



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF BEHAVIORAL HEALTH  
CONTRACTS AND PROCUREMENT SERVICES**

**REQUEST FOR QUOTES**

**RM-14-RFQ-162-BY2-JCC – Youth Mental Health First Aid Instructors**

The District of Columbia Government, Department of Behavioral Health is seeking a Contractor to provide **Youth Mental Health First Aid Instructors** per the attached Scope of Work.

The vendor will provide services as outlined in the attached Request for Quotation document.

Opening Date: Monday, March 24, 2014

Closing Date: Friday, March 28, 2014

Closing Time: 2:00 PM Local Time

Please return completed quote to Mrs. Janet C. Concepcion via hand delivery, U.S. Postal Service (Mail) to:

64 New York Avenue, NE, Second Floor  
Washington, DC 20002

or via e-mail at [janet.concepcion@dc.gov](mailto:janet.concepcion@dc.gov).

Any and all questions pertaining to this RFQ shall be submitted in writing no later than three (3) days prior to the closing of this solicitation to:

Ms. Samuel J. Feinberg, CPPO, CPPB  
Director, Contracts and Procurement Services  
Agency Chief Contracting Officer  
Department of Behavioral Health  
64 New York Avenue, NE, Second Floor  
Washington, DC 20002  
[Samuel.Feinberg@dc.gov](mailto:Samuel.Feinberg@dc.gov)

And copy:

[Janet.Concepcion@dc.gov](mailto:Janet.Concepcion@dc.gov)



**SECTION B****SUPPLIES OR SERVICES AND PRICE  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
B.1	PURPOSE OF SOLICITATION	3
B.2	CONTRACT TYPE	3
B.3	PERIOD OF PERFORMANCE	3
B.4	ORDERING PROCEDURE	3
B.5	PRICE SCHEDULE	4

**SECTION B**  
**CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST**

**B.1 PURPOSE OF SOLICITATION**

The Department of Behavioral Health (DBH) is seeking Certified Instructors to provide multiple Youth Mental Health First Aid (YMHFA) Trainings to various groups throughout the community including parents, caregivers and non-mental health service providers who work with the youth in the District.

**B.2 CONTRACT TYPE**

The District intends to award multiple Indefinite Delivery - Indefinite Quantity (IDIQ) Contracts resulting from this Solicitation with payments based on Fixed Unit Price specified in Section B.5. Performance under this Contract shall be in accordance with the terms and conditions set forth herein and by any modification made thereto.

**B.3 PERIOD OF PERFORMANCE**

The Period of Performance (POP) for this Contract shall be One Year from Date of Award with Two (2) One Year Option Periods. The Total Duration of this Contract, including the exercise of any options under this clause, shall not exceed three (3) years.

**B.4 ORDERING PROCEDURES**

Delivery or performance shall be made only as authorized by orders issued in accordance with ordering instructions from the District. The Contractor shall furnish to the District, when and if ordered, the supplies or services specified in the Section C as agreed upon in the Contract.

**B.5 PRICE SCHEDULE**

The Vendor shall provide the estimated number of training sessions they can provide in a year (not to exceed 30) and the unit price per training session.

**B.5.1 BASE YEAR**

CLIN	SUPPLIES/SERVICES	ESTIMATED QUANTITY*	UNIT**	UNIT PRICE	EXTENDED PRICE
0001	Training Services		Each		
TOTAL FOR BASE YEAR					

\*Estimated Quantity shall not exceed 30 training sessions.  
 \*\*Each = One 8-hour training session

**B.5.2 OPTION YEAR 1**

CLIN	SUPPLIES/SERVICES	ESTIMATED QUANTITY*	UNIT**	UNIT PRICE	EXTENDED PRICE
1001	Training Services		Each		
TOTAL FOR OPTION YEAR ONE					

\*Estimated Quantity shall not exceed 30 training sessions.  
 \*\*Each = One 8-hour training session

**B.5.3 OPTION YEAR 2**

CLIN	SUPPLIES/SERVICES	ESTIMATED QUANTITY*	UNIT**	UNIT PRICE	EXTENDED PRICE
2001	Training Services		Each		
TOTAL FOR OPTION YEAR TWO					

\*Estimated Quantity shall not exceed 30 training sessions.  
 \*\*Each = One 8-hour training session

**TOTAL CONTRACT VALUE [Base Year and Two (2) One Year Options] \$ \_\_\_\_\_**

\_\_\_\_\_  
 Print Name of Business/Organization

\_\_\_\_\_  
 Signature of Authorized Personnel

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print Name of Authorized Personnel

\_\_\_\_\_  
 Title of Authorized Personnel

**\*\*\* END OF SECTION B \*\*\***

**SECTION C****DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
C.1	BACKGROUND	6
C.2	SCOPE OF WORK	6 - 7
C.3	MINIMUM QUALIFICATIONS	7
C.4	SPECIAL STANDARDS OF RESPONSIBILITY	8
C.5	STANDARDS OF PERFORMANCE	8

**SECTION C**  
**DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK**

**C.1 BACKGROUND:**

Youth Mental Health First Aid (YMHFA) is a public education program which introduces participants to the unique risk factors and warning signs of mental health problems in adolescents, builds understanding of the importance of early intervention, and most importantly, teaches individuals how to help a youth in crisis or experiencing a mental health or substance use challenge. YMHFA uses role-playing and simulations to demonstrate how to assess a mental health crisis; select interventions and provide initial help; and connect young people to professional, peer, social and self-help care.

The National Council for Behavioral Health (National Council) is a not-for-profit 501(c)(3) association representing 1,800 organizations that provide behavioral health treatment and rehabilitation. Mental Health First Aid and Youth Mental Health First Aid are the major initiatives. The National Council, the Maryland State Department of Health and Mental Hygiene (DHMH) and the Missouri Department of Mental Health (DMH) worked with the program's founders to bring Mental Health First Aid and now Youth Mental Health First Aid to the United States. The Maryland State Department of Health and Mental Hygiene and the Missouri Department of Mental Health are the authorities on Mental Health First Aid in their respective states, while the National Council for Behavioral Health (National Council) is the authority for the rest of the nation. All YMHFA instructors must be trained and certified through the National Council or the Maryland DHMH or Missouri DMH. These three (3) entities have chosen to combine their certified instructor list on a common website: [www.mentalhealthfirstaid.org](http://www.mentalhealthfirstaid.org)

The DC Gateway project is the Substance Abuse and Mental Health Services Administration (SAMHSA) funded grant to expand and strengthen the System of Care for children/youth with Serious Emotional Disturbance and their families or children/youth at risk of mental health concerns. The goals of the project are: to increase awareness of mental health concerns; decrease the stigma surrounding mental health; and increase awareness of the behavioral health services available in the District. Toward these goals, a Contractor is sought to provide multiple YMHFA trainings to various groups throughout the community including parents, caregivers, and non-mental health service providers in both community organizations and DC agencies who work with the youth of the District.

