

**DISTRICT OF COLUMBIA, DEPARTMENT OF BEHAVIORAL HEALTH (DBH)
SOLICITATION, OFFER, AND AWARD
SECTION A**

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|--|---|
| 1. ISSUED BY/ADDRESS OFFER TO: DISTRICT OF COLUMBIA DEPARTMENT OF BEHAVIORAL HEALTH CONTRACTS AND PROCUREMENT SERVICES (CPS) 64 NEW YORK AVENUE, NE, 2ND FLOOR WASHINGTON, DC 20002 | 2. PAGE OF PAGES: 1 of 97 |
| | 3. CONTRACT NUMBER: |
| | 4. SOLICITATION NUMBER: RM-16-RFP-200-SRR-XXX-BY4-SC |
| | 5. DATE ISSUED: Thursday, September 24, 2015 |
| | 6. OPENING/CLOSING TIME: Thursday, September 24, 2015/Friday, October 9, 2015 @12 Noon (est) |
| | 7. TYPE OF SOLICITATION/CONTRACT: <input type="checkbox"/> SEALED BID <input type="checkbox"/> SINGLE AVAILABLE SOUCE <input checked="" type="checkbox"/> REQUEST FOR PROPOSAL (RFP) |
| NOTE: IN SEALED BID SOLICITATION "OFFER AND THE CONTRACTOR" MEANS "BID AND BIDDER" | |

| | | | |
|----------------------|---|--|---|
| 10. INFORMATION CALL | NAME: Samuel J. Feinberg, CPPO, CPPB Director, Contracts and Procurement Agency Chief Contracting Officer | TELEPHONE NUMBER: (202) 671-3188 | B. E-MAIL ADDRESS: Samuel.Feinberg@dc.gov |
|----------------------|---|--|---|

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OFFER (TO BE COMPLETED BY THE CONTRACTOR)

12. In compliance with the above, the undersigned agrees, if the offer is accepted within **180** calendar days (unless a different period is inserted by the Contractor) from the date for receipt of offers specified above, that with respect to all terms and conditions by the DBH under "AWARD" below, this offer and the provisions of the RFP shall constitute a Formal Contract. All offers are subject to the terms and conditions contained in the Request for Proposal.

| | | |
|---|--|------------------|
| 13. ACKNOWLEDGEMENT OF AMENDMENTS (The Contractor acknowledge receipt of amendments to the REQUEST FOR PROPOSAL for The Contractors and related documents numbered and dated): | AMENDMENT NO: | DATE: |
| | | |
| | | |
| 14. NAME AND ADDRESS OF THE CONTRACTOR: | 15. NAME AND TITLE OF PERSONAL AUTHORIZED TO SIGN OFFER: (Type or Print) | |
| 14A. TELEPHONE NUMBER: | 15A. SIGNATURE: | 15B. OFFER DATE: |
| AREA CODE: | EXT: | |

AWARD (To be completed by the DBH)

| | | |
|--|------------------------------------|-----------------|
| 16. ACCEPTED AS TO THE FOLLOWING ITEMS: | 17. AWARD AMOUNT: | |
| | | |
| 18. NAME OF CONTRACTING OFFICER: (TYPE OR PRINT) Samuel J. Feinberg, CPPO, CPPB Director, Contracts and Procurement Agency Chief Contracting Officer | 19. CONTRACTING OFFICER SIGNATURE: | 20. AWARD DATE: |
| | | |

SECTION B

SUPPLIES OR SERVICES AND PRICE

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SECTION B: SUPPLIES OR SERVICES AND PRICE

B.1 PURPOSE OF CONTRACT

The Government of the District of Columbia, Department of Behavioral Health (DBH) or the (DBH or District) is seeking Contractors to provide enhanced residential services to individuals certified for Supported Rehabilitative Residence (SRRs) level of care. The number of available slots shall not exceed sixty (60). The District may potentially make more than one Contract Award for this Indefinite Delivery Indefinite Quantity (IDIQ) Contract resulting from this Request for Proposal (RFP) Solicitation. The Contract Award amount(s) shall depend upon the availability of funds along with the quality and number of Offers received by DBH. The Award of Option Years within this referenced Contract shall depend on the availability of funds, the Contractor's satisfactory performance and progress in meeting Contract requirements, along with the timely submission of required data and reports.

B.2 SUBCONTRACTING REQUIREMENT

A Offeror responding to this solicitation must submit with its bid, a notarized statement detailing any subcontracting plan required by law. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the Offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with Section H.6.

B.3 SCHEDULE B – PRICING SCHEDULE

| Line Item # | Activity and Services | Maximum Quantity | Unit | Unit Price | Extended Price |
|--------------------------|--|-------------------------|-------------------------|-----------------------|-----------------------|
| 0001 Base Year | Supported Rehabilitative Residence (SRR) Services, as outlined in Section C. | _____ | Consumer Per Day | <u>\$90.92</u> | \$_____ |
| 0001 Option One | Supported Rehabilitative Residence (SRR) Services, as outlined in Section C. | _____ | Consumer Per Day | <u>\$90.92</u> | \$_____ |
| 0001 Option Two | Supported Rehabilitative Residence (SRR) Services, as outlined in Section C. | _____ | Consumer Per Day | <u>\$90.92</u> | \$_____ |
| 0001 Option Three | Supported Rehabilitative Residence (SRR) Services, as outlined in Section C. | _____ | Consumer Per Day | <u>\$90.92</u> | \$_____ |
| 0001 Option Four | Supported Rehabilitative Residence (SRR) Services, as outlined in Section C. | _____ | Consumer Per Day | <u>\$90.92</u> | \$_____ |

 Print Name of Offeror

 Print Name of Authorized Person

 Date

 Signature of Authorized Person

PART I - THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATIONS/ STATEMENT OF WORK

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PART I - THE SCHEDULE
SECTION C
DESCRIPTION/SPECIFICATIONS/ STATEMENT OF WORK

C.1 BACKGROUND/GENERAL REQUIREMENTS:

The Department of Behavioral Health (DBH) provides emergency care and comprehensive mental health and substance use disorder services for eligible District residents through a network of community based providers and unique government delivered behavioral health services. In addition, DBH operates Saint Elizabeths Hospital, the District's Psychiatric Facility.

DBH is seeking Supported Rehabilitative Residence (SRR) Providers who are licensed as a SRR Provider or can demonstrate the capacity to meet SRR licensure designation requirements to meet Contractor Requirements under this Contract. The successful Contractor shall demonstrate the ability to provide intensive residential support and services to Consumers enrolled in the Public Mental Health System, diagnosed with a serious mental illness and in need of intensive behavioral and medical supports within a structured and supervised setting.

The purpose of this effort is to provide culturally and linguistically appropriate residential supports and services to individuals living with serious mental illness in the least restrictive environment. The philosophy of DBH is that Consumer choice is a primary determinant of residential placement decisions. The goal is to assist Consumers to become fully integrated into their community. SRRs are **not** viewed as permanent housing. All housing services must be designed to support a recovery focus and the system must offer the necessary supports that allow people to obtain the skills to move to a more independent setting. The successful Contractor (s) shall be required to develop a Transition Plan which shall include the utilization of the Critical Time Intervention (CTI). The Contractor (s) shall be required to become proficient in CTI, a model to assist individuals in care to move from the SRR to a more independent living environment. DBH's goal is to enable as many individuals as possible to live in Supportive Housing. DBH shall provide the necessary training to enable the Contractor (s) to become familiar with the CTI model.

C.2 APPLICABLE DOCUMENTS

The following documents are applicable to this procurement and are hereby incorporated by this reference:

| Item No. | Document Type | Title | Date |
|----------|--|---|------|
| 1. | DBH Policy 300.1D | Level of Care Utilization System (LOCUS/CALOCUS) Evaluations | 2012 |
| 2. | Chapter 34, Title 22A of the D.C. Municipal Regulations | Mental Health Rehabilitation Services (MHRS) Provider Certification Standards | 2011 |
| 3. | Chapter 38, Title 22 of the D.C. Municipal Regulations | Community Residents Facilities for Mentally Ill Persons | 1995 |
| 4. | Chapter 31, Title 22-B of the D.C. Municipal Regulations | Licensing of Health Care and Community Residence Facilities | 1992 |

C.3 DEFINITIONS

- C.3.1 **Access Helpline**- (AHL) This 24-hour, seven-day-a-week telephone line is staffed by mental health professionals who can refer a caller to immediate help or ongoing care. The Access Helpline can activate mobile crisis teams to respond to adults and children who are experiencing a psychiatric or emotional crisis and are unable or unwilling to travel to receive mental health services. The Access Helpline at 1 (888) 7WE-HELP or 1-888-793-4357 is the easiest way to get connected to services provided by the Department of Behavioral Health and its Certified Mental Health Care Providers.
- C.3.2 **Comprehensive Psychiatric Emergency Program (CPEP)** - a DBH-certified community-based Mental Health Rehabilitation Services (MHRS) Provider. CPEP provides 24-hours, 7 days a week services to protect clients who are a danger to themselves or others as a result of mental illness, who are unable to meet their basic needs and role functions. In addition, CPEP is committed to providing State of the Art Assessment, Treatment and Linkage in the least restrictive and safe environment.
- C.3.3 **Consumer** - Adults, children or youth who seek or receive Mental Health Services or Mental Health Supports funded or regulated by DBH. D.C. Official Code §7-1131.02 (2).
- C.3.4 **Core Services Agency (CSA)** - is a Community-based provider of Mental Health Services and Mental Health Supports that is certified by DBH and that acts as a clinical home for Consumers of Mental Health Services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services and access to other needed services.
- C.3.5 **Critical Time Intervention (CTI)** – is a time-limited support model that assists consumers in re-establishing themselves in community-based housing with access to necessary mental health services and housing supports.
- C.3.6 **Level of Care (LOC)**-refers to intensity of services with required features (e.g., MHRS type of service-as applicable, location and housing recommendation).

- C.3.7 **LOCUS-Level of Care Utilization System and Child and Adolescent Level of Care Utilization System (CALOCUS)**- refers to clinical evaluations tools that are utilized to determine level of care (LOC) and medical necessity for adults and children and youth respectively. (See DBH Policy Number 300.1D Level of Care Utilization System (LOCUS/CALOCUS) Evaluations).
- C.3.8 **Mental Health Rehabilitation Services (MHRS)** - Mental Health Rehabilitative or Palliative Services provided by a DBH-certified Community Mental Health Provider to Consumers in accordance with the District of Columbia State Medicaid Plan, the MAA/DBH Interagency Agreement, and District of Columbia Municipal Regulations Title 22 Subtitle A Chapter 34. Mental Health Rehabilitation Services Provider Certification Standards.
- C.3.9 **Provider in Good Standing** - Current facility licenses, as required; MHRS certification is current; up to date corrective action plans, if applicable; no outstanding notices of infractions; and a failure rate for audit results that is within acceptable limits.
- C.3.10 **Service Authorization**-a process within the Division of Care Coordination where by clinical staff (Care Coordinators) determine the medical necessity for services that require prior authorization or re-authorization. Prior authorizations/re-authorizations require electronic and sometimes “hard copy” submission of specific clinical information in order to be processed. All prior authorizations/re-authorizations are processed routinely by Care Coordinators or designated staff within the Office of Programs and Policy after the provider adheres to required protocols and submits required data. Some decisions require more in-depth review by the Care Coordinator.
- C.3.11 **Supported Employment** - a system of support for people with disabilities in regards to ongoing employment in integrated settings. Supported employment provides assistance such as job coaches, job development, job retention, transportation, assistive technology, specialized job training and individually tailored supervision. Supported Employment often refers to both the development of employment opportunities and on-going support for those individuals to maintain employment. The DBH utilizes the Fidelity Scale developed by Dartmouth College, Psychiatric Research Center as a program evaluation tool to assess the delivery of this service by contracted providers.
- C.3.12 **Supportive Housing**-this Evidence-based Practice is defined as decent, safe and affordable community-based housing that provides tenants with the rights of tenancy under state and local landlord tenant laws, along with being linked to voluntary and flexible supports and services designed to meet tenants’ needs and preferences. (Permanent Supportive Housing Tool Kit (2010).
- C.3.13 **Supported Rehabilitative Residence (SRR)**-A SRR shall be a homelike setting where residential and rehabilitative services are provided in a publicly or privately owned apartment or house for eight (8) or fewer residents 18 or older, with a primary diagnosis of mental illness and who require twenty four (24) hour on site supervision, personal assistance, lodging, meals and who are not in the custody of the District of Columbia Department of Corrections. Specialized services, such as limited and intermittent nursing care or physical therapy, shall be provided if necessary on a scheduled basis as established in the resident’s IRP, by properly licensed staff. Intermittent nursing care may be provided by residence staff or home health aides if required.

