

<b>SOLICITATION, OFFER, AND AWARD</b>				1. Caption Clinical Family Therapy Services		Page of Pages 1   78	
2. Contract Number		3. Solicitation Number DCRL-2016-B-0007		4. Type of Solicitation <input checked="" type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Emergency		5. Date Issued 10/13/15	6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open Market with Set- Aside CBE Designated Category
7. Issued By: Office of Contracts and Procurement Administration 2001 I Street, S.E., Suite 2031 Washington, D.C. 20001				8. Address Offer to: Office of Contracts and Procurement Administration 2001 I Street, S.E., Suite 2031 Washington, D.C. 20001			
NOTE: In sealed bid solicitations "offer" or "offeror" means "bid" or "bidder"							
<b>SOLICITATION</b>							
9. Sealed offers in original and <u>2</u> copies for furnishing the supplies or services in the Schedule will be received at the place specified in Block one (1) or if hand carried in the depository at <u>2:00 p.m.</u> local time <u>November 12, 2015.</u> Hour (Date) CAUTION: Late submission, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in solicitation.							
10. For Information Contact	A. Name Linda Thomas		(Area Code) 202	B. Telephone (Number) 724-7548		(Ext) N/A	C. E-mail Address lindar.thomas@dc.gov
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<b>OFFER</b>							
12. In conjunction with the above, the undersigned agrees, if this offer is accepted within <u>120</u> calendar days from the receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.							
13. Discount for Prompt Payment		10 Calendar days %	20 Calendar days %	30 Calendar days %		___ Calendar days %	
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):			Amendment Number	Date		Amendment Number	Date
15A. Name and Address of Offeror				16. Name and Title of Person Authorized to Sign Offer/Contract			
15B. Telephone (Area Code) (Number) (Ext)			<input type="checkbox"/> 15 C. Check if remittance address is different from above – Refer to section G	17. Signature		18. Award Date	
<b>AWARD (TO BE COMPLETED BY GOVERNMENT)</b>							
19. Accepted as to Items Numbered			20. Amount		21. Accounting and Appropriation		
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (district of Columbia)			24. Award Date	



Government of the District of Columbia

CFSA SOLICITATION/OFFER /AWARD FORM 33 (REV. 01-01) GOVERNMENT OF THE DISTRICT OF COLUMBIA

**SECTION B: SUPPIES OR SERVICES AND PRICE/COST**

**B.1** The Government of the District of Columbia, Child and Family Agency (CFSA), herein referred as to the “District” is seeking a contractor to provide Clinical Family/Individual/ Integrated Therapy Services and Life Long Connection to identify issues related to stability and preservation to adoption matters as specified in Section C in the contract.

**B.2** The District contemplates award of a firm fixed price contract with a cost reimbursement component.

**B.3 PRICE SCHEDULE**

SECTION B.3.1		BASE YEAR				
CLIN	Description	Minimum Quantity	Maximum Quantity	Unit	Unit Price	Total Price
0001	Clinical Services Family Individual/ Integrated Therapy and Life Long Connection cited in §§ C.1.1 thru C.1.4	54	810	Sessions	\$_____	\$_____
0002	Case Consultation/ Cost Reimbursement cited in §§ C.1.4, C.1.6 & C.5	N/A	N/A	N/A	\$_____	\$_____
<b>TOTAL PRICE</b>						\$

SECTION B.3.2		OPTION YEAR ONE (1)				
CLIN	Description	Minimum Quantity	Maximum Quantity	Unit	Unit Price	Total Price
1001	Clinical Services Family Individual/ Integrated Therapy and Life Long Connection cited in §§ C1.1 thru C.1.5	54	810	Sessions	\$_____	\$_____
1002	Case Consultation/ Cost Reimbursement cited in §§ C.1.6 & C.5	N/A	N/A	N/A	\$_____	\$_____
<b>TOTAL PRICE</b>						\$

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SECTION B.3.3		OPTION YEAR TWO (2)				
CLIN	Description	Minimum Quantity	Maximum Quantity	Unit	Unit Price	Total Price
2001	Clinical Services Family Individual/ Integrated Therapy and Life Long Connection cited in §§ C.1.1 thru C.1.4	54	810	Sessions	\$ _____	\$ _____
2002	Case Consultation/ Cost Reimbursement cited in §§ C.1.5, C.1.6 & C.5	N/A	N/A	N/A	\$ _____	\$ _____
TOTAL PRICE						\$ _____

SECTION B.3.4		OPTION YEAR THREE (3)				
CLIN	Description	Minimum Quantity	Maximum Quantity	Unit	Unit Price	Total Price
3001	Clinical Services Family Individual/ Integrated Therapy and Life Long Connection cited in §§ C.1.1 thru C.1.4	54	810	Sessions	\$ _____	\$ _____
3002	Case Consultation/ Cost Reimbursement cited in §§ C.1.5, C.1.6 & C.5	N/A	N/A	N/A	\$ _____	\$ _____
TOTAL PRICE						\$ _____

SECTION B.3.5		OPTION YEAR FOUR (4)				
CLIN	Description	Minimum Quantity	Maximum Quantity	Unit	Unit Price	Total Price
4001	Clinical Services Family Individual/ Integrated Therapy and Life Long Connection cited in §§ C.1.1 thru C.1.5	54	810	Sessions	\$ _____	\$ _____
4002	Case Consultation/ Cost Reimbursement cited in §§ C.1.5, C.1.6, C.3 & C.5	N/A	N/A	N/A	\$ _____	\$ _____
TOTAL PRICE						\$ _____

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- B.4** An bidder responding to this solicitation which is required to subcontract shall be required to submit with its bid, any subcontracting plan required by law. Bids responding to this IFB may be rejected if the bidder fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with Section H.9.
- B.4.1 A Subcontracting Plan form is available at <http://ocp.dc.gov>, click on “Required Solicitation Documents”.

