



# Government of the District of Columbia



## HUMAN CARE AGREEMENT

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1. Human Care Agreement Number <b>DCJM-2013-H-0007</b>		2. Date of Award See Block 13C	3. Date Solicitation Issued January 30, 2013
4. Issued by: Department on Disability Services Office of Contracts and Procurement 1125 – 15 <sup>th</sup> Street NW, 4th Floor Washington, DC 20005-2720  202-730-1717 Fax: 202-730-1514		5. Administered by: Department on Disability Services Developmental Disabilities Administration 1125 – 15 <sup>th</sup> Street, NW, 8th Floor Washington, DC 20005-2726  Telephone: 202-730-1700 Fax: 202-730-1808	

6. NAME AND ADDRESS OF PROVIDER/CONTRACTOR (No. Street, county, state and ZIP Code)

Telephone: Fax: E-Mail:

7. PROVIDER/CONTRACTOR SHALL SUBMIT ALL INVOICES TO:  Office of the Chief Financial Officer Department on Disability Services Attn: Accounts Payable P.O. Box 54047 Washington, DC 20032-0247	8. DISTRICT SHALL SEND ALL PAYMENTS TO:  Address in Block 6
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### 9. DESCRIPTION OF HUMAN CARE SERVICE AND RATE COST

LINE ITEM	NIGP CODE	BRIEF DESCRIPTION OF HUMAN CARE SERVICE	QUANTITY OF SERVICE REQUIRED	TOTAL SERVICE UNITS	SERVICE RATE	TOTAL AMOUNT
0001 thru 0008	952-9265	Residential Habilitation, Supported Living, Host Home, and related Residential expenses for District of Columbia Persons with Intellectual and Developmental Disabilities	See Individual Task Orders	See Individual Task Orders	SEE SECTION B	See Individual Task Orders
<b>GRAND TOTAL</b>						\$

### 10. APPROPRIATION DATA AND FINANCIAL CERTIFICATION TO BE CITED ON EACH TASK ORDER

### 11. TERM OF HUMAN CARE AGREEMENT

Starting Date: <b>See Block 13 C</b>	Ending Date: <b>To be determined upon award, but not to exceed one (1) year</b>
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### HUMAN CARE AGREEMENT SIGNATURES

Pursuant to the authority provided in D.C. Official Code § 2-354.06, this HUMAN CARE AGREEMENT is being entered into between the Provider/Contractor specified in block 6 of this document. The Provider/Contractor is required to sign and return two signed copies of this document to the Contracting Officer of the Issuing Office stated in block 4 of page 1 of this document. The Contractor further agrees to furnish and deliver all items or perform all the services set forth or otherwise identified within this Human Care Agreement and on any continuation sheets or appendices for the consideration stated herein. The rights and obligations of the parties to this Human Care Agreement shall be subject to and governed by the following documents: (a) this Human Care Agreement, (b) the Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007; and (c) any other provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. This Human Care Agreement between the signatories to this document constitutes the entire agreement of the parties.

### 12. FOR THE PROVIDER/ CONTRACTOR

### 13. FOR THE DISTRICT OF COLUMBIA

A. Name and Title of Signer (Type or print)		A. Name of Contracting Officer (Type or print)	
B. Authorized Signature of the PROVIDER/CONTRACTOR:	C. DATE	B. Authorized Signature of the PROVIDER/CONTRACTOR:	C. DATE

(Base Year)

## SECTION B

### HUMAN CARE SERVICES AND SERVICE RATES

- B.1** The Government of the District of Columbia, Department on Disability Services (DDS), hereafter referred to as the “**District**,” is seeking to establish Human Care Agreements (HCA) with approved providers under the District’s Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities, hereafter referred to as the “**Provider**,” for occupancy-related residential expenses and services as described in Section C, in accordance with D.C. Official Code § 2-354.06.
- B.2** The Human Care Agreement is based on fixed-unit prices. The Provider shall submit itemized justification of costs for the line items listed in Section B.6.
- B.3** The Human Care Agreement is not a commitment to purchase any quantity of a particular service covered under the agreement. The District is obligated only to the extent that authorized purchases are made pursuant to the Human Care Agreement.
- B.4** Services shall be performed only as authorized by Task Orders issued under this Agreement. The Provider shall furnish to the Government of the District of Columbia, the services specified in the Schedule, when and if ordered.
- B.5** An offeror responding to this solicitation must submit with its proposal, a notarized statement detailing any subcontracting plan required by law. Proposals responding to this HCA shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with Section H.10.1.

**HUMAN CARE SERVICE RATES**

**B.6 PRICE SCHEDULE**

**B.6.1 BASE YEAR**

<b>CLIN</b> (Contract Line Item Number)	<b>SERVICE DESCRIPTION</b>	<b>DAILY RATE</b> (per client)	<b>NEW RESIDENT ANNUAL RATE</b> (per client)	<b>ANNUAL RATE AFTER RESIDENTS FIRST YEAR</b> (per client)
<b>0001</b>	<b>Occupancy Costs <sup>1</sup></b>			
	Address (#Bedrooms)	\$ _____	\$ _____	\$ _____
	Address (#Bedrooms)	\$ _____	\$ _____	\$ _____
	Average Occupancy Cost	\$ _____	\$ _____	\$ _____
<b>0002</b>	<b>Client Expenses:</b>			
0002.1	Food	\$ _____	\$ _____	\$ _____
0002.2	Clothing (cannot exceed \$600 annually)	\$ _____	\$ _____	\$ _____
0002.3	Medical Expenses, if applicable (NTE \$500 annually)	\$ _____	\$ _____	\$ _____
<b>0003</b>	<b>Supplies, Furnishings, and Equipment</b>			
0003.1	Supplies	\$ _____	\$ _____	\$ _____
0003.2	Furnishings and Equipment First Year**	\$ _____	\$ _____	
	Furnishings and Equipment after First Year	\$ _____	-	\$ _____
<b>0004</b>	Communication Costs	\$ _____	\$ _____	\$ _____
<b>0005</b>	Administrative Costs and Fees (NTE 13% First Year)	\$ _____	\$ _____	
	Administrative Costs and Fees (NTE 13% after First Year)	\$ _____		\$ _____
	<b>Average Annual Cost per Client</b>	<b>(Estimated)</b>	\$ _____	\$ _____
	New Resident Total Daily per diem * range from	(Estimated)	\$ _____	
	to	(Estimated)	\$ _____	
	Total Daily per diem * range after one year from	(Estimated)		\$ _____
	to	(Estimated)		\$ _____
	* The per diem range represents estimated rates based on the proposed facilities listed. Task Order rates will be based on individual budgets and actual occupancy costs.			

<sup>1</sup> \* The District may add or subtract facilities, with rates for any additional facilities to be negotiated at the time of placement of additional District of Columbia residents.

**SECTION B.6.1 (Continued)**

<b>CLIN</b> (Contract Line Item Number)	<b>SERVICE DESCRIPTION</b>	<b>DAILY RATE</b> (per client)	<b>NEW RESIDENT ANNUAL RATE</b> (per client)	<b>ANNUAL RATE AFTER RESIDENTS FIRST YEAR</b> (per client)
<b>0006</b>	<b>Specialized Care and other approved expenses for Individuals not covered by Medicaid</b>	See Section B.6.3		\$
<b>0007</b>	<b>Host Home Program Services</b>	See Rates in Section B.8		\$
<b>0008</b>	<b>**New Furnishings and Equipment will be added to task orders (SL and Res Hab only) when approved by Provider Resource Management and negotiated by the Contracting Officer.</b>	\$	\$	\$
	<b>Base Year Estimated Annual Amount</b>			\$

**B.6.2** A base year and up to four (4) option years may be approved through this agreement. For each of the line items above a Cost of Living Adjustment, not-to-exceed three (3) percent may be added in subsequent years based upon the Consumer Price Index (CPI-U) published by the Department of Labor, Bureau of Labor Statistics for those services not regulated by the Provider’s local or state jurisdiction. Rates that are regulated by the Provider’s local jurisdiction will only be adjusted when an option is exercised. Providers are highly encouraged to provide current regulated rates at least 90 days prior to the date that an option is due to be exercised.

**B.6.3 SPECIALIZED CARE EXPENSES COVERED BY MEDICAID § 1915 (c) HOME AND COMMUNITY BASED SERVICES WAIVER**

Specialized Care Expenses, such as costs of direct care and staffing, will be covered by the District’s Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (“IDD HCBS waiver”) program. In cases where the Provider is not covered by the Medicaid IDD HCBS waiver program, all such services will be reimbursed at a rate not exceeding the applicable Medicaid IDD HCBS waiver program rates. All such deviations will be approved and/or disapproved for each individual on a case-by-case basis by DDS/DDA

**B.7 DESCRIPTION OF EACH CONTRACT LINE ITEM NUMBER (CLIN):**

**B.7.1 CLIN 0001 – Occupancy.** This is the annual cost to occupy the living residence for the individual. DDS will pay the lesser of fair market rent for leased property or actual costs (including mortgage payments and related costs) for Provider-owned property. ***A pending lease agreement for each address must be provided for rental property when a referral is made.*** Occupancy cost will be prorated based on the total annual cost of the unit divided by the number of tenants in the unit. (Example: 3-bedroom unit at a monthly cost of \$1,500 would be prorated at \$500 each for three (3) individuals assigned to the unit. Unit refers to apartment or house). Costs for routine repairs and maintenance shall be included in the lease

amount. Repair and maintenance costs not included in lease amount shall be offset from administrative costs and fees.

