GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency

CONTRACTS AND PROCUREMENT ADMINISTRATION

BLANKET PURCHASE AGREEMENT
DCRL-2013-A-0032 – Medical Records Technician

1. EXTENT OF OBLIGATION:

The Government of the District of Columbia is obligated only to the extent that authorized purchases are actually made under the Blanket Purchase Agreement (BPA), and is not obligated to place future orders. (Title 27 of the District of Columbia Municipal Regulations (DCMR), Chapter 18, Section 1810.2 (a) (c).

The Contractor shall not provide any services under this agreement until sufficient funding to cover the cost of the requested services has been issued.

2. PURCHASE LIMITATION /METHOD OF AWARD:

The BPA shall not exceed $_____through one year from date of award.

3. RESPONSE IS DUE BY: January 3, 2013 by 200 p.m. and may be sent via: Fax (202) 727-5886, email patricia.miller@dc.gov or hand-delivered or mailed to:

Child and Family Services Agency
Contracts and Procurement Administration
200 I Street, S.E., Suite 2031
Washington, DC 20003

If you have any questions, please contact Patricia Lewis-Miller, Contract Specialist, at (202) 727-7584.

4. PERIOD OF PERFORMANCE:

One year from date of award, with (4) four one- year option periods. Continuation of this BPA beyond the fiscal year is contingent upon future fiscal appropriations

5. PRICE/COST SCHEDULE/AGGREGATE GROUP AWARD

The Contractor shall provide all direct and indirect resources to provide the services in accordance to the specifications contained in this BPA and at the prices stated. This is a Fixed-Price BPA for the supplies/services to be performed at the unit prices specified in Section 5.1 – 5.5 the Price Schedules.

5.1 BASE YEAR

CONTRACT LINE ITEM NO. (CLIN)	SUPPLIES/ SERVICES	UNIT	Minimum UNIT	Maximum Unit	Unit Price	Maximum Total Cost
0001	Medical Records Technician	Hour	**1**	**2080**	**$**	**$**
Total Not to Exceed Amount						**$**

5.2 OPTION YEAR 1

CONTRACT LINE ITEM NO. (CLIN)	SUPPLIES/ SERVICES	UNIT	Minimum UNIT	Maximum Unit	Unit Price	Maximum Total Cost
1001	Medical Records Technician	Hour	**1**	**2080**	**$**	**$**
Total Not to Exceed Amount						**$**

5.3 OPTION YEAR TWO

CONTRACT LINE ITEM NO. (CLIN)	SUPPLIES/ SERVICES	UNIT	Minimum UNIT	Maximum Unit	Unit Price	Maximum Total Cost
2001	Medical Records Technician	Hour	**1**	**2080**	**$**	**$**
Total Not to Exceed Amount						**$**

5.4 OPTION YEAR THREE

CONTRACT LINE ITEM NO. (CLIN)	SUPPLIES/ SERVICES	UNIT	Minimum UNIT	Maximum Unit	Unit Price	Maximum Total Cost
3001	Medical Records Technician	Hour	1	2080	$	$
Total Not to Exceed Amount						$

5.5 OPTION YEAR FOUR

CONTRACT LINE ITEM NO. (CLIN)	SUPPLIES/ SERVICES	UNIT	Minimum UNIT	Maximum Unit	Unit Price	Maximum Total Cost
4001	Medical Records Technician	Hour	1	2080	$	$
Total Not to Exceed Amount						$

6. DESCRIPTION/SPECIFICATON/STATEMENT OF WORK:

6.1 BACKGROUND

6.1.1 Placement and re-placement screenings

6.1.2 The placement screenings include an unclothed physical examination, laboratory tests as medically indicated, behavioral health assessment screening. Additionally, as part of the placement screen, the Pediatric Nurse Practitioner (PNP), shall look for indicators to identify physical and/or sexual abuse and make appropriate referrals; referrals for urgent medical or behavioral health services as indicated; and at the completion of the screening, the PNP shall complete a thorough written report provided to the social worker and the social worker shall complete the data entry into the medical screens of FACES. The report and date entry shall include at a minimum the following:

- General assessment of child's health including indications of physical, sexual or emotional abuse and/or neglect, and
- Follow-up appointments made for medical, vision, developmental,

- dental or behavioral health care and documentation of appointment notification to resource families

6.1.3 Support Services

6.1.3.1 The clinic will provide immediate assessment tests to address a range of medical needs. These services will be components of the pre-placement and replacement screenings. The services will be focused on low end medical interventions which do not require specialty disposal services.

i. HIV testing
ii. Rapid STD testing
iii. Rapid strep
iv. Pregnancy testing
v. UTI white blood cell test
vi. Glucose screening

6.1.4 Medical check of at-risk children and youth

6.1.4.1 This service will be a research and assessment investigation. Children who are at-risk of being removed from their homes will be eligible for support. PNPs will receive information from the intake/investigations social worker. The PNP will conduct an exploratory assessment of the services a child may need, if the child is up to date on all of their medical health screenings, immunizations, and other health needs.

