
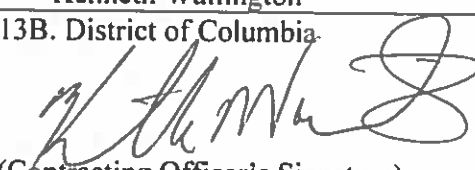


1. Contract Number DCHBX-2023-E-0002		2. Effective Date March 11, 2023		3. Requisition/Purchase Request/Project No.		Page 1 of 25	
4. Name and Address of Contractor: Norton Rose Fulbright US LLP 1301 McKinney Street, Suite 5100 Houston, TX 77010-3095				5. Delivery Address: DC Health Benefit Exchange Authority 1225 "I" Street, NW, 4th Floor Washington, DC 20005			
				6. Contractor shall submit all invoices to: Via electronic format through the DC Vendor Portal, https://vendorportal.dc.gov			
7. Reserved for future use				8. Accounting and Appropriation Data			
9A. Item	9B. Supplies/Services			9C. Quantity	9D. Unit	9E. Unit Price	9F. Total
	Legal services			See Price Schedule		See price Schedule	NTE \$2,600,000
Contracting Officer will Complete Item 10 or 11 as Applicable: Item 10 is Applicable							
<input checked="" type="checkbox"/> 10. CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				<input type="checkbox"/> 11. AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) The Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
12A. Name and Title of Signer (Type or print) Chris Cwalina				13A. Name of Contracting Officer Kenneth Wallington			
12B.  (Authorized Representative's Signature)		12C. Date June 7, 2023		13B. District of Columbia  (Contracting Officer's Signature)		13C. Date 7/25/2023	

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

B.1 The District of Columbia Health Benefit Exchange (“DCHBX”), seeks to award a contract to Norton Rose Fulbright US LLP (“NRF” or “Contractor”) to provide legal counsel and representation with respect to a data security breach incident that was discovered on March 6, 2023. The Contractor shall provide legal services and advice to HBX, including litigation services and comprehensive recommendations on strengthening our IT systems and processes.

B.1.1 This contract is being awarded as authorized by DC Official Code 31-3171.04(a)(5) and 2-351.05(c)(22) and in accordance with DC Health Benefit Exchange Authority Contracting and Procurement Policies and Procedures, Section III A(4)(i)(c) – Exemption from Competitive Procurement Requirements.

B.2 The District contemplates award of a labor hour contract.

B.2.1 Cost Reimbursement Component

The cost reimbursement component as described in Section D.5 shall not exceed \$750,000 for the base period and each option period.

B.2.2 The total value of this contract, including the cost reimbursement component, is not to exceed \$2,600,000 for the base period and \$2,000,000 for each option period.

B.2.3 Insurance Panel Rates

NRF acknowledges that the data breach is covered by a policy of insurance. The District may request the insurer to reimburse certain expenses and pay other expenses, such as attorneys’ fees, directly to the NRF. In the event the insurer pays NRF directly, NRF agrees that it shall accept the insurer’s hourly rates and that HBX will pay the difference, if any, between the insurer’s rates and the 2023 AIG panel rates to NRF. The agreed upon insurer hourly rates are:

- **2023 HBX insurer panel rates:**
Incident response: \$600 partners / \$400 non-partners / \$225 paraprofessionals
- **Litigation:** \$695/partners/ \$495 non-partners / \$225 paraprofessionals
- **2023 AIG panel rates:**
\$816 global lead partner / \$718 partners / \$541 non-partners / \$225 paraprofessionals

B.3 PRICE SCHEDULE- Labor Hour with Cost Reimbursement Component

B.3.1 Base Year

Contract Line Item No. (CLIN)	Labor Category	Hourly Labor Rate *
0001	Global Lead Partner	\$816
0002	Partner	\$718
0003	Non-Partner	\$541
0004	Paraprofessional	\$225
0005	Cost Reimbursement - Not-to-Exceed	\$750,000
	TOTAL NOT-TO-EXCEED	\$2,600,000

B.3.2 Option Year One (1)

Contract Line Item No. (CLIN)	Labor Category	Hourly Labor Rate *
0001	Global Lead Partner	\$816
0002	Partner	\$718
0003	Non-Partner	\$541
0004	Paraprofessional	\$225
0005	Cost Reimbursement – Not-to-Exceed	\$750,000
	TOTAL NOT-TO-EXCEED	\$2,000,000