**C.2 SCOPE OF WORK:**

**C.2.1** The Department of Behavioral Health (DBH) is seeking Certified Instructors to provide multiple Youth Mental Health First Aid (YMHFA) 8 hour Training Courses as prescribed by the National Council for Behavioral Health (National Council) for up to 30 participants per Training Session. Scheduling of the Trainees shall be determined based on the needs of the trainees. Training may occur as one 8-hour day or may be divided into two 4-hour sessions. Trainings may be scheduled during the work day, in the evening, or on the weekends depending upon the needs of the group(s) to be trained as prescribed by the National Council.

- C.2.2** The Contractor shall ensure that each training attendee signs-in to document their participation. The Contractor shall provide documentation of successful course completion. The Contractor shall provide copies of sign-in sheets and list of participants who successfully complete the training to DBH within three (3) days of the completion of training.
- C.2.3** The Contractor shall provide each participant with the Official YMHFA Manual, Mental Health Resource Guide and survey instrument (manual, guide, and surveys, all supplied by DBH). The Contractor shall provide each participant with photocopies of handouts identified in course materials (prepared and provided by instructors). The Contractor shall provide each participant who successfully completes the class with a hard copy Certificate of Completion (blank certificates provided by DBH).
- C.2.4** The Contractor shall facilitate the training alone or with a co-facilitator, another Contractor who's also a certified instructor. (If co-facilitating, shall plan in advance with partner as to which section each will cover).
- C.2.5** The Contractor shall pick up sign-in sheet, resource guides, manuals, course certificates and blank survey forms 24 - 48 hours prior to an assigned scheduled training from the YMHFA Training Coordinator.
- C.2.6** The Contractor shall conduct Training Evaluation Surveys at the end of each Training Course and provide original survey forms to DBH within three (3) days of the completion of training. Survey instrument shall be provided by DBH.
- C.2.7** The Contractor shall provide information on the mental health service resources available within the District of Columbia.
- C.2.8** The Contractor shall enter Training participant information and evaluation data into the National Council database within 72 hours of the completion of training.

**C.3 MINIMUM QUALIFICATIONS:**

- C.3.1** Instructor shall be currently certified as a Youth Mental Health First Aid Instructor through the National Council for Behavioral Health, the Maryland State Department of Health and Mental Hygiene or the Missouri Department of Mental Health.
- C.3.2** Instructor shall provide proof of certification in good standing.
- C.3.3** Instructor with a certification of less than one year should be able to provide documentation of facilitating or co-facilitating a minimum of (1) one training.
- C.3.4** Instructor with a certification of more than one year should be able to provide documentation of facilitating or co-facilitating (3) three trainings per year of certification.

**C.3.5** Instructor shall have the ability to provide trainings during the day, evenings or on a Saturday.

**C.4 SPECIAL STANDARDS OF RESPONSIBILITY:**

The Vendor submitting a response to the Request for Quotation shall submit together with the completed B.5 - Price Schedule, all information required in this Section C.4 – Special Standard of Responsibility. Quotation submitted in response to this Request for Quote (RFQ) shall be deemed nonresponsive and shall be rejected if the Bidder fails to submit the information that is required by this Section.

**C.4.1** Instructor shall provide proof of Certification (in good standing) as a Youth Mental Health First Aid Instructor by the National Council for Behavioral Health, the Maryland State Department of Health and Mental Hygiene or the Missouri Department of Mental Health.

**C.4.2** Instructor shall provide documentation of facilitating or co-facilitating trainings as required by Sections C.3.3 and C.3.4.

**C.5 STANDARD OF PERFORMANCE**

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. The Contractor shall at all times, comply with DBH operational policies, procedures and directives while performing the duties specified in the Contract.

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

**SECTION D**

**PACKING AND MARKING  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
D.1 & D.2	PACKAGING AND MARKING	10

**SECTION D  
PACKAGING AND MARKING**

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

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

**SECTION E****INSPECTION AND ACCEPTANCE  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
E.1	INSPECTION OF SUPPLIES AND SERVICES	12
E.2	CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES TERMINATION FOR CONVENIENCE	12
E.3	TERMINATION FOR CONVENIENCE	13
E.4	TERMINATION FOR DEFAULT	13 - 14

**SECTION E**  
**INSPECTION AND ACCEPTANCE**

- E.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)
- 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 (ACCO) and at no additional cost to the DBH.
- 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.
- 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, Contracts and Procurement/Agency Chief Contracting Officer (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.

**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 will 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 \*\*\***

**SECTION F****DELIVERY AND PERFORMANCE  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
F.1	PERIOD OF PERFORMANCE	16
F.2	OPTION TO EXTEND THE TERM OF CONTRACT	16
F.3	DELIVERABLES	17
F.4	CONTRACTOR NOTICE REGARDING LATE PERFORMANCE	17

**SECTION F**  
**DELIVERY AND PERFORMANCE**

**F.1 PERIOD OF PERFORMANCE (POP)**

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 under this Contract shall be as indicated on the Price Schedule which is from Date of Award through one (1) Calendar Year with two (2) – One (1) Year Options.

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

The Director, Contracts and Procurement/Agency Chief Contracting Officer (ACCO) can exercise each of the Two (2) One Year Options at the sole and absolute discretion of DBH based upon appropriated funding and satisfactory performance of the Contract during the Period of Performance. The total duration this Contract, including the exercise of any options under the Contract, shall not exceed three (3) Years.

**F.2.1** The District can exercise the term of the Contract for a period of two (2) One-Year option periods, or successive fractions therefore, by written notice to the Contractor before the expiration of the Contract; provided that the Director/ACCO shall give the Contractor a preliminary written notice of its intent to extend, at least thirty (30) days before the expiration of the contract. 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 based on the satisfactory performance of the Contractor by their being in full compliance with the Scope of Work, along with the Terms and Conditions of the Contract and subject to the availability of funds at the time of the Exercise of the Option Period. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Director/ACCO prior to the expiration of the Contract.

**F.2.2** If the District exercises this Option, the extended Contract shall be considered to include this Option Period provision.