6.1.5. Estimated Number of Units Per-Service

6.1.5.1 Pre-placement Screenings: average of 40 / month = 480 screenings / year

6.1.5.2 Replacement Screenings: average of 80 - 100 / month = 906 – 1200 screenings / year

6.1.5.3 EPSDT Screenings: Average of 40/month = 480 screenings/year

6.1.5.4 **Support Testing:** Support testing will vary based on type and age group. Overall, it is projected that between 55 to 65 children per month will require some form of testing support. Over an annual period, 660 to 780 children with testing needs per year.

6.1.5.5 Approximate Total Screening Visits: 1386 – 1680 / annum

6.1.5.6 Approximate Total Secondary Testing / Support Needs: 660 – 780 / annum

6.2 SCOPE OF SERVICES

The District of Columbia Child and Family Service Agency (CFSA) is seeking a Medical Records Technician for the on-site Agency clinic that provides pre-foster care placement medical screenings for children coming into CFSA custody and replacement screenings for children/youth currently in care. The clinic is under the direction of the Clinical and Health Services Administration. The clinic operates 24 hours/7 days a week to support the CFSA Child Protective Services Administrative and the In-Home and Reunification Administrations. The Pediatric Nurse Practitioner (PNP), provides direct medical care, coordinate additional health care services, communicate with families and caregivers, and provide other health care related education and support to caregivers and social workers.

6.2.1 In line with CFSA's goals, services shall be integrated, culturally and linguistically competent. In addition, proposed programs shall comply with the *LaShawn A. v. Gray* Implementation Plan which sets forth benchmarks the District must achieve in order to come into compliance with the *LaShawn A. v. Fenty* Amended Implementation Exit Plan.

6.3 LOCATION OF SERVICES AND HOURS OF OPERATION:

The Contractor shall provide services at the following location:

200 I Street, S.E.
Washington, D.C. 20024

The clinic will operate 24 hours per day, 365 days per year/366 Leap Year

6.4 SPECIFIC SERVICES REQUIREMENTS

6.4.1 The contractor shall organize and maintain patient health information and provide support to the PNP, Medical Assistant and nursing staff of the Clinic by retrieving files for scheduled appointments as necessary; enters applicable information into medical record computer database (alphabetic or numeric client i.d. number) according to policy.

6.4.2 Produces medical records or related information for supervisory review and audits as needed.

6.4.3 Distributes any reports to the PNPs as needed.

6.4.4 Provides Medicaid billing specialist with information for reimbursement processing as needed. Maintains files on services billed for by client.

6.4.5 Photocopying, faxing and data entry tasks as assigned

6.4.6 Provide support to Medicaid billing specialist with maintaining statistical data

6.4.7 Successfully follow all policies and procedures for recordkeeping and documentation

6.4.8 The contract shall be aware of and understand and abide by client agency establish rules, regulations and practices.

6.5 QUALIFICATIONS

6.5.1 **Education and experience equivalent to:**

High school diploma or equivalent, with no experience required; three (3) months of medical office experience preferred

6.5.2 Knowledge of modern office equipment to include operating a personal computer

6.5.3 Interpersonal/human relations skills

6.5.4 Organizational skills

6.5.5 Ability to maintain confidentiality

6.5.6 Ability to exert physical effort in maintaining and distributing files

The clinic will operate 24 hours per day, 365 days per year/366 Leap Year

6.6 STANDARD OF PERFORMANCE

6.6.1 The Contractor shall at all times act in good faith and in the best interest of CFSA, use its best efforts and exercise due care and sound business judgment in performing the duties under this contract.

6.6.2 The Contractor shall at all times comply with CFSA policies, procedures and directives as it pertains to providing services to our children, caregivers and involved family members.

6.6.3 he Contractor shall at all times act in accordance with the values, standards, and requirements of the professional code of conduct of medical professionals.

6.6.4 Upon signing the agreement and prior to starting work, the contractor and the District will jointly develop performance standards. The contractor shall be held to performance standards for daily performance.