- B.7.2** CLIN 0002.1 – **Food**. Provider shall estimate the total annual cost for food based on the specific nutritional needs of the referenced individual. The provider is required to apply for and/or ensure that individuals they serve apply for and receive the federal food benefit entitlement program, Supplemental Nutritional Assistance Program (SNAP), formerly called Food Stamps. The provider and the Contract Administrator shall determine the annual cost based on the SNAP benefit amount the individual receives and annual cost breakdown submitted by the provider. Each provider must factor in the SNAP benefit amount for each individual who is eligible for and is receiving SNAP. Contractor is required to provide a breakdown on how the annual cost was developed. Contractor shall provide justification for food costs exceeding USDA guidelines.
- B.7.3** CLIN 0002.2 – **Clothing** has an annual required allocation of \$600 per individual. This amount is non-negotiable. The provider shall maintain records of the disbursement of this money and receipts for clothing purchased.
- B.7.4** CLIN 0002.3 – **Medical expenses** based on the specific medical (dental and prescription and over the counter drugs not covered by Medicaid) needs of the referenced individual. Provider is required to provide a breakdown on how the annual cost is developed. Standard is \$500 per year.
- B.7.5** CLIN 0003.1 – **Supplies**. Estimated annual cost of household supplies required to maintain clean and safe living quarters. Provide detailed list and expense log of items in excess of \$500.
- B.7.6** CLIN 0003.2 and CLIN 0003.3– **Furnishings and Equipment** - Estimated annual cost of household furnishings and equipment for each individual. The Provider may be required to submit three (3) quotes for itemized furnishings with each budget proposed. The costs of furnishing the common space (*e.g.*, living room, dining room, and kitchen) are to be shared among the multiple individuals in a unit. All furnishings and equipment purchased for the individual by the Provider are considered property of the individual and property of the District if abandoned by the individual when the individual vacates the premises, either voluntarily or involuntarily. Disposition of excess or surplus furniture or equipment shall be coordinated with the DDS Office of Support Services and the Surplus Property Division of the Office of Contracting and Procurement. The Provider must ensure that furnishings are included on the person's inventory.
- B.7.7** CLIN 0004 – **Communication** cost refers to the cost to provide telephone (including long-distance), basic cable and Internet service for all individuals living in each residential setting. Provider must provide data on how this amount was developed and may be required to provide a quarterly report with actual bills to substantiate this cost. Phones, including cell phones for staff and management are the Provider's responsibility.
- B.7.8** CLIN 0005 – **Administrative Costs and Fee**. Provider may be required to provide detailed cost and pricing data in support of its application to demonstrate how it arrived at the amount

of administrative costs and fees. The Administrative Costs and Fees shall **not exceed 13%** of the total proposed budget; except that for Providers serving ten or fewer clients the rate shall not exceed 15%. This cost is only associated with those services stated as occupancy-related or room and board expenses. Administrative Costs and Fee will not be applied to vacancy costs. No administrative costs will be included in the Human Care Agreement for any service covered by the Medicaid IDD HCBS waiver program. To avoid the appearance of cost-plus-percentage-of-cost, the standard amount determined at the beginning of the base and each option period shall apply for each individual.

**B.7.9** THE PROVIDER SHALL MAINTAIN FULLY DETAILED AND DOCUMENTED ACCOUNTING RECORDS OF ACTUAL EXPENSES SUCH AS RECEIPTS AND LEASES TO SUPPORT AMOUNTS PROPOSED OR ANY REQUESTED PRICE INCREASES FOR ANY SINGLE LINE ITEM EXPENSE. THE PROVIDER'S RECEIPTS FOR UTILITIES, FURNITURE, EQUIPMENT, SUPPLIES, MEDICAL EXPENSES AND COMMUNICATIONS COSTS SHALL INCLUDE DESCRIPTIVE DETAILS SUFFICIENT TO RELATE THE RECEIPT TO THE INDIVIDUAL(S) OR RESIDENCE.

**B.8** **Host Home Services Program:** Occupancy, or room and board payments, in the Host Home Services Program are computed as follows:

**B.8.1** For each individual who receives one or more cash benefit payment(s) of \$710.00, the payment(s) are divided into two parts. Part #1: One hundred dollars (\$100.00) will be deposited into each individual's community-based bank account to serve as the individual's Personal Needs Allowance. Part #2: Six hundred ten dollars (\$610.00) (for 2013) will be sent to the Host as full payment for room and board. The figure used for the room and board payment is derived from the Federal Benefit Rate for Supplemental Security Income. The dollar amount may change annually due to the Cost of Living Adjustment.

**B.8.2** For each individual who receives cash benefit payment of less than \$710.00 (for 2013), the District will add an individually computed supplement for the Host and the individual so that the room and board payment equals \$610.00 (for 2013) and the Personal Needs Allowance equals \$100.00. The Provider will pass the supplement through to the Host.

**B.8.3** For each individual who receives one or more cash benefit payment(s), where the payment(s) exceeds \$710.00 (for 2013), the payments are divided into three parts. Part #1: One hundred dollars (\$100.00) will be deposited into each individual's community-based bank account to serve as the individual's Personal Needs Allowance. Part #2: Six hundred ten dollars (\$610.00) (for 2013) will be sent to the Host Home as full payment for room and board. Part #3: Excess cash benefits, if any, will be deposited into the individual's community based account.

## SECTION C

### HUMAN CARE SERVICE DESCRIPTION AND SCOPE OF SERVICES

#### **C.1 Background**

**C.1.1** This is an ongoing service.

**C.1.2** In 1978, U.S. District Judge John H. Pratt entered a consent decree in the *Evans* class action (Civil Action No. 76-0293) ordering the de-institutionalization of Forest Haven, the District's institution for persons with intellectual and other developmental disabilities. In 1978, the Council of the District of Columbia enacted the "Mentally Retarded Citizen Constitutional Rights and Dignity Act" (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.* (2008 Repl.)). The *Evans* parties negotiated and entered into consent orders in 1981, and 1983; there was a court-ordered plan in 1996; the parties negotiated and filed with the Court the "2001 Plan for Compliance and Conclusion of *Evans v. Williams*;" and the parties entered into court-ordered 90-day plans in both 2005 and 2007. These court orders and the referenced law protect the rights of these vulnerable District citizens with appropriate services and support, personal property, freedom from harm and service delivery in the least restrictive setting. In accordance with the "Department on Disability Services Establishment Act" (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.* (2008 Repl.)), DDS is charged with the development and provision of residential services for individuals eligible for and receiving services from the Developmental Disabilities Administration.

**C.1.3** In July 2010, the *Evans* parties agreed to the "2010 Revision of the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*," entered as an order by U.S. District Judge Ellen S. Huvelle on August 10, 2010, which requirements shall be applicable to all supports and services provided to *Evans* class members under this Human Care Agreement. The 2010 Revision synthesizes the various court orders into nine sets of outcome criteria for determining compliance aligned with the remaining five goals and underlying court orders.

#### **C.2 Scope of Human Care Services:**

**C.2.1** Subject to the continuing availability of funds, the District may purchase and the Provider shall provide human care services for various types of residential care with unique staffing patterns and service requirements supported through the Medicaid State Plan Services, the Medicaid § 1915(c) IDD HCBS waiver program, and local appropriated funding. DDS shall issue Human Care Agreements to provide the following residential care:

**C.2.1.1** Residential Habilitation Services in licensed group homes for persons with IDD, maximum of six (6) residents as set forth in Section 946 of Chapter 9 of Title 29 DCMR, or the successor regulation;

**C.2.1.2** Supported Living Services, maximum of three (3) residents as set forth in Section 993 of Chapter 9 of Title 29 DCMR, or the successor regulation; or

- C.2.1.3** Host Home Services residences whereby the Providers subcontract with families (residents) that shall serve as hosts to individuals in the DDS/DDA system who have selected this option of residential program service as set forth in Section 1915 of Chapter 19 of Title 29 DCMR, or the successor regulation.
- C.2.1.4** The Provider shall operate residential settings with services offered through the Medicaid § 1915(c) IDD HCBS waiver program as described in the applicable regulations published in Chapters 9 and 19 of Title 29 DCMR, as those regulations may be amended from time to time.
- C.2.1.5** Providers must be qualified as current IDD HCBS waiver providers to be eligible for the Human Care Agreement. Providers who do not possess current qualifications for the approved IDD HCBS waiver program and have not passed the Provider Readiness Certification protocols established by DDA will be disqualified for the Human Care Agreement.
- C.2.1.6** Persons with disabilities served by DDS may select any eligible provider of the IDD HCBS waiver program to provide services. Even if the residential service provider is a provider for a particular HCBS waiver service, the individual may elect to receive supports and services from another HCBS waiver provider. The residential provider must not interfere in the free choice of the person to seek the necessary services from any approved HCBS waiver provider.
- C.2.1.7** All services must align with current IDD HCBS waiver program. To view a complete listing of waiver services please visit the web site at <http://www.dds.dc.gov> and follow the links to *Waiver Service Descriptions*. None of the services listed will be supported with local funds unless the service recipient is not enrolled in the IDD HCBS Waiver program.