**F.2.3** The Price for the Option Period shall be as specified in Section B.5 of the Contract.

**F.3 DELIVERABLES**

**F.3.1** The Contractor shall provide the following deliverables within the specified time:

<b>Section</b>	<b>Deliverable</b>	<b>Format/Method of Delivery</b>	<b>Quantity</b>	<b>Due Date</b>
C.2.2	List of Trainees who successfully completed Training	Hard copy	1	Within 3 days of the completion of training
C.2.2	Training Sign-in Sheet	Hard copy	1	Within 3 days of the completion of training
C.2.6	Training Survey	Hard copy - original	1	Within 3 days of the completion of training

**F.4 CONTRACTOR NOTICE REGARDING LATE PERFORMANCE**

In the event the Contractor anticipates or encounters difficulty in complying with the terms and conditions as stated in the Contract, or in meeting any other requirements set forth in the Contract, the Contractor shall immediately notify the Director/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 \*\*\***

**SECTION G****CONTRACT ADMINISTRATION DATA  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
G.1	INVOICE PAYMENT	19
G.2	SUBMISSION OF INVOICE	19 - 20
G.3	FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT	20
G.4	ASSIGNMENT OF CONTRACT PAYMENTS	20
G.5	QUICK PAYMENT CLAUSE	21 - 22
G.6	DIRECTOR, CONTRACTS AND PROCUREMENT/AGENCY CHIEF CONTRACTING OFFICER (ACCO)	22
G.7	AUTHORIZED CHANGES BY THE DIRECTOR, CONTRACTS AND PROCUREMENT/ACCO	22
G.8	CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)	23 - 24
G.9	TYPE OF CONTRACT	24
G.10	RESPONSIBILITY FOR AGENCY PROPERTY	24 - 25
G.11	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	25

**SECTION G**  
**CONTRACT ADMINISTRATION DATA**

**G.1 INVOICE PAYMENT**

**G.1.1** The District shall make payments to the Contractor, upon submission of proper invoices, based on the fixed unit prices stipulated in this Contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this Contract.

**G.1.2** The District shall pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 SUBMISSION OF INVOICE**

**G.2.1** The Contractor shall submit, on a monthly basis, an original and three copies of each invoice to:

Accounts Payable Office  
Department of Behavioral Health  
64 New York Avenue, NE, 6<sup>th</sup> Floor  
Washington, DC 20002

or by e-mail to: [dbh.ap@dc.gov](mailto:dbh.ap@dc.gov)

The invoice shall then be forwarded by the Accounts Payable Office to the COTR. Payment shall be made within thirty (30) days after the Accounts Payable Office receives a proper and certified 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 Contract Line Items (CLIN) 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 corrected and resubmitted as indicated in this clause.**

**G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

**G.2.2.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);

**G.2.2.2** Contract number and invoice number;

**G.2.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

**G.2.2.4** Other supporting documentation or information, as required by the Contracting Officer;

**G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

**G.2.2.6** Name, title, phone number of person preparing the invoice;

**G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and

**G.2.2.8** Authorized signature.

**G.2.3 CERTIFICATION OF INVOICE**

Contracting Officer’s Technical Representative (COTR) shall perform certification of each of the Contractor’s invoices. The invoices shall be logged in by the Accounts Payable Office and forwarded to the COTR to review for accuracy and to perform certification for payment. The certified invoice shall be forwarded to the Agency Chief Financial Officer (ACFO) within five (5) working days after receipt of a satisfactory invoice.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

**NOT APPLICABLE**

**G.4 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.4.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this Contract.

**G.4.2** Any assignment shall cover all unpaid amounts payable under this Contract and shall not be made to more than one party.

**G.4.3** Notwithstanding an assignment of Contract payments, the 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.5 QUICK PAYMENT CLAUSE****G.5.1 Interest Penalties to Contractors**

**G.5.1.1** 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 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b) the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c) the 15<sup>th</sup> day after the required payment date for any other item.

**G.5.1.2** 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.5.2 Payments to Subcontractors**

**G.5.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this Contract.

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

**G.5.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item, of property or service is made on or before:

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

**G.5.2.3** 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.5.2.4** 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.5.3 SUBCONTRACTOR REQUIREMENTS**

**G.5.3.1** The Contractor shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its Contract with any lower-tier sub-contractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

### **G.6 DIRECTOR, CONTRACTS AND PROCUREMENT/AGENCY CHIEF CONTRACTING OFFICER (ACCO)**

Contracts shall be entered into and signed on behalf of the DBH only by the DBH Director, Contracts and Procurement/Agency Chief Contracting Officer. The contact information for the Director/ACCO is as follows:

Samuel J. Feinberg, CPPO, CPPB  
 Director, Contracts and Procurement  
 Agency Chief Contracting Officer  
 Department of Behavioral Health  
 64 New York Avenue, NE, 2<sup>nd</sup> Floor  
 Washington, DC 20002  
 Phone: (202) 671-3188  
 Email: [Samuel.Feinberg@dc.gov](mailto:Samuel.Feinberg@dc.gov)

### **G.7 AUTHORIZED CHANGES BY THE DIRECTOR, CONTRACTS AND PROCUREMENT/AGENCY CHIEF CONTRACTING OFFICER (ACCO)**

**G.7.1** The Director/ACCO is the only person authorized to approve changes in any of the requirements of this Contract.

**G.7.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of the Contract, unless issued in writing and signed by the Director/ACCO.

**G.7.3** In the event the Contractor effects any change at the instruction or request of any person other than the Director/ACCO, the change shall be considered to have

been made without authority and no adjustment shall be made in the Contract price to cover any cost increase incurred as a result thereof.

## **G.8 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

**G.8.1** The COTR is responsible for general administration of the Contract and advising the Director/ACCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility of ensuring the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the Contract. These include:

**G.8.1.1** Keeping the Director/ACCO informed of any technical or contractual difficulties encountered during the performance period and advising the Director/ACCO of any potential problem areas under the Contract;

**G.8.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.8.1.3** Reviewing invoices for completed work and recommending approval by the Director/ACCO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the Rate of Expenditure;

**G.8.1.4** Reviewing and approving invoice for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices in accordance with the District's payment provisions; and

**G.8.1.5** Maintaining a file that includes all Contract correspondence, modifications, records of inspections (site, data, equipment).

**G.8.2** The address and telephone number of the COTR is:

Carol Zahm, DC Gateway Project Director  
Children & Youth Services Division  
Department of Behavioral Health  
64 New York Avenue, NE, 2<sup>nd</sup> Floor  
Washington, DC 20002  
Phone: (202) 673-6495  
Email: [carol.zahm2@dc.gov](mailto:carol.zahm2@dc.gov)

**G.8.3** The COTR shall NOT have the authority to:

- 1) Award, agree to, or sign any Contract, delivery order or task order. Only the Director/ACCO shall make contractual agreements, commitments or modifications;
- 2) Grant deviations from or waive any of the terms and conditions of the Contract;
- 3) Increase the dollar limit of the Contractor or authorize work beyond the dollar limit of the Contract;
- 4) Authorize the expenditure of funds by the Contractor;
- 5) Change the Period of Performance; or

6) Authorize the use of District property, except as specified under the Contract.

**G.8.4** The Contractor shall be fully responsible for any changes not authorized in advance, in writing, by the Director/ACCO, may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **G.9 TYPE OF CONTRACT**

**G.9.1** This is an Indefinite Delivery – Indefinite Quantity (IDIQ) Contract for Youth Mental Health First Aid Training Instructors. The Contractor shall be remunerated according to Section B.5 - Price Schedule. 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.

**G.9.2** This Contract is a “non-personal services 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/Agency Chief Contracting Officer, or the duly authorized representative as the COTR as is necessary to ensure accomplishment of the Contract objectives.

**G.9.3** 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.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/ACCO 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.