6.6.5 The contractor's performance shall be measured through regular reviews by the CA.

6.6.6 The contractor's performance standards will be reviewed and updated periodically. In the event, the contractor is not meeting the mutually agreed upon performance standards, the Contractor Administrator (CA) will notify the Contracting Officer who will issue a notice to cure failure to perform. The contractor shall have ten (10) days upon receipt of the notice to cure to correct the performance or the District may terminate the contract for default.

6.7 MANDATORY REPORTING

6.7.1 The Contractor shall Comply with the provisions as cited in D.C. Law 22-2 and DC Code §4-1321.02.

6.7.2 The Contractor shall ensure that any staff member who receives information concerning, or personally observes, an incident of alleged or actual child abuse or neglect, having any other information indicating an alleged or actual risk to a client's health or safety, shall make an immediate oral report and a written report within twenty-four (24) hours to the Child Abuse and Neglect Unit Located at 200 I Street, S.E Street .S.E. First Floor, Washington, D.C. 20024 or by calling the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline (202) 671-SAFE.

6.7.3 The Contractor shall ensure that any staff member who believes that a client is in serious and immediate danger shall take immediate steps to protect the client including, as appropriate, removing the client from the danger.

6.7.4 The Contractor shall ensure that the written report shall include, but not limited to, the following information if the person making the report know it: client who is the subject of the report, person responsible for the client's care, nature and extent of the abuse or neglect, other information that may be helpful in establishing the cause of the abuse or neglect, and the identity of the person responsible for the abuse or neglect.

6.8 UNUSUAL INCIDENTS

6.8.1 The contractor shall immediately report all unusual incidents to the hotline center located at 200 I Street, S.E. First Floor, Washington, D.C. 20003 or by calling the 24 hour hotline (202) 671-SAFE within 24 hours of the contractor becoming aware of the incident.

6.8.2 The Contractor shall establish, implement, and describe in writing policies and procedures for the reporting of unusual incidents, including, but not limited to;

(a) The death of a client;

(b) The death of a staff member while on duty or at the facility;
(c) An attempted suicide;
(d) Any situation in which a client is the victim of alleged delinquent or criminal behavior;
(e) An injury, trauma or illness of a client requiring treatment at a hospital;
(f) Any use of restraints;
(g) An outbreak of a communicable disease;
(h) An incident that requires the services of the fire or police departments;
(i) An automobile accident involving client or staff on duty;
(j) A loss of any utility, including but not limited to power, water, or sewage; and
(k) Any other occurrence or event that substantially interferes with the client's health, welfare, living arrangement, or well being, in any way places the client at risk.

6.8.3 The Contractor's director or other designated staff shall complete an Unusual Incident Report, CFSA-1243 (Attachment) and ensure delivery is completed via fax (202-727-7772), or personal delivery to the CFSA Office of Clinical Practice, within (24) hours of the occurrence of the incident, except in cases involving abscondance.

6.8.4 Report medical emergency to clinic administrator.

6.9 DELIVERABLES OR PERFORMANCE

TERM OF AGREEMENT

The term of this agreement shall be for a period of one (1) year from the date of award specified on page 1 of the BPA. The District reserves the right to extend The right to extend this BPA for one year option periods under the same terms as stated for the initial period of performance. Purchase orders issued by the District will expire at the end of each fiscal year. The expiration date of a purchase order has no effect o the delivery period of the actual BPA unless the purchase limitation amount has been met.

The BPA specifies the requirements. The Contractor shall have the ability to deliver requested services. The Contractor shall adhere to the specified requirements.

Deliverable	Quantity	Format/ Delivery Method	Due Date	To Whom
Bi-weekly Time Sheets	1	Bi-weekly Time Sheet	As agreed upon	CA

7. NOTICE OF INDIVIDUALS AUTHORIZED TO PLACE ORDERS UNDER THE BPA:

OFFICE	POINT OF CONTACTS
Contracts and Procurement Administration:	Tara Sigamoni Agency Chief Contracting Officer
Clinical & Health Services Administration:	Cheryl Durden, MSW Administrator PH: (202) 724-7016 cheryl.duren.@dc.gov

8. OPTION TO EXTEND THE TERM OF THE BLANKET PURCHASE ORDER:

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

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

8.1.3 The price for the option period shall be as specified in the contract.

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

9. Order For Services And Invoices:

9.1 Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX or paper communications.

9.1.2 The contractor shall invoice in duplicate to CFSA's Fiscal Operations Administration (Office of the Chief Financial Officer) at cfsa.accountspayable@dc.gov or via regular mail delivery to:

Child and Family Services Agency
Fiscal Operations

200 I Street, S.E., Suite 2031 Washington, DC 20003
(202) 724-5300 (202) 727-5886 Fax

9.1.3 The requirements of a proper invoice are as specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified in the purchase order(s) issued against this BPA. The District reserves the right to reject any improper or inaccurate invoice.