**C.3. Definitions**

- C.3.1** **Continuity of Operations Planning (COOP)** means a written emergency plan that defines how a provider will continue services or recover its minimum essential functions in the event of a disaster.
- C.3.2** **Day Habilitation** means an individual and group activity program that offers social, recreational and educational events designed to improve each participant's self-awareness and level of functioning.
- C.3.3** **Developmental Disability** means a severe, chronic disability of a person that is attributable to a mental or physical impairment, or both, that is manifested before the person attains the age of twenty-two (22) years and is likely to continue indefinitely. The disability causes substantial functional limitation in three (3) or more of the following major life activities: (a) self-care; (b) receptive and expressive language; (c) learning; (d) mobility; (e) self-direction; (f) capacity for independent living; and (g) economic self-sufficiency; and reflects the person's need for a combination and sequence of special,

interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

- C.3.4 Direct Care Staff/ Direct Support Professional** means individuals employed to support individuals in the community and residential setting who render the day-to-day personal assistance required in order to meet the goals of their Individual Support Plan (ISP).
- C.3.5 Habilitation Services** means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her person own environment, and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. Services provided may include monitoring of health care needs, behavior management, money management, social skills, personal care skills, and practical living skills.
- C.3.6 Host Home** means the provision of ADL, habilitation, supervision and health care coordination to an individual who lives in the caregiver's own home with no more than two other individuals who receive support.
- C.3.7 Human Care Agreement** means a written agreement for the procurement of education or special education, health, human or social services pursuant to D.C. Official Code § 2-354.06, to be provided directly to individuals who are disabled, disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in the custody of the District of Columbia. The limitation of the human care agreement is specified on Section D.2.
- C.3.8 Human Care Services** means education, or special education, health, human, or social services to be provided directly to individuals who are disabled, disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in the custody of the District of Columbia
- C.3.9 Individual Financial Plan (IFP)** means a written component of the Individual Support Plan that outlines the individual's spending plan for the year, which includes expenditures and assets. The purpose of the IFP is to safeguard the individual's funds and personal possessions. It is also a vehicle to ensure individuals maintain eligibility for Medicaid and Social Security benefits.
- C.3.10 Individual Program Plan (IPP)** means a written plan that describes how the goals set forth in the ISP are to be implemented. For individuals residing in an ICF/MR, the provider will develop an IPP with the participation of the IDT per 42 CFR § 483.440 (6). For HCBS waiver participants, the provider is responsible to prepare and implement a written support plan per the requirements for the specific waiver service being delivered (e.g. 29 DCMR § 993.5 Supported Living)
- C.3.11 Individual Support Plan (ISP)** means a written plan developed by a planning team chosen, whenever possible, by the individual with developmental disabilities or his/her guardian.

The ISP serves as the single document that integrates all supports a person may receive irrespective of where the person resides. The ISP integrates the Plan of Care (POC) required by the District of Columbia's Medicaid Home and Community-Based Services Waiver (HCBS) and the plan of care required by Medicaid for nursing for services delivered under those two programs. The ISP presents the measurable goals and objectives identified as required for meeting the person's preferences, choices, and desired outcomes. The ISP also addresses the provision of safe, secure and dependable supports that are necessary for the person's well being, independence and social inclusion.

- C.3.12 Least Restrictive Environment** means that living or habilitation arrangement which least inhibits an individual's independence. It includes, but is not limited to, arrangements to move an individual from more to less structured living and from larger to smaller living units.
- C.3.13 Life Skills** means a combination of services designed to assist individuals with intellectual and developmental disabilities in the acquisition of knowledge and skills that will enable them to realize their personal, social, educational, and prevocational functioning to the fullest extent possible.
- C.3.14 Mental Retardation** is the disfavored term for Intellectual Disability.
- C.3.15 Plan of Care** means a written service plan that meets the requirements set forth in Section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.
- C.3.16 Provider** means a consultant, vendor, or contractor of goods or services, who can be an individual, a partnership, non-profit entity, or a corporation that enters into a contract with the District.
- C.3.17 Qualified Personnel** means persons holding official credentials, accreditation registration, certification, or licenses issued by their jurisdiction. The term shall include administrators, dentists, dietitians, occupational therapists, physical therapists, licensed and registered nurses, physicians, podiatrists, psychologists, certified behavior analysts, speech pathologists or audiologists, pharmacists, QDDPs (Qualified Developmental Disability Professional), and social workers.
- C.3.18 Staff** means the employees, contractors, or subcontractors of direct service agencies.
- C.3.19 Supported Employment** means providing employment evaluations of individual job skills and preferences, job training, job placement and job coaching services.
- C.3.20 Supported Living** means the provision of ADL, habilitation, supervision and health care coordination services in settings of three (3) persons or less.
- C.3.21 Task Order** means an order for services placed against an established human care agreement.

- C.3.22 Training** means a systematic and organized presentation of information that promotes on-the-job application of targeted competencies (*i.e.*, applicable awareness, knowledge, and skills). Training is not limited to a classroom environment. It can also consist of self-study training manuals, computer-based training programs, ‘hands-on’ application and on-the-job shadowing and monitoring, etc. To be effective, training needs to be applied to the job with the support of the agency.
- C.3.23 Vocational Training** means specialized job training in those vocational areas most suited to the individual as determined by evaluation and individual preferences. Actual skill relating to a specific job may be taught in the workshop, or on the job.
- C.3.24 Voucher** means a written authorization, to a service provider who has been awarded a human care agreement, to provide the services authorized in the agreement and described in the voucher directly to an individual identified in writing.
- C.3.25 Work Activity** means a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for workers whose physical or mental and/or intellectual impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities and purposeful activity so long as work or production is not the main purpose.
- C.3.26 Intellectual Disability (ID)** means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly subaverage intellectual functioning, existing concurrently with two or more significant limitations in adaptive functioning, and has the same meaning as the disfavored term “mental retardation” as set forth in D.C. Official Code § 7-1301.03(19) (2008 Repl.).

#### **C.4 General Requirements**

- C.4.1** The Provider shall provide residential habilitation, supported living, host home, day habilitation, employment readiness, and supported employment services when prior authorized for persons with intellectual and developmental disabilities as specified throughout this document and in accordance with Chapters 9 and 19 of Title 29 DCMR, Home and Community-Based Waiver Services.
- C.4.2** The Provider shall provide habilitation services in accordance with the established ISP as identified in Section C.4.3.

- C.4.3** The Provider shall develop and implement an Individual Program Plan (IPP), which is compatible with the goals and objectives outlined in the ISP or as specified herein in Sections C.4.3.1, C.4.3.2 and C.4.3.3. DDS will participate in the development of an ISP for each individual. The ISP process will include the following components:
- C.4.3.1** Coordination of comprehensive evaluations may include but shall not be limited to:
- a. educational or vocational;
  - b. psychological;
  - c. social and recreational;
  - d. speech and language;
  - e. medical and dental; and
  - f. physical or occupational therapy
- C.4.3.2** A meeting or conference whose participants shall include the individual, the individual's advocate or attorney, the individual's family if appropriate, guardian, friends and program staff of the Provider representing both the residential and day program components. Also participating in this conference are the assigned DDS Service Coordinator (or designee) and other appropriate DDS and IDD HCBS waiver professionals of the interdisciplinary team.
- C.4.3.3** The integration of individual preference, choice, and desired outcomes of services, supports and related activities
- C.4.4** The Provider shall participate in ISP meetings and other meetings requested by DDS to discuss status and/or progress toward desired outcomes
- C.4.5** The Provider shall record at least quarterly, status of the goals and objectives outlined in the ISP.
- C.4.6** The Provider shall provide qualified professional or paraprofessional staff as appropriate to deliver habilitative support and services to each individual.
- C.4.7** The Provider shall adhere to all mandatory policies and procedures established by DDS, including but not limited to the following, which are posted to the DDS website at <http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies>:
- a. Health and Wellness Standards
  - b. Most Integrated Community-Based Setting
  - c. Individual Support Plans

- d. Provider Certification Review (PCR)
- e. Provider Performance Review
- f. 2010 Evans Compliance Plan
- g. Imposition of Sanctions
- h. Enhanced Monitoring
- i. Watch List
- j. Personal Funds
- k. Human Rights/Restrictive Control Review Committee
- l. Behavior Support
- m. Incident Management and Enforcement
- n. Fire and Natural Disaster
- o. Direct Support Professional Training
- p. Language Access
- q. Utilization of Local Funds to Purchase, Repair, Rent or Lease Adaptive Equipment and,
- r. Continuity of Operations Planning.

**C.4.8** The Provider shall provide access to its facilities to bona fide protection and advocacy agencies, governmental agencies, the Quality Trust for Individuals with Disabilities, and to *Evans* Court-appointed officers on short notice for the purpose of review, monitoring and evaluation.

**C.4.9** The Provider shall not discharge an individual from its program without holding a team meeting that includes the individual and ISP team members, and providing written notification to all parties following the team meeting of any decision regarding termination or discharge from a program. The Provider shall allow DDS at least 90 days to arrange an alternate placement and for an appropriate transition between providers and the individual to occur. **The Provider shall not discharge or terminate an individual without an identified alternate placement** to include continued provision of services post hospitalization or acute psychiatric episode, unless specifically authorized in writing by DDA.

