless and defend the Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.

H.22.10.10 Injunctive Relief

Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information and Electronic Protected Health Information from the Business Associate.

H.22.10.11 Assistance in litigation or administrative proceedings

The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or its workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance Clause and the Contract, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or

administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the Privacy Rule, Electronic Protected Health Information or other laws relating to security and privacy, except where the Business Associate or its agents, affiliates, subsidiaries, subcontractors or its workforce are a named adverse party.

H.22.10.12 Notices

Any notices between the Parties or notices to be given under this HIPAA Compliance Clause shall be given in writing and delivered by personal courier delivery or overnight courier delivery, or by certified mail with return receipt requested, to the Business Associate or to the Covered Entity, to the addresses given for each Party below or to the address either Party hereafter gives to the other Party. Any notice, being addressed and mailed in the foregoing manner, shall be deemed given five (5) business days after mailing. Any notice delivered by personal courier delivery or overnight courier delivery shall be deemed given upon notice upon receipt.

If to the Covered Entity, to

If to the Covered Entity, to

Attention:

Attention:

FAX:

FAX:

H.22.10.13 Headings

Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.22.10.14 Counterparts; Facsimiles

This HIPAA Compliance Clause may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

H.22.10.15 Successors and Assigns

The provisions of this HIPAA Compliance Clause shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, if any.

H.22.10.16 Severance

In the event that any provision of this HIPAA Compliance Clause is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this HIPAA Compliance Clause will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this HIPAA Compliance Clause fails to comply with the then-current requirements of the Privacy Rule, such party shall notify the other Party in writing, in the manner set forth in Section 10. Miscellaneous, Paragraph k. Notices. Within ten (10) business days from receipt of notice, the Parties shall address in good faith such concern and amend the terms of this HIPAA Compliance Clause, if necessary to bring it into compliance. If, after thirty (30) days, the HIPAA Compliance Clause fails to comply with the Privacy Rule and the Security Rule then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

H.22.10.17 Independent Contractor

The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose. Nothing in this HIPAA Compliance Clause shall be interpreted as authorizing the Business Associate workforce, its subcontractor(s) or its agent(s) or employee(s) to act as an agent or representative for or on behalf of the Covered Entity.

H.22.10.18 Entire Agreement

This HIPAA Compliance Clause, as may be amended from time to time pursuant to Section 10. Miscellaneous, Paragraph b. Amendment, which incorporates by reference the Contract, and specific procedures from the DHCF Privacy Policy Operations Manual, constitutes the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements and understandings between them with respect to applicable District of Columbia and federal laws, rules and regulations, HIPAA and the Privacy Rule and Security Rule, and any rules, regulations, requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary.

H.23 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The key personnel specified in the contract, Section C.9 are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the Contracting Officer at least thirty calendar days in advance and shall submit justification (including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the Contracting Officer for any proposed substitution of key personnel.

Please insert the names of the key personnel below:

Project Director _____

Audit Manager _____

Senior Staff _____

H.24 **CORRECTIVE ACTION**

H.24.1 In addition to its rights under the Default Clause under the Standard Contract Provisions in Attachment J.1, if the District determines that the Contractor has failed to comply with terms of the Contract or has violated applicable Federal or District law, regulation or court order, the District may request corrective action within the time frame established by the District.

H.24.2 The Contractor shall complete all steps necessary to correct the identified violation. Upon the Contractor's failure to comply with an approved corrective action plan the District may withhold of up to ten (10%) percent of the Contractor's monthly payment when the District has determined that the Contractor has failed to perform according to the corrective action plan and Sanctions have been previously imposed.