**G.11 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

Funds are not presently available for the performance under this Contract beyond the current Fiscal Year. DBH's obligation for the performance of this Contract beyond the current Fiscal Year is contingent upon the availability on appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of DBH for any payment may arise for performance under this Contract beyond the current Fiscal Year, until funds are made available to the Director/ACCO for performance and until the Contractor receives notice of availability of funds, to be confirmed in writing by the Agency's Chief Financial Officer (ACFO).

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

## SECTION H

SPECIAL CONTRACT REQUIREMENTS  
TABLE OF CONTENTS

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
<b>H.1</b>	<b>LIQUIDATED DAMAGES</b>	<b>27</b>
<b>H.2</b>	<b>HIRING OF DC RESIDENTS AS APPRENTICE AND TRAINEES</b>	<b>27</b>
<b>H.3</b>	<b>DEPARTMENT OF LABOR WAGE DETERMINATIONS</b>	<b>27 - 28</b>
<b>H.4</b>	<b>PUBLICITY</b>	<b>28</b>
<b>H.5</b>	<b>FREEDOM OF INFORMATION ACT</b>	<b>28</b>
<b>H.6</b>	<b>51% DISTRICT RESIDENTS NEW HIRES REQUIRMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT</b>	<b>28</b>
<b>H.7</b>	<b>SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended</b>	<b>28</b>
<b>H.8</b>	<b>AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)</b>	<b>29</b>
<b>H.9</b>	<b>WAY TO WORK AMENDMENT ACT OF 2006</b>	<b>29 - 30</b>
<b>H.10</b>	<b>SUBCONTRACTING REQUIREMENTS</b>	<b>30</b>
<b>H.11</b>	<b>COST OF OPERATION</b>	<b>31</b>
<b>H.12</b>	<b>CONTRACTOR LICENSE/CLEARANCES</b>	<b>31</b>
<b>H.13</b>	<b>PRIVACY AND CONFIDENTIALITY COMPLIANCE</b>	<b>31 - 50</b>

## 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 scheduled meeting and a Notice to Cure document with a cure period of Not To Exceed ten (10) business days. Upon receiving the Notice to Cure document, the Contractor shall provide DBH with their assessment of the identified deficiencies in order to reach an agreement on a proactive plan to resolve the matter. The assessment of Liquidated Damages as determined by the Director, Contracts and Procurement/Agency Chief Contracting Officer (ACCO) shall be in an amount of **One Hundred Dollars (\$100.00) per day** against the Contractor until such time that the Contractor has cured its deficiencies and is able to satisfactorily perform the tasks required under this Contract.

**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 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

**H.2.1** For all new employment resulting from this Contract or subcontract hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

**H.2.2** At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

**H.2.3** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this Contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

### H.3 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractors shall be bound by the Wage Determination No. 2005-2103, Revision 13, dated 06/19/2013, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.* and incorporated herein as Attachment J.2. The Contractors shall be bound by the wage rates for the term of the Contract subject to

revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the Director, Contracts and Procurement/ACCO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

#### **H.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 subcontractors, either during or after expiration or termination of the Contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Contract.

#### **H.5 FREEDOM OF INFORMATION ACT**

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

#### **H.6 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**NOT APPLICABLE**

#### **H.7 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.**

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

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

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

**H.9 WAY TO WORK AMENDMENT ACT OF 2006**

**H.9.1** Except as described in H.9.8 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.9.2** The Contractor shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage published on the OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.9.3** 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.9.4** The DOES may adjust the living wage annually and the OCP shall publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.9.5** The Contractor shall provide a copy of the Fact Sheet (Attachment J.4) to each employee and subcontractor who performs services under the Contract. The Contractor shall also post the Notice (Attachment J.4) in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**H.9.6** 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.9.7** 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.9.8** 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.9.9** 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.10 SUBCONTRACTING REQUIREMENTS**

**NOT APPLICABLE**

**H.11 COST OF OPERATION**

All costs of operation under this Contract shall be borne by the Contractor. This includes but is not limited to taxes, surcharges, licenses, insurance, transportation, salaries and bonuses.

**H.12 CONTRACTOR LICENSE/CLEARANCES**

The Contractor shall maintain documentation that he/she possesses adequate training, qualifications and competence to perform the duties to which he/she is assigned and hold current licenses or certification as appropriate.

**H.13 PRIVACY AND CONFIDENTIALITY COMPLIANCE**

**H.13.1** For the purpose of this agreement the 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 NAME OF CONTRACTOR, 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).

1. *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.13.2 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 effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Clause.
- 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.13.3 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.13.4 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.13.5 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.13.6 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.13.7 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.13.8 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.13.9 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.13.10** Miscellaneous

- a. *Regulatory References.* A reference in this HIPAA Compliance Clause to a section in the Privacy Rule means the section as in effect or as amended.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and HIPAA. Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.
- c. *Survival.* The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.
- d. *Interpretation.* Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit 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 _____ _____ _____ Attention: _____ Fax: _____	If to the Covered Entity, to _____ _____ _____ Attention: _____ 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://dmh1.dc.gov/node/682752>

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

**SECTION I****CONTRACT CLAUSES  
TABLE OF CONTENTS**

<b>CLAUSE NO.</b>	<b>CLAUSE TITLE</b>	<b>PAGE NO.</b>
I.1	APPLICABILITY OF STANDARD CONTRACT PROVISIONS	52
I.2	CONTRACTS THAT CROSS FISCAL YEARS	52
I.3	CONFIDENTIALITY OF INFORMATION	52
I.4	TIME	52
I.5	EQUAL EMPLOYMENT OPPORTUNITY	52
I.6	OTHER CONTRACTORS	52
I.7	SUBCONTRACTORS	52 - 53
I.8	INSURANCE	53 – 54
I.9	GOVERNING LAW	55
I.10	STOP WORK ORDER	55
I.11	ANTI-KICKBACK PROCEDURES	56 – 57
I.12	RIGHTS IN DATA	57 – 60
I.13	SUSPENSION OF WORK	60 – 61
I.14	ORDER OF PRECEDENCE	61

## **SECTION I CONTRACT CLAUSES**

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

The Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007, are incorporated by reference into this Contract in Attachment J.1.

### **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 in Attachment J.4. An award cannot be made to any Prospective Bidder/Offeror who has not satisfied the equal employment requirements.

### **I.6 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.7 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.

## I.8 INSURANCE

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

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

- B. **DURATION.** The Contractors 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 sub-contractors 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 Contractors shall immediately provide the CO 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 CO.
- G. **CERTIFICATES OF INSURANCE.** The Contractors 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  
Phone: (202) 671-3188  
Email: [Samuel.Feinberg@dc.gov](mailto: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 subcontractors in the performance of this Contract.

**I.9 GOVERNING LAW**

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

**I.10 STOP WORK ORDER**

**I.10.1** The Director, Contracts and Procurement/Agency Chief Contracting Officer (ACCO) may, at anytime, 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.10.2** 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/ACCO 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.10.3** 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/ACCO shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be modified, in writing, accordingly.