**C.4.10 Specific Supported Living and Residential Habilitation Services Requirements**

- C.4.10.1.** The Provider shall provide individuals with a safe, homelike environment with supervision and support based on the individual's ISP;
- C.4.10.2.** The Provider shall provide daily experiences that support the individual to develop to his/her potential, inclusive of access/integration of individuals into community life;
- C.4.10.3.** The Provider shall provide necessary supportive habilitation programs;
- C.4.10.4.** The Provider shall establish, operate, administer, maintain, and manage residential settings, including required staffing, personnel (and an emergency plan), building supplies, equipment and programming for implementation of care and habilitation services;
- C.4.10.5.** The Provider shall maintain twenty-four (24) hour coverage, when and if applicable, on weekends, holidays, during periods of individuals' illness or during periods of individuals' suspension from day programs;
- C.4.10.6.** The Provider shall coordinate services with individuals' day or vocational service providers to achieve sufficient support and consistency in service provision across service settings;
- C.4.10.7.** The Provider shall provide transportation for all individuals in a residential habilitation living setting, and coordinate transportation services whenever they are required for the individual to attend day programs, medical appointments, recreation activities, court hearings, ISP meetings and other activities related to the implementation of the ISP for individuals in a supported living or host home living arrangement;
- C.4.10.8.** The Provider shall provide individuals with three (3) nutritious meals per day in accordance with USDA standards. The individuals' special dietary needs shall be reflected in meal planning and preparation.
- C.4.10.9.** The Provider shall provide each individual with adequate and appropriate quantities of seasonal clothing and footwear, which shall be in serviceable condition and of proper size and fit.
- C.4.10.10.** The Provider shall maintain an inventory of individuals' properties that have a purchase value over one hundred dollars (\$100).
- C.4.10.11.** The Provider shall maintain inspection of fire extinguishers and validation tags by the appropriate authority;
- C.4.10.12.** The Provider shall maintain smoke detectors and carbon monoxide detectors in operable condition in residences and areas where DDS individuals are being supported at all times;

- C.4.10.13.** The Provider shall coordinate the development and implementation of behavior support plans per the ISP based on the assessed needs of the individuals and in accordance with related DDS policies and procedures. The plans shall include interaction with the individuals' family and day program provider. The individual behavior support plan shall be submitted to the designated DDS representative for review and approval per DDS policy and procedure and the approved IDD HCBS waiver program regulation;
- C.4.10.14.** The Provider shall provide and document completed training related to the care and program needs of the individuals per DDS policy and procedure, Chapter 35 regulations and IDD HCBS waiver program regulations. Provider training shall be completed on a continuous basis.
- C.4.10.15.** The Provider shall ensure that all medical concerns are addressed and all doctors' recommendations adhered to as per DDA Health and Wellness standards.
- C.4.10.16.** The Provider shall establish and maintain individuals' financial, medical and programmatic records in the home and at the Provider's administrative office at all times. These records shall be made available to DDS and its agents, other governmental agencies, the Quality Trust for Individuals with Disabilities, and to *Evans* Court-appointed officers on short notice for the purpose of review, monitoring and evaluation.
- C.4.10.17.** The Provider shall provide a range of socialization and religious experiences to enhance peer and intra-personal relationships in accordance with the individual's respective ISP.
- C.4.10.18.** The Provider shall maintain documentation of the individual's income including all allowance payments, social security benefits, earned income and any other form of income. The Provider shall provide oversight for the individual's individual interest bearing bank account in accordance with the individual's Individual Financial Plan (IFP). The Provider shall provide oversight to ensure the person's benefits are not interrupted. The Provider shall adhere to DDS policy and procedures regarding the management and oversight of consumer funds and possessions.
- C.4.10.19.** The Provider shall provide appropriate supervision to assist individuals in the areas of daily living skills, meal preparation, dressing in appropriate clothing, planning events of the evening, and in general, following the individual program plan (IPP) of each individual.
- C.4.10.20.** The Provider shall attach a work plan that describes the operation of the facility including staffing and consultants to the Contractor Qualification Record (CQR). The work plan must not exceed five pages.
- C.4.10.21.** The Provider shall maintain documentation of all services, including assessments, teaching and training activities rendered, the person's progress in meeting established goals, and any recommendations for changes in the goals or plan of care.
- C.4.10.22.** The Provider shall be willing to consider the possibility of new developments to expand service delivery within its capability as determined by the person's needs, including

services for medically fragile persons, persons with autism spectrum disorder and/or dual diagnosis.

**C.4.10.23.** The Provider shall be engaged in ensuring continuity of services for the person, such as attending discharge-planning meetings, participating in the review and plans for the person's pending discharge, and serving as a resource in planning the person's continuing support.

**C.4.10.24.** The Provider shall establish and maintain a valid license issued by the Health Regulation and Licensing Administration division of the Department of Health or equivalent agency in other jurisdictions for each Group Home providing Residential Habilitation Services.

**C.4.11**     **Staff Requirements**

**C.4.11.1**     The Provider shall provide sufficient staff qualified to perform the services required in this Section C and the applicable Medicaid provider agreement.

**C.4.11.2**     The Provider shall obtain criminal background checks for those individuals identified as key personnel, including all principals, officers and individuals in positions designated to serve administrative functions, prior to their commencement of work under this Human Care Agreement. In this instance, administrative functions specifically refer to those individuals that will interface with DDS and conduct business regarding the provider's organization in the name of the organization.

**C.4.11.3**     The Provider shall maintain documentation that each staff person possesses adequate training, qualifications and competence to perform the duties to which they are assigned.

**C.4.11.4**     The Provider shall provide to the Contracting Officer's Technical Representative (COTR) documentation that all direct and indirect staff, including consultants, be free of communicable diseases and meet the criminal background check requirements of the jurisdiction where the facility is located.

**C.4.11.5**     The Provider shall maintain complete written job descriptions covering all positions within the Provider's program, which shall be included in the Provider's application. Job descriptions shall include education, experience and/or licensing certification criteria, description of duties and responsibilities, hours of work, salary range and performance evaluation criteria. When hiring staff, the Provider shall obtain and document written work experience and personal references, which shall be available for review upon request by DDS or other investigative or enforcement agencies.

**C.4.11.6**     The Provider shall maintain an individual personnel file for each staff person, which contains an application for employment, professional and personal references, applicable credentials/certification, records of local jurisdiction required medical examinations, personnel actions including time records, documentation of all training received, notation of any allegations of professional or other misconduct and Provider's action in response to the allegations and the date and reason if an employee is terminated from

employment. All personnel materials shall be made available to the Contracting Officer's Technical Representative designated in the Human Care Agreement Notice of Award Letter or task orders upon request.

**C.4.11.7** The Provider shall provide orientation sessions for all staff members with respect to administrative procedures, program goals, policies, and practices to be adhered to under this human care agreement as stipulated in the DDA Competency-Based Training policy.

**C.4.11.8** The Provider shall maintain a current organizational chart, which displays organizational relationships and demonstrates who has responsibility for administrative oversight and clinical supervision over each human care agreement activity.

**C.4.12 DDS/DDA Web Based Case Management System (MCIS) Requirements**

**C.4.12.1** Only authorized provider staff may utilize the DDS/DDA web based Case Management System (MCIS) to access the individual's pertinent case related information.

**C.4.12.2** The Provider shall request access credentials for MCIS via a completed access request form, for each individual member of the provider staff required to utilize the MCIS system. DDS/DDA will provide the access request form, upon request, which must be fully completed and returned on company letterhead. DDS provision of access to a provider staff member is limited to that staff member and may not be shared, distributed or reassigned.

**C.4.12.3 Deactivating Access to MCIS**

**C.4.12.3.1** The Provider is responsible for notifying DDS/DDA as soon as possible, no later than 24 hours of the separation of a staff member authorized to access MCIS. The Provider shall notify DDS of the need to deactivate MCIS access immediately upon determining the need to take a negative personnel action against a provider employee who has MCIS access.

**C.4.12.3.2** The Provider is responsible for notifying DDS/DDA immediately in the event that any situation may have or has the potential to compromise the security of the DDS/DDA case management system, including, but not limited to , loss or theft of equipment that may contain consumer information or MCIS access information, separation of provider staff that had MCIS access, unauthorized access to provider facilities that potentially contained MCIS access information or client information by any individual.

**C.4.12.3.3** DDS reserves the right to deactivate MCIS access for any individual or provider if DDS determines or suspects that the individual or provider may be responsible for any compromised security of DDS records.

**C.4.13 Residential Site Requirements**

- C.4.13.1** The Provider's settings shall be the appropriate size and type to accommodate the number and support needs of individuals to be supported and shall comply with all applicable laws, ordinances and codes mandated by the Provider's jurisdiction.
- C.4.13.2** The District reserves the right to inspect all proposed residences prior to issuance of task orders for placement of DDS individuals. The District will conduct periodic, scheduled and unscheduled site visits for purposes of directly observing the provision of services and discussing contract performance relative to the terms and conditions of the human care agreement.
- C.4.13.3** All residences shall include adequate space, as well as furnishings that are well maintained. The residential settings used during the performance of this human care agreement shall meet all applicable federal, state and local regulations for their intended use throughout the term of the human care agreement and shall maintain current required permits and licenses for all facilities.
- C.4.13.4** DDS will not routinely approve leases that exceed ten (10%) percent above the published U.S. Housing and Urban Development (HUD) fair market rents as approved by the District of Columbia Housing Authority (DCHA) for locations within the District of Columbia or the HUD rates outside the District of Columbia. Providers shall not renew any leases exceeding the DCHA Payment Standards without approval of DDA Provider Resource Management and the Contracting Officer.
- C.4.13.5** The Provider shall ensure that a suitable emergency site facility, such as a hotel, is available for contract performance should the primary facility become unavailable for human care agreement service performance.
- C.4.13.6** The Provider shall develop and maintain a Continuity of Operations Plan (COOP) as part of a Comprehensive Emergency Management Program using a comprehensive planning process based on federal guidance and best practices in emergency management and continuity planning in accordance with DDS COOP policy published on the DDS Internet website. The provider must submit a draft COOP with HCA application.
- C.4.13.7** All homes offered for providing services to people with accessibility needs shall be accessible to persons with mobility limitations, consistent with the Rehabilitation Act of 1973 as amended P.L. 93-112 (Section 504) incorporated herein by reference.
- C.4.13.8** Supplies and services routinely needed for maintenance and operation of the residences, such as, but not limited to, security, janitorial services, trash pick-up, laundry or linens shall be provided by the Provider at no additional cost to the District.