SECTION I

CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (Attachment J.1) are incorporated as part of the contract.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.3 CONFIDENTIALITY OF INFORMATION

All information obtained by Contractor relating to any employee or customer of the District shall be kept in absolute confidence and shall not be used by Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

I.3.1 Both parties agree that they, their personnel, agents or representatives will not, at any time during the term of this Contract or after its termination, reveal, divulge, or make known to any person, firm, corporation or other business organization, any customers' lists, trade secrets, cost figures and projections, profit figures and projections or any other secret, confidential or proprietary information whatsoever, whether of the DHCF, Contractor or any of the DHCFs, used or gained by the DHCF or Contractor during performance under this Contract. Contractor and the DHCF further covenant and agree to retain all such knowledge and information acquired during and after the term of this Contract respecting such lists, trade secrets, or any secret, confidential or proprietary information whatsoever in trust for the sole benefit of the DHCF or Contractor and their successors and assigns. The above prohibition of disclosure shall not apply to the extent that the DHCF or Contractor must disclose such data to a governmental authority or a court of competent jurisdiction.

I.3.2 The DHCF acknowledges that its personnel may be exposed to proprietary information of Contractor, including, but not limited to Contractor's proprietary SAS Software System, and the DHCF agrees that it will take all appropriate steps to ensure that its personnel will keep all aspects of Contractor's SAS Software System confidential.

I.3.3 Both parties acknowledge and agree that a breach of this Section by a party or its personnel, agents or representatives is highly likely to cause significant, irreparable harm to the other party and that such other party shall be entitled to temporary, preliminary and/or injunctive relief, or any other equitable remedy deemed appropriate by a

reviewing court, to prevent a breach or threatened breach of this Section in order to protect its interests in its Confidential Information.

I.4 **TIME**

Time, if stated in a number of days, shall include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 **RIGHTS IN DATA**

I.5.1 “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.5.3 The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

I.5.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

I.5.5 All data first produced in the performance of this Contract shall be the sole property of the District. Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether

published or unpublished. Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Contractor agrees not to assert any rights in common law or in equity in such data. Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

I.5.6 The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed shall be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

I.5.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

I.5.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

I.5.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in Section I.5.6 are of no effect unless the data is marked by Contractor with the following legend:

I.5.7.1 RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Contractor's Name); and,

I.5.7.2 If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

I.5.8 In addition to the rights granted in Section I.5.6 above, Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as

restricted rights set forth in Section I.5.6 above, under any copyright owned by Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

- I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor shall be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.5.11** Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for:
- I.5.11.1** Violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or,
- I.5.11.2** Based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by Contractor at the time of delivery of such work

I.6 **OTHER CONTRACTORS**

Contractor shall not commit or permit any act that shall interfere with the performance of work by another District Contractor or by any District employee.

I.7 **SUBCONTRACTS**

Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District shall have the right to review and approve prior to its execution by Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.8 **INSURANCE**

GENERAL REQUIREMENTS. The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractor to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The

Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

I.8.1 **Commercial General Liability Insurance**

The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent Contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations

coverage for five (5) years following final acceptance of the work performed under this contract.

I.8.1.2 Automobile Liability Insurance

The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract.

The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

I.8.1.3 Workers' Compensation Insurance

The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

I.8.1.4 Employer's Liability Insurance

The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

I.8.1.5 Umbrella or Excess Liability Insurance

The Contractor shall provide umbrella or excess liability insurance (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000.00 per occurrence with the District of Columbia as an additional insured.

I.8.1.6 Professional Liability Insurance (Errors & Omissions)

The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission caused by the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$1,000,000 annual aggregate for each wrongful act.

The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work.

I.8.2 Duration

The Contractor shall carry all required insurance until the contract work is accepted by the District and shall carry the required General Liability; and Professional Liability; and any required Employment Practices Liability Insurance for five (5) years following final acceptance of the work performed under this contract.

I.8.3 Liability

These are the required minimum insurance limits required by the District of Columbia. HOWEVER THE REQUIRED MINIMUM INSURANCE REQUIREMENTS SHALL IN NO WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

I.8.4 Contractor's Property

Contractors and subcontractor are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding, and temporary structures, rented machinery, or owned or leased equipment. A waiver of subrogation shall apply in the favor of the District of Columbia.

I.8.5 Measure of Payment

The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

I.8.6 Notification

The Contractor shall immediately provide the Contracting Officer with written notice in the event its insurance has or shall be substantially changed, cancelled or not renewed, and provide an updated Certificate of Insurance to the Contracting Officer.