B.3.3 Option Year Two (2)

Contract Line Item No. (CLIN)	Labor Category	Hourly Labor Rate *
0001	Global Lead Partner	\$816
0002	Partner	\$718
0003	Non-Partner	\$541
0004	Paraprofessional	\$225
0005	Cost Reimbursement – Not-to-Exceed	\$750,000
	TOTAL NOT-TO-EXCEED	\$2,000,000

B.3.4 Option Year Three (3)

Contract Line Item No. (CLIN)	Labor Category	Hourly Labor Rate *
0001	Global Lead Partner	\$816
0002	Partner	\$718
0003	Non-Partner	\$541
0004	Paraprofessional	\$225
0005	Cost Reimbursement – Not-to-Exceed	\$750,000
	TOTAL NOT-TO-EXCEED	\$2,000,000

B.3.5 Option Year Four (4)

Contract Line Item No. (CLIN)	Labor Category	Hourly Labor Rate *
0001	Global Lead Partner	\$816
0002	Partner	\$718
0003	Non-Partner	\$541
0004	Paraprofessional	\$225
0005	Cost Reimbursement – Not-to-Exceed	\$750,000
	TOTAL NOT-TO-EXCEED	\$2,000,000

SECTION C: SPECIFICATIONS/STATEMENT OF WORK

C.1 SCOPE

The District of Columbia Health Benefit Exchange Authority (“DCHBX”) seeks to award a contract to Norton Rose Fulbright US LLP (“NRF” or “Contractor”) to provide legal counsel and representation with respect to a data security breach incident that was discovered on March 6, 2023. The Contractor shall provide legal services and advice to the DC Health Benefit Authority (HBX), including litigation services, and comprehensive recommendations on strengthening our IT systems and processes.

DCHBX will retain sole authority at all times to direct the investigation and litigation in all respects, including but not limited to approval and/or rejection of settlements.

C.1.1 APPLICABLE LAWS AND DOCUMENTS

The following laws are applicable to this procurement:

Item No.	Document Type	Title	Date
1	Letter Agreement	Letter of Engagement and Standard Terms of Engagement between DC Health Benefit Exchange Authority) and Norton Rose Fulbright US LLP, dated March 10, 2023.	3/10/2023
2	Letter Agreement	Letter of Engagement and Standard Terms of Engagement between DC Health Benefit Exchange Authority) and Norton Rose Fulbright US LLP, dated March 31, 2023.	3/31/23

C.2 RESERVED

C.3 BACKGROUND

On March 6, the DC Health Benefit Exchange Authority (“DCHBX” or “DC Health Link”) received notice that data for some DC Health Link customers had been published on a data breach forum. The DCHBX immediately launched a comprehensive investigation, began working with law enforcement, and engaged a third-party expert forensics firm to investigate.

Due to the nature of the incident, DCHBX needed a law firm that was experienced in this type of practice, including investigations, class action litigation, and the comprehensive review of systems and processes to strengthen the HBX framework against future incidents. Norton Rose was one of three entities we met with. Norton Rose has a Data Protection, Privacy and Cybersecurity practice, and was available to provide representation immediately. To date, we are aware of three putative class action complaints that have been filed arising out of the data breach -- one in the District of Columbia Superior Court, *Lawless v. DC Health Benefit Exchange Authority*, and two in the U.S. District Court for the District of Columbia, *Suhr v. DC Health Benefit Exchange Authority* and *Meranda v. DC Health Benefit Exchange Authority, et al.*

C.1.1 **REQUIREMENTS**

C.1.2 Contractor shall perform legal services that include, but are not limited to the following:

C.1.2.1 Assist DCHBX in responding to the data breach.

C.1.2.2 Contractor shall assist in all phases of these investigations and litigation, including:

- a. Preparation, filing, and service of all offensive and responsive pleadings;
- b. Mediation attendance and briefing;
- c. Preparation and service of all offensive and defensive discovery;
- d. Document review and management;
- e. Taking depositions, defending depositions, preparing witnesses for depositions;
- f. Identifying and managing experts needed to analyze, develop, or defend the DCHBX's case;
- g. Participation and conduct of representation of the DCHBX in court hearings, oral arguments, trials, investigations and settlement negotiations;
- h. Coordination and conduct of any needed appeal.
- i. Comprehensive review of the HBX IT systems and processed to identify steps to strengthen our system.