## **SECTION C: SPECIFICATIONS/WORK STATEMENT**

### **C.1 SCOPE OF WORK**

- C.1.1 The Contractor shall provide short term Integrated Family Therapy for children and youth who are committed to the District of Columbia and have been matched with a prospective adoptive and or prospective guardianship family for the purpose of achieving permanency. The goal of Integrated Family Therapy is to help the family to incorporate the child (ren) and or youth into the family and to help the family function cohesively. This can be accomplished by helping the parents identify and master special tasks related to parenting children who exhibit issues pertaining to abuse, neglect, and or family trauma.
- C.1.2 The Contactor shall provide therapeutic services to those youth, prospective guardianship parents and pre-adoptive parents who are having difficulty in deciding whether to move forward with permanency. The purpose of this service is to ensure that the youth, pre-adoptive or pre-guardianship parent has an opportunity to discuss their concerns and have those concerns resolved as it relates to permanency.
- C.1.3 The Contractor shall also provide Therapeutic Support Services to youth who are aging out of the foster care system, and do not have a relationship with their birth parents, extended family member and or adults who provide physical or emotional support. The goal of this specialized service is to help them establish or re-establish a relationship with a Life Long Connection; identify and address issues and barriers that might inhibit that relationship and to teach communication and other skills that would promote a healthy relationship.
- C.1.4 The Contractor shall provide Post Clinical Family and Post Individual Therapeutic Services to adoptive parents, guardianship parents and those children and youth who have achieved permanency from the District of Columbia Foster Care System. The goal of these specialized services is to identify issues related to adoption and or guardianship; and to provide support and services designed to stabilize and preserve the family.
- C.1.5 The Contractor shall provide Intake and an Initial Assessment of all referrals. The Contractor shall provide case consultation services that would include identifying and referring the target population to community related services to meet the needs of the children youth and families not offered by the contractor. Community Based Intervention shall include but not be limited family and individual therapy for families, children and youth. The Contractor shall also attend court hearings when required by the court; provide written reports to the court, and provide expert testimony pertaining to the target population.

The overall target population includes:

1. Children and youth committed to the DC Child and Family Services agency who has a goal of adoption or guardianship;
2. Children and youth who have finalized an adoption and/or guardianship through the District of Columbia Child Welfare System;
3. Children and youth who are waiting adoptive and or guardianship placement;
4. Families waiting or who have achieved an adoption or guardianship finalization;
5. Families, children and youth needing post permanency support;
6. Youth who are aging out of the DC Foster Care System;
7. Children, youth and families who are involved in a Competing Adoption Petition;
8. Children, youth and families where the Adoption has been Appealed or and the neglect case has been re-opened.

C.1.6 The Contractor shall be reimbursed per mile, per home visit in accordance with the Internal Revenue Service Federal Guidelines of mileage. The contractor shall maintain individual mileage records for all services provided. A copy of the mileage record shall be attached to all monthly invoices.

## **C.2 DEFINITIONS**

### C.2.1 Crisis Intervention

C.2.1.1 Refers to the methods used to offer immediate, short-term help to individuals who experience an event that produces emotional, mental, physical, and behavioral distress or problems. A crisis can refer to any situation in which the individual perceives a sudden loss of his or her ability to use effective problem-solving and [coping skills](#).

### C.2.2 Individual Therapy

C.2.2.1 Individual therapy (sometimes called “psychotherapy” or “counseling”) is a process through which clients work one-on-one with a trained therapist in a safe, caring, and confidential environment to explore their feelings, beliefs, or behaviors, work through challenging or influential memories, identify aspects of their lives that they would like to change, better understand themselves and others, set personal goals, and work toward desired change.

### C.2.3 Family Therapy

C.2.3.1 Family therapy is a type of [psychotherapy](#) that involves all members of a nuclear family, [stepfamily](#), adoptive family, guardianship family, and, in some cases, members of the extended family (e.g., grandparents). A therapist or team of therapists conducts multiple sessions to help families address and resolve important issues that may interfere with the functioning of the family and the home environment.

C.2.4 Integrated Family Therapy

C.2.4.1 Integrated Family Therapy is a type of psychotherapy that involves all members of the pre-adoptive or pre-guardianship family. A therapist conducts multiple sessions to help the families address, understand and resolve important issues that may interfere with the child (ren) and or youth from transitioning in the home and functioning as a cohesive entity.

C.2.5 Support Groups for Parents and Children

C.2.5.1 Group that contains individuals with similar problems, who meet on a short or longer term basis to share problems and get support and advice from one another. Support Groups can be provided through an educational or recreational group formed to bring families, youth and children together to share their experiences of the adoption or guardianship process.

C.2.6 Case Consultation Services

C.2.6.1 Services provided to stabilize families with emotional and high risk behavioral problems; develop short term intervention plans; and connect youth, children and families to on-going service providers and support systems.

C.2.7 Trauma Informed Practice

C.2.7.1 A trauma-informed child- and family-service system is one in which all parties involved recognize and respond to the impact of traumatic stress on those who have contact with the system including children, caregivers, and service providers. Programs and agencies within such a system infuse and sustain trauma awareness, knowledge, and skills into their organizational cultures, practices, and policies. They act in collaboration with all those who are involved with the child, using the best available science, to facilitate and support the recovery and resiliency of the child and family. A service system with a trauma-informed perspective is one in which programs, agencies, and service providers: (1) routinely screen for trauma exposure and related symptoms; (2) use culturally appropriate evidence-based assessment and treatment for traumatic stress and associated mental health symptoms; (3) make resources available to children, families, and providers on trauma exposure, its impact, and treatment; (4) engage in efforts to strengthen the resilience and protective factors of children and families impacted by and vulnerable to trauma; (5) address parent and caregiver trauma and its impact on the family system; (6) emphasize continuity of care and collaboration across child-service systems; and (7) maintain an environment of care for staff that addresses, minimizes, and treats secondary traumatic stress, and that increases staff resilience

C.2.8 Review Evaluate Direct Team (RED TEAM)

C.2.8.1 The RED Team is a teaming process that uses the consultation and information sharing framework to assess the barriers and complicating factors for guardianship and adoption cases in order to stabilize and prevent guardianship disruptions and adoption dissolutions.

C.2.9 Family Team Meeting (FTM)

C.2.9.1 The FTM process is a strength-based early intervention family conferencing model that brings together families, community members, child welfare professionals, and other family support and/or resource people in a shared context to discuss and plan for the needs of the child. Occurring at the critical moment of concern, the FTM process increases the opportunity for family participation during times of critical decision-making, identify supports and resources in the extended family and community and allow decisions to be made based on the best information available.

C.2.10 Unusual Incident Report

C.2.10.1 Is a written and or verbal report that provides information pertaining to events and/or incidents that threaten or compromise the well-being of a child or youth that are deemed “critical events”, and require the immediate response and action of CFSA and its private agencies or Child Protective Services in the jurisdiction where the family resides that is responsible for the safety and well-being of children and youth.

C.2.11 Minimum Access Capabilities

C.2.11.1 The Contractor shall have limited services and accessibility fifteen (15) days after the contract is awarded. The following shall be in place and available: Program Director, Therapist, referral process, location, telephone services, computer, secured area for client files, hours of operation, agency address, and organizational chart.

**C.3 REQUIREMENTS**

C.3.1 The Contractor shall have a Trauma Informed Practice in order to provide trauma-informed services to children, youth and families involved with District of Columbia Child Welfare System, and to help the family understand the impact of trauma on the children/youth, and learn how to effectively minimize its effects without causing additional trauma.