**C.4.14** **Furnishings**

All furnishings and equipment purchased for the individual by the Provider are considered property of the individual and property of the District if abandoned by the individual when the individual vacates the premises, either voluntarily or involuntarily.

Disposition of furnishings shall be coordinated with the DDS Office of Support Services and the Surplus Property Division of the Office of Contracting and Procurement

**C.5 Compliance with Service Rates**

- C.5.1.** All human care services shall be provided, and the District shall only pay, in accordance with the service rates shown in Part 1, Section B, Human Care Services and Service Rates. Invoices shall be submitted no later than 30 days after the end of each month. If any overpayment occurs, the provider shall promptly repay the District the full amount of the overpayment.
- C.5.2.** If the Provider's rates are regulated by its State jurisdiction, the Provider shall submit documentation of rates in accordance with Section B.2.
- C.5.3.** If the Provider's rates are not regulated by its State jurisdiction, the Provider shall submit a detailed budget with supporting documentation to justify its price(s). The Provider's unregulated rates will be subject to negotiation.
- C.5.4.** Providers shall submit annual audited financial statements dated within the most recent 12 months prior to award of a Human Care Agreement and prior to the exercise of each option. The financial statements shall be prepared by an independent third party certified professional auditor that is experienced in audit of large public and commercial organizations.

**C.6 Method of Delivery of Services.**

- C.6.1** The District will provide to the Provider available social history information, available reports on psychological evaluations, available medical history, available family and school information, and other pertinent data, as appropriate, and as mutually agreed upon by the District and the Provider, to facilitate provision of services.
- C.6.2** The Provider shall provide no human care service unless and until the District makes an official referral to the Provider, and a purchase order/task order is issued to the Provider.

**C.7 Service Plan**

- C.7.1** The Provider shall develop a written service plan and subsequent program implementation plans that describe how the tasks specified in Section C will be accomplished, within 30 days of the ISP meeting with the Contractor and the DDS Service Coordinator.
- C.7.2** The Provider shall report all unusual incidents electronically in the DDS Management and Information System (MCIS) as specified in the DDS Incident Management and Enforcement Policy and Procedure, which is incorporated herein.

## **C.8 Eligibility**

- C.8.1** Eligibility to provide services under this Agreement shall be determined and re-determined by the District, as applicable, in accordance with prescribed procedures. The Provider shall be subject to a written determination that it is qualified to provide the services and shall continue the same level of qualification, subject to a review by the District, according to the criteria delineated in Title 27 DCMR Subsection 1905.6, and Section 1900, subsection 1903.1 of Chapter 19 of Title 29 DCMR.
- C.8.2** The Provider must submit evidence of and maintain status as a provider in good standing with generally accepted quality measures through the submission of at least one of the following: CARF (The Commission on Accreditation of Rehabilitation Facilities) Accreditation, CQL (The Council on Quality and Leadership), Accreditation; or Statement of Good Standing from the provider's state jurisdiction indicating that the provider has met all licensing and/or certification standards required by that jurisdiction and is not in a probationary status for any reason. Certification standards shall include following all DDS policies and procedures, including **Provider Certification Review**, which requires preliminary review within two (2) months of providing services, initial annual review within six months and annual review thereafter, to ensure that services are provided in accordance with the Medicaid waiver rules.
- C.8.3** The Provider shall not be included on the U.S. Department of Health & Human Services Office of the Inspector General's List of Excluded Individuals/Entities (LEIE), nor shall the Provider be excluded from receiving District of Columbia or Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404.

## **C.9 Compliance with Laws and Regulations**

As a condition of the District's obligation to perform under this Human Care Agreement, the Provider shall comply with all applicable District, federal and other state and local governmental laws, regulations, standards or ordinances and, where applicable, any other applicable licensing and permit laws, regulations, standards, or ordinances as necessary for the lawful provision of the services required of the Provider under the terms of this Human Care Agreement. The Provider shall inform DDS immediately of inability to maintain acceptable compliance with applicable laws.

#### **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 March 2007. (Attachment J.2)

#### **SECTION E: INSPECTION AND ACCEPTANCE**

The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007. (Attachment J.2)

## **SECTION F**

### **HUMAN CARE SERVICE ADMINISTRATION AND PERFORMANCE**

#### **F.1 Term of Agreement**

- F.1.1** The term of this Human Care Agreement shall be for a period of up to one base year from the date of award, subject to the availability of funds for any period beyond the end of the District's fiscal year, which begins on October 1, in which this Agreement is awarded.
- F.1.2** The District may terminate this Human Care Agreement in accordance with sections 8 and 27 of the Government of the District of Columbia Standard Contract Provisions for Use with District of Columbia Government Supply and Services, dated March 2007, hereafter referred to as "Standard Contract Provisions", or exercise sanctions in accordance with DDS policy, if the Provider fails to perform its obligations under this Human Care Agreement in accordance with this Human Care Agreement and in a timely manner, or otherwise violates any provision of this Human Care Agreement. Section 16 of the Standard Contract Provisions provides for Termination for the Convenience of the District.

#### **F.2 Agreement Not a Commitment of Funds or Commitment to Purchase**

This Human Care Agreement is not a commitment by the District to purchase any quantity of a particular good or service covered under this Human Care Agreement from the Provider. The District shall be obligated only to the extent that authorized purchases are actually made by funded purchase orders or task orders pursuant to this Human Care Agreement.

#### **F.3 Option to Extend Term of the Agreement**

- F.3.1** The District Government may extend the term of this Human Care Agreement for a period of four (4) one (1) year option periods, or multiple successive fractions thereof, by written notice to the Provider prior to the expiration of the Human Care Agreement; provided that the District gives the Provider written notice of its intent to extend at least thirty (30) days before the Human Care Agreement 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 Provider may waive the thirty (30) day notice requirement by providing a written notice to the Contracting Officer.
- F.3.3** The extended Human Care Agreement shall be considered to include this option provision if the District exercises an option.
- F.3.4** The total duration of this Human Care Agreement including the exercise of any options under this clause, shall not exceed five (5) years.

**F.4 Option to Extend Services**

Notwithstanding Section F.3.4 above, the District may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor at least thirty (30) days before the Human Care Agreement expires.

\*\*\*\*\*NOTHING FOLLOWS ON THIS PAGE\*\*\*\*\*

## **SECTION G**

### **CONTRACT ADMINISTRATION**

#### **G.1 CONTRACTING OFFICER/HUMAN CARE AGREEMENT ADMINISTRATION**

**G.1.1** Contracting Officers (CO) are the only District officials authorized to bind contractually the District through signing a human care agreement or contract, and all other documents relating to the human care agreement. All correspondence to the Contracting Officer shall be forwarded to:

Ms. Janice Parker Watson  
Department on Disability Services  
Office of Contracts and Procurement  
Chief Procurement Officer  
1125 – 15<sup>th</sup> Street NW, 4th Floor  
Washington, DC 20005-2720  
Telephone Number: (202) 730-1716  
Facsimile Number: (202) 730-1514  
E-Mail: [Janice.Watson@dc.gov](mailto:Janice.Watson@dc.gov)

**G.1.2 Contact Persons.** The cognizant Contract Specialist is:

Ms. Nicole Starwood  
Department on Disability Services  
Office of Contracts and Procurement  
1125 – 15<sup>th</sup> Street NW, 4th Floor  
Washington, DC 20005-2720  
Telephone Number: (202) 730-1690  
Facsimile Number: (202) 730-1514  
E-mail: [Nicole.Starwood@dc.gov](mailto:Nicole.Starwood@dc.gov)

#### **G.1.3 Contract Administrator.**

After award, a Contract Administrator will be assigned in the Office of Contracts and Procurement. The Contract Administrator will be the primary point of contact for task orders and post-award responsibilities not delegated to the Contracting Officer's Technical Representative.

## **G.2 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE**

- G.2.1** The Contracting Officer's Technical Representative (COTR) is the representative responsible for the general administration of this human care agreement and advising the Contracting Officer as to the compliance or noncompliance of the Provider with the terms of this Human Care Agreement.
- G.2.2** In addition, the COTR is responsible for the day-to-day monitoring and supervision of this Agreement, including approval of invoices. The COTR is not authorized or empowered to make amendments, changes, or revisions to this agreement. The COTR will be assigned at time of award of the Human Care Agreement.

## **G.3 ORDERING AND PAYMENT**

- G.3.1** The Provider **shall not** provide services or treatment under this Agreement unless the Provider is in actual receipt of a purchase order or task order for the period of the service or treatment that is signed by a Contracting Officer.
- G.3.2** All purchase orders or task orders issued in accordance with this Agreement shall be subject to the terms and conditions of this Agreement. In the event of a conflict between a purchase order or a task order and this Agreement, the Agreement shall take precedence.
- G.3.3** If mailed, a purchase order or task order shall be considered "issued" by the District when deposited in the mail. Orders may be transmitted electronically.
- G.3.4** The Provider shall forward or submit all monthly invoices for services or treatment to the agency, office, or program requesting the specified human care service or treatment, and as specified in the purchase order/task order, the **Provider/Contractor shall submit original invoices, no later than the 5<sup>th</sup> business day of the month after services are delivered, to:**

**Office of the Chief Financial Officer  
Department on Disability Services  
Attn: Accounts Payable  
P.O. Box 54047  
Washington, DC 20032-0247**

- G.3.5** To ensure proper and prompt payment, each invoice for payment shall provide the following minimum information:
- a. Provider name and address; name of individuals; location of individuals;
  - b. Invoice date, number and the total amount due;
  - c. Period or date of service;
  - d. Description of service;
  - e. Quantity of services provided or performed to include service, and the frequency and duration of each service;
  - f. Contract Line Item Number (CLIN), as applicable to each purchase order or task order;
  - g. Purchase Order or Task Order Number;

- h. Human Care Agreement Number;
- i. Federal tax identification number;
- j. Any other supporting documentation or information, as required; and
- k. Name, title, telephone no., and signature of the preparer.