C.4 **SCOPE OF SERVICES**

- C.4.1 The purpose of this effort is to prepare individuals with serious mental illness with the skills necessary to function independently in the community to the greatest extent possible. Housing placement is based upon the individual needs of the consumer and bed availability. DBH's goal is to provide the support required to afford individuals with serious mental illness with access to services, supports, treatment and care that is **time limited** and focused on specific mental health recovery goals. A Transition Plan, developed upon admission and followed throughout the person's stay, shall be used to assist persons in care to live within a more independent living environment within the community. Eligibility for this level of care is dependent upon MHRS eligibility and certification of need for this level of care from the DBH Certification Review Team (CRT).
- C.4.2. One of the principles that guide DBH's housing policy is that whenever possible an individual should reside in supportive housing setting. The SRR is an essential option for providing community based residential services for individuals in need of time-limited supported and/or for individuals with co-occurring medical issues and need those who require active assistance with daily living skills. However, the expectation is that the SRR Provider shall whenever possible integrate the principles of permanent supportive housing into the structure of the SRR. This includes, but is not limited to individuals having access to their living quarters twenty-four hours per day, seven days a week.
- C.4.3 The individuals eligible for this intensive level of care are those who are (1) enrolled in the DBH public mental health system (2) have complex psychiatric, medical and social needs that put them at a high risk of needing a more restrictive setting such as a nursing home and/psychiatric hospital if they do not receive supervision during their awake hours, along with life skills development, community support and the other MHRS services included in their Individual Recovery Plan.

C.5 **CONTRACTOR QUALIFICATIONS**

The Prospective Offeror shall meet the following qualifications prior to commencing performance under this Contract and for the duration of the Contract:

- C.5.1 Maintain a Mental Community Residential Facility (MHCRF) License issued through the DBH Office of Accountability/Division of Licensure with authorization to provide Supported Rehabilitative Residence Services;
- C.5.2 Ensure that the maximum number of Consumers that can be served in any one Mental Health SRR is eight (8), unless this requirement has been waived in writing by the Department of Consumer and Regulatory Affairs (DCRA) for the facility and the waiver submitted to DBH prior to serving more than eight (8);
- C.5.3 Own or operate the facility or facilities that the Contractor shall use to provide Supported Rehabilitative Residence Services;

- C.5.4 Comply with contract monitoring and evaluation activities required by DBH or its designee;
- C.5.5 Have the ability to contract with the District of Columbia, which requires that the Prospective Contractor have no outstanding debts with the Office of Tax and Revenue or the Department of Behavioral Health;
- C.5.6 Does not have a record of false or fraudulent statements or conduct in dealing with the District of Columbia Government;
- C.5.7 Is able to comply with the required or proposed delivery or performance schedule, based upon the Offeror's existing commercial and government contract commitments;
- C.5.8 Has adequate financial resources to perform the contract or the ability to obtain those resources;
- C.5.9 Has a satisfactory record of compliance with the law, including labor and civil rights law and rules and First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code sec.2-219.01 *et seq.*);
- C.5.10 Has, or has the ability to obtain, the necessary production, construction, technical equipment and facilities;
- C.5.11 Has not exhibited a pattern of overcharging the District;
- C.5.12 Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- C.5.13 Is otherwise qualified and is eligible to receive an award under applicable laws and rules.

C.6 **RESIDENTIAL SERVICE REQUIREMENTS**

The Prospective Offeror shall demonstrate the ability to meet the following requirements:

- C.6.1 The Contractor shall have experience in providing on-site management of individuals with psychiatric and/or behavior problems;

The Contractor shall demonstrate an ability to provide on-site individualized mental health services and structured supports to each Consumer, twenty-four (24) hours a day, seven (7) days per week. Services shall be in accordance with the Consumer's IRP and shall include but not be limited to:

- C.6.1.1 Medication administration and physical therapy, to be provided by licensed staff on a scheduled basis according to the resident's IRP;
- C.6.1.2 Medication supervision and management;
- C.6.1.3 Therapeutic support and management with basis on clinical recommendations;
- C.6.1.4 One to one support for behavioral management or functional living skills training;

C.6.1.5 Crisis and emergency services in accordance with the Consumer's Crisis Emergency Plan;

C.6.1.6 Assistance with bowel/bladder incontinence;

C.6.1.7 Coordination of Substance Use Treatment with assigned CSA;

C.6.1.8 Provision for social/recreational activities for Consumers in the residence daily, on weekends and evenings;

C.6.1.9 Special support services (e.g., language, sight and mobility); and

C.6.1.10 Routine first aid services.

C.6.2 The Contractor shall ensure that services are responsive to the unique ethnic, racial and cultural needs of the Consumer served.

C.6.3 The Contractor shall ensure that the full spectrum of MHRS shall be available to the Consumer from either the Contractor and/or the CSA; however MHRS services shall be tracked and billed separately with distinction from the Residential Support Services required under this Contract.

C.6.4 The Contractor shall provide all in-home Activities of Daily Living (ADL), functional assistance, training and support services as part of the per-Consumer-per Day Rate agreed upon in the Contract.

C.6.5 The Contractor shall maintain a staff-to-Consumer ratio of 1:8, twenty-four (24) hours a day whenever a resident is present and a staff-to-Consumer ratio of 2:8 during periods of peak activity such as meals and when the residents are in the facility and awake. The Contractor shall have a plan for the provision of 2:8 staff-to-Consumer ratios when the needs of residents indicate the need for additional staff.

C.6.6 The Contractor shall demonstrate an ability to provide on-site individualized mental health services and structured supports to each Consumer, twenty-four (24) hours a day, seven (7) days per week. "Awake" supervision shall be provided to all consumers for a minimum of sixteen (16) hours per day. The Contractor shall have the capacity to provide twenty-four hour (24) per day "awake" supervision when required to adequately address the needs of an individual who experiences periods of destabilization or those who require twenty-four hour (24) "awake" supervision on an ongoing basis in order to be maintained within the community.

C.6.7 The Contractor shall develop and implement an annual training plan to ensure that staff has knowledge of mental health, co-occurring substance use disorders and culturally competent practice.

C.6.8 The Contractor shall provide written justification prior to refusal of a Consumer that must be reviewed by the CSA and DBH with consensus obtained.

C.6.9 The Contractor shall provide written justification for holding the Consumer's bed when the Consumer is hospitalized and/or absent for thirty (30) days or longer.

C.6.10 The Contractor shall ensure that its staff and representatives receive system and health information management ('HIPPA') training in order to maintain accurate and current residence census ('Bed-Board') information in the DBH information management system (iCAMS/Credible).

C.7 TRANSITION PLANNING

C.7.1. In keeping with the DBH philosophy, Contractors must continuously assess and document the need for placement in SRR placement and proactively plan for less intensive levels of residential care in partnership with the individual and their CSA.

C.7.2 SRR placements are not viewed as permanent living situations. The District's goal is to facilitate the integration of Consumers into independent living environments within the community to the greatest degree possible. Contractor shall develop and implement a Transition Plan that includes specific goals and objectives designed to assist the Consumer in obtaining the necessary skills to become more independent with the ability to live in a less restrictive environment within the community.

C.7.3 The Contractor shall develop a Transition Plan within 60 days of the Consumers admission. The Transition Plan for each Consumer shall provide a description of the barriers to living in the community and shall include specific strategies for addressing barriers to transition to a less restrictive environment.

C.7.4 The Transition Plan shall include a description of the specific residential services and supports to be delivered to the Consumer, the criteria that shall be utilized to determine when the Consumer is ready for a less restrictive community placement, and the process that shall be used to make that determination in collaboration with the Consumer and his/her CSA.

C.7.5 DBH shall utilize an Evidence-based Practice, the Critical Time Intervention (CTI) model, to facilitate the transition of Consumers from SRRs who are able to live in a less restrictive environment to more integrated community placement community. This shall open up slots so that individuals who require a higher level of need can be accommodated in those facilities.

C.7.6 The Transition Plan shall document the Consumer's progress toward recovery including how the Consumer responds to services provided, staff, other Consumers and the treatment team from the referring CSA.

C.7.7 The Contractor shall utilize the Critical Time Intervention model to assist Consumers as they transition from supervised Residential living to a less restrictive community based settings. CTI is a time-limited support model that assists Consumers in re-establishing themselves in the community-based housing with access to necessary mental health services and housing supports. Within this model, Transition Specialists work with the Consumer and his/her support network over a nine (9) month period to ensure successful

transition to the community. At the conclusion of that time period, the Consumer's CSA and other members of his/her support network, take on the responsibility of assisting the individual to manage tasks and stressors related to community living.

C.7.8 The Contractor shall monitor the medical, behavioral and psychiatric status of Consumers and keep the Consumer's CSA informed whenever there is a change in status.

C.8 **ACCESS AND ELIGIBILITY**

C.8.1 A Consumer must meet the following eligibility criteria for admission into a SRR as defined by this Contract:

C.8.1.1 Consumer shall be at least eighteen (18) years of age;

C.8.1.2 Consumer must be enrolled in Medicaid, or be eligible for enrollment and have an application pending;

C.8.1.3 Be a bona fide resident of the District, as defined in D.C. Official Code § 7-1131.02 (29) (2008) Repl.);

C.8.1.4 Be an adult with mental illness as defined in D.C. Official Code § 7-1131.02 (24); and

C.8.1.5 Be certified as requiring MHRS by a qualified practitioner; and

C.8.1.6 Be certified by the DBH to meet the criteria for this Level of Care.

C.8.2 The Contractor shall ensure that each Consumer admitted is certified by DBH to require this level of care.

C.8.3 The Contractor shall participate in discharge planning for Consumers in an inpatient or institutional setting prior to admission and at anytime during the Consumer's stay in the facility.

C.8.4 SRRs covered by this Contract must be located within the District of Columbia.

C.9 **STANDARD OF PERFORMANCE**

C.9.1 The Contractor shall at all times, while acting in good faith and in the best interests of the DBH, use its best efforts and exercise all due care and sound business judgment in performing its duties under this contract. Contractor shall at all times, comply with DBH operational policies, procedures and directives while performing the duties specified in this contract.

C.10 **CONFIDENTIALITY**

C.10.1 The Contractor shall maintain the confidentiality and privacy of all identifying information concerning DBH clients in accordance with the confidentiality law, the privacy rule (the requirements and restrictions contained in 45 CFR part 160 and part 164, subparts A and E, as modified by any District of Columbia laws, including the Mental Health Information Act of 1978, that may have preemptive effect by operation of 45 CFR part 160, subpart B) and Section H.7 of this Contract.

C.11 **ADVERTISING AND PUBLICITY**

C.11.1 The Contractor shall not issue or sponsor any advertising or publicity that states or implies, either directly or indirectly, that DBH endorses, recommends or prefers the Contractor's services; shall not use the DBH's logo in any fashion; or use or release information, photographs or other depictions obtained as a result of the performance of services under this Contract, for publication, advertising or financial benefit.