C.3.2 The Contractor shall provide Pre and Post Permanency Therapeutic Services, which include, but are not limited to, the following: Intake and Assessment Process, Family Therapy, Individual Therapy, and Trauma Therapy, Case Consultation, participation in Red Team Meetings, participation in Family Team Meetings, participation in Court Hearing, provide experts witness testimony in permanency related issues, to provide written reports to the court, as needed, provide therapeutic intervention and support to families when there are Competing Adoption Petitions, Appeal of Adoption and when Adoptions are overturned and the child (ren) and or youth may be returned to the birth parents.

C.3.3 Given that the Child and Family Services Agency has children, youth and families who reside in the District of Columbia, in various counties in the State of Maryland and Northern Virginia, the contractor shall ensure that services are readily accessible to all families living in these jurisdictions.

#### **C.4 REFERRAL AND INTAKE PROCESS**

- C.4.1 The Contractor shall design and implement a Referral and Intake Process for children, youth and families seeking therapeutic services; who are in the process of having their adoption and guardianship finalized; whose adoption and or guardianship has been finalized in the District of Columbia; those children, youth or families that have been matched with a pre-adoptive and or pre-guardianship family; those whose adoption has been appealed; those children, youth and families whose adoption has been overturned; those youth and families who are ambivalent about moving forward with permanency and those youth who are connected to a Life Long Connection. The Contractor shall conduct an Initial Assessment to determine whether the family or individual meets the eligibility criteria, determine the area(s) of concern and develop a written plan of action.
- C.4.2 The Contractor shall design a tracking system of all referrals received, to include the disposition of those referrals, and follow up to the referral source within thirty (30) days of the outcome to ensure that the referral has been accepted, services are in place and the client's needs are being met.
- C.4.3 The Tracking System database shall be developed within fifteen (15) days after the contract is awarded and shall be approved by the CFSA Contract Administrator and available for review upon request.
- C.4.4 The Contractor shall ensure that all Referrals are assigned and contact made with the client within forty eight (48) hours and within twenty four (24) hours for that case that are considered urgent.
- C.4.5 The Contractor shall develop a process to respond within one (1) hour to crises that occur while services are being provided to the target population. This process must be reviewed and approved by CFSA.
- C.4.6 Given that the District of Columbia has children, youth and families in the surrounding jurisdictions (Maryland, District of Columbia and Virginia), the Contractor shall be familiar with the Child Protection Reporting Process in the jurisdiction in which the target population resides.
- C.4.7 The Contractor shall ensure that there is adequate staff comprised of trained employees, and interns (master level social worker/psychology major) to attend to the clients during business hours.
- C.4.8 The Contractor shall ensure that the therapist and or interns have the knowledge and ability to make referrals to appropriate community resources which include, but are not limited to, mental health providers, child protective services, and medical providers.
- C.4.9 The Contractor shall ensure that all telephone attendants are skilled listeners with good communication skills, have knowledge of the target population served, and the sensitivity to understand and assess each caller's needs.

- C. 4.10 The Contractor shall ensure that the target population has a clear understanding of the purpose of the services and the process for obtaining services.
- C.4.11 The Contractor shall ensure that the days and hours of operation meet the needs of the target population.
- C.4.12 The Contractor shall ensure that all of the staff is able to communicate effectively with the target population including the hearing or speech impaired and those who speak a language other than English.

**C.5 CASE CONSULTATION SERVICES**

- C.5.1 The Contractor shall provide at least three hours (3) of case consultation services to those children, youth and families who have finalized an adoption or guardianship from the District of Columbia Foster Care System.
- C.5.2 The Contractor shall provide case consultation services to those youth who have aged out of foster care and who have identified a Life Long Connection.
- C.5.3 The Contractor shall determine whether a client with an open case with CFSA is in need of case consultation services, the request for additional services should be put in writing and sent to the Contract Administrator (CA). The CA will be responsible for ensuring that the assigned social worker receives the written recommendation.
- C.5.4 The Contractor shall be familiar with community related services in the jurisdiction in which the target population resides (i.e., District of Columbia, Virginia and Maryland).
- C.5.5 The Contractor shall provide a written report, attend and or testify in cases for children who are committed to the DC Child and Family Services Agency with the permanency goal of adoption or guardianship. The Contractor must provide notification to the CA in order to obtain prior approval.
- C.5.6 The Contractor shall participate in Review Evaluate and Direct (RED) Team Meetings and Family Team Meetings in order to provide additional support to the agency in assessing complex cases with a multitude of issues, such as those cases where there are Competing Adoption Petitions, Appeals and cases where the Appeal results in the Adoption being overturned and the child (ren) and/or youth are being reunited with the birth parent.
- C.5.7 The Contractor shall participate in Review Evaluate and Direct (RED) Team Meetings, and Family Team Meetings, of those children, youth and families and who are considering an adoption dissolution or guardianship disruption.

**C.6 FACE TO FACE COUNSELING**

- C.6.1 The Contractor shall conduct a two (2) hour evaluation and twelve (12), fifty-five (55) minute sessions of clinical family and or individual therapy (if needed) over a period of three months for those children, youth and families who have finalized an adoption or guardianship from the District of Columbia Foster Care System.
- C.6.2 The Contractor shall conduct a two (2) hour evaluation and sixteen (16), fifty-five (55) minute sessions of integrated family therapy (if needed) over a period of four months for those children, youth and families who are in the adoption and or guardianship process and those who have been matched with a pre-adoptive parent or pre-guardianship parent and are in the process of transitioning into the home.
- C.6.3 The Contractor shall conduct a two (2) hour evaluation and six (6), fifty-five minute sessions of individual and family therapy to those youth, foster parents, pre-adoptive parents and pre- guardianship parents who are ambivalent about moving forward with permanency.
- C.6.4 The Contractor shall conduct a two (2) hour evaluation and twelve (12), fifty-five (55) minute sessions of clinical family and or individual therapy (if needed) over a period of four months for those children, youth and families who are in the process of aging out of foster care and who are in the process of establishing or re-establishing a relationship with a Life Long Connection. Youth who have engaged in the Life Long therapeutic services prior to aging out of foster care shall continue to receive therapeutic support.
- C.6.5 The Contractor shall conduct a two (2) hour evaluation, (if needed) and at least (12) fifty-five minute therapeutic sessions for those children, youth and families whose adoption has been appealed and or overturned. Therapeutic Services for these children, youth and families shall remain in place throughout the Appellate process and or until the court makes a final ruling on the adoption or reunification with the birth parents.
- C.6.6 The Contractor shall provide services at a designated facility that is owned and or operated by the contractor, at the subcontracting Agency who is providing services under this contract, and or in the home of the family. The facility sites must meet health and safety requirements of the jurisdiction in which they are located.

**C.7 DOCUMENTATION**

- C.7.1 The Contractor shall track all inquiries for services, the progress and outcomes from the inception through the disposition stage.
- C.7.2 The Contractor shall provide a monthly progress report to the CFSA's Contract Administrator by the 10<sup>th</sup> of each month, which indicates steps taken toward the implementation of Therapeutic Services, accomplishments during the reporting period, identification of barriers, and plans to address barriers.