9.1.4 **Payment.** In accordance with the Quick Payment Act, D.C. Official Code § 2-221.02, payment shall be made within thirty (30) days from the date of receipt of a properly submitted invoice, after all approvals are completed as required by the PASS system. CFSA will only pay the Contractor for performing the services under this BPA at the prices stated under BPA number **DCRL-2013-A-0032**.

9.1.5 The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the contractor's invoice, the provisions of this BPA will take precedence.

9.1.6 Award will be made to the lowest responsive bidder meeting the District's minimum requirements enumerated herein. The District reserve the rights to award to the contractor offering the District the best overall valve taking into consideration the make/mode offered, delivery schedule, pricing or a combination of these factors.

9.1.7 The District will notify the contractor at least thirty (30) days prior to expiration or termination of orders against this BPA.

10. INSPECTION AND ACCEPTANCE:

The inspection and acceptance requirements for the resultant agreement 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.

11 METHOD OF AWARD:

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

In order for the response to be complete the offeror shall submit the following:

- Resume - Detailed
- Written proposal that clearly and convincingly address the technical factors enumerated in Section 11.4

11.2 TECHNICAL RATING(S)

11.2.1 Technical Rating Scale is as follows:

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

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

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

11.4 TECHNICAL EXPERTISE (75 Points Maximum)

FACTOR(S)	Evaluation Criteria	Points
Factor #1	Demonstrated capability to adhere to the functionalities and duties of a medical records technician as described in the Scope of Work, Section 6 .	20
Factor #2	Demonstrated reliability and commitment in past performance. Submit evidence of your education experience, knowledge , past performance necessary skills needed n medical record process and procedures.	10
Factor #3	Superior customer service and interaction with staff.	10
Factor #4	Knowledge of organizational, planning, prioritizing filing system.	20
Factor #5	Knowledge of medical record process and procedures. Ability to maintain complete confidentiality in regards clients' medical records. Submit evidence of your educations experience, knowledge, past performan	15
Total		**75**

12. PRICE CRITERION (25 Points Maximum)

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

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

12.1 TOTAL POINTS (100 Points Maximum)

Total points shall be the cumulative total of the offeror's technical criteria points and price.

13. EVALUATION OF OPTION YEARS

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

14. BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted, the top three highest scoring Offerrors shall be so notified and will be provided an opportunity to submit written best and final offers or oral presentations at the designated ate and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provision of the solicitation. After receipt of best and final offers or oral presentations, no discussion 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 the best and final offers.

15. KEY PERSONNEL

15.1 The District considers the following positions to be key personnel for this BPA: Medical Records Technician.

15.2 The Offeror shall set forth in its response the names and reporting relationships of the key personnel the Offeror will use to perform the work under the proposed contract. The Offeror shall include in its response a resume for each key personnel and the hours that each will devote to the contract in total and broken down by task.

16. DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

17. DEPARTMENT OF LABOR WAGE DETERMINATIONS:

The Contractor shall be bound by the Wage Determination No. 2005-2103 Rev. 12, dated June 13, 2012, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

18. CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES

18. 1 The Contractor shall be held to the full performance of the contract. The CFSA will deduct from the Contractor's invoice or otherwise withhold payment for any non-conforming service as specified below.

18.2 A service task may be composed of several sub-items. A service task may be determined to be partially complete if the Contractor satisfactorily completes some, but not all, of the sub-items. In those cases, partial deductions may be taken from the Contractor's invoice/timesheet.

18.3 The CFSA shall give the Contractor written notice of deductions by providing copies of reports, which summarize the deficiencies for which the determination was made to assess the deduction in payment for unsatisfactory work.

18.4 Therefore in the case of non-performed work, the CFSA:

18.5 Will deduct from the Contractor's invoice/timesheet all amounts associated with such non-performed work at the rate set out in Section 6 or provided by other provisions of the contract.

18.6 May, at its option, afford the Contractor an opportunity to perform the non-performed work within a reasonable period subject to the discretion of the Contracting Officer and at no additional cost to the CFSA.

18.7 May, at its option, perform the services by the CFSA personnel or other means.

18.8. In the case of unsatisfactory work, the CFSA:

18.9 Will deduct from the Contractor's invoice/timesheet all amounts associated with such unsatisfactory work at the rates set out in Section 6 or provided by other provisions of the contract, unless the Contractor is afforded an opportunity to re-perform and satisfactory completes the work;

18.10 May, at its option, afford the Contractor an opportunity to perform the unsatisfactory work within a reasonable period subject to the discretion of the Contracting Officer and at no additional cost to the CFSA.