*****END OF SECTION C*****

PART I - THE SCHEDULE

SECTION D

PACKAGING AND MARKING

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PART I - THE SCHEDULE

SECTION D

PACKAGING AND MARKING

D.1 References Standard Contract Provisions (SCP) Clause 2/Shipping Instructions-Consignment/Page 1.

http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%202020Solicitation%20Attachments_standard_contract_provisions_0307.pdf (“Double click on link.”)

D.2 Includes any additional instructions that are specific to the requirement of the Solicitation/Contract.

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

SECTION E

INSPECTION AND ACCEPTANCE

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SECTION E: INSPECTION AND ACCEPTANCE

PART 1: THE SCHEDULE

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF SUPPLIES AND SERVICES

E.1.1 References SCP Clause 5/Inspection of Supplies and/or Clause 6/Inspection of Services/ Pages 1-4. **Standard Contract Provisions for Use with Supplies and Services Contracts dated March 2007 (Attachment J.1)**

http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%202020Solicitation%20Attachments_standard_contract_provisions_0307.pdf

E.2 CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES

E.2.1 The Contractor shall be held to the full performance of the Contract. The DBH shall deduct from the Contractor's invoice, or otherwise withhold payment for any non-conforming service as specified below.

E.2.2 A service task may be composed of several sub-items. A service task may be determined to be partially complete if the Contractor satisfactorily completes some, but not all, of the sub items.

E.2.3 The DBH shall give the Contractor written notice of deductions by providing copies of reports which summarize the deficiencies for which the determination was made to assess the deduction in payment.

E.2.4 In case of non-performed work, DBH shall:

E.2.4.1 Deduct from the Contractor's invoice all amounts associated with such non-performed work at the rate set out in Section B, or provided by other provisions of the Contract;

E.2.4.2 DBH may, at its option, afford the Contractor an opportunity to perform the non-performed work with a reasonable period subject to the discretion of the Director, Contracts and Procurement Agency Chief Contracting Officer (Director/ACCO) and at no additional cost to the DBH; and

E.2.4.3 DBH may, at its option, perform the Contracted services by the DBH personnel or other means.

E.2.5 In the case of unsatisfactory work, DBH:

E.2.5.1 Shall deduct from the Contractor's invoice all amounts associated with such unsatisfactory work at the rates set out in Section B, or provided by other provisions of the Contract, unless the Contractor is afforded an opportunity to re-perform and satisfactorily completes the work; and

E.2.5.2 May, at its option, afford the Contractor an opportunity to re-perform the unsatisfactory work within a reasonable period, subject to the discretion of the Director/ACCO and at no additional cost to the DBH.

E.3 TERMINATION FOR CONVENIENCE

E.3.1 The DBH may terminate performance of work under this Contract for the convenience of the Government, in a whole or, from time to time, in part, if the Director/ACCO determines that a termination is in the Government's best interest.

E.3.2 After receipt of a Notice of Termination and, except as directed by the Director/ACCO, the Contractor shall immediately proceed with the following obligations:

E.3.2.1 Stop work as specified in the notice;

E.3.2.2 Place no further subcontracts or orders except as necessary to complete the continued portion of the Contract;

E.3.2.3 Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination;

E.3.2.4 Assign to DBH, as directed by the Director/ACCO, all rights, titles and interests of the Contractor under the subcontracts terminated; in which case DBH shall have the right to settle or pay any termination settlement proposal arising out of those terminations;

E.3.2.5 With approval or ratification to the extent required by the Director/ACCO settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification shall be final for purposes of this clause;

E.3.2.6 Transfer title, if not already transferred and, as directed by the Director/ACCO, deliver to DBH any information and items that, if the Contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated (ii) completed or partially completed plans, drawings and information;

E.3.2.7 Complete performance of the work not terminated; and

E.3.2.8 Take any action that may be necessary for the protection and preservation of property related to this Contract.

E-4 TERMINATION FOR DEFAULT

- E.4.1 DBH may, subject to the conditions listed below, by written notice of default to the Contractor, terminate the Contract in whole or in part if the Contractor fails to:
- E.4.1.1 Perform the services within the time specified in the Contract or any extension; or
- E.4.1.2 Make progress as to endanger performance of the Contract; or
- E.4.1.3 Perform any of the other material provisions of the Contract.
- E.4.2 The DBH's right to terminate the Contract may be exercised if the Contractor does not cure such failure within ten (10) days, or such longer period as authorized in writing by the Contracting Officer (CO) after receipt of the notice to cure from the CO, specifying the failure.
- E.4.3. If DBH terminates the Contract in whole or in part, it may acquire, under the terms and in the manner the Director/ACCO considers appropriate, supplies and services similar to those terminated and the Contractor shall be liable to DBH for any excess costs for those supplies and services. However, the Contractor shall continue the work not terminated.
- E.4.4 Except for default by subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such issues include (i) acts of God, (ii) fires or floods, (iii) strikes and (iv) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- E.4.5 If the failure to perform is caused by the fault of a subcontractor, at any tier and, if the cause of the default is beyond the control of both the Contractor and the subcontractor and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required schedule.
- E.4.6 If the Contract is terminated for default, DBH may require the Contractor to transfer title and deliver to DBH as directed by the Director/ACCO, any completed and partially completed supplies and materials that the Contractor has specifically produced or acquired for the terminated portion of the Contract. Upon direction of the Director/ACCO, the Contractor shall also protect and preserve property in its possession in which DBH has an interest.

- E.4.7 DBH shall pay the Contract price or a portion thereof, for fully or partially completed or delivered supplies and services that are accepted by DBH.
- E.4.8 If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience of DBH.
- E.4.9 The rights and remedies of DBH in this clause are in addition to any other rights and remedies provided by law or under the Contract.

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

PART I - THE SCHEDULE

SECTION F

DELIVERY and PERFORMANCE

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PART I - THE SCHEDULE

SECTION F

DELIVERY AND PERFORMANCE

F-1 **CONTRACT TYPE**

The District may potentially make more than one Contract Award for this Indefinite Delivery Indefinite Quantity (IDIQ) contract type resulting from this Request for Proposal (RFP) Solicitation.

F-2 **PERIOD OF PERFORMANCE**

F-2.1 Performance under this contract shall be in accordance with the terms and conditions set forth herein and by any modification made thereto. The Period of Performance (POP) for this Contract shall be One (1) Year from Date of Award with Four (4) One Year Option Periods.

F-3 **OPTION PERIOD**

F-3.1 The District shall extend the POP of this Contract by exercising up to Four (4) One Year Option Periods or a fraction thereof.

F-4 **OPTION TO EXTEND THE TERM OF THE CONTRACT**

F-4.1 The District shall extend the term of this Contract for a period of Four (4) One Year, option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the Contract, provided that the District shall give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the Contract expires. The preliminary notice does not commit the District to an extension. The exercise of the option is at the sole and absolute discretion of DBH and subject to the availability of funds at the time of the exercise of the option. The Contractor shall waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Director, Agency Chief Contracting Officer (Director/ACCO) prior to expiration of the Contract.

F-4.2 If the District exercises the option, the extended Contract shall be considered to include the option provision.

F-4.3 The price for the option period shall be as specified in Section B of the Contract.

F.5 **DELIVERABLES**

F.5.1 The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the **Contracting Officer's Technical Representative (COTR)** identified in Section G.5 in accordance with the requirements described in Section C.

F.5.2 In addition to any other deliverable outlined in this Contract, DBH staff shall from time to time request information concerning a Consumer's care and/or treatment. Contractor shall provide such information within 48 hours of the request (or a negotiated agreed-upon timeframe), in a manner requested by DBH, provided that Contractor shall provide such information no later than the end of the next business day following the date of the request if necessary for DBH to meet a court deadline or other legal requirement.

F.5.3 The Contractor shall submit to the District, as a deliverable, the report described in Section I.16 that is required by First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor may not be paid.

F-6 **CONTRACTOR NOTICE REGARDING LATE PERFORMANCE**

In the event the Contractor anticipates or encounters difficulty in complying with the terms and conditions as stated in this contract, or in meeting any other requirements set forth in this contract, the Contractor shall immediately notify the Director, Contracts and Procurement/ Agency Chief Contracting Officer in writing giving full detail as to the rationale for the late delivery and why the Contractor should be granted an extension of time, if any. Receipt of the Contractor's notification shall in no way be construed as an acceptance or waiver by the DBH.

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

PART I: THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

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PART I: THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

G-1 CONTRACT ADMINISTRATION

Correspondence or inquiries related to this contract or any modifications shall be addressed to:

Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer
Department of Behavioral Health
64 New York Avenue, NE, 2nd Floor
Washington, DC 20002
(202) 671-3188 - Office
(202) 671-3395 – Fax

Email: Samuel.feinberg@dc.gov

G-2 TYPE OF CONTRACT

This is an IDIQ Contract for Supported Rehabilitative Residence (SRR) Services. The Contractor shall be remunerated according to Schedule B Price Sheet. In the event of termination under this Contract, the DBH shall only be liable for the payment of all services accepted during the hours of work actually performed. Pursuant to the Terms and Conditions, of this contract individuals working under this contract for Department of Behavioral Health (DBH) are not eligible to be paid for holidays and sick leave. However, if you work on a Holiday, you shall be paid at your regular hourly rate.

This Contract is a “non-personal service Contract”. It is therefore, understood and agreed that the Contractor and/or the Contractor’s employees: (1) shall perform the services specified herein as independent Contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required to bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the Government’s right and obligation to inspect, accept or reject work, comply with such general direction of the Director, Contracts and Procurement/Agency Chief Contracting Officer, or the duly authorized representative as the Contracting Officer’s Technical Representative (COTR) as is necessary to ensure accomplishment of the contract objectives.

By accepting this order or Contract the Contractor agrees, that the District, at its discretion, after completion of order or contract period, may hire an individual who is performing services as a result of this order or contract, with restriction, penalties or fees.

G-3 **MODIFICATIONS**

Any changes, additions or deletions to this contract shall be made in writing by a formal Modification to this contract and shall be signed by the Director, Contracts and Procurement/Agency Chief Contracting Officer only.

G-4 **AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

Funds are not presently available for performance under this Contract beyond September 30, 2016. DBH's obligation for performance of this Contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the DBH for any payment may arise for performance under this contract beyond September 30, 2016, until funds are made available to the Director, Contracts and Procurement/Agency Chief Contracting Officer for performance and until the Contractor receives notice of availability of funds, to be confirmed in writing by the Agency's Chief Financial Officer.

G-5 **DESIGNATION OF THE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE**

The Director, Contracts and Procurement/Agency Chief Contracting Officer shall designate a Contracting Officer's Technical Representative (COTR) who shall, among other duties relating to this contract, have direct responsibility to assign work to the Contractor, review the Contractor's performance during the term of this contract and make recommendations to the Director, Contracts and Procurement/Agency Chief Contracting Officer. The COTR shall also review, approve and sign all invoices prior to payment by DBH. The COTR for this procurement is:

Brandi Gladden, Program Manager
Department of Behavioral Health
Office of Programs and Policy
64 New York Ave, NE, 3rd Floor
Washington, DC 20002
Telephone: 202-671-2906
Fax: 202-671-1930
Email: brandi.gladden@dc.gov

G-6 **BILLING AND PAYMENT**

G.6.1 The Contractor shall submit an original and three copies of the invoice to the Department of Behavioral Health, Accounts Payable Office at 64 New York Avenue, NE, 4th Floor Washington, DC 20002 or by e-mail to dmh.ap@dc.gov. The invoices shall include Contractor's name and address, invoice date, Contract number, Contract line items numbers (CLINS), description of the services, quantity, unit price and extended prices, terms of any prompt payment discounts offered, name and address of the official to whom payment is to be sent and the name, title and phone number of the person to be notified in the event of a defective invoice. Payment shall be made within Thirty (30) days after the COTR receives a proper and certified invoice from DBH Accounts Payable of the Contractor's Invoice, unless a discount for prompt payment is offered and payment is made within the discount periods. Please note that the invoice shall match the itemized

lines (CLIN Lines) of the Purchase Order as written up to, but not exceeding the maximum of each line. Any invoices deemed improper for payment shall be returned, **UNPAID** and shall be resubmitted as indicated in this clause.