C.7.3 The progress of outcomes report shall also include but not be limited to the following:

1. Number of Families/Children, youth and adult adoptees served.
2. Number of RED Teams or Family Team Meetings that the therapist participated in.
3. Date referral received, services requested, date action taken.
4. Number of families receiving in-home services.
5. Number of initial assessments.
6. Number of Post Adoption/Post Guardianship children, youth and or families served.
7. Number of children, youth and families receiving Integrated Family Therapy.
8. Number of children in Guardianship Disruptions or Adoption Dissolutions that resulted in children or youth returning to foster care; with a Back-up person, or placed in foster care in the jurisdictions where the family resides.
9. Number of cases receiving Case consultation Services.
10. Number of Cases receiving services due to Appeals or Overturned Adoptions.
11. Number of Court Reports, Court Hearings, and or Expert Witness Testimony.
12. Number of children, youth and families successfully referred to community related services.
13. Number of children, youth and families requesting services that were unavailable and reason services were not available.
14. Any other information requested by CFSA and provided by the Contractor.
15. Observed trends of needs.

C.7.4 The Contractor shall provide a written report on each child, youth and or family at the completion of the therapeutic process. The report shall include goals for the child, youth and or family, progress, barriers for providing service(s), the need for additional services, the outcome, and reason for termination.

## **C.8 STAFFING REQUIREMENTS**

C.8.1 The Contractor shall recruit all staff and interns necessary to perform all tasks outlined in the contract.

C.8.2 The Contractor shall maintain files on all staff and have available to CFSA for review (i.e., staff, interns, and sub-contractors).

C.8.3 The Contractor shall notify CFSA's Contract Administrator (CA) immediately of any personnel changes; provide a written report as to how duties will be covered in the absence of those personnel changes, and the time frame for hiring new staff. When new staff is hired, the Contractor shall notify the Contract Administrator. The notification shall include documentation supporting the candidates experience and qualifications and establish and maintain a personnel file for review by CFSA.

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- C.8.4 All staff, interns and subcontractors shall be fully trained, qualified, experienced, licensed or certified, as appropriate to function within the scope of the requirements of the contract.
- C.8.5 The Contractor shall hire interns who shall possess a Bachelor's Degree in the Human Services field, and have sufficient training and experience in adoptions, guardianship, and foster care and knowledge of human behavior.
- C.8.6 Staff providing therapeutic services must have a Master's Degree in Social Work or a related field, and be licensed to practice in the District of Columbia, Virginia and or Maryland.
- C.8.7 Student Interns must be supervised by a Licensed Clinical Social Worker at all times.
- C.8.8 The Contractor shall provide a minimum of forty (40) hours (which includes 24 hours of Crisis Training) of initial training for all staff in areas related to their respective positions.
- C.8.9 The Contractor shall ensure that staff servicing families is provided at least (15) fifteen hours annual training on permanency related issues in order to meet the needs of the target population.
- C.8.10 The Contractor shall ensure that staffs participate in the trainings that CFSA deem mandatory for its staff. The Contractor shall discuss these training with the CA to determine which trainings are necessary.
- C.8.11 The Contractor shall ensure that the staff is knowledgeable about adoption, guardianship and foster care related issues. The Contractor shall hire diverse staff who are culturally sensitive, knowledgeable and experienced in recognizing an array of issues that may delay and or prevent the child or youth from transitioning into the home; may prevent the pre-adoptive/pre-guardianship family from accepting the child and/or youth in the home or the child (ren)/youth from accepting the pre-adoptive/pre-guardianship family.
- C.8.12 The Contractor shall ensure that all staff, interns and subcontractors are cleared through the Child Protection Registry where they have resided for the last ten years prior to employment. The Child Protection Registry shall be updated yearly and filed in the employee's personnel file.
- C.8.13 The Contractor shall ensure that all staff, interns and subcontractors be cleared through the Federal Bureau of Investigation (FBI) prior to employment; and are required to update the FBI Clearance every two years. The information shall be filed in the staff member's personnel file.

- C.8.14 The Contractor shall ensure that all staff, interns and subcontractors shall obtain a state Police Clearance(s) in the jurisdictions in which they have attended school, resided or been employed in the past five (5) years prior to employment. Police Clearances shall be updated every two years and the information shall be filed in the staff member's personnel files, prior to employment at the PPFC.
- C.8.15 The Contractor shall ensure that staff shall not have any prior criminal record of convictions for child abuse, neglect, molestation, rape, sexual abuse, drug use or drug involvement or any crime pertaining to children.
- C.8.16 The Contractor shall maintain written job descriptions covering all positions funded, including interns and subcontractors. The job descriptions will include education, experience, licensing, certification, description of duties and responsibilities, hours of work, salary range and performance evaluation criteria. Such documentation shall be in the personnel file, and be available for inspection by CFSA officials upon request.
- C.8.17 The Contractor shall maintain a current organizational chart for all functions funded, which displays organizational relationships and demonstrates who has the responsibility for administrative oversight and program operation.
- C.8.18 The Contractor shall ensure all staff is able to read, write, speak, and understand English proficiently, and have a contingency plan to meet the language needs of the non-English speaking population, and the hearing and visually impaired.
- C.8.19 The Contractor shall ensure that all staff and subcontractors providing therapeutic services are knowledgeable about laws that govern the DC Foster Care System.
- C.8.20 The Contractor shall ensure that all Staff and subcontractors providing therapeutic services especially those providing Integrated Family Therapy, and therapeutic services to those cases that are in appeal have knowledge and skill base to be considered an expert witness.
- C.8.21 The Contractor shall ensure that all Staff and subcontractors have proficient writing skills and the knowledge and awareness of appropriate format and process for submitting a written report to the court.

## **C.9 SPECIFIC REQUIREMENTS FOR PROGRAM MANAGER**

- C.9.1 The Contractor shall provide a Program Manager who will be responsible for the overall operation of the contract, provide management and direction of all services required under the contract, an along with the Executive Director of the Contract Agency, act as one of the principal liaisons with CFSA, community partners and other stakeholders.

- C.9.2 The Program Manager shall have a Master's degree of Social Work or a Master's degree in a related field of discipline shall have at least five years of experience in child welfare services and management; and be appropriately licensed in the District of Columbia at the time of hire.

