

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency



CONTRACTS AND PROCUREMENT ADMINISTRATION

MAINTENANCE & SUPPORT RENEWAL SERVICES
BLANKET PURCHASE AGREEMENT (BPA)
DCRL-2015-A-0025

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: November 17, 2014 by 200 p.m. and may be sent via: Fax (202) 727-5886, email Pamela.glover@dc.gov or hand-delivered to:

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

Your response shall include the following at a minimum:

1. Complete the attached price schedule
2. Complete Attached Tax Affidavit Certificate

If you have any questions, please contact Pamela Glover, Contract Specialist, at (202) 727-7579.

4. Notice Of Individual(s) Authorized To Place Orders Under The BPA:

- 4.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:
- 4.2 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
- 4.3 Coordinating site entry for Contractor personnel, if applicable;

- 4.4 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
- 4.5 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- 4.6 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoice or vouchers.
- 4.7 The address and telephone number of the CA:

Brady Birdsong, Contract Administrator (CA)
Information Systems
Child and Family Services Agency
(202) 434-0012
Email: brady.birdsong@dc.gov

- 4.8 The CA shall NOT have the authority to:
 - 1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
 - 2. Grant deviations from or waive any of the terms and conditions of the contract;
 - 3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
 - 4. Authorize the expenditure of funds by the Contractor;
 - 5. Change the period of performance; or
 - 6. Authorize the use of District property, except as specified under the contract.
- 4.9 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

5. PERIOD OF PERFORMANCE

- 5.1 The term of the BPA shall be for a period of one (1) year from date of award. Purchase orders issued by the District will expire on September 30 of each year.
- 5.2 The District reserves 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 on the delivery period of the actual BPA unless the purchase limitation amount has been met.

OFFICE

POINTOF CONTACTS

Contracts and Procurement Administration Tara Sigamoni, Agency Chief Contracting Officer
(202) 724-5300
Email: tara.sigamoni@dc.gov

Child Information System Administration: Brady Birdsong, Contract Administrator (CA)
(202) 434-0012
Email: brady.birdsong@dc.gov

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

6. SCOPE OF WORK

6.1 The Government of the District of Columbia, Child and Family Services Agency (CFSA) is seeking a contractor to provide maintenance renewal software that will be used in CFSA for all payment processing in FACES production.

6.2 The software shall be installed, up and running in HP-UX operating system (verison 11.31) where FACES Oracle database 11g is configured.

1. AFCARS
2. ACEDS
3. RSTAR
4. IV-E
5. Medicaid

7. GENERAL REQUIREMENTS

7.2 The Contractor shall provide 24/7; 365 days production support, toll free support number and on-line technical support to submit issues and resolution.

7.3. The Contractor shall provide new software upgrades for free when it's available.

7.4. Contractor shall provide technical support for product upgrades and bug fixes.

7.5 The contractor shall have proven experience providing maintenance support; technical support and knowledge resolving issues, automation solutions for government agencies in the human service cluster.

8. APPLICABLE DOCUMENT

| No. | Document Type | Title | Date |
|------|---------------|---|-----------------------------|
| 0001 | Public Law | Health Insurance Portability and Accountability Act (HIPAA) of 1996 | Most Current Version |

9. BACKGROUND

9.1 CFSA is the public child welfare agency in the District of Columbia responsible for protecting child victims and those at risk of abuse and neglect and assisting their families along with our community partners. CFSA has 817 FTEs and currently provides services to approximately 3500 children and their families.

9.2 In an effort to streamline business processes the agency is in need of a contractor to provide annual maintenance support for the FACES database system.

10. Option To Extend The Term Of The Blanket Purchase Order

10.1 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. Not less than thirty days prior to the start of any option period Contractor may notify the District in writing that Contractor will not accept 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.

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

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

10.4 The total duration of this blanket purchase agreement, including the exercise of any options under this clause, shall not exceed five (5) years.

11. 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 11.1 – 11.5 the Price Schedules.