G.7 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

For contracts subject to the First Source Employment Agreement requirement, final request for payment must be accompanied by the report or a waiver of compliance. No final payment shall be made to the Contractor until the CFO has received the Director/ACCO's final determination or approval of waiver of the Contractor's compliance with the First Source Employment Agreement requirements.

G.8 ASSIGNMENTS

G.8.1 In accordance with 27 DCMR § 3250, unless otherwise prohibited by this contract, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution

G.8.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

G.8.3 Notwithstanding an assignment of money claims pursuant to authority contained in the contract, 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.9 THE QUICK PAYMENT CLAUSE

G.9.1 Interest Penalties to Contractors:

G.9.1.1 The District shall 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.9.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.9.2 Payments to Subcontractors:

G.9.2.1 The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:

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

G.9.2.2 The Contractor must pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

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

G.9.2.3 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.9.2.4 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-10 **RESPONSIBILITY FOR AGENCY PROPERTY**

The Contractor shall assume full responsibility for and shall indemnify the DBH for any and all loss or damage of whatsoever kind and nature to any and all Agency property, including any equipment, supplies, accessories, or part furnished, while in contractor's custody during the performance of services under this contract, or while in the Contractor's custody for storage or repair, resulting from the negligent acts or omissions of the Contractor or any employee, agent, or representative of the Contractor or Subcontractors. The Contractor shall do nothing to prejudice the DBH's right to recover against third parties for any loss, destruction of, or damage to DBH property and upon the request of the Director, Contracts and Procurement/Agency Chief Contracting Officer shall, at the DBH's expense, furnish to the DBH all reasonable assistance and cooperation, including assistance in the protection of suit and the execution of instruments of assignment in favor of the DBH recovery.

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

**PART I: THE SCHEDULE
SECTION H
SPECIAL CONTRACT REQUIREMENTS**

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PART I: THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 LIQUIDATED DAMAGES

H.1.1 When the Contractor fails to perform the tasks required under this Contract, DBH shall notify the Contractor in writing of the specific task deficiencies with a Notice to Cure notification with a cure period of not to exceed ten (10) Business Days. The assessment of Liquidated Damages as determined by the Director, Contracts and Procurement/ Agency Chief Contracting Officer shall be in an amount of **\$200.00** per day per unavailable services as depicted in the Scope of Services. This assessment of Liquidated Damages against the Contractor shall be implemented after the expiration of the cure period and until such time that the Contractor has cured its deficiencies and is able to satisfactorily perform the tasks required under this Contract for a maximum of thirty (30) Business Days.

H.1.2 When the Contractor is unable to cure its deficiencies in a timely manner and DBH requires a replacement Contractor to perform the required services, the Contractor shall be liable for Liquidated Damages accruing until the time DBH is able to award said contract to a qualified responsive and responsible Contractor. Additionally, if the Contractor is found to be in default of said Contract under the Default Clause of the Standard Contract Provisions, the original Contractor is completely liable for any and all total cost differences between their Contract and the new Contract awarded by DBH to the replacement Contractor.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2005-2103 Revision No. 16, dated July 8, 2015, issued by the U.S. Department of Labor in accordance with and incorporated herein as Attachment J.7 of this Agreement. The Contractor shall be bound by the wage rates for the term of the Contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer for the option obtains a revised wage determination, that determination is applicable for the option periods; the Contractor may be entitled to an equitable adjustment.

H.3 AUDITS, RECORDS, AND RECORD RETENTION

H.3.1 At any time or times before final payment and three (3) years thereafter, the Director/ACCO may have the Contractor's invoices or vouchers and statements of cost audited. For cost reimbursement contracts, any payment may be reduced by amounts found by the Director/ACCO not to constitute allowable costs as adjusted for prior overpayment or underpayment. In the event that all payments have been made to the Contractor by the District Government and an

overpayment is found, the Contractor shall reimburse the District for said overpayment within thirty (30) days after written notification.

H.3.2 The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

H.3.3 The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

H.3.4 The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Director/ACCO.

H.3.5 Persons duly authorized by the Director/ACCO shall have full access to and the right to examine any of the Contractor's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.

H.3.6 The Contractor shall include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

H.3.7 The provisions of this clause govern in preference to the provisions of Clause 18, Examination and Retention of Records, in the Standard Contract Provisions for Use with District of Columbia Government Supplies and Services Contracts, March 2007, to the extent of any inconsistency.

H.4 **PUBLICITY**

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

H.5 **CONFLICT OF INTEREST**

H.5.1 No official or employee of the District of Columbia or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract.

H.5.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

H.6 **MANDATORY SUBCONTRACTING REQUIREMENTS**

Information concerning DBH Mandatory Subcontracting Requirements for Contracts in Excess of \$250,000 is available at DBH link:

<http://dmh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/Procurement%20-%20Mandatory%20Subcontracting%20Requirements%20%20%20April%202014.pdf>.

The Contractor shall be held responsible in complying with the Mandatory Subcontracting Requirements during the duration of the Contract.

H.7 **PRIVACY AND CONFIDENTIALITY COMPLIANCE**

For the purpose of this agreement [DEPARTMENT OF BEHAVIORAL HEALTH (DBH)], a covered component within the District of Columbia's Hybrid Entity will be referred to as a "Covered Entity" as that term is defined by the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") and associated regulations promulgated at 45 CFR Parts 160, 162 and 164 as amended (the "HIPAA Regulations") and [**INSERT VENDOR NAME**], as a recipient of Protected Health Information or electronic Protected Health Information from [DBH], 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.

Definitions

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

business associate of the District or arrangement, to the person. A covered entity may be a business associate of another covered entity.

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

A *Business Associate* does not include: (i) a health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual; (ii) a plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of 45 CFR § 164.504(f) apply and are met; (iii) a government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law; iv) a covered entity participating in an organized health care arrangement that performs a function, activity or service included in the definition of a Business Associate above for or on behalf of such organized health care arrangement.

- b. *Covered Entity* means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of HIPAA. With respect to this HIPAA Compliance Clause, *Covered Entity* shall also include the designated health care components of the District government's hybrid entity or a District agency following HIPAA best practices.
- c. *Data Aggregation* means, with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- d. *Designated Record Set* means a group of records maintained by or for the Covered Entity that are:
 - i. The medical records and billing records about individuals maintained by or for a covered health care provider;

- ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- iii. Records used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- e. *Health Care* means care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
 - iv. 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
 - v. 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. *Mental Health Information Act* is the law controlling any disclosure of mental health information in the District of Columbia (D.C. Official Code § 7-1201.01 et seq. 2009).

- j. *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.
- k. *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).
- l. *Individually Identifiable Health Information* is information that is health information, including demographic information collected from an individual, and;
 - vi. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
 - vii. 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
 - viii. 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.
- m. *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.
- n. *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.
- o. *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.
- p. *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.
- q. *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:

- ix. Transmitted by, created or maintained in electronic media; or
- x. 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 of Protected Health Information in 45 C.F.R. §160.103.

- r. *Required By Law.* “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103, and shall include the MHIA and 42 CFR Part 2 as applicable.
- s. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- t. *Security Officer.* The person designated by the Security Official or one of the District of Columbia’s designated health care components, who is responsible for overseeing compliance with the Covered Agency’s Privacy Policies and Procedures, the Security Rules, and other applicable federal and state privacy law(s). The Covered Agency’s security officer shall follow the guidance of the District’s Security Official, as well as the Associate Security Official within the Office of the Chief Technology Officer, and shall be responsive to the same on matters pertaining to HIPAA compliance.
- u. *Security Rule* “Security Rule” shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- v. *Workforce.* “Workforce” shall mean employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or business associate, is under the direct control of such entity, whether or not they are paid by the covered entity or business associate.

H.7.2 Obligations and Activities of Business Associate

- a. The Business Associate agrees not to use or disclose Protected Health Information or electronic Protected Health Information (hereinafter “PHI” or Protected Health Information”) other than as permitted or required by this HIPAA Compliance Clause or as Required By Law.
- b. The Business Associate agrees to 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 Health ACT (February 18, 2010) (“HITECH”), to maintain the security of the Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Clause. 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. Part 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 name Privacy and/or Security Officer who is accountable for developing, maintaining, implementing, overseeing the compliance of and enforcing compliance with this Clause, the Security Rule and other applicable federal and state privacy laws within the Business Associate’s business. The Business associate reports violations and conditions to the District-wide Privacy and Security Official and/or the Agency Privacy Officer of the covered component within the District’s Hybrid Entity.
- d. The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Clause.
- e. The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information not permitted or required by this HIPAA Compliance Clause or other incident or condition arising out the Security Rule, including breaches of unsecured protected health information as required at 45 CFR 164.410, to the District-wide Privacy and Security Official or agency Privacy Officer within five (5)

days from the time the Business Associate becomes aware of such unauthorized use or disclosure. However, if the Business Associate is an agent of the District (i.e., performing delegated essential governmental functions), the Business Associate must report the incident or condition immediately. Upon the determination of an actual data breach, and in consultation with the District's Privacy and Security Official, the Business Associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the District.

- f. The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Clause with respect to Protected Health Information received from the Business Associate, Protected Health Information created by the Business Associate, or Protected Health Information received by the Business Associate on behalf of the Covered Entity.
- g. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information
- h. Initially, within ten (10) days following the commencement of this Contract, or within ten (10) days of a new or updated agreement with a subcontractor, the Business Associate agrees to provide the District a list of all subcontractors who meet the definition of a Business Associate. Additionally, Business Associate agrees to ensure its subcontractors understanding of liability and monitor, where applicable, compliance with the Security Rule and applicable privacy provisions in this Clause.
- i. The Business Associate agrees to provide access within five business days, at the request of the Covered Entity or an Individual, **at a mutually agreed upon location, during normal business hours, and in a format** [as directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.
- j. The Business Associate agrees to make any amendment(s) within five business days to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 **in a format** [*agency should insert appropriate terms for amendment if applicable*] or as directed by the District Privacy Official or agency Privacy Officer in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.
- k. The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual

who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of the [*Insert Applicable Agency Identity and Procedure Verification Policy*], attached hereto as Exhibit C and incorporated by reference.

- l. The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations.
- m. The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request **at a mutually agreed upon location, during normal business hours, and in a format designated** [*delete bolded material and insert agency appropriate terms if applicable*] 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 Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations.
- n. The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and **at a mutually agreed upon location, during normal business hours, and in a format designated** [*delete bolded material and insert negotiated terms if applicable*] by the District Privacy and Security Official or agency Privacy Officer and the duly authorized Business Associate workforce member, or **in** a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule.
- o. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, the business associate agrees to comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- p. As deemed necessary by the District, the Business Associate agrees to the monitoring and auditing of items listed in paragraph 2 of this Clause, as well as data systems storing or transmitting protected health information, to verify compliance.
- q. The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered

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

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

H.7.3 Permitted Uses and Disclosures by the Business Associate

- a. Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate Subpart E of 45 CFR Part 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 Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality of the information has been breached.
- d. Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).**
- e. Business Associate may use Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

H.7.4 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 electronic PHI (ePHI) as defined by HIPAA Security Standards at 45 C.F.R. Parts 160 and 164, subparts A and C (the "Security Rule"), if in performing the Services, Business Associate, its employees, agents, subcontractors and any other individual permitted by Business Associate will have access to any computer system, network, file, data or software owned by or licensed to Provider that contains ePHI, or if Business Associate otherwise creates, maintains, or transmits ePHI on Provider's behalf, Business Associate shall take reasonable security measures necessary to protect the security of all such computer systems, networks, files, data and software. With respect to the security of ePHI, Business Associate shall: (A) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Provider; (B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (C) Report to the Provider any security incident of which it becomes aware.