**G.3.6** Payment shall be made only after performance by the Provider under the Agreement as a result of a valid purchase order or task order of the agreement, or the purchase order/task order, in accordance with all provisions thereof.

**G.3.7 First Source Agreement Request for Final Payment**

**G.3.7.1** 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.

**G.3.7.2** No final payment shall be made to the Providers until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Provider's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirement.

**G.4. Assignment of Contract Payments**

**G.4.1** In accordance with 27 DCMR 3250, the Providers 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 Providers, 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 Providers**

**G.5.1.1** The District will pay interest penalties on amounts due to the Providers 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 service is made on or before the 15<sup>th</sup> day after the required payment date for the service.

**G.5.1.2** Any amount of an interest penalty that 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 Providers 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 Provider's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.5.2.2** The Providers 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 service is made on or before the 15<sup>th</sup> day after the required payment date for any service.

**G.5.2.3** Any amount of an interest penalty that remains unpaid by the Providers 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 Providers 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 Providers 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.7 Authorized Changes by the Contracting Officer**

**G.7.1** Contracting Officers (CO) are the only District officials authorized to bind contractually the District through signing a human care agreement or contract, and all other documents relating to the human care agreement. All correspondence to the Contracting Officer shall be forwarded to the above address.

**G.7.2** The Providers shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

**G.7.3** In the event the Providers effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

### **G.8 Contract Administrator (CA)**

After award, a Contract Administrator will be assigned in the Office of Contracts and Procurement. The Contract Administrator will be the primary point of contact for task orders and post-award responsibilities not delegated to the Contracting Officer's Technical Representative

### **G.9 Contracting Officer's Technical Representative**

**G.9.1** The Contracting Officer's Technical Representative (COTR) is the representative responsible for the general administration of this human care agreement and advising the Contracting Officer as to the compliance or noncompliance of the Provider with this Human Care Agreement.

**G.9.2** In addition, the COTR is responsible for the day-to-day monitoring and supervision of this Agreement, including approval of invoices. The COTR is not authorized or empowered to make amendments, changes, or revisions to this agreement. The COTR will be assigned at time of award of the Human Care Agreement.

## **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**

In accordance with 29 CFR § 4.134(b), the Department of Labor Service Contract Act does not apply to this Human Care Agreement because the principal purpose is to provide room and board and not services.

#### **H.3 Publicity**

The Contractor shall at all times obtain the prior written approval from the CO before it, any of its officers, agents, employees or subcontractors, 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 who will 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 will 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 will determine the releasability of the records. The District will 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 51% District Residents New Hires Requirements and First Source Employment Agreement**

**H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* (“First Source Act”).

**H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.4) in which the Contractor shall agree that:

- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and
- (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

**H.5.3** The Contractor shall submit to DOES, no later than the 10<sup>th</sup> of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- (1) Number of employees needed;
- (2) Number of current employees transferred;
- (3) Number of new job openings created;
- (4) Number of job openings listed with DOES;
- (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - (a) Name;
  - (b) Social security number;
  - (c) Job title;
  - (d) Hire date;
  - (e) Residence; and
  - (f) Referral source for all new hires.

**H.5.4** If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.5.5** With the submission of the Contractor’s final request for payment from the District, the Contractor shall:

- (1) Document in a report to the CO its compliance with section H.5.4 of this clause; or

- (2) Submit a request to the CO for a waiver of compliance with section H.5.4 and include the following documentation:
  - (a) Material supporting a good faith effort to comply;
  - (b) Referrals provided by DOES and other referral sources;
  - (c) Advertisement of job openings listed with DOES and other referral sources; and
  - (d) Any documentation supporting the waiver request pursuant to section H.5.6.

**H.5.6** The CO may waive the provisions of section H.5.4 if the CO finds that:

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

**H.5.7** Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the CO shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.

**H.5.8** Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section H.5.8.

**H.5.9** The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

**H.6 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.7 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.8 Way to Work Amendment Act of 2006**

**H.8.1** Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 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 \$100,000 or more in a 12-month period.

**H.8.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.3** The Contractor shall include in any subcontract for \$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.8.4** The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**H.8.6** The 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 \$15,000 or more under the contract.

**H.8.7** 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.8.8** The requirements of the Living Wage Act of 2006 do not apply to:

(1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

(2) 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;

- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
  - (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
  - (5) 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;
  - (6) An employee under 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 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
  - (7) 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;
  - (8) Employees of nonprofit organizations that employ not more than 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));
  - (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
  - (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.
- H.8.9** 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.9 HIPAA PRIVACY AND SECURITY COMPLIANCE (January 2010)**

### **H.9.1 Definitions**

- H.9.1.1 *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.9.1.2 *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 Rule. With respect to this HIPAA Compliance Clause, *Covered Entity* shall also include the designated health care components of a hybrid entity.

**H.9.1.3 *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.9.1.4 *Designated Record Set*** means a group of records maintained by or for the Covered Entity that is:

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

**H.9.1.5** Used ***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.9.1.5.1** 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.9.1.5.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.

**H.9.1.6 *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.9.1.7 *Health Care Operations*** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.

**H.9.1.8 *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.9.1.9** *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.9.1.10** *Individual* shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

**H.9.1.11** *Individually Identifiable Health Information* is information that is 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; and
- 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; and
- c. That 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.9.1.12** *Privacy Official*. The person 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 this Manual, the Privacy Rules, and other applicable federal and state privacy law.

**H.9.1.13** *Privacy Officer*. The person designated by the Privacy Official or one of the District of Columbia's designated health care components, which is responsible for enforcing the provisions of this Manual as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rules, and other applicable federal and state privacy law(s). 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.9.1.14** *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

**H.9.1.15** *Protected Health Information*. "Protected Health Information" means individually identifiable health information that is:

- a. Transmitted by electronic media;
- b. Maintained in electronic media; or
- 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 behalf of the Covered Entity; and
- e. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.

**H.9.1.16 *Required by Law.*** "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

**H.9.1.17 *Secretary.*** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

**H.9.1.18 *Workforce.*** "Workforce" shall mean 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.9.2 Obligations and Activities of Business Associate**

**H.9.2.1** The Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required by Law.

**H.9.2.2** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Clause.

**H.9.2.3** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Clause.

**H.9.2.4** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or agency Privacy Officer within ten (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.

**H.9.2.5** 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 Clause with respect to Protected Health Information received from the Business Associate, Protected Health Information created by the Business Associate, or Protected Health Information received by the Business Associate on behalf of the Covered Entity.

**H.9.2.6** 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 *Department on Disability Services Access Policy*, 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.9.2.7** 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 C.F.R. 164.526 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, in compliance with applicable portions of *Department on Disability Services Amendment Policy*, 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.9.2.8** 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 *Department on Disability Services Identity and Procedure Verification Policy*, incorporated by reference.
- H.9.2.9** The Business Associate agrees to record authorizations and log such disclosures of 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 on Disability Services Logging Disclosures for Accounting Policy* incorporated by reference.
- H.9.2.10** 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 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 on Disability Services Disclosure Accounting Policy* incorporated by reference.
- H.9.2.11** 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 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.
- H.9.2.12** 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.9.2.13** 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.9.3**     **Permitted Uses and Disclosures by the Business Associate**

**H.9.3.1.**     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 if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

**H.9.3.2.**     Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use 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.9.3.3.**     Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose 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 of the information has been breached.

**H.9.3.4.**     Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use 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.9.3.5.**     Business Associate may use 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.9.4 Additional Obligations of the Business Associate**

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.9.5. Sanctions**

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rules or other applicable federal or state privacy law will be subject to discipline in accordance with Business Associate's District Personnel Manual 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 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 this Manual as set forth in business associate agreements. In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy Rules or other applicable federal or state privacy laws, the Business Associate shall inform the District Privacy Official or the agency Privacy Officer of the imposition of sanctions.

**H.9.6. Obligations of the Covered Entity**

- H.9.6.1.** 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 by the Business Associate.
- H.9.6.2.** 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, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.
- H.9.6.3.** The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of 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 by the Business Associate.

**H.9.7. Permissible Requests by Covered Entity**

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

**H.9.8. Representations and Warranties**

The Business Associate represents and warrants to the Covered Entity:

- H.9.8.1.** 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.9.8.2.** 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.9.8.3.** 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.9.8.4.** 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.9.8.5.** 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; provided that modifications or limitations that the Covered Entity has agreed to adhere to with regard to the use and disclosure of Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule will be communicated to the Business Associate, in writing, and in a timely fashion;
- H.9.8.6.** That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement 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.9.9. Term and Termination**

- H.9.9.1.** *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 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 Official and/or Privacy Officer or his or her designee 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 Privacy Official or Privacy Officer or his or her designee.
- H.9.9.2.** *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.9.9.3.** 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.9.9.4.** 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.9.9.5.** If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.
- H.9.9.6.** *Effect of Termination.*
- i. 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 in any media form.
  - ii. In the event that the Business Associate determines that returning or destroying the 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 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 limit further uses and disclosures of such 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. The obligations outlined in Section 2. Obligations and Activities of Business Associate will remain in force to the extent applicable.