**I.10.4** 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/ACCO decides the facts justify the action, the Director/ACCO may receive and act upon the claim submitted at any time before final payment under this Contract.

**I.10.5** 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/ACCO shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

**I.10.6** If a stop-work order is not canceled and the work covered by the order is terminated for default, the Director/ACCO shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**I.11 ANTI-KICKBACK PROCEDURES****I.11.1 Definitions:**

- I.11.1.1** “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 Contractor in connection with a subcontract relating to a prime Contract.
- I.11.1.2** “Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- I.11.1.3** “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.11.1.4** “Prime Contractor” as used in this clause, means a person who has entered into a prime Contract with the District.
- I.11.1.5** “Prime Contractor employee,” as used in this clause, means any officer, partner employee, or agent of a prime Contractor.
- I.11.1.6** “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.11.1.7** “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.11.1.8** “Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- I.11.2** The Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 (the Act), prohibits any person from:
- I.11.2.1** Providing or attempting to provide or offering to provide any kickback;
- I.11.2.2** Soliciting, accepting, or attempting to accept any kickback; or

- I.11.2.3** 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.11.3** The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph I.11.2.2 of this clause in its own operations and direct business relationships.
- I.11.4** When the Contractor has reasonable grounds to believe that a violation described in paragraph I.11.2.2 of this clause may have occurred, the Contractor shall promptly report in writing the possible violation to the Director/ACCO.
- I.11.5** The Director/ACCO 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/ACCO 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/ACCO when the monies are withheld.

## **I.12 RIGHTS IN DATA**

- I.12.1** “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.12.2** 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.12.3** 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.12.4** 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.12.5** 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.12.6** 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 shall be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.12.6.1** 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.12.6.2** 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.12.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and
- I.12.6.4** 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.12.7** The restricted rights set forth in Section I.12.6 are of no effect unless:

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

**RESTRICTED RIGHTS LEGEND**

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

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

**I.12.8** In addition to the rights granted in Section I.12.9 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.12.9 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.12.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this Contract, the Contractor shall use Section I.12.5 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.12.10** For all computer software furnished to the District with the rights specified in Section I.12.5, the Contractor shall furnish to the District a copy of the source code with such rights of the scope specified in Section I.12.5. For all computer software furnished to the District with the restricted rights specified in Section I.12.6, 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 if 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.12.11** 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.12.11.1** 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.12.11.2** Based upon any data furnished under this Contract, or based upon libelous or other unlawful matter contained in such data.

**I.12.12** 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.12.13** Sections I.12.6, I.12.7, I.12.8, I.12.11 and I.12.12 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 delivery of such work.

### **I.13 SUSPENSION OF WORK**

**I.13.1** The Director/ACCO 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/ACCO 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/ACCO in the administration of this Contract, or by the Director/ACCO'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.13.2** 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.13.3** 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/ACCO 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.14 ORDER OF PRECEDENCE**

A conflict in language or any other 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 part of the Contract:

**I.15.1** Dixon Settlement Agreement dated September 8, 2011 In Dixon, et al. v Gray, et al., CA 74-285 (TFH) (Attachment J.3)

**I.15.2** Sections A through J of this Solicitation RM-14-RFQ-162-BY2-JCC

**I.15.3** Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007 (Attachment J.1)

**I.15.4** Contract attachments other than Attachments J.1, J.3 and J.10

**I.15.5** DBH Policies and Rules (Attachment J.10)

**I.15.6** Request for Quotation submission

**I.15.7** Request for Quotation

**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 Contract.**

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

**SECTION J**  
**LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

Attachment Number	Document
J.1	<b>GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH DISTRICT OF COLUMBIA SUPPLIES AND SERVICES CONTRACTS DATED MARCH 2007:</b> <a href="http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%2020209%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf">http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%2020209%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf</a>
J.2	<b>U.S. DEPARTMENT OF LABOR WAGE DETERMINATION UNDER THE SERVICE CONTRACT ACT – WD2005-2103 REVISION NO. 13 DATED JUNE 19, 2013:</b> See Attachment
J.3	<b>DIXON SETTLEMENT AGREEMENT DATED SEPTEMBER 8, 2011:</b> <a href="http://dmh1.dc.gov/page/dixon-settlement-agreement">http://dmh1.dc.gov/page/dixon-settlement-agreement</a>
J.4	<b>LIVING WAGE NOTICE AND LIVING WAGE ACT FACT SHEET (THE WAY TO WORK AMENDMENT ACT OF 2006):</b> See Attachment
J.5	<b>DEPARTMENT OF BEHAVIORAL HEALTH POLICIES AND RULES (New):</b> <a href="http://www.dmh.dc.gov/dmh/cwp/view,a,3,q,621393,dmhNav,%7C31262%7C.asp">http://www.dmh.dc.gov/dmh/cwp/view,a,3,q,621393,dmhNav,%7C31262%7C.asp</a>
J.6	<b>PROCUREMENT PRACTICES REFORM ACT (PPRA):</b> <a href="http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/PPRA.pdf">http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/PPRA.pdf</a>
<b>Forms identified below are to be submitted with Vendor’s Bid/Proposal</b>	
J.7	<b>EQUAL EMPLOYMENT OPPORTUNITY INFORMATION AND MAYOR ORDER 85-85:</b> <a href="http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/EEO%20Compliance%20Documents%200307.pdf">http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/EEO%20Compliance%20Documents%200307.pdf</a>
J.8	<b>FIRST SOURCE EMPLOYMENT AGREEMENT:</b> <a href="http://ocp.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Appendix%20E_FIRST_SOURCE_EMPLOYMENT_PLAN_3_22_11.pdf">http://ocp.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Appendix%20E_FIRST_SOURCE_EMPLOYMENT_PLAN_3_22_11.pdf</a>
J.9	<b>TAX CERTIFICATION AFFIDAVIT:</b> <a href="http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%2020209%20Solicitation%20Attachments_tax_certification_affidavit.pdf">http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%2020209%20Solicitation%20Attachments_tax_certification_affidavit.pdf</a>
J.10	<b>COST/PRICE DISCLOSURE CERTIFICATION:</b> <a href="http://ocp.dc.gov/publication/cost-price-disclosure-certification-form">http://ocp.dc.gov/publication/cost-price-disclosure-certification-form</a>

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

**Section J**  
**Documents, Exhibits and**  
**other Attachments**

## **J.1**

# **Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007):**

**[http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP\\_Channel%2029%20Solicitation%20Attachments\\_standard\\_contract\\_provisions\\_0307.pdf](http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%2029%20Solicitation%20Attachments_standard_contract_provisions_0307.pdf)**

**J.2**

**U.S. Department of Labor  
Wage Determination under the  
Service Contract Act  
(WD No. 2005-2103, Revision No.  
13 dated June 19, 2013)**