11.1 BASE YEAR

| CONTRACT LINE ITEM NO. (CLIN) | ITEM DESCRIPTION | TOTAL PRICE |
|--|---------------------------------|--------------------|
| 0001 | Maintenance Support Services | \$ |

11.2 OPTION YEAR ONE

| CONTRACT LINE ITEM NO. (CLIN) | ITEM DESCRIPTION | TOTAL PRICE |
|--|---------------------------------|--------------------|
| 1001 | Maintenance Support Services | \$ |

11.3 OPTION YEAR TWO

| CONTRACT LINE ITEM NO. (CLIN) | ITEM DESCRIPTION | TOTAL PRICE |
|--|---------------------------------|--------------------|
| 2001 | Maintenance Support Services | \$ |

11.4 OPTION YEAR THREE

| CONTRACT LINE ITEM NO. (CLIN) | ITEM DESCRIPTION | TOTAL PRICE |
|--|---------------------------------|--------------------|
| 3001 | Maintenance Support Services | \$ |

11.5 OPTION YEAR FOUR

| CONTRACT LINE ITEM NO. (CLIN) | ITEM DESCRIPTION | TOTAL PRICE |
|--|---------------------------------|--------------------|
| 4001 | Maintenance Support Services | \$ |

12. DELIVERABLES/REPORTS

12.1 The maintenance support renewal system should be delivered electronically with a vendor support agreement number and should be activated and ready to use.

13. Order For Services And Invoices:

13.1 Orders for services against this BPA will be placed via email, telephone or facsimile. CFSA will issue an order under this Agreement in writing, in the form of an electronic

mail, facsimile, or paper purchase order. These will be considered direct ordering agreements made with the contractor.

- 13.2 The requirements of a proper invoice are as specified in the Blanket Purchase Agreement (BPA). 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.
- 13.3 Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or invoices that must contain as a minimum, the contractor's name, address, invoice number, date, tax ID number, DUNS number, BPA and purchase order numbers, description of services, name and address of both the person to whom payment is to be sent, and the person to be notified in the event of a defective invoice.

**Child and Family Services Agency
Fiscal Operations Administration
200 I Street S.E., Suite 2030
Washington, DC 20003
(202) 727-7456 (phone)**

- 13.4 Direct all technical inquiries to the Contract Administrator (CA), Brady Birdsong, at (202) 434-0012.
- 13.4 The terms and conditions included in this BPA apply to all purchases made pursuant to this BPA and the District's Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts dated March 2007. 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.

14. Certification, Submission and Payment of Invoices:

- 14.1 **Certification of Invoices.** Upon receipt of a properly submitted invoice, it will be forwarded to the CFSA CA, who will certify the invoice and return it to the CFSA Fiscal Operations Administration for processing.
- 14.2 **Submission of Invoices.** The Contractor shall submit to the Agency Fiscal Operations an itemized invoice upon acceptance of services, every occurrence, or upon expiration of the BPA, whichever occurs first, for all services for which payment has not been received. All invoices should be mailed to:

**Child and Family Services Agency
Fiscal Operations
200 I Street SE; Suite 2030
Washington, DC 20003**

The contractor may also submit invoices by e-mail to: cfsa.accountspayable@dc.gov

District agrees that an acceptable invoice shall be a HIPAA compliant that shall use the Contractors usual and customary billing rules and charges. District shall pay the rates enumerated in Sections 11.1 – 11.5 of this Agreement.

13.3 Payment of Invoices. 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. CFSA will only pay the Contractor for performing the services under this BPA Number: **DCRL-2015-A-0025** at the prices stated in the Pricing Schedule.

14. COMPLIANCE

14.1 The contractor's system shall provide an audit trail and session history.

14.2 The contractor's system shall be HIPAA compliant.

14.3 The contractor's system shall protect private and sensitive information through encryption.

15. INSPECTION AND ACCEPTANCE

15.1 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.