## **C.10 FACILITY REQUIREMENTS**

- C.10.1 The Contractor shall be centrally located within the boundaries of the District of Columbia, preferably on bus routes and or Metro rail lines, and easily accessible from the surrounding Maryland and Virginia metropolitan communities.
- C.10.2 At all times during the period of performance, the Contractor shall be in full compliance with all licensing and building code requirements governing the District of Columbia, Maryland and or Virginia properties, including compliance of the Americans with Disabilities Act. Prior to contract award, the Contractor shall provide a copy of the current Certificate of Occupancy issued by the Department of Consumer and Regulatory Affairs for the proposed site.
- C.10.3 The Contractor shall develop an emergency evacuation safety plan, which shall be posted at all entry and exit doors. A copy of the evacuation safety plan shall be available to the Contract Administrator upon request.
- C.10.4 The Contractor shall have existing office space and all related facility management services, such as janitorial services, telephone services, utilities, U.S. mail, and all other related support services to accomplish the requirements under this contract.
- C.10.5 The Contractor's hours of operations shall be designed to meet the needs of the population served. The Contractor shall have evening office hours and weekend office hours at least twice a month.
- C.10.6 The Contractor shall have minimum access capabilities, fifteen (15) days after award and be fully operational within ninety (90) days after contract award.

## **C.11 REPORTING REQUIREMENTS**

- C.11.1 Reports required to be submitted to CA for this project will include reports of Unusual Incidents, Monthly Reports, Progress Report (see C.7.2) and an Annual Report that is due at the end of each fiscal year for the life of the contract.
- C.11.2 Reporting Unusual Incidents: An unusual incident is defined as any event affecting staff or Clients significantly different from the regular course of events or established procedures. Within one (1) hour of the occurrence of an abuse or neglect incident the Contractor shall file a report with the Child and Family Services Agency Hotline (202-671-SAFE), or the Child Abuse and Neglect Hotline in the jurisdiction in which the client resides. The

Contractor shall report the incident by telephone or facsimile, and follow-up within twenty-four (24) hours with a detailed written report to the CFSA Contract Administrator. Other incidents that would not meet the criteria for mandated reporting shall be submitted to Contractor Administrator within twenty- four (24) hours using Contractor's Unusual Incident Reporting form.

C.11.3 Monthly Report: Contractor shall provide a monthly report to the CFSA CA, by the tenth (10th) calendar day of each month. The report shall be sufficient and comprehensive in accordance to C.7.3.

C.11.4 Annual Program Report: Contractor shall provide an annual report to the CFSA CA, by the 25th calendar day of September. The report shall be comprehensive and in narrative form. The report shall include the following:

- a) A narrative on progress made in delivering the services;
- b) Statistical data related to the number of Referrals received and type of services provided of those cases referred, number of clients who participated in the various types of services, number of clients who refused services, and the reason for refusal of service;
- c) Number of Court Hearing and Court Reports, and case that expert testimony was required;
- d) Barriers related to service delivery;
- e) Trends related to services needed or requested by clientele;
- f) Plan for the upcoming fiscal year
- g) The Child and Family Services Agency reserves the right to request additional information on an as needed basis

C.11.5 The Contractor shall provide a written case report on each child, youth and or family at the completion or the therapeutic process. The report shall include goals for the child, youth and or family, progress, barriers for providing service(s), the need for additional services, the outcome and reason for termination.

C.11.6 The Contractor shall submit the written case report to the CA within 30 days after the case has been closed. If the case requires additional sessions, the written request shall be submitted to the CA two weeks prior to the scheduled termination.

## **C.12 RECORDS**

C.12.1 At all times the Contractor shall maintain accurate records reflecting initial assessments, initial and revised service plans, and the on-going progress of each child, youth and family.

C.12.2 The Contractor shall have each client's record available for review at all times by CFSA staff responsible for monitoring the contract.

- C.12.3 In the event of termination or cancellation of this contract, all files and or records shall revert to CFSA's ownership.

**C.13 ADMINISTRATIVE RECORDS**

- C.13.1 At all times, the Contractor shall maintain current and accurate records on all Administrative activities resulting from this contract, including Personnel, Contracts for services, financial and facility records.
- C.13.2 Financial records shall be maintained consistent with Generally Accepted Accounting Principles (GAPP).

**C.14 INSPECTION OF RECORDS**

- C.14.1 At any time during the period under contract, the Contracting Officer may approve the inspection of any and all records maintained pursuant to it. Such inspection may take place by any authorized official of the District of Columbia Government, or specifically, the Child and Family Services Agency, and may be announced or unannounced. In the event of announced visits, the Contractor may be granted a period of not to exceed five (5) business days to prepare records for inspection.

**C.15 PERFORMANCE OUTCOMES**

- C.15.1 Contractor shall submit Invoices timely and in the appropriate format. (95%)
- C.15.2 Contractor shall ensure that 85% of children, youth and families referred for Integrated Family, Therapy, Life Long Connection, Clinical Family and Individual Therapy will complete the initial assessment and participate in the therapeutic process.
- C.15.3 Contractor shall successfully prevent guardianship disruptions and adoption dissolutions and stabilize the family (75%).
- C.15.4 Contractor shall ensure that 100% percent of the children, youth and families referred to The Contractor, who have achieved permanency through the District of Columbia Foster Care System and are in need of Post Permanency Services, received supportive services.
- C.15.5 Contractor shall ensure that at least 95% of the referrals are assigned and contact made with the client within forty eight (48) hours and twenty-four (24) hours (for emergency cases) of receipt of the referral.
- C.15.6 Contractor shall ensure that they participate and or provide court reports for 100% of the case per the order of the court.

**SECTION D: PACKAGING AND MARKING**

- D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007 (Attachment J.1).

**\*\*\*END OF SECTION D\*\*\***

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

- E.1** The inspection and acceptance requirements for the resultant contract shall be governed by clause number six (6), Inspection of Services, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March, 2007 (Attachment J.1).

**\*\*\* END OF SECTION E\*\*\***

## **SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES**

### **F.1 TERM OF CONTRACT**

The term of the contract shall be for a period of twelve (12) months from the date of award specified on the cover page of the contract.

### **F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

F.1.1 The District may extend the term of this contract for a period of one (1) year with (4) option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

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

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

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

### **F.3 DELIVERABLES**

F.3.1 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 which is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, the District shall not make final payment to the Contractor pursuant to section G.3.2.

F.3.2 The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.9 in accordance with the following:

<b>DELIVERABLE</b>	<b>INFORMATION (SECTION)</b>	<b>FREQUENCY</b>	<b>DUE DATE</b>
Monthly Progress Program	C.7.2, C.7.4, C.11	Monthly to CA	10 <sup>th</sup> of each month
Monthly Report	C.11: C.11.3	Monthly to CA	10 <sup>th</sup> of each month
Unusual Incidents Report	C.11: C.11.2	Telephone or facsimile...etc.	Within one (1 hour)
Annual Program Report	C.11: C.11.4	Hard Copy to CA	25 <sup>th</sup> calendar day of September
Written Case Report	C.11.6	Hard Copy to CA	Within 30 days after case been closed

**\*\*\*END OF SECTION F\*\*\***

## **SECTION G: CONTRACT ADMINISTRATION**

### **G.1 INVOICE PAYMENT**

- G.1.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.2 The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

### **G.2 INVOICE SUBMITTAL**

- G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the Contract Administrator (CA) specified in Section G.9 below. The address of the CFO is:

Child and Family Services Agency  
Office of the Controller/Agency CFO/ Fiscal Operations Office  
200 I Street, S.E., Washington, DC 20003

The contractor may also submit invoices by e-mail to: [cfsa.accountspayable@dc.gov](mailto:cfsa.accountspayable@dc.gov)

- G.2.2 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.2.2.1 Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.2.2.2 Contract number and invoice number;
- G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;
- G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.6 Name, title, phone number of person preparing the invoice;
- G.2.2.7 Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8 Authorized signature.