I.8.7 Certificates of Insurance

The Contractor shall submit Certificates of Insurance giving evidence of the required insurance coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

Franklin Austin
Contracting Officer
Department of Health Care Finance
Contracts and Acquisition Division
441 – 4TH Street, N.W., Room 969
Washington, DC 20001
202-673-3561
Franklin.Austin3@dc.gov

I.8.8 Disclosure of Information

The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractor in the performance of this contract

I.9 **EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment J.3. An award cannot be made to any Contractor who has not satisfied the equal employment requirements.

I.10 **CONTINUITY OF SERVICES**

I.10.1 The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another Contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

- a. Furnish phase-out, phase-in (transition) training; and
- b. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

I.10.2 The Contractor shall, upon the Contracting Officer's written notice:

- a. Furnish phase-in, phase-out services for up to 90 days after this contract expires and
- b. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval.

I.10.3 The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

I.10.4 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

I.10.5 Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.11 **ORDER OF PRECEDENCE**

The contract awarded as a result of this RFP will contain the following clause:

ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended
- (6) BAFOs (in order of most recent to earliest)
- (7) Proposal

I.12 **CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

Any contract in excess of \$1,000,000.00 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

I.13 **GOVERNING LAW**

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

SECTION J

ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference.

| Attachment Number | Document |
|--------------------------|---|
| J.1 | Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at www.ocp.dc.gov click on "Solicitation Attachments" |
| J.2 | U.S. Department of Labor Wage Determination 2005-2103 Revision 30, dated June 29, 2013 |
| J.3 | Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85 available at www.ocp.dc.gov click on "Solicitation Attachments" |
| J.4 | Department of Employment Services First Source Employment Agreement available at www.ocp.dc.gov click on "Solicitation Attachments" |
| J.5 | Way to Work Amendment Act of 2006 - Living Wage Notice available at www.ocp.dc.gov click on "Solicitation Attachments" |
| J.6 | Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at www.ocp.dc.gov click on "Solicitation Attachments" |
| J.7 | Tax Certification Affidavit |
| J.8 | Bidder/Offeror Certifications available at www.ocp.dc.gov click on "Solicitation Attachments" |

SECTION K

REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

Bidder/Offeror Certification Form available at www.ocp.dc.gov click on "Solicitation Attachments"

SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 **Most Advantageous to the District**

The District intends to award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.2 **Initial Offers**

The District may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the offeror's best terms from a standpoint of cost or price, technical and other factors.

L.2 PROPOSAL ORGANIZATION AND CONTENT

L.2.1.1 The offeror shall submit one (1) original on 8½ X11 bond paper and four (4) copies on CD ROM in Microsoft format as a pdf file.

L.2.1.2 The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered. In case of discrepancies, the data in the 8½X11 bond copy will govern.

L.2.1.3 The offeror shall label each file, i.e., "Technical Proposal", "Price Proposal."

L.2.1.54 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror's response. The offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

L.2.1.5 The bidders shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate.

L.2.2 PROPOSAL FORMAT AND CONTENT

L.2.2.1 Volume I - Technical Proposal Content Instructions

The Offeror's Technical Proposal shall be organized and presented in the following clearly marked separate sections:

L.2.2.2 Section 1 - Technical Approach and Methodology

L.2.2.2.1 The information contained in this section shall facilitate the evaluation of the Offeror's technical approach and methodology to provide the requirements described in C.4.

L.2.2.2.2 The Offeror shall provide the following narratives:

A description of the Offeror's understanding of the District's requirements section C.4, and discussion of the Offeror's knowledge of the Applicable Documents referenced in section J. and the application of these documents to the successful performance of the District's requirements C.4. The Offeror shall provide narrative discussion on how the audit will be performed. The Offeror shall include a discussion of the Offeror's plan to identify and comply with future revisions or updates to the Applicable Documents.

L.2.2.3 Section 2 - Technical Expertise and Capacity

The Offeror shall provide the resume(s) of personnel that will provide services in section C.4. The resume shall include details of the academic background, professional licenses/certifications and positions held.