15.2 The District will review all services and deliverables to determine acceptability. If neither the services nor deliverables conform to the contract requirements, the Contractor shall repeat these services at no increase in the contract amount. When defects in services or deliverables cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements. If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred, or (2) terminate the contract for default.

14. METHOD of AWARD

14.1 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.

14.1.2 TECHNICAL RATING

The 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. |

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

If 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.

14.1.4 TECHNICAL CRITERIA (Total 100 Points maximum)

Description: These factors consider the Offeror's past performance, experience and key personnel used in performing services similar to the required services as described in Section C. These factors include an examination of the quality of services provided, timeliness in services delivery, business practices, and overall satisfaction with the Offeror's performance.

| Technical Evaluation Factors | Points |
|--|------------|
| Factor A- Expertise and Past Performance | 30 |
| Factor B – Proposed Methodology | 30 |
| Factor C – Project Team | 30 |
| Factor D – Price | 10 |
| Total | 100 |

14.1.4.1 Factor A – Expertise (30 Points maximum)

14.1.4.1a This evaluation factor considers the specific expertise related to the scope of work in similar projects within the past three (3) years.

14.1.4.1b This factor will be evaluated on the toolset, technical approach, and demonstrated viability of the proposed technical solution, based on a clear and thorough understanding of the capabilities of the tools proposed. Offerors with a proven track record of experience with the proposed toolset will be rated higher.

14.1.4.1c Evaluation of past performance and experience allows the District to assess the Offeror’s ability to perform and relevance of the work performed.

14.1.4.1d This factor considers the extent of the Offeror’s past performance within the last five (5) years, in achieving a high degree of customer satisfaction. Evaluation of this factor will be based on the quantity and quality of Offeror’s performance on projects of comparable size, highly technical nature, and complexity. The currency and relevance of the information, source of information, context of the data, and general trends in Offeror’s performance shall be considered.

14.1.4.1e The Offeror provides a list of three (3) previous contracts for which the Offeror provided identical or similar work within the last five years. Include the Name of Company, Title and Description of the Project, Contract Number, Dollar Amount, and Period of Performance, Name of the Contact Person, and Title, and Telephone Number and email address.

14.1.4.2 Factor B – Proposed Methodology (30 Points maximum)

14.1.4.2a This evaluation factor considers the proposed methodology for this project, including the delivery of a renewed maintenance system annually.

14.1.4.2b This factor will be evaluated based upon the completeness of the proposed methodology and its match to the Functional Requirements in Section 12.1. The proposed methodology must demonstrate how the Offeror intends to complete the project and all deliverables successfully, within the desired timeframe. The maintenance support renewal system should be delivered electronically with a vendor support agreement number and should be activated and ready to use.

14.1.4.4 Factor C – Project Team (30 Points maximum)

14.1.4.4a This evaluation factor considers the education, experience, knowledge, past performance, necessary skills and expertise of the key personnel assigned to the project.

14.1.4.4b This factor will be evaluated on the specific skill sets of the proposed project team. Each key team member must provide the required specific expertise in the requirements of the scope, based on their project role.

14.1.4.5 Factor D – Price Criterion (10 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:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated}} \times \text{weight}(10) = \text{Evaluated price score}$$

Price of proposal being evaluated

14.1.5 TOTAL POINTS (100 Points Maximum)

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

15.1 Delivery: Unit prices offered herein shall include delivery, all charges prepaid and exclusive of all taxes to the following delivery point:

FOB Point: Child and Family Services Agency
Child Information System Administration
200 I Street, SE, Suite 3404
Washington, DC 20003

Contractor shall telephone in advance of delivery date;
Contact:
Telephone:

16.1 KEY PERSONNEL

16.1.1 There shall be no substitutions of the Key Personnel without prior written approval of the CFSA Contract Administrator (CA). The CFSA’s CA shall approve all key personnel proposed by the Contractor to work under this Contract, prior to the individual beginning work. CFSA may require for any reason, and at any time, that the Contractor remove and/or replace Contractor personnel or subcontractor personnel.