**H.9.10 Miscellaneous**

- H.9.10.1.** *Regulatory References.* A reference in this HIPAA Compliance Clause to a section in the Privacy Rule means the section as in effect or as amended.
- H.9.10.2.** *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 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.9.10.3.** *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 March 2007, shall survive termination of the Contract.
- H.9.10.4.** *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 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 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 than those of HIPAA and its Privacy Rule.
- H.9.10.5.** 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, the Privacy Rule shall control.
- H.9.10.6.** *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 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.9.10.7.** *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.9.10.8.** *Governing Law and Forum Selection.* This Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, 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 by and 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.9.10.9.** *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.9.10.10.** *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 by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information from the Business Associate.

**H.9.10.11.** *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 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.9.10.12.** *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 Business Associate, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

If to the Covered Entity, to

**Department on Disability Services**  
**Developmental Disabilities**  
**Administration**  
**1125 15<sup>th</sup> Street NW, 8<sup>th</sup> floor**  
**Washington, DC 20005-2726**  
**Attention: Deputy Director**  
**Fax: 202-730-1843**

**H.9.10.13.** *Headings.* Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

**H.9.10.14.** *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.9.10.15.** *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.9.10.16.** *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, then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

**H.9.10.17.** *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.9.10.18.** *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 District of Columbia Department of Health 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 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.9.11 HIPAA Security Compliance**

### **H.9.11.1 Definition:**

- a. Electronic Protected Health Information means “Protected Health Information” in electronic form as defined in 45 CFR Part 160, Section §160.103.

### **H.9.11.2 Obligations of Business Associate:**

- a. As required by the HIPAA Security Rule, 45 CFR Part 164-502(g), Business Associate Contract Standards 164.308(b)(1) and 164.314(a)(1), the Business Associate agrees to:
  - (1) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity;
  - (2) Ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it;

- (3) Report to the Covered Entity any security incident of which it becomes aware; and
- (4) Authorize termination of the contract by the Covered Entity, if the Covered Entity determines that the Business Associate has violated a material term of the contract.

## **H.10 Subcontracting Requirements**

### **H.10.1 Mandatory Subcontracting Requirements**

**H.10.1.1** For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

**H.10.1.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph H.10.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

**H.10.1.3** A prime contractor that is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

### **H.10.2 Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.10.1. The prime contractor responding to this solicitation that is required to subcontract shall be required to submit with its proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror is required to subcontract, but fails to submit a subcontracting plan with its proposal. Once the plan is approved by the Contracting Officer, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD. Each subcontracting plan shall include the following:

- H.10.2.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.10.2.2** A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.10.2.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;

- H.10.2.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- H.10.2.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- H.10.2.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
- H.10.2.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- H.10.2.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
- H.10.2.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award subcontracts to them.

**H.10.3 Subcontracting Plan Compliance Reporting**

If the Contractor has an approved subcontracting plan required by law under this contract, the Contractor shall submit to the CO and the Director of DSLBD, no later than the 21<sup>st</sup> of each month following execution of the contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly subcontracting plan compliance report shall include the following information:

- H.10.3.1** The dollar amount of the contract or procurement;
- H.10.3.2** A brief description of the goods procured or the services contracted for;
- H.10.3.3** The name of the business enterprise from which the goods were acquired or services contracted;
- H.10.3.4** Whether the subcontractors to the contract are currently certified business enterprises;
- H.10.3.5** The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- H.10.3.6** A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and

**H.10.3.7** A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

**H.10.4 Subcontractor Standards**

A prime contractor shall ensure that subcontractors meet the criteria for responsibility described in D.C. Official Code § 2-353.01.

**H.10.5 Enforcement and Penalties for Breach of Subtracting Plan**

**H.10.5.1** If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default clause of the Standard Contract Provisions.

**H.10.5.2** There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

**H.10.5.3** A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

**H.11 Provider Responsibilities**

**H.11.1** The Provider bears responsibility for ensuring that the Provider/Contractor fulfills all its Agreement requirements under any task order or purchase order that is issued to the Provider pursuant to this Agreement.

**H.11.2** The Provider shall notify the District immediately whenever the Provider does not have adequate staff, financial resources, or facilities to comply with the provision of services under this Human Care Agreement.

## **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 (“SCP”) are incorporated as part of the contract. To obtain a copy of the SCP go to [www.ocp.dc.gov](http://www.ocp.dc.gov), click on Solicitation Attachments under the heading “Vendor Support Center”.

#### **I.2 Laws and Regulations Incorporated By Reference**

By signing this Human Care Agreement, the Provider agrees and acknowledges its obligation to be bound by the provisions of the following laws, act and orders, together with the provisions of the applicable regulations made pursuant to the laws:

**I.2.1** D.C. Law 2-137, “the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978,” D.C. Official Code § 7-1301.02 *et seq.* (2008 Repl.).

**I.2.2** In the *Evans* class action, Civil Action No. 76-0293, the parties negotiated and entered into consent orders in 1978, 1981, and 1983; there was a court-ordered plan in 1996; the parties negotiated and filed with the Court the “2001 Plan for Compliance and Conclusion of *Evans v. Williams*” (“2001 Plan”); and the parties entered into court-ordered 90-day plans in both 2005 and 2007. The *Evans* parties agreed to the “2010 Revision of the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*,” entered as an order by U.S. District Judge Ellen S. Huvelle on August 10, 2010, which requirements shall be applicable to all supports and services provided to *Evans* class members under this Human Care Agreement. The 2010 Revision synthesizes the various court orders into nine sets of outcome criteria for determining compliance aligned with the remaining five goals and underlying court orders.

**I.2.3** D.C. Law 17-249, the “Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008,” 55 D.C. Reg. 9206 (August 29, 2008).

**I.2.4** The Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*,

**I.2.5** The applicable portions of Chapter 9 and 19 of Title 29 DCMR, Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities, and of Chapter 35 of Title 22 DCMR, Group Homes for Persons with Intellectual Disabilities.

### **I.3 Confidentiality**

All services or treatment provided by the Provider through referrals by the District to the Provider shall be provided in a confidential manner and the Provider shall not release any information relating to a recipient of the services or otherwise as to the provision of those services or treatment to any individual other than an official of the District connected with the provision of services under this Agreement, except upon the written consent of the individual referral, or in the case of a minor, the custodial parent or legal guardian of the individual referral. The Provider shall ensure that the protection of the consumer's record from loss, alteration, unauthorized use and damage. Records shall be maintained in a locked file or locked room.

### **I.4 Access to Records**

- I.4.1.** The Provider shall retain copies of all case records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the human care agreement for a period of five (5) years after termination of the human care agreement , or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.
- I.4.2.** The Provider shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.
- I.4.3.** Persons duly authorized by the Contracting Officer shall have full access to and the right to examine any of the Provider's human care agreement and related records and documents, in which kept, at all reasonable times for as long as records are retained.

### **I.5 Tax Compliance Certification**

In signing and submitting this Agreement, the Provider certifies, attests, agrees, and acknowledges that the Provider is in compliance with all applicable tax requirements of the District of Columbia and shall maintain that compliance for the duration of this Agreement.

### **I.6 Other Contractors**

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

**I.7 Consent to Subcontracts**

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

**I.8 Insurance (March 2010)**

**A. GENERAL REQUIREMENTS.** The Contractor shall acquire 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 Contracting Officer 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 Contracting Officer. 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 subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the Contracting Officer 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 Contracting Officer with ten (10) days prior written notice in the event of non-payment of premium.

1. **Commercial General Liability Insurance.** The Contractor shall provide evidence satisfactory to the Contracting Officer 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.
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.

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.
  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.
  5. **Umbrella or Excess Liability Insurance.** The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000 per occurrence, including the District of Columbia as additional insured.
  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 in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 annual aggregate.
  7. **Crime Insurance (3<sup>rd</sup> Party Indemnity).** The Contractor shall provide a 3<sup>rd</sup> Party Crime policy to cover the dishonest acts of Contractor's employees that result in a loss to the District. The policy shall provide a limit of \$50,000 per occurrence. This coverage shall be endorsed to name the District of Columbia as joint-loss payee, as their interests may appear.
  8. **Sexual/Physical Abuse & Molestation.** The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate. The policy coverage shall include the District of Columbia as an additional insured. This insurance requirement will be considered met if the general liability insurance includes sexual abuse and molestation coverage for the required amounts.
  9. **Environmental Liability Insurance.** The Contractor shall provide a policy to cover costs associated with bodily injury, property damage and remediation expenses associated with pollution incidents including, but not limited to, mold, asbestos or lead removal. The policy shall provide a minimum of \$1,000,000 in coverage per incident and \$1,000,000 aggregate.
- B. **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.
- C. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

- D. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors 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 and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- E. **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.
- F. **NOTIFICATION.** The Contractor shall immediately provide the Contracting Officer with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the Contracting Officer.
- G. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

Janice Parker Watson  
Chief Contracting Officer  
Department on Disability Services  
1125 15<sup>th</sup> Street NW, 4<sup>th</sup> Floor  
Washington, DC 20005-2720  
[202-730-1716/Janice.Watson@dc.gov](mailto:202-730-1716/Janice.Watson@dc.gov)

- H. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party that 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 subcontractors in the performance of this contract.

#### **I.9 Equal Employment Opportunity**

The Contractor shall comply with and maintain compliance with Equal Employment Opportunity provisions set forth in 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 Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

#### **I.10 Order of Precedence**

Disputes regarding any inconsistency between this Agreement and other documents shall be resolved by giving precedence in the following order:

- (1) The Human Care Agreement
- (2) The Government of the District of Columbia Standard Contract Provisions for Use with District of Columbia Government Supply and Services dated March 2007.
- (3) Department on Disability Services Policies and Procedures
- (4) The Human Care Agreement Contractor Qualifications Record.
- (5) The Task Order or Purchase Order.