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

H.7.5. 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.

H.7.6. Obligations of the Covered Entity

- a. The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information by the Business Associate.
- b. The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.
- c. The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of Protected Health Information by the Business Associate.

H.7.7. Permissible Requests by Covered Entity

Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule and Subpart E of 45 CFR Part 164 if done by the Covered Entity.

H.7.8. Representations and Warranties.

The Business Associate represents and warrants to the Covered Entity:

- a. That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees,

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

H.7.9. Term and Termination

- a. *Term.* The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award, and shall terminate when all of the Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request. The Protected Health Information shall be returned in a format mutually agreed upon by and between the Privacy Official and/or Privacy Officer or his or her designee and the appropriate and duly authorized workforce member of the Business Associate. If it is infeasible to return or confidentially destroy the Protected Health Information, protections shall be extended to such information, in accordance with the termination provisions in this Section and communicated to the Privacy Official or Privacy Officer or his or her designee. The requirement to return Protected Health Information to the District at the end of the contract term or if the contract is terminated applies irrespective of whether the Business Associate is also a covered entity under HIPAA. Where a business associate is also a covered entity, Protected Health Information provided by the District, or created or received by the Business Associate on behalf of the District, a duplicate of the record may be acceptable if mutually agreed.
- b. *Termination for Cause.* Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:
 - i. Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does

not cure the breach or end the violation within the time specified by the Covered Entity; or

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

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

c. *Effect of Termination.*

- i. Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in **a mutually agreed upon format or confidentially destroy** [*delete bolded material and insert negotiated terms and conditions if applicable*] all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information in any form.

- ii. In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity written notification of the conditions that make the return or confidential destruction infeasible. Upon determination by the agency Privacy Officer that the return or confidential destruction of the Protected Health Information is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for so long as the Business Associate maintains such Protected Health Information. Additionally, the Business Associate shall:

- (1) Retain only that protected health information 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 protected health information 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 electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
- (4) Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information 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 protected health information 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.

H.7.10 Miscellaneous

- a. *Regulatory References.* A reference in this HIPAA Compliance Clause to section in the Privacy Rule means the section as in effect or as amended.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and HIPAA. Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.
- c. *Survival.* The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.
- d. *Interpretation.* Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit 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 Protected Health Information 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 Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.
- f. *Compliance with Applicable Law.* The Business Associate shall comply with all federal and District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.
- g. *Governing Law and Forum Selection.* This Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia. The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be. The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.
- h. *Indemnification.* The Business Associate shall indemnify, hold harmless and defend the Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.
- i. *Injunctive Relief.* Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information from the Business Associate.

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

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

If to the Business Associate, to

If to the Covered Entity, to

Attention:

Attention:

Fax: _____

Fax: _____

- 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.

Identity and Procedure Verification: <http://dmh.dc.gov/node/682752>

The Contractor shall be held responsible in complying with the HIPAA Compliance Clause during the duration of the Contract.

H.8 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of the 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.9 NOTICE OF NON-DISCRIMINATION

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code Section 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act shall not be tolerated. Violators shall be subject to disciplinary action.

H.10 **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 program and activities. See 29 U.S.C. § 794 *et seq.*

H.11 **WAY TO WORK AMENDMENT ACT OF 2006**

H.11.1 Except as described in H.11.8 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.11.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage rate.

H.11.3 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.11.4 The Department of Employment Services may adjust the living wage annually and the District’s Office of Contracting and Procurement shall publish the current living wage rate on its website at www.ocp.dc.gov. If the living wage is adjusted during the term of the contract, the Contractor shall be bound by the applicable wage rate as of the effective date of the adjustment, and the Contractor may be entitled to an equitable adjustment.

H.11.5 The Contractor shall provide a copy of the Fact Sheet attached as J.8 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.8 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.11.6 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.11.7 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.11.8 The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;

- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.11.9 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.12 **CONTRACTOR LICENSE/CLEARANCES**

Contractor shall maintain documentation that all staff possesses adequate training, qualifications and competence to perform the duties to which they are assigned and hold current licenses or certification as appropriate.

H.13 **COST OF OPERATION**

Except as otherwise specified in this Contract, Contractor shall be responsible for all costs of operation under this Contract, including but not limited to taxes, surcharges, licenses, insurance, transportation, salaries and bonuses.

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

PART I: THE SCHEDULE

SECTION I

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

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PART I: THE SCHEDULE

SECTION I

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION I – CONTRACT CLAUSES
CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS AND WAGE DETERMINATION

The Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007 (Attachment J-1), are incorporated by reference into this contract. The Standard Provisions are attached hereto and can also be retrieved at:

http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%209%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf (Double click on link)

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 EQUAL EMPLOYMENT OPPORTUNITY

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

I.6 DEPARTMENT OF MENTAL HEALTH POLICIES AND RULES

Includes requirement to be in compliance with DBH Policies and Rules with References to DBH Web Site with Link: <http://dmh.dc.gov/node/240592> (Double click on link)

I.7 OTHER CONTRACTORS

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

I.8 SUBCONTRACTORS

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

1.9.1 Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor contractor.

I-10 SUSPENSION OF WORK

I-10.1 The Director, Contracts and Procurement/Agency Chief Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Director, Contracts and Procurement/Agency Chief Contracting Officer determines appropriate for the convenience of the District. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Director, Contracts and Procurement/Agency Chief Contracting Officer in the administration of this contract, or by the Director, Contracts and Procurement/Agency Chief Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly.

I-10.2 No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

I-10.3 A claim under this clause shall not be allowed for any costs incurred more than twenty (20) days before the Contractor shall have notified the Director, Contracts and Procurement/Agency Chief Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and unless the claim, in an amount stated, is asserted in writing as soon as

practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

I-11 STOP WORK ORDER

- I-11.1 The Director, Contracts and Procurement/Agency Chief Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree.
- I-11.2 The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall either cancel the stop-work order; or terminate the work covered by the order as provided in the Default or Termination for Convenience clauses in the Standard Contract Provisions (Attachment J-1).
- I-11.3 If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Director, Contracts and Procurement/Agency Chief Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly.
- I-11.4 If the stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and the Contractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the Director, Contracts and Procurement/Agency Chief Contracting Officer decides the facts justify the action, the Director, Contracts and Procurement/Agency Chief Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- I-11.5 If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the District, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- I-11.6 If a stop-work order is not canceled and the work covered by the order is terminated for default, the Director, Contracts and Procurement/Agency Chief Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I.12 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 Director/ACCO 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 Director/ACCO. 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 Director/ACCO 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 Director/ACCO 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 Director/ACCO 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 Contractor. 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. Professional Liability: The Provider shall carry and maintain professional liability insurance coverage of at least \$1 Million Dollars.
5. Malpractice Insurance : The Provider shall have or obtain and maintain throughout the term of this Agreement medical malpractice insurance of not less than one million dollars (\$1,000,000) for individual incidents and three million dollars (\$3,000,000) in annual aggregated to cover all incidents of malpractice alleged to have occurred during the term of the Agreement. The Provider shall purchase a "tail" for the policy when: (a) The Provider cancels or fails to renew the policy, or (b) this Agreement expires, whichever occurs first. Failure to maintain the malpractice insurance at any time during the term of this Agreement

shall constitute default. A copy of all correspondence between the Provider and its malpractice insurer shall be sent to DBH.

- 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 SHALL 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 Director/ACCO with written notice in the event that its insurance coverage has or shall be substantially changed, canceled or not renewed and provide an updated certificate of insurance to the Director/ACCO.
- 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:

Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer
Department of Behavioral Health
64 New York Avenue, NE, Second Floor
Washington, DC 20002
(202) 671-3188 – Office
Email: Samuel.feinberg@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 sub-contractors in the performance of this contract.

I.13.1 WORKERS' COMPENSATION INSURANCE

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of the Contractor. Employer's Liability coverage with limits of liability of not less than \$100,000/accident, \$100,000/disease, and \$500,000/disease policy limit shall be included.

I.14.2 COMMERCIAL GENERAL LIABILITY INSURANCE

A policy issued to and covering liability imposed upon the Contractor with respect to all work to be performed and all obligations assumed by the Contractor under the terms of this Contract. Products-completed operations, independent contractors, and contractual liability coverage's are to be included. If any machinery, equipment, storage containers or anything else that has the potential for releasing contaminants (e.g., fuels, lubricants, etc.) into the environment will be brought onto the job site, the policy shall endorsed to provide coverage's for sudden and accidental pollutions. The District is to be designated as an additional insured with respect to operations to be performed. Coverage under this policy or policies, shall have limits of liability of not less than \$1,000,000 per occurrence, combined single limit for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

I.14.3 All insurance shall be written with responsible companies. Each insurance policy shall be provided for at least thirty (30) days written notice to the District, prior to any termination or material alternation.

I.15 GOVERNING LAW

This Contract is governed by the laws of the District of Columbia, the rules and regulations of the Department of Mental Health and other pertinent laws, rules and regulations relating to the award of public contracts in the District.

I.16 FIRST SOURCE EMPLOYMENT AGREEMENT

The Contractor shall maintain compliance with the terms and conditions of the First Source Employment Agreement executed between the District of Columbia and the Contractor throughout the entire duration of the contract, including option periods if any.

I.17 ANTI-KICKBACK PROCEDURES

Definitions:

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

- I.17.1 “Prime contract,” as used in this clause, means a contract or contractual action entered into by the District for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- I.17.2 “Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the District.
- I.17.3 “Prime Contractor employee,” as used in this clause, means any officer, partner employee, or agent of a prime Contractor.
- I.17.4 “Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- I.17.5 “Subcontractor,” as used in this clause, means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.
- I.17.6 “Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- I-17.7 The Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 (the Act), prohibits any person from:
 - I.17.7.1 Providing or attempting to provide or offering to provide any kickback;
 - I.17.7.2 Soliciting, accepting, or attempting to accept any kickback; or
 - I.17.7.3 Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the District or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- I.17.8 The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph I-17.7 of this clause in its own operations and direct business relationships.
- I.17.9 When the Contractor has reasonable grounds to believe that a violation described in paragraph I-17.7 of this clause may have occurred, the Contractor shall promptly report in writing the possible violation to the Director, Contracts and Procurement/Agency Chief Contracting Officer.
- I.17.9 The Director, Contracts and Procurement/Agency Chief Contracting Officer may offset the amount of the kickback against any monies owed by the District under the prime contract and/or direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Director, Contracts and Procurement/Agency Chief Contracting Officer may order that monies withheld under this clause be paid over to the District unless the District has already

offset those monies under this clause. In either case, the Prime Contractor shall notify the Director, Contracts and Procurement/Agency Chief Contracting Officer when the monies are withheld.

I.18 RIGHTS IN DATA

- I.18.1 “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.18.2 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.18.3 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.18.4 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.18.5 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 the 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 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. The

District shall not unreasonable withhold consent to the Contractor's request to publish or reproduce data in professional and scientific publications.

- I.18.6 The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, not withstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.18.6.1 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.18.6.2 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.18.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and
 - I.18.6.4 Modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.
- I.18.7 The restricted rights set forth in section I-18.6 are of no effect unless:
- I.18.7.1 The data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____
With _____(Contractor's Name); and
 - I.18.7.2 If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. 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.18.8 In addition to the rights granted in Section I-18.9 below, 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-18.9 below, 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 Contracting Officer 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 this paragraph.
- I.18.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use Section I-18.5 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.18.10 For all computer software furnished to the District with the rights specified in Section I-18.3, the Contractor shall furnish to the District a copy of the source code with such rights of the scope specified in Section I-18.7. For all computer software furnished to the District with the restricted rights specified in Section I-18.6, 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 the 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 sources code the reasonable cost of making each copy.
- I.18.11 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 for the following:
- I.18.11.1 Violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or
- I.18.11.2 Based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.18.12 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.18.13 Sections I-18.6, I-18.7, I-18.8, I-18.11 and I-18.12 in this clause 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
- I.19 **DISPUTES:** (Interim PPRA Version, July 2011) (Delete Article 14, Disputes, of the General Provisions, of the Standard Contract Provisions for use with Specifications for District of Columbia Government Supplies and Services Contracts, Revised March 2007 and substitute the following Article 1.19, Disputes)
- 1.19.1 All disputes arising under or relating to this contract shall be resolved as provided herein.