05005 - Automobile Body Repairer, Fiberglass	25.26
05010 - Automotive Electrician	23.51
05040 - Automotive Glass Installer	22.15
05070 - Automotive Worker	22.15
05110 - Mobile Equipment Servicer	19.04
05130 - Motor Equipment Metal Mechanic	24.78
05160 - Motor Equipment Metal Worker	22.15
05190 - Motor Vehicle Mechanic	24.78
05220 - Motor Vehicle Mechanic Helper	18.49
05250 - Motor Vehicle Upholstery Worker	21.63
05280 - Motor Vehicle Wrecker	22.15
05310 - Painter, Automotive	23.51
05340 - Radiator Repair Specialist	22.15
05370 - Tire Repairer	14.44
05400 - Transmission Repair Specialist	24.78
07000 - Food Preparation And Service Occupations	
07010 - Baker	13.85
07041 - Cook I	12.55
07042 - Cook II	14.60
07070 - Dishwasher	10.11
07130 - Food Service Worker	10.66
07210 - Meat Cutter	18.08
07260 - Waiter/Waitress	9.70
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.86
09040 - Furniture Handler	14.06
09080 - Furniture Refinisher	20.23
09090 - Furniture Refinisher Helper	15.52
09110 - Furniture Repairer, Minor	17.94
09130 - Upholsterer	19.86
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.54
11060 - Elevator Operator	10.54
11090 - Gardener	17.52
11122 - Housekeeping Aide	11.83
11150 - Janitor	11.83
11210 - Laborer, Grounds Maintenance	13.07
11240 - Maid or Houseman	11.26
11260 - Pruner	11.58
11270 - Tractor Operator	16.04
11330 - Trail Maintenance Worker	13.07
11360 - Window Cleaner	12.85
12000 - Health Occupations	
12010 - Ambulance Driver	20.41
12011 - Breath Alcohol Technician	20.27
12012 - Certified Occupational Therapist Assistant	23.11
12015 - Certified Physical Therapist Assistant	21.43
12020 - Dental Assistant	17.18
12025 - Dental Hygienist	44.75
12030 - EKG Technician	27.67
12035 - Electroneurodiagnostic Technologist	27.67
12040 - Emergency Medical Technician	20.41
12071 - Licensed Practical Nurse I	19.07
12072 - Licensed Practical Nurse II	21.35
12073 - Licensed Practical Nurse III	24.13
12100 - Medical Assistant	15.01
12130 - Medical Laboratory Technician	18.04
12160 - Medical Record Clerk	17.42
12190 - Medical Record Technician	19.50
12195 - Medical Transcriptionist	18.77
12210 - Nuclear Medicine Technologist	37.60
12221 - Nursing Assistant I	10.80

12222 - Nursing Assistant II	12.14
12223 - Nursing Assistant III	13.98
12224 - Nursing Assistant IV	15.69
12235 - Optical Dispenser	20.17
12236 - Optical Technician	15.80
12250 - Pharmacy Technician	18.12
12280 - Phlebotomist	15.69
12305 - Radiologic Technologist	31.11
12311 - Registered Nurse I	27.64
12312 - Registered Nurse II	33.44
12313 - Registered Nurse II, Specialist	33.44
12314 - Registered Nurse III	40.13
12315 - Registered Nurse III, Anesthetist	40.13
12316 - Registered Nurse IV	48.10
12317 - Scheduler (Drug and Alcohol Testing)	21.73
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	19.86
13012 - Exhibits Specialist II	24.61
13013 - Exhibits Specialist III	30.09
13041 - Illustrator I	20.48
13042 - Illustrator II	25.38
13043 - Illustrator III	31.03
13047 - Librarian	33.88
13050 - Library Aide/Clerk	14.21
13054 - Library Information Technology Systems Administrator	30.60
13058 - Library Technician	19.89
13061 - Media Specialist I	18.73
13062 - Media Specialist II	20.95
13063 - Media Specialist III	23.36
13071 - Photographer I	16.65
13072 - Photographer II	18.90
13073 - Photographer III	23.67
13074 - Photographer IV	28.65
13075 - Photographer V	33.76
13110 - Video Teleconference Technician	20.39
14000 - Information Technology Occupations	
14041 - Computer Operator I	18.92
14042 - Computer Operator II	21.18
14043 - Computer Operator III	23.60
14044 - Computer Operator IV	26.22
14045 - Computer Operator V	29.05
14071 - Computer Programmer I	(see 1) 26.36
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	18.92
14160 - Personal Computer Support Technician	26.22
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	36.47
15020 - Aircrew Training Devices Instructor (Rated)	44.06
15030 - Air Crew Training Devices Instructor (Pilot)	52.81
15050 - Computer Based Training Specialist / Instructor	36.47
15060 - Educational Technologist	35.31
15070 - Flight Instructor (Pilot)	52.81
15080 - Graphic Artist	26.80
15090 - Technical Instructor	25.08
15095 - Technical Instructor/Course Developer	30.67
15110 - Test Proctor	20.20

15120 - Tutor	20.20
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	9.88
16030 - Counter Attendant	9.88
16040 - Dry Cleaner	12.94
16070 - Finisher, Flatwork, Machine	9.88
16090 - Presser, Hand	9.88
16110 - Presser, Machine, Drycleaning	9.88
16130 - Presser, Machine, Shirts	9.88
16160 - Presser, Machine, Wearing Apparel, Laundry	9.88
16190 - Sewing Machine Operator	13.78
16220 - Tailor	14.66
16250 - Washer, Machine	10.88
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	21.14
19040 - Tool And Die Maker	23.38
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	18.02
21030 - Material Coordinator	22.03
21040 - Material Expediter	22.03
21050 - Material Handling Laborer	13.83
21071 - Order Filler	15.09
21080 - Production Line Worker (Food Processing)	18.02
21110 - Shipping Packer	15.09
21130 - Shipping/Receiving Clerk	15.09
21140 - Store Worker I	11.72
21150 - Stock Clerk	16.86
21210 - Tools And Parts Attendant	18.02
21410 - Warehouse Specialist	18.02
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	27.21
23021 - Aircraft Mechanic I	25.83
23022 - Aircraft Mechanic II	27.21
23023 - Aircraft Mechanic III	28.53
23040 - Aircraft Mechanic Helper	17.54
23050 - Aircraft, Painter	24.73
23060 - Aircraft Servicer	19.76
23080 - Aircraft Worker	21.01
23110 - Appliance Mechanic	21.75
23120 - Bicycle Repairer	14.43
23125 - Cable Splicer	26.02
23130 - Carpenter, Maintenance	21.40
23140 - Carpet Layer	20.49
23160 - Electrician, Maintenance	27.98
23181 - Electronics Technician Maintenance I	24.94
23182 - Electronics Technician Maintenance II	26.47
23183 - Electronics Technician Maintenance III	27.89
23260 - Fabric Worker	19.13
23290 - Fire Alarm System Mechanic	22.91
23310 - Fire Extinguisher Repairer	17.62
23311 - Fuel Distribution System Mechanic	22.81
23312 - Fuel Distribution System Operator	19.38
23370 - General Maintenance Worker	21.43
23380 - Ground Support Equipment Mechanic	25.83
23381 - Ground Support Equipment Servicer	19.76
23382 - Ground Support Equipment Worker	21.01
23391 - Gunsmith I	17.62
23392 - Gunsmith II	20.49
23393 - Gunsmith III	22.91
23410 - Heating, Ventilation And Air-Conditioning Mechanic	23.89
23411 - Heating, Ventilation And Air Contditioning	25.17