17.1 CONFIDENTIALITY

The Contractor recognizes and acknowledges that, by virtue of entering into this contract and providing services to the District hereunder, Contractor may have access to certain information of the District and its clients that is confidential and constitutes valuable, special and unique property of the District. The Contractor shall not at any time, either during or subsequent to the term of this contract, disclose to others, use, copy or permit to be copied, any the District client/confidential information without the District's express prior written consent, except pursuant to Contractor's duties hereunder. Contractor agrees to abide by all laws and regulations governing confidentiality, including but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).

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

19.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2005-2103 Rev. 14, dated July 25, 2014, 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.

20.1. 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.

3. 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 **\$3,000,000** annual aggregate.

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

- 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:

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

21.1 HIPAA PRIVACY COMPLIANCE

21.1.1 For the purpose of this agreement Child and Family Services (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, on behalf of the District government or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of the District or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity for the District, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, accreditation, or financial services to or for the District, or to or for an organized health care arrangement in which the District participates, where the provision of the service involves the disclosure of protected health information from the District or arrangement, or from another business associate of the District or arrangement, to the person. A covered entity may be a business associate of another covered entity.

A Business Associate includes, (i) a Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information; (ii) a person that offers a personal health record to one or more individuals on behalf of the District; (iii) a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

A *Business Associate* does not include: (i) a health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the

individual; (ii) a plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of 45 CFR § 164.504(f) apply and are met; (iii) a government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law; iv) a covered entity participating in an organized health care arrangement that performs a function, activity or service included in the definition of a Business Associate above for or on behalf of such organized health care arrangement.

- 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.
- d. **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 individual²⁵. 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. Hybrid Entities are required to designate and include functions, services and activities within its own organization, which would meet the definition of Business Associate and irrespective of whether performed by employees of the Hybrid Entity, as part of its health care components for compliance with the Security Rule and privacy requirements under this Clause.
- 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.** “Privacy Officer” shall mean the person designated by the District’s Privacy and Security Official or one of the District’s covered components within its Hybrid Entity, 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). Also referred to as the agency Privacy Officer, the individual 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.
- PHI 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 PHI or Ephi (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 use appropriate safeguards and 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 Health Information Technology Economic and Clinical HealthACT (February 18, 2010) (“HITECH”), to maintain the security of the PHI and to prevent use or disclosure of such PHI other than as provided for by this Clause. Business Associate acknowledges that, pursuant to HITECH, it must comply with the Security Rule and privacy provisions detailed in this Clause. As such, Business Associate is under the jurisdiction of the United States Department of Health and Human Services and is directly liable for its own compliance. A summary of HIPAA Security Rule standards, found at Appendix A to Subpart C of 45 C.F.R. § 164 is as follows:

Administrative Safeguards

| | | |
|--|---------------|---|
| Security Management Process | 164.308(a)(1) | Risk Analysis I Risk Management I Sanction Policy I Information System Activity Review I |
| Assigned Security Responsibility | 164.308(a)(2) | I |
| Workforce Security | 164.308(a)(3) | Authorization and/or Supervision (A) Workforce Clearance Procedure Termination Procedures (A) |
| Information Access Management | 164.308(a)(4) | Isolating Health care Clearinghouse Function I Access Authorization (A) Access Establishment and Modification (A) |
| Security Awareness and Training | 164.308(a)(5) | Security Reminders (A) Protection from Malicious Software (A) Log-in Monitoring (A) Password Management (A) |
| Security Incident Procedures | 164.308(a)(6) | Response and Reporting I |
| Contingency Plan | 164.308(a)(7) | Data Backup Plan I Disaster Recovery Plan I Emergency Mode Operation Plan I Testing and Revision Procedure (A) Applications and Data Criticality Analysis (A) |
| Evaluation | 164.308(a)(8) | I |
| Business Associate Contracts and Other Arrangement | 164.308(b)(1) | Written Contract or Other Arrangement I |