**G.3 ORDERING CLAUSE**

- G.3.1 Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the CO. Such orders may be issued during the term of this contract.
- G.3.2 All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.
- G.3.3 If mailed, a delivery order or task order is considered "issued" when the District deposits the order in the mail. Orders may be issued by facsimile or by electronic commerce methods.

**G.4 THE QUICK PAYMENT CLAUSE**

- G.4.1 Interest Penalties to Contractors
  - G.4.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:
    - a) The 3rd day after the required payment date for meat or a meat product;
    - b) The 5th day after the required payment date for an agricultural commodity; or
    - c) The 15th day after the required payment date for any other item.
  - G.4.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.
  - G.4.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.
- G.4.3 Subcontract requirements
  - G.4.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

**G.5 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- G.5.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.5.2 The District shall not make final payment to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

**G.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 contract at the prices stated in Section B.

**G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

- G.5.1 In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.
- G.5.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.
- G.5.3 Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

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

**G.6 THE QUICK PAYMENT CLAUSE**

- G.6.1 Interest Penalties to Contractors
  - G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

G.6.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

## **G.7 CONTRACTING OFFICER (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Tara Sigamoni  
Agency Chief Contracting Officer  
Child and Family Services Agency  
200 I (Eye) Street S.E., Suite 2031  
Washington, D.C. 20003  
(202) 724-5300  
(202) 727-5886 (fax)

## **G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

G.8.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.9 CONTRACT ADMINISTRATOR (CA)**

G.9.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.9.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.9.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.9.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.9.2 The address and telephone number of the CA is:

Trantina Waugh  
Foster Care Resources Administration  
Permanency Specialty Unit  
200 I St. S.E., Room 3675C  
Washington, D.C. 20003  
[trantina.waugh@dc.gov](mailto:trantina.waugh@dc.gov)  
Phone: (202) 727-4956

G.9.3 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.

- G.9.4 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.

**\*\*\*END OF SECTION G\*\*\***

## **SECTION H: SPECIAL CONTRACT REQUIREMENTS**

### **H.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination 2005-2103 Rev 16, July 8, 2015, 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, Attachment 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.

### **H.2 PUBLICITY**

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

### **H.3 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

#### **H.4 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

- H.4.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:
- H.4.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.
- H.4.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

#### **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

- H.5.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* ("First Source Act").
- H.5.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, in which the Contractor shall agree that:
- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and
  - (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.
- H.5.3 The Contractor shall submit to DOES, no later than the 10<sup>th</sup> of each month following execution of the contract, a First Source Agreement Contract Compliance Report ("contract compliance report") to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:
- (1) Number of employees needed;
  - (2) Number of current employees transferred;
  - (3) Number of new job openings created;
  - (4) Number of job openings listed with DOES;
  - (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
  - (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
    - (a) Name;
    - (b) Social security number;
    - (c) Job title;

- (d) Hire date;
- (e) Residence; and
- (f) Referral source for all new hires.

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

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

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

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

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

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

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to

DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section H.5.8.

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

**H.6 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.**

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

**H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

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

**H.8 WAY TO WORK AMENDMENT ACT OF 2006**

H.8.1 Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

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

H.8.3 The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.8.4 The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

H.8.5 The Contractor shall provide a copy of the Fact Sheet attached as J.3 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.4 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.8.6 The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

H.8.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

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

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case consultation and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.8.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **H.9 SUBCONTRACTING REQUIREMENTS**

### **(a) Mandatory Subcontracting Requirements**

- (1) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (2) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a)(1), then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (3) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections (a)(1) and (a)(2) of this clause.
- (4) Except as provided in (a)(5) and (a)(7), a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (5) A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (6) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (7) A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

### **(b) Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section (a) of this clause. The plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit

of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

**(c) Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

**(d) Subcontracting Plan Compliance Reporting.**

- (1) If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
  - (A) The price that the prime contractor will pay each subcontractor under the subcontract;
  - (B) A description of the goods procured or the services subcontracted for;
  - (C) The amount paid by the prime contractor under the subcontract; and
  - (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- (2) If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

**(e) Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

**(f) Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

**(g) Enforcement and Penalties for Breach of Subcontracting Plan**

- (1) A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- (2) A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- (3) If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 8 of the SCP, Default.

H.9.6 The contractor's subcontracting plan is attached as Attachment J.10.

**H.10 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The Contractor shall submit with its bid listing of key personnel, who will be considered essential to the work being performed hereunder, see Section L.20. 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.

**H.11 CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS FOR CONTRACTORS THAT PROVIDE DIRECT SERVICES TO CHILDREN OR YOUTH**

H.11.1 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: any position that may have direct or unsupervised contact with any CFSA children or youth.

H.11.2 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: any position that may have direct or unsupervised contact with any CFSA children or youth.

- H.11.3 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.
- H.11.4 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.
- H.11.5 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.

H.11.6 The Contractor shall inform each applicant, employee and unsupervised volunteer that a false statement may subject them to criminal penalties.

H.11.7 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 H.11.5(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.

H.11.8 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.

H.11.9 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.

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- H.11.10 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.
- H.11.11 The Contractor shall provide copies of all criminal background and traffic check reports to the CA within one business day of receipt.
- H.11.12 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.
- H.11.13 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 CO of the CA's decision after his or her assessment of the criminal background or traffic record check.
- H.11.14 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.
- H.11.15 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.
- H.11.16 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 listed in sections H.11.1 and H.11.2.
- H.11.17 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.
- H.11.18 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 CO of its decision, and the CO shall inform the Contractor whether an offer may be made to each applicant.
- H.11.19 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.

H.11.20 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 CO.

## **H.12 ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST**

H.12.1 An attorney-client relationship will exist between the District and any attorney who performs work under the contract, as well as between the District and the firm of any attorney who performs work under the contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

H.12.2 In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize that in the performance of the contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

H.12.3 Before any contractor can be retained to perform legal services under the contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. After notice of its selection, each prospective contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the contract that require waiver pursuant to Rule 1.7(b) because the contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all

representations of clients who are or will be adverse to the District government with regard to the work to be performed under the contract, whether or not such representations are related to the matter for which the work is to be performed under the contract.