Mechanic (Research Facility)	
23430 - Heavy Equipment Mechanic	22.91
23440 - Heavy Equipment Operator	22.91
23460 - Instrument Mechanic	22.59
23465 - Laboratory/Shelter Mechanic	21.75
23470 - Laborer	14.98
23510 - Locksmith	21.90
23530 - Machinery Maintenance Mechanic	23.12
23550 - Machinist, Maintenance	22.91
23580 - Maintenance Trades Helper	18.27
23591 - Metrology Technician I	22.59
23592 - Metrology Technician II	23.80
23593 - Metrology Technician III	24.96
23640 - Millwright	28.19
23710 - Office Appliance Repairer	22.96
23760 - Painter, Maintenance	21.75
23790 - Pipefitter, Maintenance	24.63
23810 - Plumber, Maintenance	22.29
23820 - Pneudraulic Systems Mechanic	22.91
23850 - Rigger	22.91
23870 - Scale Mechanic	20.49
23890 - Sheet-Metal Worker, Maintenance	22.91
23910 - Small Engine Mechanic	20.49
23931 - Telecommunications Mechanic I	29.95
23932 - Telecommunications Mechanic II	31.55
23950 - Telephone Lineman	27.41
23960 - Welder, Combination, Maintenance	22.91
23965 - Well Driller	22.91
23970 - Woodcraft Worker	22.91
23980 - Woodworker	17.62
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	12.79
24580 - Child Care Center Clerk	17.77
24610 - Chore Aide	10.57
24620 - Family Readiness And Support Services Coordinator	16.90
24630 - Homemaker	18.43
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	27.30
25040 - Sewage Plant Operator	20.84
25070 - Stationary Engineer	27.30
25190 - Ventilation Equipment Tender	19.49
25210 - Water Treatment Plant Operator	20.84
27000 - Protective Service Occupations	
27004 - Alarm Monitor	20.57
27007 - Baggage Inspector	12.71
27008 - Corrections Officer	22.80
27010 - Court Security Officer	24.72
27030 - Detection Dog Handler	20.57
27040 - Detention Officer	22.80
27070 - Firefighter	24.63
27101 - Guard I	12.71
27102 - Guard II	20.57
27131 - Police Officer I	26.52
27132 - Police Officer II	29.67
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.59
28042 - Carnival Equipment Repairer	14.63
28043 - Carnival Equipment Worker	9.24
28210 - Gate Attendant/Gate Tender	13.01
28310 - Lifeguard	11.59
28350 - Park Attendant (Aide)	14.56

28510	- Recreation Aide/Health Facility Attendant	10.62
28515	- Recreation Specialist	18.04
28630	- Sports Official	11.59
28690	- Swimming Pool Operator	18.21
29000	- Stevedoring/Longshoremen Occupational Services	
29010	- Blocker And Bracer	23.13
29020	- Hatch Tender	23.13
29030	- Line Handler	23.13
29041	- Stevedore I	21.31
29042	- Stevedore II	24.24
30000	- Technical Occupations	
30010	- Air Traffic Control Specialist, Center (HFO) (see 2)	39.92
30011	- Air Traffic Control Specialist, Station (HFO) (see 2)	26.84
30012	- Air Traffic Control Specialist, Terminal (HFO) (see 2)	29.56
30021	- Archeological Technician I	20.19
30022	- Archeological Technician II	22.60
30023	- Archeological Technician III	27.98
30030	- Cartographic Technician	27.98
30040	- Civil Engineering Technician	26.41
30061	- Drafter/CAD Operator I	20.19
30062	- Drafter/CAD Operator II	22.60
30063	- Drafter/CAD Operator III	25.19
30064	- Drafter/CAD Operator IV	31.00
30081	- Engineering Technician I	22.92
30082	- Engineering Technician II	25.72
30083	- Engineering Technician III	28.79
30084	- Engineering Technician IV	35.64
30085	- Engineering Technician V	43.61
30086	- Engineering Technician VI	52.76
30090	- Environmental Technician	27.41
30210	- Laboratory Technician	23.38
30240	- Mathematical Technician	28.94
30361	- Paralegal/Legal Assistant I	21.36
30362	- Paralegal/Legal Assistant II	26.47
30363	- Paralegal/Legal Assistant III	32.36
30364	- Paralegal/Legal Assistant IV	39.16
30390	- Photo-Optics Technician	27.98
30461	- Technical Writer I	21.93
30462	- Technical Writer II	26.84
30463	- Technical Writer III	32.47
30491	- Unexploded Ordnance (UXO) Technician I	24.74
30492	- Unexploded Ordnance (UXO) Technician II	29.93
30493	- Unexploded Ordnance (UXO) Technician III	35.88
30494	- Unexploded (UXO) Safety Escort	24.74
30495	- Unexploded (UXO) Sweep Personnel	24.74
30620	- Weather Observer, Combined Upper Air Or (see 2)	25.19
	Surface Programs	
30621	- Weather Observer, Senior (see 2)	27.98
31000	- Transportation/Mobile Equipment Operation Occupations	
31020	- Bus Aide	14.32
31030	- Bus Driver	20.85
31043	- Driver Courier	13.98
31260	- Parking and Lot Attendant	10.07
31290	- Shuttle Bus Driver	15.66
31310	- Taxi Driver	13.98
31361	- Truckdriver, Light	15.66
31362	- Truckdriver, Medium	17.90
31363	- Truckdriver, Heavy	19.18
31364	- Truckdriver, Tractor-Trailer	19.18
99000	- Miscellaneous Occupations	
99030	- Cashier	10.03
99050	- Desk Clerk	11.58

99095 - Embalmer	23.05
99251 - Laboratory Animal Caretaker I	11.30
99252 - Laboratory Animal Caretaker II	12.35
99310 - Mortician	31.73
99410 - Pest Controller	17.69
99510 - Photofinishing Worker	13.20
99710 - Recycling Laborer	18.50
99711 - Recycling Specialist	22.71
99730 - Refuse Collector	16.40
99810 - Sales Clerk	12.09
99820 - School Crossing Guard	13.43
99830 - Survey Party Chief	21.94
99831 - Surveying Aide	13.63
99832 - Surveying Technician	20.85
99840 - Vending Machine Attendant	14.43
99841 - Vending Machine Repairer	18.73
99842 - Vending Machine Repairer Helper	14.43