C.1.2.3 **REMOVED**

C.1.2.4 Provide regular status reports to the Contract Administrator.

C.1.2.5 Provide legal services to DCHBX for this matter in a manner consistent with accepted standards of practice in the legal profession. The DCHBX or Attorney

General for the District of Columbia (the Attorney General) shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express written approval of the DCHBX or the Attorney General.

- C.1.2.6** Coordinate the provision of legal services with the Attorney General or his or her designated assistant, other personnel of OAG, and such others as the DCHBX may designate.
- C.1.2.7** Submit all substantive pleadings, motions, briefs, and other material which may be filed with a court to DCHBX in draft form in a reasonable and timely manner for review. All such material must be approved by the DCHBX or designee prior to filing.
- C.1.2.8** Communicate with the District's executive branch and agencies through DCHBX unless authorized by DCHBX to communicate directly with any of them.
- C.1.2.9** Render services pursuant to this Contract as an independent contractor. Neither Contractor nor any employee of Contractor shall be regarded as employed by, or as an employee of the DCHBX or the District of Columbia government.

SECTION D: PERIOD OF PERFORMANCE AND DELIVERABLES

D.1 TERM OF CONTRACT

The term of the contract shall be for a period of one (1) year from the date of the signed letter of engagement (March 11, 2023), also referred to as a letter contract, whereas the letter contract shall merge with this definitized contract.

D.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

D.2.1 The District may extend the term of this contract for a period of four (4) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the DCHBX will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the DCHBX to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the contract.

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

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

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

D.3 DELIVERABLES

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

CLIN	Deliverable	Quantity	Format/Method of Delivery	Due Date
C.1.2.2 a.	Preparation, filing, and service of all offensive and responsive pleadings	TBD	PDF/Electronic	Ongoing, as requested
C.1.2.2b	Mediation attendance and briefing	TBD		Ongoing
C.1.2.2 c.	Preparation and service of all	TBD	PDF/Electronic	Ongoing

	offensive and defensive discovery			
C.1.2.2d	Document Review	TBD	PDF/Electronic	Ongoing
C.1.2.2 e.	Depositions	TBD	PDF/Electronic	Ongoing
C.1.2.2f	Identifying experts	TBD	PDF/Electronic	Ongoing
C.1.2.2g	Legal representation	TBD	PDF/Electronic	Ongoing, as requested
C.1.2.2h	Appeals	TBD	PDF/Electronic	Ongoing, as requested
C.1.2.2.i	Comprehensive review of the systems and processes	TBD	Electronic	Ongoing
C.1.2.4	Status Reports	TBD	PDF/Electronic	Ongoing
C.1.2.7	Drafts of substantive pleadings, motions, briefs, and other material which may be filed with the court	TBD	PDF/Electronic	Ongoing

D.3.1 Contractor shall submit to the DCHBX, as a deliverable, the report described in section F.6 which is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, DCHBX shall not make final payment to the Contractor pursuant to section E.5.2.

D.4 **ORDERING CLAUSE**

D.4.1 Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders, task orders, or purchase orders by the CO. Such orders may be issued during the term of this contract.

D.4.2 All purchase orders are subject to the terms and conditions of this contract. In the event of a conflict between a purchase order and this contract, the contract shall control.

D.4.3 Orders may be issued by facsimile or electronic commerce methods.

D.5 **Cost Reimbursement**

D.5.1 Cost Reimbursement Ceiling

- a. Cost reimbursement ceiling for the contract for costs specified in D.5.2 is set forth in Section B.2.1.
- b. The Contractor agrees to use its best efforts to perform work specified in this contract and to meet all obligations under the contract within the cost reimbursement ceiling specified in Section D.5.2.
- c. The Contractor must notify the Contract Administrator, in writing, whenever it has reason to believe that the total cost for reimbursement will be either greater or substantially less than the costs reimbursement ceiling ("Notification of Cost Differential").
- d. As part of the notification, the Contractor must provide the Contract Administrator a revised estimate of the total cost of reimbursement for the contract.
- e. HBX is not obligated to reimburse the Contractor for cost incurred in excess of the cost reimbursement ceiling specified in B.2.1 and the Contractor is not obligated to incur costs in excess of the cost reimbursement ceiling specified in B.2.1 until a modification is executed by the Contracting Officer that the estimated cost has been increased and provides revised cost reimbursement ceilings for performing the contract.