H.12.4 The Attorney General generally does not grant prospective conflict of interest waivers, except in certain pro bono matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

H.12.5 Before any contractor can be retained pursuant to the contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct (“RPC”) 1.6, 1.7, 1.8, 1.9 and 1.10. Each prospective contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, attached as Attachment J.X hereto, a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

### **H.13 HIPAA BUSINESS ASSOCIATE COMPLIANCE:**

For the purpose of this agreement 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 (“HIPAA Regulations”) and Contractor/Vendor, 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 re-pricing; 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 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. 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.

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 a health care component, 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 (R) Risk Management (R) Sanction Policy (R) Information System Activity Review (R)
Assigned Security Responsibility	164.308(a)(2)	(R)
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 (R) 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 (R)
Contingency Plan	164.308(a)(7)	Data Backup Plan (R) Disaster Recovery Plan (R) Emergency Mode Operation Plan (R) Testing and Revision Procedure (A) Applications and Data Criticality Analysis (A)
Evaluation	164.308(a)(8)	(R)
Business Associate Contracts and Other Arrangement	164.308(b)(1)	Written Contract or Other Arrangement (R)

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)	(R)
Workstation Security	164.310(c)	(R)
Device and Media Controls	164.310(d)(1)	Disposal (R) Media Re-use (R) Accountability (A) Data Backup and Storage (A)

Technical Safeguards (see § 164.312)

Access Control	164.312(a)(1)	Unique User Identification (R) Emergency Access Procedure (R) Automatic Logoff (A) Encryption and Decryption (A)
Audit Controls	164.312(b)	(R)

Integrity	164.312(c)(1)	Mechanism to Authenticate Electronic Protected Health Information (A)
Person or Entity Authentication	164.312(d)	(R)
Transmission Security	164.312(e)(1)	Integrity Controls (A) Encryption (A)

- c. 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.
- d. 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.
- 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 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.
- 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 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.

- g. 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.
- 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 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.
- i. 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.
- 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'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.
- k. 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.
- l. 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.

- m. 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. § 164.504(e)(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 [*Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"*] 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. *Survival.* 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 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 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:**

**If to the Covered Entity, to:**

Child and Family Services Agency  
Privacy Officer  
200 I Street, S.E., 3<sup>rd</sup> Floor  
Washington, DC 20003  
Attention: Dionne 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:

Exhibit A - Identity and Procedure Verification

#### **H.14 STAFF CLEARANCES**

- H.14.1 The Contractor shall ensure that all staff, sub-contractors, and or volunteers have been cleared through the Child Protection Registry where they have resided, been employed or had significant contact with for the past ten years. Child Protective Services (CPS) clearances must be up-dated annually.
- H.14.2 The Contractor shall ensure that all staff, sub-contractors, and or volunteers have been cleared through the Federal Bureau of Investigation and the State Police Department (s) in the jurisdiction in which they have resided, been employed, or had significant contact within the past eighteen years. State Clearance must be up-dated annually.
- H.14.3 Staff shall not have any prior criminal record of convictions for child abuse, neglect, molestation, rape, sexual abuse, drug usage, drug involvement, felony conviction, or any crime pertaining to children.
- H.14.4 Within thirty (30) days of contract award and whenever new staff or volunteers are recruited, the Contractor shall submit to the CA a copy of their Criminal and Child Protection Registry Clearance to ensure that staff do not possess any neglect abuse or criminal history, and current health certificates for each person to establish the absence of any communicable diseases.

#### **H.15 RECORD MAINTENANCE**

- H.15.1 The Contractor shall maintain written job descriptions covering all positions funded under the contract, as well as for those occupied by sub-contractors and volunteers. The job descriptions will include education, experience, and/or licensing/certification criteria, description of duties and responsibilities, hour of work, salary range and performance evaluation criteria. Such documentation must be maintained at all times and be available for inspection by CFSA officials upon request.
- H.15.2 The Contractor shall maintain a current organization chart for all functions funded under the Contract which displays organizational relationships and demonstrates who has the responsibility for administrative oversight and program supervision. Such documentation must be maintained at all times and be available for inspection by CFSA officials upon request.

**\*\*\* END OF SECTION H\*\*\***

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (“SCP”) are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to [www.ocp.dc.gov](http://www.ocp.dc.gov), click on “Solicitation Attachments” under the heading “OCP at a Glance”, then click on “Standard Contract Provisions – (March 2007)”.

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

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

### **I.3 CONFIDENTIALITY OF INFORMATION**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

### **I.4 TIME**

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

### **I.5 RIGHTS IN DATA**

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

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software

documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3 The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5 All data first produced in the performance of this Contract shall be the sole property of the District. 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.
- I.5.6 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:
- I.5.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

- I.5.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

The restricted rights set forth in section I.5.6 are of no effect unless 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.

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with \_\_\_\_\_ Contractor's Name); and

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.

- I.5.8 In addition to the rights granted in Section I.5.6 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 I.5.6 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.
- I.5.9 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.

- I.5.10 For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if 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.
- I.5.11 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.
- I.5.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.5.13 Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to 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.

## **I.6 OTHER CONTRACTORS**

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

## **I.7 SUBCONTRACTS**

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

## **I.8 INSURANCE**

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 CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.
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.

4. Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000 per occurrence, including the District of Columbia as additional insured.
5. 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 \$2,000,000 per occurrence for each wrongful act and \$2,000,000 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.

6. Crime Insurance (3<sup>rd</sup> Party Indemnity). The Contractor shall provide a 3<sup>rd</sup> Party Crime policy to cover the dishonest acts of Contractor's employees which result in a loss to the District. The policy shall provide a limit of \$1,000,000 per occurrence. This coverage shall be endorsed to name the District of Columbia as joint-loss payee, as their interests may appear.
  7. Sexual/Physical Abuse & Molestation. The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate. The policy coverage shall include the District of Columbia as an additional insured. This insurance requirement will be considered met if the general liability insurance includes sexual abuse and molestation coverage for the required amounts.
- 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 CO 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 CO.
- 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  
200 I Street, S.E., Suite 2031  
Washington, DC 2000324  
(202) 724-5300  
[tara.sigamoni@dc.gov](mailto:tara.sigamoni@dc.gov)

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

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment J.6. An award cannot be made to any bidder who has not satisfied the equal employment requirements.