1.19.2 Claims by a Contractor against the District:

Claim, as used in paragraph 1.19.2 of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

1.19.2.1 All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Director/ACCO for a decision. The Contractor's claim shall contain at least the following:

1.19.2.1.1 A description of the claim and the amount in dispute;

1.19.2.1.2 Data or other information in support of the claim;

1.19.2.1.3 A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

1.19.2.1.4 The Contractor's request for relief or other action by the Director/ACCO.

1.19.2.2 The Director/ACCO may meet with the Contractor in a further attempt to resolve the claim by agreement.

1.19.2.3 The Director/ACCO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the Director/ACCO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

1.19.2.4 The Director/ACCO's written decision shall do the following:

1.19.2.4.1 Provide a description of the claim or dispute;

1.19.2.4.2 Refer to the pertinent contract terms;

1.19.2.4.3 State the factual areas of agreement and disagreement.

1.19.2.4.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

1.19.2.4.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

1.19.2.4.6 Indicate that the written document is the Director/ACCO's final decision; and

1.19.2.4.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

- 1.19.2.5 Failure by the Director/ACCO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
 - 1.19.2.5.1 If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
 - 1.19.2.5.2 Liability under Paragraph 1.19.2.5.1 shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- 1.19.2.6 Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Director/ACCO.

1.19.3 Claims by the District against a Contractor:

- 1.19.3.1 Claim as used in paragraph 1.19.3 of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- 1.19.3.2 The Director/ACCO shall decide all claims by the District against a contractor arising under or relating to a contract.
 - 1.19.3.2.1 The Director/ACCO shall send written notice of the claim to the Contractor. The Director/ACCO's written decision shall do the following:
 - 1.19.3.2.1.1 Provide a description of the claim or dispute;
 - 1.19.3.2.1.2 Refer to the pertinent contract terms;
 - 1.19.3.2.1.3 State the factual areas of agreement and disagreement;
 - 1.19.3.2.1.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - 1.19.3.2.1.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the

contract adjustment to be made, or other relief to be granted;

1.19.3.2.1.6 Indicate that the written document is the Director/ACCO's final decision; and

1.19.3.2.1.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

1.19.3.3 The Director/ACCO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

1.19.3.4 Before or after issuing the decision, the Director/ACCO may meet with the Contractor to attempt to resolve the claim by agreement

1.19.3.5 The authority contained in this clause 1.19.3 shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

1.19.3.6 This clause shall not authorize the Director/ACCO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

1.19.4 Decisions of the Director/ACCO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

1.19.5 Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Director/ACCO.

I.20 ORDER OF PRECEDENCE

A conflict in language or any inconsistencies in this Contract shall be resolved by giving precedence to the document in the highest order of priority which contains language addressing the issue in question. The following sets forth in descending order of precedence documents that are hereby incorporated into this contract by reference and made a part of the Contract:

I.20.1 Wage Determination No. 2005-2103, Revision 16, dated July 8, 2015 (Attachment J.7)

I.20.2 Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts dated March 2007. (Attachment J.1)

I.20.3 Sections A through M of this Contract Number RM-16-RFP-200-SRR-XXX-BY4-SC, Signed Amendments by Vendor and Waiver of Subcontracting Requirements

I.20.4 Best and Final Offer (RFP)

I.20.5 Request for Proposal Submission

I.20.6 Request for Proposal Solicitation, as amended

I.20.7 DBH Policies and Rule

I.21 NO PROSELYTIZING WITH DISTRICT FUNDS

Vendor is prohibited from proselytizing with District funds. Further, vendor may not coerce participants or subject participants to any consequences for not participating in any religious/ faith based programs who come to the religious/faith based programs through this Contract.”

This Contract, including incorporated documents, constitutes the entire agreement between the parties. All previous discussions, writings and agreements are merged herein and shall not provide a basis for modifying or changing this written contact.

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

**PART I: THE SCHEDULE
SECTION J
WEB ADDRESSES FOR COMPLIANCE DOCUMENTS**

- J-1 Standard Contract Provisions for Use with District of Columbia Government Supplies and Services Contracts dated March 2007 (SCP). (Double click on link”) (27 PAGES)
http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%202_9%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf
- J-2 Tax Certification Affidavit (Double click on link) (1 PAGE)
http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%202_9%20Solicitation%20Attachments_tax_certification_affidavit.pdf
- J-3 Equal Employment Opportunity (EEO) Policy Statement (6 PAGES) (Double click on link)
http://ocp.in.dc.gov/ocp/lib/ocp/policies_and_form/eo_compliance.pdf
- J-4 First Source Employment Agreement (10 PAGES) Double click on line
http://ocp.dc.gov/sites/default/files/dc/sites/ocp/page_content/attachments/FIRST_SOURCE_EMPLOYMENT_AGREEMENT_-_Non-Construction_-_Rev._2013.pdf
First Source Employment Plan (3 PAGES) - Double click on link)
<http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/FIRST%20SOURCE%20EMPLOYMENT%20PLAN%20-%20%28%24300K%20-%20%245%20M%29%20Rev.%202013.pdf>
- J-5 Bidder/Offeror Certification Form (5 PAGES) <http://ocp.dc.gov/node/740742>
- J-6 Mandatory Subcontracting Plan Information <http://ocp.dc.gov/node/541462>
- J-7 Wage Determination No. 2005-2103 (Revision 16) July 8, 2015 (10 PAGES)
<http://www.wdol.gov/wdol/scafiles/std/05-2103.txt?v=12> (Double click on link)
- J-8 Living Wage Act Fact Sheet (The Way to Work Amendment Act of 2006) and Living Wage Notice of 2015 (2 PAGES) (Double click on link) <http://ocp.dc.gov/publication/2015-living-wage-fact-sheet-and-living-wage-notice>
- J.9 Department of Behavioral Health Policies and Rules <http://dmh.dc.gov/node/240592>
(Double click on link)
- J.10 Level of Care Utilization System (LOCUS/CALOCUS) Evaluations (55 PAGES)
<http://dmh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/TL161.pdf>
(Double click on link)
- J.11 Reporting Major Unusual Incidents (MUIs) and Unusual Incident (UIs) (18 PAGES)
<http://dmh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/TL165.pdf>
(Double click on link)
- J.12 MHRS Provider Authorization and Billing Manual (93 PAGES)
<http://dmh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/1000.2A%20TL-192.pdf>
(Double click on link)

The Contractor shall perform all services in accordance with the Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts, dated March 2007 and incorporated herein by reference.

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

SECTION K

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

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SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 AUTHORIZED NEGOTIATORS

The Offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with the request for proposals. (list names, titles, and telephone numbers of the authorized negotiators).

K.2 TYPE OF BUSINESS ORGANIZATION

K.2.1 The Offeror, by checking the applicable box, represents that

(a) It operates as:

a corporation incorporated under the laws of the State of _____

an individual,

a partnership

a nonprofit organization, or

a joint venture; or

(b) If the Offeror is a foreign entity, it operates as:

an individual

a joint venture, or

a corporation registered for business in _____

(Country)

K.3 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

Mayor's Order 85-85, "Compliance with Equal Opportunity Obligations in Contracts", dated June 10, 1985 and the Office of Human Rights' regulations, Chapter 11, "Equal Employment Opportunity Requirements in Contracts", promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for Contracts subject to the order. Failure to complete the certification may result in rejection of the Offeror for a Contract subject to the order.

I hereby certify that I am fully aware of the content of the Mayor’s Order 85-85 and the Office of Human Rights’ regulations, Chapter 11, and agree to comply with them in performance of this Contract.

Offeror _____ Date _____

Name _____ Title _____

Signature _____

Offeror ____ has ____ has not participated in a previous Contract or subcontract subject to the Mayor’s Order 85-85. Offeror ____ has ____ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed subcontractor. (The above representations need not be submitted in connection with Contracts or subcontracts, which are exempt from the Mayor’s Order.)

K.4 BUY AMERICAN CERTIFICATION

The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in Clause 23 of the Standard Contract Provisions, “Buy American Act”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

_____ EXCLUDED END PRODUCTS

_____ COUNTRY OF ORIGIN

K.5 DISTRICT EMPLOYEES NOT TO BENEFIT - REFERENCES SCP CLAUSE13/DISTRICT EMPLOYEES NOT TO BENEFIT/PAGE 7

http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%209%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf (Double click on link)

Each Offeror shall check one of the following:

_____ No person listed in Clause 13 of the Standard Contract Provisions shall benefit from this Contract.

_____ The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the Standard Contract Provisions.

K.6 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- (a) Each signature of the Offeror is considered to be a certification by the signatory that:
- (1) The prices in the Offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Contractor or competitor relating to:
 - (i) those prices
 - (ii) the intention to submit an Offer, or
 - (iii) the methods or factors used to calculate the prices in the Offer;
 - (2) The prices in the Offer have not been and shall not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before award unless otherwise required by law; and
 - (3) No attempt has been made or shall be made by the Offeror to induce any other concern to submit or not to submit an Offer for the purpose of restricting competition.
- (b) Each signature on the Offer is considered to be a certification by the signatory that the signatory:
- (1) Is the person in the Offeror's organization responsible for determining the prices being offered in this Offer, and that the signatory has not participated and shall not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - (2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and shall not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:
-
- (Please insert full name and title of the person(s) in the organization responsible for determining the prices offered in this Offer)**
- (i) As an authorized agent, does certify that the principals named in subdivision (b)(2) above have not participated, and shall not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
 - (ii) As an agent, has not participated, and shall not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the Offeror deletes or modifies subparagraph (a)(2) above, the Offeror shall furnish with its Offer a signed statement setting forth in detail the circumstances of the disclosure.

K.7 ACKNOWLEDGMENT OF AMENDMENTS

The Offeror acknowledges receipt of the following Amendments to the solicitation and related documents numbered and dated as follows:

| Amendment No. | Date | Name of Authorized Representative | Title of Authorized Representative | Signature of Authorized Representative |
|----------------------|-------------|--|---|---|
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*****END OF SECTION K*****

SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

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SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

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SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

The District intends to potentially award more than one contract resulting from this solicitation to the responsive and responsible Offeror whose Offer conforming to the solicitation shall be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.2 Initial Offers

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

L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT

L.2.1 One original and four (4) copies of the written Proposals shall be submitted and titled “**Technical Proposal.**” **One copy of compliance documents only is permitted.** Proposals shall be typewritten in 12 point Times New Roman font on 8.5” by 11” bond paper. **Telephonic, and facsimile proposals shall not be accepted.** Each proposal shall be submitted in a sealed envelope conspicuously marked “**Proposal in Response to Solicitation No. RM-16-RFP-200-SRR-XXX-BY4-SC (title and name of Offeror)**”).

L.2.2 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. Offerors shall respond to each factor in a way that shall allow the District to evaluate the Offeror’s response. Offerors shall submit information in a clear, concise, factual and logical manner, providing a comprehensive description of program supplies and services delivery thereof. The information requested below for the technical proposal shall facilitate evaluation and best value source selection for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise representation of the requirements in Section C.

L.2.3 Technical Proposal

L.2.3.1 The Technical Proposal shall be no more than 20 single-spaced pages, one side only. The District shall not consider any pages in excess of 20 pages to be a part of the Technical Proposal and shall not review or evaluate such pages. Offeror shall address all of the requirements depicted in Section C – Scope of Work/ Deliverables.