19. 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 BPA 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 BPA 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 BPA, 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*.

20. SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the BPA, 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.*

21. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of this BPA, 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.*

22. PROTECTON OF PROPERTY:

The Contractor shall be responsible for any damage to the building, interior, or their approaches n delivering equipment covered by this contract.

23. CONTRACTOR RESPONSIBLITIES

All costs of operations under this contract shall be paid by the Contractor. This includes, but is not limited to, all Federal and State income taxes, surcharges, licenses, insurance, transportation, or any other operational costs. No payments other than those provided for in the Pricing Schedule shall be made to the Contractor unless authorized by modification to this contract.

Pursuant to the Child and Youth, Safety and Health Omnibus Congressional Review Amendment Act of 2004 and Mayor's Order 90-27 Drug-Free Workplace Act of 1988; the contractor will be required to complete a Drug and Alcohol Test, Criminal Background Check, Child Protection Registry (CPR) at the contractor's expense.

Contractor shall at all times act in good faith and in the best interest of CFSA, use commercially reasonable efforts and exercise all due care and sound business judgment in performing its duties under this contract. The Contractor shall at all times comply with CFSA policies, procedures, and directives, which are incorporated by reference and made part of this contract.

24. ADVERTISING AND PUBLICITY:

Unless granted prior, express, written authority by the Director, the Contractor shall not issue or sponsor any advertising or publicity that states or implies, either directly or indirectly, that CFSA endorses, recommends or prefers the Contractor's services; shall not use CFSA logo in any fashion; or use or release information, photographs or other depictions obtained as a result of the performance of services under this contract, for publication, advertising or financial benefit.

25. CONFIDENTIALITY:

The Contractor shall maintain the confidentiality and privacy of all identifying information concerning CFSA children and youth in accordance with the confidentiality law, the privacy rule (the requirements and restrictions contained in 45 CFR part 160 and part 164, subparts A and E, as modified by any District of Columbia laws, including the Mental Health Information Act of 1978, that may have preemptive effect by operation of 45 CFR part 160, subpart B) and agrees to comply with administrative, physical, and technical safeguards requirements in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as required by § 13401 of the HITECH ACT (February 18, 2010), 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.

26. RIGHTS IN DATA:

26.1 Any data first produced in the performance of this contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, produced by the Contractor for CFSA under this contract are works made for hire and are the sole property of CFSA; but, to the extent any such data may not, by operation of law, be works made for hire, the Contractor and the Physician hereby transfers and assigns to CFSA ownership of copyright in such works, whether published or unpublished.

26.2 The Contractor agrees to give assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The contractor agrees not to assert any rights in common law or in equity in such data. The contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of CFSA at such time as to review the intent to release such data to the public.

CFSA shall not unreasonably withhold consent to the Physician's request to publish or reproduce data in professional and scientific publications.

27. 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, click on Solicitation Attachments, then click on "Standard Contract Provisions (March 2007) (PDF)".

28. HIPAA PRIVACY COMPLIANCE

28.1 For the purpose of this agreement Child and Family Services Agency (CFSA), a covered component within the District of Columbia's Hybrid Entity will be referred to as a "Covered Entity" as that term is defined by the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") and associated regulations promulgated at 45 CFR Parts 160, 162 and 164 as amended (the "HIPAA Regulations") and as a recipient of Protected Health Information or electronic Protected Health Information from CFSA, is a "Business Associate" as that term is defined by HIPAA.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.

1. Definitions

a. 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.

b. 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 HIPAA. With respect to this HIPAA Compliance Clause, Covered Entity shall also include the designated health care components of the District government's hybrid entity or a District agency following HIPAA best practices.

c. 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.

Designated Record Set means a group of records maintained by or for the Covered Entity that are:

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

e. 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:

i. 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

ii. Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.

f. *Health Care Components* means a component or a combination of components of a hybrid entity designated by a hybrid entity. 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.

g. Health Care Operations shall have the same meaning as the term "health care operations" in 45 C.F.R. § 164.501.

h. 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. The District of Columbia is a Hybrid Covered Entity.

i. 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.

j. 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).

k. Individually Identifiable Health Information is information that is health information, including demographic information collected from an individual, and;

   i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;

   ii. 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

   iii. That identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

l. National Provider Identifier (NPI) Rule: "National Provider Identifier" shall mean the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.

m. Privacy and Security Official. The person or persons designated by the District of Columbia, a Hybrid Entity, who is/are responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy and Security Rules, and other applicable federal and state privacy law.