## **I.10 ORDER OF PRECEDENCE**

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

- I.10.1 A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) IFB, as amended
- (6) Bid

**I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

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

**I.12 GOVERNING LAW**

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

**\*\*\* END OF SECTION I\*\*\***

**SECTION J: ATTACHMENTS**

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.2</b>	U.S. Department of Labor Wage Determination 2005-2103 Rev 16, July 8, 2015
<b>J.3</b>	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.4</b>	Way to Work Amendment Act of 2006 – Living Wage Notice available at <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.5</b>	Bidder/Offeror Certification Form available <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.6</b>	Office of Local Business Development, Equal Employment Opportunity Information Report and Mayor’s Order 85-85 available <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.7</b>	Department of Employment Services First Source Employment Agreement available <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.8</b>	Tax Certification Affidavit available <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”
<b>J.9</b>	Budget Package
<b>J.10</b>	Subcontracting Plan available at available <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on “Required Solicitation Documents”

\*\*\*END OF SECTION J\*\*\*

**SECTION K: BIDDER/OFFEROR CERTIFICATION FORM,  
ATTACHMENT J.5**

also available [www.ocp.dc.gov](http://www.ocp.dc.gov) click on "Required Solicitation Documents"

**\*\*\* END OF SECTION K \*\*\***

## **SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS**

### **L.1 METHOD OF AWARD**

**L.1.1** The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

**L.1.2** The District intends to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid.

### **L.2 PREPARATION AND SUBMISSION OF BIDS**

**L.2.1** Bidders shall submit a signed original and two (2) copies as specified in Section 9 of the Solicitation, Offer and Award form. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. Each bid shall be submitted as specified in Section 3 of the Solicitation, Offer and Award form in a sealed envelope conspicuously marked: "Bid in Response to Solicitation No. DCRL-2016-B-0007".

**L.2.2** The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.

**L.2.3** The District may reject as non-responsive any bid that fails to conform in any material respect to the IFB.

**L.2.4** The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.

**L.2.5** The bidder must bid on all CLINs and submit with bid Attachment J.9 Budget Package to be considered for this award. Failure to bid on all CLINs in section B.4 and Attachment J.9 Budget Package will render the bid non-responsive and disqualify a bid.

### **L.3 FAMILIARIZATION WITH CONDITIONS**

Bidders shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered and the conditions under which the work is to be accomplished.

Bidders will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

**L.4 BID SUBMISSION DATE AND TIME**

Bids must be submitted no later than 2:00 p.m. local time on November 12, 2015 as specified in Section 9 of the Solicitation, Offer and Award form.

**L.5 WITHDRAWAL OR MODIFICATION OF BIDS**

A bidder may modify or withdraw its bid upon written, telegraphic notice, or e-mail transmission if received at the location designated in the solicitation for submission of bids, but not later than the exact time set for opening of bids.

**L.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS**

**L.6.1 Late Submissions**

The District's will not accept late bids or modifications to bids after the closing date and time for receipt of bids.

**L.6.2 Late Modifications**

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

**L.7 HAND DELIVERY OR MAILING OF BIDS**

Bidders must deliver or mail their bids to the address in Section 8 of the Solicitation, Offer and Award form.

**L.8 ERRORS IN BIDS**

Bidders are expected to read and understand fully all information and requirements contained in the solicitation; failure to do so will be at the bidder's risk. In event of a discrepancy between the unit price and the total price, the unit price shall govern.

## **L.9 QUESTIONS ABOUT THE SOLICITATION**

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the CO. The prospective bidder shall submit questions no later than 10 days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than 5 days before the date set for submission of bids. The District will furnish responses promptly to all prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

## **L.10 FAILURE TO SUBMIT BIDS**

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the Contracting Officer (CO), Section G.7, by letter or email whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, [insert agency name], of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the CO, that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

## **L.11 BID PROTESTS**

Any actual or prospective bidder or contractor, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. In procurements in which bids are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of bids following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO.

## **L.12 SIGNING OF BIDS**

- L.12.1 The bidder shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.12.2 All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation. Bidders shall complete and sign all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

**L.13 ACKNOWLEDGMENT OF AMENDMENTS**

The bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section 14 of the Solicitation, Offer and Award form; (c) by letter, telegram or e-mail from an authorized representative. The District must receive the acknowledgment by the date and time specified for receipt of bids. A bidder's failure to acknowledge an amendment may result in rejection of its bid.

**L.14 BIDS WITH OPTION YEARS**

The bidder shall include option year prices in its bid. A bid may be determined to be nonresponsive if it does not include option year pricing.

**L.15 LEGAL STATUS OF BIDDER**

Each bid must provide the following information:

**L.15.1** Name, address, telephone number and federal tax identification number of bidder;

**L.15.2** A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the bidder is required by law to make such certification. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

**L.15.3** If the bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

**L.16 BID OPENING**

The District shall make publicly available the name of each bidder, the bid price, and other information that is deemed appropriate.

**L.17 CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8.10 to:

Tara Sigamoni  
Agency Chief Contracting Officer  
Child and Family Services Agency  
200 I Street, S.E., Suite 2031  
Washington, DC 20003  
(202) 724-5300  
(202) 727-5886 (fax)

**L.18 GENERAL STANDARDS OF RESPONSIBILITY**

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

**L.18.1** To be determined responsible, a prospective contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.*;

- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;\
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

**L.18.2** If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be nonresponsible.

**L.19 CANCELLATION CEILING**

In the event of cancellation of the contract because of nonappropriation for any subsequent fiscal years or any option years, there shall be a cancellation ceiling of [insert dollar amount] dollars representing reasonable preproduction and other non-recurring costs, which would be applicable to the items or services being furnished and normally amortized over the life of the contract.

**L.20 KEY PERSONNEL**

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

**\*\*\*END OF SECTION L\*\*\***

## **SECTION M: EVALUATION FACTORS**

### **M.1 Preferences for Certified Business Enterprises**

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

#### **M.1.1 Application of Preferences**

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

- M.1.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to this Invitation for Bids (IFB).
- M.1.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive a five percent (5%) reduction in the bid price for a bid submitted by the ROB in response to this IFB.
- M.1.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive a five percent (5%) reduction in the bid price for a bid submitted by the LRB in response to this IFB.
- M.1.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to this IFB.
- M.1.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to this IFB.
- M.1.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to this IFB.
- M.1.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the VOB in response to this IFB.

**M.1.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive a two percent (2%) reduction in the bid price for a bid submitted by the LMBE in response to this IFB.

**M.1.2** **Maximum Preference Awarded**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is twelve per cent (12%) for bids submitted in response to this IFB. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

**M.1.4** **Verification of Bidder's Certification as a Certified Business Enterprise**

**M.1.4.1** Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its bid. The CO will verify the bidder's certification with DSLBD, and the bidder should not submit with its bid any documentation regarding its certification as a certified business enterprise.

**M.1.4.2** Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

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

**M.1.4.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.2** **EVALUATION OF OPTION YEARS**

The District will evaluate bids for award purposes by evaluating the total price for all options as well as the base year along with Attachment J.8, Budget. 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.

**\*\*\*END OF SECTION M\*\*\***