L.2.3.2 Offeror shall also complete the following documents and submit them along with its Technical Proposal:

- L.2.3.2.1** Solicitation, Offer and Award form (See Section L.9, below);
- L.2.3.2.2** Attachment J.2 of this solicitation, Tax Certification Affidavit
- L.2.3.2.3** Attachment J.3 of this solicitation, Equal Employment Opportunity Form
- L.2.3.2.4** Attachment J.4 of this solicitation, First Source Agreement
- L.2.3.2.5** Attachment J.5 of this solicitation, Bidder/Offeror Certification Form
- L.2.3.2.6** Attachment J.6 of this solicitation, Subcontracting Plan Form
- L.2.3.2.7** Section K of this solicitation, Representations, Certifications and Other Statements of Offeror

- L.2.3.2.8** The names, address, phone numbers and e-mail addresses of at least, but no more than three (3) points of contact for which Offeror has provided the same or similar services in the last three (3) years. The District shall contact these agencies as part of conducting its Past Performance Evaluation (See Section M.3.7, below.)

- L.2.3.2.9** Any document required by Section C and Section L.19 of this solicitation.

L.2.4 **Price Proposal (NOT APPLICABLE FOR THIS RFP DUE TO PUBLISHED RATE)**

- L.2.4.1** Offerors shall complete Section B, Pricing Schedule to include a detail supporting Budget Narrative to explain Pricing.

L.3 **PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS**

L.3.1 **Proposal Submission**

Proposal must be submitted no later than **Friday, October 9, 2015 @ 12:00 Noon (EST)** to the following address AND CLEARLY MARKED THAT IT IS A REQUEST FOR PROPOSAL SUBMISSION WITH THE SOLICITATION NUMBER: **RM-16-RFP-200-SRR-XXX-BY4-SC in compliance with Section L.2:**

Government of the District of Columbia
Department of Behavioral Health
Contracting and Procurement Services
64 New York Avenue, NE, 2nd Floor
Washington, DC 20002
Attn: Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer

Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are “late” and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

(b) The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or

(c) The proposal is the only proposal received.

L.3.2 Withdrawal or Modification of Proposals

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

L.3.3 Postmarks

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

L.3.4 Late Modifications

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

L.3.5 Late Proposals

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

L.4 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective Offeror has any questions relative to this solicitation, the prospective Offeror shall submit the question in writing to the **Contact Person identified in Section A, Page One, Item #10 of this solicitation**. The prospective Offeror shall submit questions no later than **five (5) calendar days** prior to the closing date and time indicated for this solicitation. The District shall not consider any questions received fewer than **five (5) calendar days** before the date set or submission of the proposals. The District shall furnish responses promptly to all prospective Offerors. The District shall issue an Amendment to the solicitation if that information is necessary in submitting Offers, or if the lack of it would be prejudicial to any other prospective Offeror. Oral explanations or instructions given before the award of the contract shall not be binding.

L.5 FAILURE TO SUBMIT OFFERS

Recipients of this solicitation not responding with an Offer should not return this solicitation. Instead, they should advise the Director/ACCO, Department of Behavioral Health, 64 New York Avenue, N.E., 2nd Floor, Washington, DC 20002, Telephone (202) 671-3171/3185 by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Director/ACCO of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the Director, ACCO that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

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

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

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

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

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

L.7 PROPOSALS WITH OPTIONS YEARS

The Offeror shall include option year prices in its Price proposal. An Offer may be determined to be unacceptable if it fails to include option year pricing.

L.8 PROPOSAL PROTESTS

Any actual or prospective Offeror or Contractor, who is aggrieved in connection with the solicitation or award of a Contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 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 the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals. In procurements in which

proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 – 4th Street, N.W., Suite 350 North, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the Contracting officer for the solicitation.

L.9 SIGNING OF OFFERS

The Offeror shall sign the Offer in **Blue Ink** and print or type the name of the Offeror and the name and title of the person authorized to sign the Offer in blocks 14, 14A, 15 and 15A of Section A, Solicitation, Offer and Award form, page one of this solicitation. The Offeror's solicitation submission must be **signed in Blue Ink** by an authorized negotiator as identified in Section K.1 of your submission. DBH shall not under any circumstances accept a submission signed by someone other than an authorized negotiator, nor submitted with either an electronic signature, a signature stamp, a color copy of a signature, or anything other than an original signature in **Blue Ink** by an authorized negotiator. Furthermore, wherever any other part of the solicitation requires you to submit a document with a signature (*e.g.* Section L-Certification as to Compliance with Equal Employment Opportunity, Tax Certification Affidavit, First Source Employment Agreement), only an original signature by an authorized negotiator, in **Blue Ink** shall be accepted by DBH. Erasures or other changes must be initialed by the person signing the Offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Director/ACCO.

L.10 UNNECESSARILY ELABORATE PROPOSALS

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

L.11 RETENTION OF PROPOSALS

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

L.12 PROPOSAL COSTS

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

L.13 **ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other proposal submission requirements, the Contractor must submit within ten (10) days of request an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code section 2-534, in order for the District to comply with Section 2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the Contract, subject to applicable FOIA exemption under Section 2-534(a)(1).

L.14 **CERTIFICATES OF INSURANCE**

The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in Section I.12 prior to commencing work. Evidence of insurance shall be submitted within ten (10) days of request by the District to:

Samuel J. Feinberg, CPPO, CPPB
Director, Contracts and Procurement
Agency Chief Contracting Officer
64 New York Avenue, NE, 2nd Floor
Washington, DC 20002
(202) 671-3188 – Office
(202) 671-3395 – Fax
Samuel.feinberg@dc.gov

L.15 **ACKNOWLEDGMENT OF AMENDMENTS**

Offerors shall acknowledge receipt of any amendment to this solicitation by (a) signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section K of the solicitation; or (c) by letter or telegram including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of Offers. An Offeror's failure to acknowledge an amendment may result in rejection of the Offer.

L.16 **BEST AND FINAL OFFERS**

If, subsequent to receiving original proposals, negotiations are conducted, all Offerors within the competitive range shall be so notified and shall be provided an opportunity to submit written Best and Final Offers (BAFOs) at the designated date and time. Best and Final Offers shall be subject to Late Submissions, Late Modifications and Late Withdrawals of Proposals provision of the solicitation. After receipt of best and final offers, no discussions shall be reopened unless the

Contracting Officer determines that it is clearly in the Government's best interest to do so, *e.g.*, it is clear that information available at that time is inadequate to reasonably justify selection and award based on the best and final offers received. If discussions are reopened, the Contracting Officer shall issue an additional

request for BAFOs to all Offerors still within the competitive range.

L.17 **KEY PERSONNEL**

The Offeror shall identify proposed key personnel for each discipline required and outline their relevant experience, indicating the percentage of their total time to be dedicated to this project. In addition, identify the Project Manager who shall lead the day-to-day activities of the project and outline his/her relevant experience. **Provide a brief narrative of key personnel's relevant experience along with a copy of their resume.**

L.18 **ACCEPTANCE PERIOD**

The Offeror agrees that its Offer remains valid for a period of 120 days from the solicitation's closing date.

L.19 **LEGAL STATUS OF CONTRACTOR**

L.19.1 Offeror must provide as part of its proposal its Name, Address, Telephone Number, Federal tax identification number and DUNS Number.

L.19.2 Offeror must provide a copy with its proposal a copy of each District of Columbia license, registration or certification that the Offeror is required by law to obtain. This mandate also requires the Offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code section 47-2862 (2001), if the Offeror is required by law to make such certification. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to Contract award or its exemption from such requirements; and

L.19.3 If the Offeror is a partnership or joint venture, Offeror must provide the names of general partners or joint ventures, and copies of any joint venture or teaming agreements.

L.20 **FAMILIARIZATION WITH CONDITIONS**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties that may be encountered, and the conditions under which work is to be accomplished. Offerors shall 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.21 **STANDARDS OF RESPONSIBILITY**

The Offeror shall demonstrate to the satisfaction of the District the capability in all respects to perform fully the Contract requirements, therefore, the Offeror shall

submit the documentation listed below, within five (5) days of the request by the District:

- L.21.1** Furnish evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the Contract.
- L.21.2** Furnish evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.21.3** Furnish evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.
- L.21.4** Furnish evidence of compliance with the applicable District licensing, tax laws and regulations.
- L.21.5** Furnish evidence of a satisfactory performance record, record of integrity and business ethics.
- L.21.6** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.
- L.21.7** If the Offeror fails to supply the information requested, the Director/ACCO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the Offeror to be non-responsible.

L.22 **OPTIONAL PRE-PROPOSAL CONFERENCE**

- L.22.1** The District shall conduct an Optional Pre-Proposal Conference on **Monday, October 5, 2015 @11:00am in Conference Room 320** at the Department of Behavioral Health, 64 New York Avenue, NE, 2nd Floor, Washington, D.C. 20002. Prospective Offerors shall be given an opportunity to ask questions regarding this solicitation at the conference. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attendees must complete the Pre-Proposal Conference Attendance Roster at the conference so that their attendance can be properly recorded. This conference is to be held no more than 7 days after the release of the solicitation.
- L.22.2** Impromptu questions shall be permitted and spontaneous answers shall be provided at the District's discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the District's formal position. All questions must be submitted in writing to the Director/ACCO following the close of the Pre-Proposal conference in order to generate a formal answer, but in any event no fewer than five (5) days prior to the date set for receipt of proposals. Answers shall be provided in writing to all prospective Offerors who are listed on the official Offerors' list as having

received a copy of the solicitation, and shall be issued as an Amendment to the solicitation.

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

SECTION M

EVALUATION FACTORS FOR AWARD

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SECTION M: EVALUATION FACTORS FOR AWARD

M.1 EVALUATION FOR AWARD

The Contract(s) shall be awarded to the responsible Offeror(s) whose Offer(s) conforming to the solicitation shall be most advantageous to the District, based upon the Evaluation Criteria specified below. While the points in the Evaluation Criteria indicate their relative importance, the total scores shall not necessarily be determinative of the award. Rather the total scores shall guide the District in making an intelligent award decision based upon the Evaluation Criteria.

M.2 TECHNICAL RATING

The Technical Rating Scale is as follows:

| Numeric Rating | Adjective | Description |
|-----------------------|------------------|--|
| 1 | Unacceptable | Fails to meet minimum requirements; major deficiencies which are not correctable |
| 2 | Poor | Marginally meets minimum requirements; major deficiencies which may be correctable |
| 3 | Acceptable | Meets requirements; only minor deficiencies which are correctable |
| 4 | Good | Meets requirements; no deficiencies |
| 5 | Excellent | Exceeds most, if not all requirements; no deficiencies |

For example, if a subfactor has a point evaluation of 0 to 6 points, and (using the Technical Rating Scale) the District evaluates as “Good” the part of the proposal applicable to the subfactor, the score for the subfactor is 4.8 (4/5 of 6). The subfactor scores shall be added together to determine the score for the factor level.

M.3 TECHNICAL EVALUATION CRITERIA

M.3.1 The Technical Evaluation Criteria set forth below have been developed by agency technical personnel and has been tailored to the requirements of this particular solicitation. The criteria serve as the standard against which all proposals shall be evaluated and serve to identify the significant matters which the Offeror should specifically address in complying with the requirements of this solicitation.

M.3.2 Offeror’s Technical Proposal and Price Proposal shall be evaluated separately.

M.3.3 TECHNICAL UNDERSTANDING OF REQUIREMENT AND TECHNICAL APPROACH (60 POINTS)

- a. Describe in writing a clear understanding of the range of services required in Chapter 38, Title 22 of the DC Municipal Regulations.