n. Privacy Officer. The person designated by the Privacy and Security Official or one of the District of Columbia's designated health care components, who is responsible for overseeing compliance with the Covered Agency's Privacy Policies and Procedures, the HIPAA Privacy Regulations, HIPAA Security Regulations and other applicable federal and state privacy law(s). The Covered Agency's privacy officer shall follow the guidance of the District's Privacy and Security Official, and shall be responsive to and report to the District's Privacy and Security Official on matters pertaining to HIPAA compliance.

o. 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.

p. Protected Health Information. "Protected Health Information" (PHI) or "Electronic Protected Health Information" (ePHI) means individually identifiable health information that is created or received by the Business Associate from or on behalf of the Covered Entity, or agency following HIPAA best practices, which is:

i. Transmitted by, created or maintained in electronic media; or
ii. Transmitted or maintained in any other form or medium;

Protected Health Information does not include information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

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

r. Security Officer. The person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for overseeing compliance with the Covered Agency's Privacy Policies and Procedures, the Security Rules, and other applicable federal and state privacy law(s). The Covered Agency's security officer shall follow the guidance of the District's Security Official, as well as the Associate Security Official within the Office of the Chief Technology Officer, and shall be responsive to the same on matters pertaining to HIPAA compliance.

s. Security Rule. "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.

t. *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.

2. Obligations and Activities of Business Associate

a. The Business Associate agrees not to use or disclose Protected Health Information or electronic Protected Health Information (hereinafter "PHI" or Protected Health Information") other than as permitted or required by this HIPAA Compliance Clause or as Required By Law.

b. The Business Associate agrees to comply with administrative, physical, and technical safeguards requirements in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as required by § 13401 of the HITECH ACT (February 18, 2010), 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.

c. 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.

d. 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.

e. 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.

f. The Business Associate agrees to provide access within five business days, 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, to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.

g. The Business Associate agrees to make any amendment(s) within five business days to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 **in a format** or as directed by the District Privacy Official or agency Privacy Officer in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.

h. 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 *Identity and Procedure Verification*, attached hereto as **Exhibit A** and incorporated by reference.

i. 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.

j. 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.

k. 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.

l. 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 other Covered Entities provided that the purpose of the 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.

m. 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.

3. Permitted Uses and Disclosures by the Business Associate

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

b. 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.

c. 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.

d. 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).

e. 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).

4. <u>Additional Obligations of the Business Associate</u>

a. 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:

i. Name of the Business Associate of the Covered Entity;
ii. Title of the Report/File;
iii. Confirmation that the Report/File contains Protected Health Information (Yes or No);
iv. Description of the basic content of the Report/File;
v. Format of the Report/File (Electronic or Paper);
vi. Physical location of Report/File;
vii. 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
viii. Supporting documents if the recipient/personal representative has access to the Report/File.

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

i. The Business Associate agrees to administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that the Business Associate creates, receives, maintains or transmits on behalf of the covered entity.

ii. The Business Associate agrees to report to the covered entity any security incident of which it becomes aware, including any attempts to access ePHI, whether those attempts were successful or not.

iii. This Business Associate Agreement may be terminated if the covered entity determines that the business associate has materially breached the agreement.

iv. The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Secretary of HHS for the purposes of determining the covered entity's compliance with HIPAA.

v. This agreement continues in force for as long as the Business Associate retains any access to the Covered Entity's ePHI.

vi. With respect to the subset of PHI known as electronic PHI (ePHI) as defined by HIPAA Security Standards at 45 C.F.R. Parts 160 and 164, subparts A and C (the "Security Rule"), if in performing the Services, Business Associate, its employees, agents, subcontractors and any other individual permitted by Business Associate will have access to any computer system, network, file, data or software owned by or licensed to Provider that contains ePHI, or if Business Associate otherwise creates, maintains, or transmits ePHI on Provider's behalf, Business Associate shall take reasonable security measures necessary to protect the security of all such computer systems, networks, files, data and software. With respect to the security of ePHI, Business Associate shall: (A) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives,

maintains, or transmits on behalf of the Provider; (B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (C) Report to the Provider any security incident of which it becomes aware.

vii. Business Associate agrees not to electronically transmit or permit access to PHI unless such transmission or access is authorized by this Addendum and the Agreement and further agrees that it shall only transmit or permit such access if such information is secured in a manner that is consistent with applicable law, including the Security Rule. For purposes of this Addendum, "encrypted" shall mean the reversible conversion of readable information into unreadable, protected form so that only a recipient who has the appropriate "key" can convert the information back into original readable form. If the Covered Entity stores, uses or maintains PHI in encrypted form, or in any other secured form acceptable under the security regulations, Covered Entity shall promptly, at request, provide with the key or keys to decrypt such information and will otherwise assure that such PHI is accessible by upon reasonable request.