**I.11 Contracts in Excess of One Million Dollars**

Any contract in excess of \$1,000,000 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.12 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: LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference. **Attachments in bold must be completed and submitted with application.** *Unless otherwise indicated, references below are available at [www.ocp.dc.gov](http://www.ocp.dc.gov) - click on "Solicitation Attachments" under Vendor Support Center.*

- J.1. Human Care Agreement Contractor Qualifications Record, DDS Form 1900, (completed and executed) Form may be found at [www.dds.dc.gov](http://www.dds.dc.gov) under About DDS, Contracts and Procurement, "Business Opportunities"**
- J.2. Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007)**
- J.3. Equal Employment Opportunity Information Report and Mayor's Order 85-85**
- J.4. Department of Employment Services First Source Employment Agreement**
- J.5. Tax Certification Affidavit**
- J.6. Bidder/Offeror Certification**
- J.7. The DDS/DDA Policies and Procedures, published on the DDS website at <http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies>, are incorporated by reference to this Solicitation, Application and resulting Agreement, and shall apply with full force and effect.**
- J.8. The DDS/DDA Provider Training Policies and Procedures, published on the DDS website at <https://sites.google.com/a/dc.gov/dds-documents/dda-provider-training> are incorporated by reference to this Solicitation, Application and resulting Agreement, and shall apply with full force and effect.**

**SECTION K:**

**REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF  
OFFERORS**

Provider shall complete Bidder/Offeror Certification Form  
available at [www.ocp.dc.gov](http://www.ocp.dc.gov) under Vendor Support Center,  
click on “Solicitation Attachments”

## SECTION L:

### INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

#### **L.1 Qualification of Providers and Award of Human Care Agreements**

- L.1.1.** The District intends to pre-qualify providers and award multiple Human Care Agreements (HCA) resulting from this request for qualifications based upon the Contracting Officer's determination that the award is in the best interest of the District, considering the service provider's qualifications, its capability of providing the services, including financial and professional responsibility, and a judgment that the price is reasonable.
- L.1.2.** The determination that a provider is technically qualified and capable of providing the services will be based primarily upon DDS' evaluation of Provider Readiness, approval after review by the DDA Provider Review Committee, eligibility for, and approval by the Department of Health Care Finance as a Supported Living, Residential Habilitation, or Host Home provider under the D.C. Medicaid IDD HCBS waiver program as set forth in DDS Provider Readiness Policy and Procedure.
- L.1.3.** Before a provider that is approved by DDS and the Department of Health Care Finance for Supported Living, Residential Habilitation, and Host Home services will be authorized to provide services, the provider shall complete New Provider Orientation. The Contracting Officer will place providers so approved on a **qualification list**, eligible to be referred for selection by individuals supported by DDS for up to three (3) years.
- L.1.4.** The District will only enter into final negotiations to award a Human Care Agreement when (a) an individual supported by DDS has selected that approved DDS and Medicaid waiver provider; (b) the proposed residential site has been certified as meeting the environmental requirements for the individual; and when all compliance documents in section J have been updated and approved by the Contracting Officer.
- L.1.5.** The District may award a Human Care Agreement on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Provider's best terms from a standpoint of cost or price, technical and other factors.

#### **L.2 Proposal Organization and Content**

- L.2.1** One original and one (1) copy of the written application for the Human Care Agreement shall be submitted **only after submittal to DDA Provider Resource Management of the prospective provider's Medicaid Waiver application for Residential Habilitation or Supported Living** services. Applications shall be typewritten in 12-point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted, in lieu of originals, however, offerors are required to submit electronic copies of applications to facilitate agency responses to Freedom of Information Act requests.

Each proposal shall be submitted in a sealed envelope conspicuously marked:

"Proposal in Response to Solicitation No. **DCJM-2013-H-0007**  
for Human Care Agreement for Residential Expenses."

Prospective Providers may submit applications along with the completed Human Care Agreement Contractor Qualifications Record (CQR), to DDS through **2:00 p.m. on April 1, 2013.**

**L.2.2** Providers shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services delivery thereof. The information requested below shall facilitate evaluation and best value source selection for all applications. The data provided by the Provider must contain sufficient detail to provide a clear and concise representation of the provider's capability to provide the requirements as set forth in Section C. In addition, except as provided in L.2.3 below, the application shall include, the following:

- a. Audited financial statements for the two most recently completed fiscal years, dated within the most recent 12 months prior to application. The financial statements shall be prepared by an independent third party certified professional auditor that is experienced in the audit of commercial financial statements.
- b. Criminal background checks or professional licenses for those individuals identified as key personnel, including all principals, officers and individuals in positions designated to serve administrative functions. In this instance, administrative functions specifically refer to those individuals that will interface with DDS and conduct business regarding the provider's organization in the name of the organization.
- c. \*Complete written job descriptions covering all positions within the Provider's program. Job descriptions shall include education, experience and/or licensing certification criteria, description of duties and responsibilities, hours of work, salary range and performance evaluation criteria.
- d. \*Documentation that each staff person possesses adequate training, qualifications and competence to perform their assigned duties.
- e. \*Resumes of work experience and personal references for key personnel.
- f. Provider shall submit a draft Continuity of Operations Plan (COOP) as part of a Comprehensive Emergency Management Program using a comprehensive planning process based on federal guidance and best practices in emergency management and continuity planning in accordance with DDS COOP policy published on the DDS Internet website.

- g. \*At least three (3) relevant references or letters of support. References must include government or private organizations that referred individual(s) to whom services have been provided, or the legal guardians of individual(s) to whom services have been provided.
- h. \*A letter from DDS/DDA Office of Provider Relations stating that the provider's preliminary technical approval or a letter from DHCF stating that the provider has been approved to provide services for one or more of the following waiver services: Residential Habilitation, Supported Living and Host Homes.
- i. Evidence of satisfactory Provider Certification Reviews within past 12 months.
- j. \*Demonstrated evidence of ability to support new developments to expand service delivery within its capability as determined by the persons' needs, including services for medically fragile persons, persons with autism spectrum disorder and/or dual diagnosis.

**L.2.3 CURRENT PROVIDERS IN GOOD STANDING THAT HAVE SATISFACTORILY COMPLETED PROVIDER CERTIFICATION REVIEWS FOR SUPPORTED LIVING, RESIDENTIAL HABILITATION AND HOST HOME SERVICES WITHIN THE PAST 12 MONTHS MAY SUBMIT ABBREVIATED APPLICATIONS, EXCLUDING THE ITEMS MARKED WITH AN ASTERISK (\*) ABOVE.**

**L.3 Proposal Submission Date and Time Late Submissions, Late Modifications, Withdrawal or Modification of Proposals and Late Proposals**

**L.3.1. Proposal Submission**

- a. Proposals must be submitted no later than **2:00 p.m. on April 1, 2013**. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:
  - (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;
  - (b) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
  - (c) The proposal is the only proposal received.

**L.3.2. Withdrawal or Modification of Proposals**

An offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date and time for receipt of proposals.

**L.3.3. Postmarks**

- a. The only acceptable evidence to establish the date of a late proposal, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification or request for withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the proposal shall be considered late unless the offeror can furnish evidence from the postal authorities of timely mailing.

**L.3.4. Late Modifications**

- a. 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.3.5. Late Proposals**

A late proposal, late modification or late request for withdrawal of a proposal that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful proposals resulting from this solicitation.

**L.4 Explanation to Prospective Offerors**

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than ten days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than ten days before the date set for submission of proposals. The District will furnish responses promptly to all prospective offerors. 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.5 Restriction on Disclosure and Use of Data**

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.5.2** 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.6 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 that 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, One Judiciary Square, 441 4th Street NW, Suite 350N, Washington, DC 20001. The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

**L.7 Signing of Offers**

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer

**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 paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

**L.9 Retention of Human Care Agreement Applications**

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

**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 the Contracting Officer.

**L.12 Acknowledgement of Amendments**

The Provider shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; or (b) by letter or facsimile. The District must receive the acknowledgment by the date and time specified for receipt of applications. Providers' failure to acknowledge an amendment may result in rejection of the application.

**L.13 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.14 Familiarization with Conditions**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties that 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.15 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 the documentation listed below, within five (5) days of the request by the District:

- (1) Evidence of adequate financial resources to perform the contract or the ability to obtain those resources;
- (2) Evidence of ability to comply with the required or proposed delivery or performance schedule, based upon its existing commercial and government contract commitments;
- (3) Evidence of a satisfactory performance record;
- (4) Evidence of a satisfactory record of integrity and business ethics;
- (5) Evidence of a satisfactory record of compliance with the law, including labor and civil rights laws and rules and part A of subchapter X of Chapter 2 of this title;
- (6) Evidence of the necessary organization, experience, accounting, operational control, and technical skills; or evidence of the ability to obtain such.
- (7) Evidence of the necessary production, construction, technical equipment, and facilities; or evidence of the ability to obtain such.
- (8) Evidence that it has not exhibited a pattern of overcharging the District;
- (9) Evidence that it does not have an outstanding debt with the District or the federal government in a delinquent status, including evidence of compliance with applicable District licensing and tax laws and regulations.
- (10) Evidence that it is otherwise qualified and is eligible to receive an award under applicable laws and rules.

If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility 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 nonresponsible.

## **SECTION M - EVALUATION FACTORS**

### **M.1 EVALUATION FOR AWARD**

Human Care Agreements will be awarded to the qualified and responsible applicant(s) whose application(s) are most advantageous to the District, based upon the evaluation and qualification process set forth in Section L.1.

### **M.4 EVALUATION OF OPTION YEARS**

The District will evaluate offers for award purposes by evaluating 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.