Physical Safeguards

| | | |
|---------------------------|---------------|---|
| Facility Access Controls | 164.310(a)(1) | Contingency Operations (A) Facility Security Plan (A) Access Control and Validation Procedures (A) Maintenance Records (A) |
| Workstation Use | 164.310(b) | I |
| Workstation Security | 164.310I | I |
| Device and Media Controls | 164.310(d)(1) | Disposal I Media Re-use I Accountability (A) Data Backup and Storage (A) |

Technical Safeguards (see § 164.312)

| | | |
|---------------------------------|---------------|---|
| Access Control | 164.312(a)(1) | Unique User Identification I Emergency Access Procedure I Automatic Logoff (A) Encryption and Decryption (A) |
| Audit Controls | 164.312(b) | I |
| Integrity | 164.312I(1) | Mechanism to Authenticate Electronic Protected Health Information (A) |
| Person or Entity Authentication | 164.312(d) | I |
| Transmission Security | 164.312I(1) | Integrity Controls (A) Encryption (A) |

- c. The Business Associate agrees to name a Privacy and/or Security Officer who is accountable for developing, maintaining, implementing, overseeing the compliance of and enforcing compliance with this Clause, the Security Rule and other applicable federal and state privacy law within the Business Associate's business. The Business associate reports violations and conditions to the District-wide Privacy and Security Official and/or the Agency Privacy Officer of the covered component within the District's Hybrid Entity.
- d. The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Clause.
- e. The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the PHI not permitted or required by this HIPAA Compliance Clause or other incident or condition arising out the Security Rule, including breaches of unsecured PHI as required at 45 CFR §164.410, to the District-wide Privacy and Security Official or agency Privacy Officer within ten (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure. However, if the Business Associate is an agent of the District (i.e., performing delegated essential governmental functions), the Business Associate must report the incident or condition immediately. Upon the determination of an actual data breach, and in consultation with the District's Privacy and Security Official, the Business Associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the District.
- f. 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 PHI received from the Business Associate, PHI created by the Business Associate, or PHI received by the Business Associate on behalf of the Covered Entity.
- g. In accordance with 45 CFR 164.502I(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information
- h. Initially, within ten (10) days following the commencement of this Contract, or within ten (10) days of a new or updated agreement with a subcontractor, the Business Associate agrees to provide the District a list of all subcontractors who meet the definition of a Business Associate. Additionally, Business Associate agrees to ensure its subcontractors understanding of liability and monitor, where applicable, compliance with the Security Rule and applicable privacy provisions in this Clause.
- i. 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 PHI 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.
- j. The Business Associate agrees to make any amendment(s) within five business days to the PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format 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.

- k. 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 PHI 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 Policy attached hereto as Exhibit A and incorporated by reference.
- l. The Business Associate agrees to record authorizations and log such disclosures of PHI 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 PHI in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations.
- m. 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's Privacy and Security 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 PHI in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations.
- n. The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI 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 and Security 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.
- o. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, the Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- p. As deemed necessary by the District, the Business Associate agrees to the monitoring and auditing of items listed in paragraph 2 of this Clause, as well as data systems storing or transmitting PHI, to verify compliance.
- q. The Business Associate may aggregate PHI in its possession with the PHI 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 PHI 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.
- r. Business Associate may de-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and any associated HHS

guidance. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI 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 PHI 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 Subpart E of 45 CFR § 164 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 PHI 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 PHI 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 PHI to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504I(2)(i)(B).
- e. Business Associate may use PHI 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. Additional Obligations of the Business Associate

- 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 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 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 PHI 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 PHI, to the extent that such changes may affect the use or disclosure of PHI by the Business Associate.

c. The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of PHI 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 PHI by the Business Associate.