viii. In the event Business Associate performs functions or activities involving the use or disclosure of PHI on behalf of Covered Entity that involve the installation or maintenance of any software (as it functions alone or in combination with any hardware or other software), Business Associate shall ensure that all such software complies with all applicable standards and specifications required by the HIPAA Regulations and shall inform of

200 I Street, S.E., Suite 2031 Washington, DC 20003
(202) 724-5300 (202) 727-5886 Fax

any software standards or specifications not compliant with the HIPAA Regulations.

c. At the request of the Covered Entity, the Business Associate agrees to amend this agreement to comply with all HIPAA mandates.

5. **Sanctions**

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of HIPAA or other applicable federal or state privacy law will be subject to discipline in accordance with Business Associate's Personnel Policy 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 Compliance Clause 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 HIPAA 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.

6. **Obligations of the Covered Entity**

a. 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.

b. 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.

c. 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.

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.

8. **Representations and Warranties**

The Business Associate represents and warrants to the Covered Entity:

a. 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;

b. 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;

c. 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;

d. 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;

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

HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information 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;

f. That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;

f. 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.

9. **Term and Termination**

a. *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. The Protected Health Information shall be 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.; If it is infeasible to return or confidentially destroy the Protected Health Information, protections shall be 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. The requirement to return Protected Health Information to the District at the end of the contract term or if the contract is

terminated applies irrespective of whether the Business Associate is also a covered entity under HIPAA. Where a business associate is also a covered entity, Protected Health Information provided by the District, or created or received by the Business Associate on behalf of the District, a duplicate of the record may be acceptable if mutually agreed.

b. 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:

   i. 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; or

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

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

c. 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 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 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.

10. Miscellaneous

a. *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.

b. 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.

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

d. 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.

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.

e. *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 have access to and amend 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 provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

f. *Compliance with Applicable Law.* The Business Associate shall comply with all federal and 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.

g. 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 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. 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.

i. 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.

j. 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.

k. 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:

If to the Covered Entity, to:

Child and Family Services Agency
Privacy Officer
400 6th Street, SW
200 I Street, S.E., Suite 2031 Washington, DC 20003
(202) 724-5300 (202) 727-5886 Fax

Suite 5023
Washington, D.C. 20024
Attention: Dionne M. Bryant
Fax: 202-727-6333

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

m. 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.

n. 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.

o. 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 1 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.

p. 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.

q. 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.

Attachments: ***Identity and Procedure Verification***

29. CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS FOR CONTRACTORS THAT PROVIDE DIRECT SERVICES TO CHILDREN OR YOUTH

29.1 A contractor that provides services as a covered child or youth services provider, as defined in section 202(3) of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*), as amended (in this section, the "Act"), shall obtain criminal history records to investigate persons applying for employment, in either a compensated or an unsupervised volunteer position, as well as its current employees and unsupervised volunteers. The Contractor shall request criminal background checks for the following positions: All positions that involve contact with wards of CFSA.

29.2 The Contractor shall also obtain traffic records to investigate persons applying for employment, as well as current employees and volunteers, when that person will be required to drive a motor vehicle to transport children in the course of performing his or her duties. The Contractor shall request traffic records for the following positions: all positions which have direct or unsupervised contact with children.

29.3 The Contractor shall inform all applicants requiring a criminal background check that a criminal background check must be conducted on the applicant before the applicant may be offered a compensated position or an unsupervised volunteer position.

29.4 The Contractor shall inform all applicants requiring a traffic records check that a traffic records check must be conducted on the applicant before the applicant may be offered a compensated position or a volunteer position.

29.5 The Contractor shall obtain from each applicant, employee and unsupervised volunteer:

(A) a written authorization which authorizes the District to conduct a criminal background check;

(B) a written confirmation stating that the Contractor has informed him or her that the District is authorized to conduct a criminal background check;

(C) a signed affirmation stating whether or not they have been convicted of a crime, pleaded nolo contendere, are on probation before judgment or placement of a case upon a stet docket, or have been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in any other state or territory:

(i) Murder, attempted murder, manslaughter, or arson;
(ii) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
(iii) Burglary;
(iv) Robbery;
(v) Kidnapping;
(vi) Illegal use or possession of a firearm;
(vii) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
(viii) Child abuse or cruelty to children; or
(ix) Unlawful distribution of or possession with intent to distribute a controlled substance;

(D) a written acknowledgement stating that the Contractor has notified them that they are entitled to receive a copy of the criminal background check and to challenge the accuracy and completeness of the report; and

(E) a written acknowledgement stating that the Contractor has notified them that they may be denied employment or a volunteer position, or may be terminated as an employee or volunteer based on the results of the criminal background check.