---

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.81 per hour or \$152.40 per week or \$660.40 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer

industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning

and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE (Standard Form 1444 (SF 1444))

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. (See Section 4.6 (C) (vi)) When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

**J.3**

**Dixon Settlement Agreement  
dated September 8, 2011:**

**<http://dmh1.dc.gov/page/dixon-settlement-agreement>**

**J.4**

**Way to Work Amendment Act of 2006 -  
Living Wage Notice &  
Living Wage Fact Sheet**

## **“THE LIVING WAGE ACT OF 2006”**

**Title I, D.C. Law No. 16-118, (D.C. Official Code §§ 2-220.01-.11)**

**Recipients of new contracts or government assistance shall pay affiliated employees and subcontractors who perform services under the contracts no less than the current living wage.**

**Effective January 1, 2013, the living wage rate is \$13.40.**

### **The requirement to pay a living wage applies to:**

- **All recipients of contracts in the amount of \$100,000 or more; and, all subcontractors of these recipients receiving \$15,000 or more from the funds received by the recipient from the District of Columbia, and,**
- **All recipients of government assistance in the amount of \$100,000 or more; and, all subcontractors of these recipients of government assistance receiving \$50,000 or more in funds from government assistance received from the District of Columbia.**

**“Contract” means a written agreement between a recipient and the District government.**

**“Government assistance” means a grant, loan or tax increment financing that result in a financial benefit from an agency, commission, instrumentality, or other entity of the District government.**

**“Affiliated employee” means any individual employed by a recipient who received compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the contract or government assistance or who are otherwise employed by the contractor, recipient or subcontractor.**

**Certain exceptions apply where contracts are subject to higher wage level determinations required by federal law; contracts delivered by regulated utility; contracts for services needed immediately to prevent or respond to a disaster or imminent threat to the public health or safety declared by the Mayor; contracts awarded to recipients that provide trainees with additional services provided the trainee does not replace employees; tenants or retail establishments that occupy property constructed or improved by government assistance, provided there is no receipt of direct District government assistance; Medicaid provider agreements for direct care services to Medicaid recipients, however, a home care agency, a community residential facility or a group home for persons with intellectual disabilities shall not be required to pay a living wage until implementing regulations are published in the D.C. Register and any necessary state plan amendments are approved; and contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.**

**Exemptions are provided for employees under 22 years of age employed during a school vacation period, or enrolled as a full-time student who works less than 25 hours per week, and for employees of nonprofit organizations that employ not more than 50 individuals.**

**Each recipient and subcontractor of a recipient shall provide this notice to each affiliate employee covered by this notice, and shall also post this notice in a conspicuous site in its place of business.**

**All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years.**

**For the complete text of the Living Wage Act of 2006 go to D.C. Official Code §§ 2-220.01-.11**

**To file a claim, visit: Department of Employment Services , Office of Wage-Hour, 4058 Minnesota Avenue, NE, Fourth Floor, Washington, D.C. 20019; call: (202) 671-1880; or file your claim on-line: [does.dc.gov](http://does.dc.gov). Go to “File a Claim” tab.**



## LIVING WAGE ACT FACT SHEET

The “Living Wage Act of 2006,” Title I of D.C. Law 16-18, (D.C. Official Code §§2-220.01-.11) became effective June 9, 2006. It provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of \$100,000 or more shall pay affiliated employees wages no less than the current living wage rate.

**Effective January 1, 2013, the living wage rate is \$13.40 per hour.**

Subcontractors of D.C. government contractors who receive \$15,000 or more from the contract and subcontractors of the recipients of government assistance who receive \$50,000 or more from the assistance are also required to pay their affiliated employees no less than the current living wage rate.

“Affiliated employee” means any individual employed by a recipient who receives compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or a contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the government assistance or contract, or who are otherwise employed by the contractor, recipient or subcontractor.

**Exemptions** – The following contracts and agreements are exempt from the Living Wage Act:

1. Contracts or other agreements that are subject to higher wage level determinations required by federal law (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District’s current living wage, the contractor must pay the higher of the two rates);
2. Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the current 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 imminent 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;
6. An employee, under 22 years of age, employed during a school vacation period, or enrolled as 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;
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 of Columbia;
  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 persons with intellectual disabilities 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); provided however, that a home care agency, a community residence facility, or a group home for persons with intellectual disabilities shall not be required to pay a living wage until implementing regulations are published in the D.C. Register and any necessary state plan amendments are approved; 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.

## **Enforcement**

The Department of Employment Services (DOES) and the D.C. Office of Contracting and Procurement (OCP) share monitoring responsibilities.

If you learn that a contractor subject to this law is not paying at least the current living wage, you should report it to the Contracting Officer.

If you believe that your employer is subject to this law and is not paying you at least the current living wage, you may file a complaint with the DOES Office of Wage – Hour, located at 4058 Minnesota Avenue, NE, Fourth Floor, Washington, DC 20019, call (202) 671-1880, or file your claim on-line: [www.does.dc.gov](http://www.does.dc.gov). Go to “File a Claim” tab.

For questions and additional information, contact the Office of Contracting and Procurement at (202) 727-0252 or the Department of Employment Services on (202) 671-1880.

**Please note:** *This fact sheet is for informational purposes only as required by Section 106 of the Living Wage Act. It should not be relied on as a definitive statement of the Living Wage Act or any regulations adopted pursuant to the law.*

**J.5**

**Department of Behavioral Health  
Policies and Rules (New):**

**<http://www.dmh.dc.gov/dmh/cwp/view,a,3,q,621393,dmhNav,%7C31262%7C.asp>**

**J.6**  
**Procurement Practices Reform**  
**Act (PPRA):**

**<http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/PPRA.pdf>**

**J.7**

**Equal Employment Opportunity (EEO)  
Information Report and  
Mayor's Order 85-85:**

**[http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/att  
achments/EEO%20Compliance%20Documents%200307.pdf](http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/EEO%20Compliance%20Documents%200307.pdf)**

**J.8**

**Department of Employment Services**

**First Source Employment Agreement:**

**[http://ocp.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Appendix%20E FIRST SOURCE EMPLOYMENT PL](http://ocp.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Appendix%20E%20FIRST%20SOURCE%20EMPLOYMENT%20PLAN%203%2022%2011.pdf)**  
**AN 3 22 11.pdf**

**J.9**

**Tax Certification Affidavit:**

**[http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP\\_Channel%202.9%20Solicitation%20Attachments tax certification affidavit.pdf](http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/OCP_Channel%202.9%20Solicitation%20Attachments_tax_certification_affidavit.pdf)**

**J.10**  
**Cost/Price Disclosure**  
**Certification:**

**[http://ocp.dc.gov/publication/cost-price-disclosure-](http://ocp.dc.gov/publication/cost-price-disclosure-certification-form)**  
**[certification-form](http://ocp.dc.gov/publication/cost-price-disclosure-certification-form)**