7. Permissible Requests by Covered Entity

Covered Entity shall not request the Business Associate to use or disclose PHI in any manner that

would not be permissible under the Privacy Rule and Subpart E of 45 CFR § 164 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 PHI 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 Contract;
- g. 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 PHI 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 PHI 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 PHI, 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 PHI 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, PHI 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 PHI 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 PHI that is in the possession of all subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of PHI in any form.

ii. In the event that the Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate shall provide written notification to the Covered Entity 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 PHI is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such PHI and limit further uses and disclosures of such PHI for so long as the Business Associate maintains such PHI. Additionally, the Business Associate shall:

- (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- (2) Return to covered entity, or, if agreed to by covered entity, destroy the remaining PHI that the business associate still maintains in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Ephi to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at 45 C.F.R. § 164.502(j)(1) which applied prior to termination; and
- (5) Return to covered entity or, if agreed to by covered entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations outlined in Section 2. Obligations and Activities of Business Associate shall survive the termination of this Contract.

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. ***Surviva***25. The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and the sections of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts covering Default and Termination for the Convenience of the District shall survive termination of the Contract.
- d. ***Interpretation***. Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit compliance with applicable federal and District of Columbia laws, rules and regulations, and the HIPAA Rules, 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 PHI than those of the HIPAA Rules.

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 contro25.

- 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 PHI, 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 PHI by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received PHI 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

 Attention: _____
 Fax: _____

If to the Covered Entity, to
 Child and Family Services
 200 I Street, S.E, Suite 3620
 Washington, D.C. 20003
 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 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.

Attachment 28.A

Exhibit A – Identity and Procedure Verification

23.1 PURCHASES OF IT HARDWARE AND EQUIPMENT

The Contractor shall provide only the most current models, components and accessories in new, fully operational, factory sealed condition, with all applicable licenses. The Contractor warrants and represents that the equipment is eligible for the manufacturer's normal and extended warranty and support within the United States to Authorized Users. Previously owned, damaged, refurbished, remanufactured, counterfeit, "gray market" or substitute third party items will not be accepted. The offeror shall provide evidence of its authorized reseller agreement or certification with its proposal.

24. RIGHTS IN DATA

- 24.1 "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- 24.2 The term "Technical Data", as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document

research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materia²⁵. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- 24.3 The term "Computer Software", as used herein means computer programs and computer databases. "Computer Programs", as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- 24.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- 24.5 All 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, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. 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 the District until such time as the District may have released such data to the public.
- 24.6 The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- 24.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired,

including use at any District installation to which the computer may be transferred by the District;

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

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

24.7 The restricted rights set forth in section 24.6 are of no effect unless

(i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

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

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

24.8 In addition to the rights granted in Section 24.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section 24.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the CO is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

24.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

24.10 For all computer software furnished to the District with the rights specified in Section 24.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section 24.5. For all computer software furnished to the District with the restricted rights specified in Section 24.6, the District, if the Contractor,

either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

- 24.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- 24.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- 24.13 Paragraphs 24.6, 24.7, 24.8, 24.11 and 24.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

25.1 RESTRICTION ON DISCLOSURE AND USE OF DATA

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

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

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

- 25.1.2 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.”

26. QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the question electronically to pamela.glover@dc.gov. The prospective bidder should submit questions no later than **three (3)** days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than **five (5)** days before the date set for submission of bids. The District will furnish responses electronically. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting bids, or if the lack of it would be prejudicial to any prospective bidder. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

27. 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.

28. ATTACHMENTS

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

| Attachment Number | Document |
|--------------------------|---|
| 28.A | Exhibit A: Identity and Procedure Verification |
| 28.B | Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at www.ocp.dc.gov click on "Solicitation Attachments" |
| 28.C | U.S. Department of Labor Wage Determination 2005-2103 Rev 14, dated July 25, 2014 |
| 28.D | Tax Certification Affidavit available at www.ocp.dc.gov click on "Solicitation Attachments" |

Name and Address of Contractor

Signature of Authorized Representative

Date

Acceptance by the District:

Tara Sigamoni
Agency Chief Contracting Officer
(202) 724-5300
(202) 727-5886 (Fax)

Date