L.2.3.1.3 Section 3 - Past Performance and Previous Experience

L.2.3.1.3.1 The information contained in this section shall facilitate the evaluation of the Offeror's past performance and previous experience in conducting similar UPL Demonstrations. The description shall include examples of both favorable and unfavorable experiences and situations and how these experiences will influence the Offeror's delivery of the required services for the District.

a. The Offeror shall provide a discussion of the Offeror's experience providing the services in Section C.4. The discussion shall include lessons learned as well as the application of those lessons learned to the successful delivery of services described in Section C.4.

b. The Offeror shall provide a list of three references within the last five years providing services described in Section C.4. The Offeror's list shall include the following information:

1. Name of Organization;
2. Description of work performed;
3. Contact Person name, phone, and e-mail address

L.2.3.2 Volume II: Price Proposal

L.2.3.2.1 Offeror's Price Proposal shall contain a Table of Contents and organized and presented in the following clearly marked separate sections.

L.2.3.2.2 Price Schedule Section B

The Offeror shall include a completed Section B.3 Price Schedule.

L.3 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC

In addition to the proposal submission requirements in Section L.2 above, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code §2-534. Redacted copies of the offeror's proposal must be submitted by e-mail attachment to the contact person designated in the solicitation. D.C. Official Code §2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable FOIA exemption under §2-534(a) (1). Successful proposals will be published on the OCP Internet in accordance with D.C. Official Code §2-361.04, subject to applicable FOIA exemptions.

L.4 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.4.1 Proposal Submission

L.4.1.1 Proposals must be submitted no later than the specified closing date and time.

L.4.1.2 Paper, telephonic, telegraphic, and facsimile proposals may not be accepted or considered for award.

L.4.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal at any time before the closing date and time for receipt of proposals.

L.4.3 Late Proposals

Late proposals or modifications will not be accepted after the closing date and time for receipt of proposals.

L.4.4 Late Modifications

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

L.5 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question via email to annie.white4@dc.gov. The prospective offeror should submit questions no later than **seven (7)** days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than seven (7) days before the date set for submission of proposals. The District will furnish responses on the OCP website. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

- L.6.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

- L.6.2 Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

L.7 PROPOSAL PROTESTS

Any actual or prospective offeror or contractor, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are

subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

L.8 UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

L.9 RETENTION OF PROPOSALS

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

L.10 PROPOSAL COSTS

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

L.11 CERTIFICATES OF INSURANCE

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 to:

Franklin Austin
Contracting Officer
Department of Health Care Finance
Contracts and Acquisition Division
441 – 4TH Street, N.W., Room 972
Washington, DC 20001
202-442-9886
Franklin.Austin3@dc.gov

L.13 ACKNOWLEDGMENT OF AMENDMENTS

The offeror shall acknowledge receipt of any amendment to this solicitation electronically via the District's E-Sourcing system's messaging process. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

L.14 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted, all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and final offers will be subject to the Late

Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all offerors still within the competitive range.

L.15 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

- L.15.1** Name, address, telephone number and federal tax identification number of offeror;
- L.15.2** A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. This mandate also requires the offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the offeror is required by law to make such certification. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and
- L.15.3** If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.16 FAMILIARIZATION WITH CONDITIONS

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.17 GENERAL STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit relevant documentation within five (5) days of the request by the District.

- L.17.1** To be determined responsible, a prospective contractor must demonstrate that it:
 - (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
 - (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.*;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

L.17.2 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non-responsible.

SECTION M

EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

| <u>Numeric Rating</u> | <u>Adjective</u> | <u>Description</u> |
|-----------------------|----------------------|---|
| 0 | Unacceptable | Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor. |
| 1 | Poor | Marginally meets minimum requirements; major deficiencies which may be correctable. |
| 2 | Minimally Acceptable | Marginally meets minimum requirements; minor deficiencies which may be correctable. |
| 3 | Acceptable | Meets requirements; no deficiencies. |
| 4 | Good | Meets requirements and exceeds some requirements; no deficiencies. |
| 5 | Excellent | Exceeds most, if not all requirements; no deficiencies. |

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If sub-factors are applied, the offeror's total technical score will be determined by adding the offeror's score for each sub-factor. For example, if an evaluation factor has a point value

range of zero (0) to forty (40) points, with two sub-factors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first sub-factor and "Poor" for the second sub-factor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first sub-factor plus 1/5 of 20 or 4 for the second sub-factor, for a total of 20 for the entire factor.