29.6 The Contractor shall inform each applicant, employee and unsupervised volunteer that a false statement may subject them to criminal penalties.

29.7 Prior to requesting a criminal background check, the Contractor shall provide each applicant, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:

(A)To authorize the Metropolitan Police Department (MPD), or designee, to conduct the criminal background check and confirm that the applicant, employee, or unsupervised volunteer has been informed that the Contractor is authorized and required to conduct a criminal background check;

(B)To affirm whether or not the applicant, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory of the United States, or for any of the felony offenses described in paragraph 25.5 (C)

(C) To acknowledge that the applicant, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;

(D) To acknowledge that the applicant may be denied employment, assignment to, or an unsupervised volunteer position for which a criminal background check is required based on the outcome of the criminal background check; and

(E) To inform the applicant or employee that a false statement on the form or forms may subject them to criminal penalties pursuant to D.C. Official Code §22-2405.

29.8 The Contractor shall direct the applicant or employee to complete the form or forms and notify the applicant or employee when and where to report to be fingerprinted.

29.9 Unless otherwise provided herein, the Contractor shall request criminal background checks from the Chief, MPD (or designee), who shall be responsible for conducting criminal background checks, including fingerprinting.

29.10 The Contractor shall request traffic record checks from the Director, Department of Motor Vehicles (DMV) (or designee), who shall be responsible for conducting traffic record checks.

29.11 The Contractor shall provide copies of all criminal background and traffic check reports to the CA within one business day of receipt.

29.12 The Contractor shall pay for the costs for the criminal background and traffic record checks, pursuant to the requirements set forth by the MPD and DMV. The District shall not make any separate payment for the cost of criminal background and traffic record checks.

29.13 The Contractor may make an offer of appointment to, or assign a current employee or applicant to, a compensated position contingent upon receipt from the contracting officer of the CA's decision after his or her assessment of the criminal background or traffic record check.

29.14 The Contractor may not make an offer of appointment to an unsupervised volunteer whose position brings him or her into direct contact with children until it receives from the contracting officer the CA's decision after his or her assessment of the criminal background or traffic record check.

29.15 The Contractor shall not employ or permit to serve as an unsupervised volunteer an applicant or employee who has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

29.16 Unless otherwise specified herein, the Contractor shall conduct periodic criminal background checks upon the exercise of each option year of this contract for current employees and unsupervised volunteer in the positions.

29.17 An employee or unsupervised volunteer may be subject to administrative action including, but not limited to, reassignment or termination at the discretion of the CA after his or her assessment of a criminal background or traffic record check.

29.18 The CA shall be solely responsible for assessing the information obtained from each criminal background and traffic records check report to determine whether a final offer may be made to each applicant or employee. The CA shall inform the contracting officer of its decision, and the contracting officer shall inform the Contractor whether an offer may be made to each applicant.

29.19 If any application is denied because the CA determines that the applicant presents a present danger to children or youth, the Contractor shall notify the applicant of such determination and inform the applicant in writing that she or he may appeal the denial to the Commission on Human Rights within thirty (30) days of the determination.

29.20 Criminal background and traffic record check reports obtained under this section shall be confidential and are for the exclusive use of making employment-related determinations. The Contractor shall not release or otherwise disclose the reports to any person, except as directed by the contracting officer.

30. INSURANCE:

A. GENERAL REQUIREMENTS. The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the 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.

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.

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. (one or more employees)

4. Professional Liability Insurance (Errors & Omissions). The Contractor (including but not limited to architects, attorneys, engineers, environmental consultants, and healthcare professionals) shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission caused by the performance of professional services under this Contract.

   The policy shall provide limits of **$1,000,000.00** per occurrence for each wrongful act and **$1,000,000.00** per aggregate for each wrongful act.

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:

200 I Street, S.E., Suite 2031 Washington, DC 20003
(202) 724-5300 (202) 727-5886 Fax

Tara Sigamoni
Agency Chief Contracting Officer
Child and Family Services Agency
Contracts and Procurement Administration
200 I Street, S.E., Suite 2031
Washington, D.C. 20003 Phone: (202) 724-5300

Name and address of Contractor:

_____

_____

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_____ _____

Signature of Authorized Representative **Date**

Acceptance by the District:

_____ _____

Tara Sigamoni Date
Agency Chief Contracting Officer
Child and Family Services Agency
200 I Street, SE, Suite 2031
Washington, DC 20003