- b. Describe in writing an understanding of the DBH residential service delivery system (Residential, Transitional and Crisis services, Supported Independent Living) including all relevant regulations, rules and DBH policies.
- c. Describe in writing an understanding of the importance of providing clinical support and assisting individuals in achieving recovery focused goals.
- d. Describe in writing how proposed services shall improve the DBH residential service delivery system through the provision of recovery focused culturally and linguistically competent care.
- e. Describe in writing an understanding of the importance of coordinating care and documenting consumer progress to the referring CSA.
- f. Describe in writing how your staff have been trained and their ability to provide mental health and behavioral supports to residents.
- g. Describe in writing a clear understanding of the requirement to provide a Transition Plan and provide and include a sample Transition Planning document.
- h. Describe in writing a thorough understanding of the value and potential role of Peer Specialist in implementing CTI model.

M.3.4 MANAGEMENT PLAN

(10 POINTS)

- a. Describe in writing thorough understanding of how the residential services program shall be organized, staffed and managed in accordance with the requirements in Section C.
- b. Describe in writing how the residential services program shall be provided to include but not limited to:
 - 1) Coordination of day-to-day provisions of program services
 - 2) Accommodation of consumers with special needs (language, sight, mobility)
 - 3) Location of facilities
 - 4) Provision of intermittent nursing care or physical therapy
 - 5) Provision of services that are culturally and linguistically competent
 - 6) Access to facility by residence 7 (seven) days per week/twenty-four (24) hours per day
- c. Describe in writing how Offeror shall work in collaboration with the DBH CRF review process to record admissions, transfers, discharges and deaths.
- d. Describe in writing how the Offeror shall ensure that the residential services program staff are in place and possess the ability to provide staffing ratios of 1:8 and 2:8 during periods of peak activity (meals, residents in the facility and awake), a minimum of 16 hours awake supervision and 24 hour supervision as needed.

- e. Describe in writing your commitment to annual training to address issues of staff competency within the relevant areas of mental health as well as cultural/linguistic competency. The draft training plan shall be included in the Offeror's submission.
- f. Describe your plan in writing to ensure that residential services billing does not duplicate MHRs and other billing for the same Consumer.
- g. Describe in writing how to ensure billing shall occur in a timely manner.
- h. Describe in writing your ability to meet DBH's monthly reporting requirements, as well as provide information to DBH staff within the requested timeframe including providing information no later than the close of the next business day if required to meet court deadlines or other legal requirements.
- i. Describe in writing your ability to comply with the performance improvement and monitoring quality indicators for residential service programs.

M.3.5. PERSONNEL

(10 POINTS)

- a. Describe in writing how staff shall be organized and managed to conduct required activities.
- b. Describe briefly how staff possesses the organizational resources, capability and experience to deliver the services described within the Scope of Work.
- c. Provide in writing job/role descriptions along with the staff educational and experiential background related to the key tasks required to complete the plan.

M.3.6 QUALITY IMPROVEMENT PLAN

(10 POINTS)

- a. Offeror demonstrates how a variety of sources, including but not limited to, Consumer satisfaction surveys, community service review results, performance improvement and quality indicators, and routine oversight and monitoring activities will be used to assess Consumer satisfaction and overall program effectiveness.

M.3.7 PAST PERFORMANCE CRITERIA

(10 POINTS)

The District shall evaluate Offeror's Past Performance in performing on contracts, grants or subcontracts for mental health services or similar services. Provide the names, addresses, numbers and email information for three (3) points of contact for which Offeror has provided the same or similar service in the last three (3) years. In addition, include a brief description of the type of work provided by the points of contact that also includes dates of service and whether service was satisfactory.

M.4 PRICE CRITERIA ((NOT APPLICABLE FOR THIS RFP DUE TOPUBLISH RATE

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

$$\frac{\text{Lowest cost/price proposal} \times 10}{\text{Cost/Price of proposal being evaluated}} = \text{evaluated cost/price score}$$

M.5 PREFERENCE 12 Points

M.6 TOTAL 112 Points

M.7 CLAUSES APPLICABLE TO ALL OPEN MARKET SOLICITATIONS

M.7.1 Preference for Subcontracting to Open Market solicitations with No LBE, DEB, RBO Subcontracting Set Aside

A. Preference for Local Businesses, Disadvantaged Businesses, Resident Business Ownerships or Businesses Operation in an Enterprise Zone.

1. General Preferences

Under the provisions of D.C. Law 13-169, "Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Amendment Act of 2000" (the "Act", as used in this section), the District shall apply preferences in evaluating offers from businesses that are local, disadvantaged, resident business ownership or located in an enterprise zone of the District of Columbia.

For evaluation purposes, the allowable preferences under the Act for this procurement are as follows:

1. Four percent reduction in the bid price or the addition of four points on a 100-point scale for a local business enterprise (LBE) certified by the Local Business Opportunity Commission (LBOC);
2. Three percent reduction in the bid price or the addition of three points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the LBOC;
3. Three percent reduction in the bid price or the addition of three points on a 100-point scale for a resident business ownership (RBO), as defined in Section 2 (a)(8A) of the Act, and certified by the LBOC; and
4. Two percent reduction in the bid price or the addition of two points on a 100-point scale for a business located in an enterprise zone, as defined in Section 2(5) of D.C. Law 12-268 and in 27 DCMR 899, 39 DCR 9087-9088 (December 4, 1992).

Any prime Contractor that is a LBE certified by the LBOC shall receive a four percent (4%) reduction in bid price for a bid submitted by the LBE in response to an Invitation for Bids (IFB) or the addition of four points on a 100-point scale added to the overall score for bids submitted by the LBE in response to a Request for Proposals (RFP).

Any prime Contractor that is a DBE certified by the LBOC shall receive a three percent (3%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to a RFP.

Any prime Contractor that is a RBO certified by the LBOC shall receive a three percent (3%) reduction in the bid price for a bid submitted by the RBO in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the RBO in response to a RFP.

Any prime Contractor that is a business enterprise located in an enterprise zone shall receive a two percent (2%) reduction in bid price for a bid submitted by such business enterprise in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by such business in response to a RFP.

B. Preferences for Subcontracting in Open Market Solicitations with No LBE, DBE, RBO Subcontracting Set Aside

The preferences for subcontracting in open market solicitations where there is no LBE, DBE or RBO subcontracting set aside are as follows:

1. If the prime Contractor is not a certified LBE, certified DBE, certified RBO or a business located in the enterprise in an enterprise zone, the District shall award the above-stated preferences by reducing the bid price or by increasing the points proportionally based on the total dollar value of the bid or proposal that is designated by the prime Contractor for subcontracting with a certified LBE, DBE, RBO or business located in an enterprise zone.
2. If the prime Contractor is a joint venture that is not a certified LBE, certified DBE or certified RBO joint venture, or if the prime Contractor is a joint venture that includes a business in an enterprise zone but such business located in an enterprise zone does not own and control at least fifty-one percent (51%) of the joint venture, the District shall award the above-stated preferences by reducing the bid price or by increasing the points proportionally in the proposal based on the total dollar value of the bid or proposal that is designated by the prime Contractor for a certified LBE, DBE, RBO or business located in an enterprise zone, for participation in the joint venture.

For Example:

If a non-certified prime Contractor subcontracts with a certified local business enterprise for a percentage of the work to be performed on an RFP, the calculation of the percentage points to be added during evaluation would be according to the following formula:

$$\frac{\text{Amount of Subcontract}}{\text{Amount of Contract}} \times 4^* = \text{Points Awarded for Evaluating LSDBE Subcontracting}$$

*Note: Equivalent of four (4) points on a 100 point scale

The maximum total preference under the act of this procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to a RFP. Any prime Contractor receiving the full bid price reduction or point addition to its overall score for a particular preference shall not receive any additional bid price reduction or points for further participation on a subcontracting level for that particular preference.

However, the prime Contractor shall receive a further proportional bid price reduction or point addition on a different preference for participation on a subcontracting level for that different preference. For example, if a LBE prime Contractor receives the four percent bid price reduction or the equivalent of four points on a 100-point scale, the LBE prime Contractor does not receive a further price reduction or additional points if such Contractor proposes subcontracting with an LBE. However, if this same LBE prime Contractor proposes subcontracting with a DBE, the LBE prime Contractor receives a further proportional bid price reduction or point addition for the DBE participation on the subcontracting level.

C. Preferences for Open Market Solicitation with LBE, DBE or RBO Subcontracting Set Aside

If the solicitation is an open market solicitation with LBE, DBE or RBO subcontracting set-aside, the prime Contractor shall receive the LBE, DBE, or RBO preferences only if it is a certified LBE, DBE or RBO. There shall be no preference awarded for subcontracting by the prime Contractor with a LBE, DBE or RBO, even if the prime Contractor proposes LBE, DBE, or RBO subcontracting above the subcontracting levels required by the solicitation. However, the prime Contractor shall be entitled to the full preference for business located in an enterprise zone if it is a business located in an enterprise zone or a proportional preference if the prime Contractor subcontracts with a business located in an enterprise zone.

The maximum total preference under the Act for this procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a 100 point scale for proposals submitted in response to a RFP.

D. Preferences for Certified Joint Ventures Including Local or Disadvantaged Businesses or Resident Business Ownerships

When an LBOC-certified joint venture includes a local business enterprise (LBE), disadvantaged business enterprise (DBE) or a resident business ownership (RBO), and the LBE, DBE or RBO owns and controls at least fifty-one percent (51%) of the venture, the joint venture shall receive the preference as if it were a certified LBE, DBE or RBO.

E. Preference for joint Ventures Including Businesses located in an Enterprise Zone

When a joint venture includes a business located in an enterprise zone, and such business located in an enterprise zone owns and controls at least fifty-one percent (51%) of the venture, the joint venture shall receive the preferences as if it were a business located in an enterprise zone.

1. Vendor Submission for Preferences

Any vendor seeking to receive preferences on this Contract must submit at the time of, and as part of its bid or proposal the following documentation, as applicable to the preference being sought:

- (a) Evidence of the vendor's, sub Contractor's, or joint venture partner's certification or self-certification as a LBE, DBE, or RBO, to include either:
 - (1) A copy of all relevant letters of certification from the Local Business Opportunity Commission (LBOC); or
 - (2) A copy of the sworn notarized Self-Certification Form prescribed by the LBOC, along with an acknowledgement letter issued by the Director of the LBOC. Businesses with principal offices located outside of the District of Columbia must first be certified as LBEs before qualifying for self-certification.

2. Evidence that the vendor or any sub Contractor is located in an enterprise zone.

In order for an Contractor to receive allowable preferences under this Contract, the Contractor must include the relevant information as described in subparagraphs (a) and (b) of this clause, as part of its proposal.

Refer to J.2.1 for the Self-Certification Package. In order to receive any preferences under this Contract, any vendor seeking self-certification must complete and submit the forms to:

Office of Local Business Development
ATTN: LSDBE Certification Program
441 Fourth Street, N.W., Suite 970N
Washington, DC 20001

All vendors are encouraged to contact the Local, Small and Disadvantaged Business Enterprises Certification Program at (202) 727-3900 if additional information is required on certification procedures and requirements.

Penalties for Misrepresentation

Any material misrepresentation on the sworn notarized self-certification form could result in termination of the contract, the Contractor's liability for civil and criminal action in accordance with the Act, D.C. Law 12-268, and other District laws, including debarment.

Local, Small, and Disadvantaged Business Enterprise Subcontracting

When a prime Contractor is certified by the Office of Local Business Development as a local, small or disadvantaged business or a resident business ownership, the prime Contractor shall perform at least fifty percent (50%) of the contracting effort, excluding the cost of materials, good, and supplies with its own organization resources, and if it subcontracts, fifty percent (50%) of the subcontracting effort, excluding the cost of materials, goods, and supplies shall be with certified local, small or disadvantaged business enterprises and resident business ownerships, unless a waiver is granted by the Contracting Officer, with prior approval and consent of the Director of the LBOC under the provisions of 27 DCMR 805, 39 DCR 5578-5580 (July 24, 1992).

By submitting a signed bid or proposal, the prime Contractor certifies that it shall comply with the requirements of paragraph (a) of this clause.

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