M.3 **EVALUATION CRITERIA**

M.3.1 **TECHNICAL EVALUATION FACTORS (80 MAXIMUM POINTS)**

M.3.1.1 **Technical Approach, Methodology and Narratives (0 – 25 Points)**

M.3.1.1.1 This factor will examine the Offeror's understanding of the District's requirements in section C and discussion of the Offeror's knowledge of the Applicable Documents referenced in section J. and the application of these documents to the successful performance of the District's requirements C.4.

Evaluation of the Offeror's technical approach and methodology allows the District to assess the Offeror's knowledge, understanding and technical knowledge to perform the required services based on information provided in Section L.2.2.2 of the Offeror's Technical Proposal.

M.3.1.2 **Technical Expertise (0 – 25 Points)**

M.3.1.2.1 This factor will examine the Offeror's designated and project team members technical expertise to provide the required services described in Section C.4.

Evaluation of technical expertise allows the District to assess the skill set and ability of Offeror to perform the required services based on information provided in response in Section L.2.2.3 of the Offeror's Technical Proposal. **(0-25 Points)**

M.3.1.3 **Past Performance and Previous Experience (0 – 30 Points)**

M.3.1.3.1 This factor will examine the Offeror's past performance and previous experience providing services similar in scope as those required by the District and described in C.4.

M.3.1.3.1.1 Evaluation of past performance and previous experience allows the District to assess the Offeror's ability to perform the required services utilizing the information provided in Section L.2.3.1.3 of the Offeror's Technical Proposal.

a. The Offeror shall provide a discussion of the Offeror's experience providing the services in Section C.4. The discussion shall include lessons learned as well as the application of those lessons learned to the successful delivery of services described in Section C.4. **(0-15 Points)**

b. The Offeror shall provide a list of three references within the last five years Offeror/ designated administrator/coordinator has performed providing services described in

Section C.4 within the past five (5) years. The Offeror's list shall include the following information: **(0-15 Points)**

1. Name of Organization;
2. Description of work performed;
3. Contact Person name, phone, and e-mail address

M.3.2 PRICE CRITERION (0-20 Points Maximum)

The price evaluation will be objective. The Offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each Offeror's evaluated price score:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated check}} \times 20 = \text{Evaluated price score}$$

M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 Points Maximum)

M.3.4 TOTAL POINTS (112 Points Maximum)

Total points shall be the cumulative total of the offeror's technical criteria points, price criterion points and preference points, if any.

M.4 EVALUATION OF OPTION YEARS

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

Under the provisions of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005", as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

M.5.1 Application of Preferences

For evaluation purposes, the allowable preferences under the Act for this procurement shall be applicable to prime contractors as follows:

- M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).
- M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.
- M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.
- M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.
- M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.
- M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.
- M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.
- M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

M.5.2 Maximum Preference Awarded

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

M.5.3 Preferences for Certified Joint Ventures

When DSLBD certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

M.5.4 Verification of Offeror's Certification as a Certified Business Enterprise

M.5.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The contracting officer will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any documentation regarding its certification as a certified business enterprise.

M.5.4.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 970N
Washington DC 20001

M.5.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT

M.6.1 Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

M.6.2 In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.

GOVERNMENT OF THE DISTRICT OF COLUMBIA**Office of the Chief Financial Officer****Office of Tax and Revenue****TAX CERTIFICATION AFFIDAVIT**

THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.

Date

**Name of Organization/Entity
Business Address (include zip code)
Business Phone Number(s)**

**Principal Officer Name and Title
Square and Lot Information
Federal Identification Number
Contract Number
Unemployment Insurance Account No.**

"I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue; consent to release my tax information to an authorized representative of the District of Columbia agency from which I am seeking to enter into a contractual relationship. I understand that the information released under this consent will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations as of the date found on the government request. I understand that this information is to be used solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization."

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia.

The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities. The penalty for making false statements is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code § 47-4106.

Signature of Authorizing Agent

Title