D.5.2

Unless otherwise specified, the District will reimburse the Contractor costs incurred by the Contractor for expert IT and breach response consultation, however, the Contractor shall not select any consultant or outside analysis without the Contract Administrator's approval. Prior to performing services under the cost reimbursement component, the Contractor shall submit to the Contract Administrator for approval, in writing, the services and associated costs. Any accumulated expense over the cost reimbursement ceiling specified in B.2.1 shall require approval of the Contract Administrator and Contracting Officer in advance of any cost being incurred.

SECTION E: CONTRACT ADMINISTRATION

E.1 CONTRACTING OFFICER ("CO")

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

Kenneth Wallington
Contracting Officer
DC Health Benefit Exchange Authority
1225 "I" Street, NW, Suite 400
Washington, DC 20005
Ph: (202) 679-5952
Email: Kenneth.wallington@dc.gov

E.2 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

- E.2.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.
- E.2.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.
- E.2.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

E.3 CONTRACT ADMINISTRATOR ("CA")

- E.3.1** The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:
 - E.3.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
 - E.3.1.2** Coordinating site entry for Contractor personnel, if applicable;
 - E.3.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

E.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the DCHBX payment provisions; and

E.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

E.3.2 The contact information of the CA is:

Brian K. Flowers
Contract Administrator
DC Health Benefit Exchange Authority
1225 I Street, NW, Suite 400
Washington, DC 20005
Email: brian.flowers@dc.gov
Ph: 202-812-8444

E.3.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

E.3.4 The Contractor shall be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to DCHBX, to take all corrective action necessitated by reason of the unauthorized changes.

E.4 **INVOICE SUBMITTAL AND PAYMENT**

E.4.1 The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>.

E.4.2 The Contractor shall submit proper invoice(s) on a monthly basis or as otherwise specified in the Contract or task or delivery order.

E.4.3 To constitute a proper invoice, the Contractor shall enter all required information into the DC Vendor Portal after selecting the applicable purchase order number listed on the Contractor's profile.

E.4.4 HBX will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in the contract (or task or delivery order), for supplies delivered and accepted or services performed and accepted, less any discounts, allowances, or adjustments provided for in the Contract.

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

E.5.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section F.6.

E.5.2 The District shall not make final payment to the Contractor until the agency CFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

SECTION F: ATTACHMENTS AND OTHER TERMS AND CONDITIONS

F.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

F.1.1 HBX Standard Contract Provisions 2016 (Attachment G.1) are incorporated in and made a part of this Contract in relevant part. Provisions in Attachment G.1 that have been superseded are stricken (denoted using ~~strike through~~) and incorporated in current form in relevant sections of the Contract.

F.1.2 To obtain a copy of the HBXSCP 2016 go to <http://hbx.dc.gov/publication/dcpolicies-and-procedures>. Under the heading "Health Benefit Exchange Authority" click on "HBX Standard Contract Provisions March 24, 2016."

F.1.3 FAMILIARIZATION WITH CONDITIONS

Contractor shall fully review this agreement and all attachments including the HBX Standard Contract Provisions 2016 (See F.1.2), becoming acquainted with all available information regarding this contracting including the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

F.2 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

F.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.

F.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.

F.3 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. **2015-4281, Revision 25 dated 12/27/2022**, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351, *et seq.* The Contractor shall be bound by the wage rates for the term of the Contract subject to revision as stated herein. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the

Contractor may be entitled to an equitable adjustment.

F.4 **PREGNANT WORKERS FAIRNESS**

F.4.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01, *et seq.* (PPWF Act).

F.4.2 The Contractor shall not:

- (a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;
- (b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:
 - (1) Pay;
 - (2) Accumulated seniority and retirement;
 - (3) Benefits; and
 - (4) Other applicable service credits;
- (c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;
- (d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;
- (e) Require an employee to take leave if a reasonable accommodation can be provided; or
- (f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

F.4.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act, to:

- (a) New employees at the commencement of employment;
- (b) Existing employees; and
- (c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

F.4.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

F.4.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

F.5 **UNEMPLOYED ANTI-DISCRIMINATION**

F.5.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361, *et seq.*

F.5.2 The Contractor shall not:

- (a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
- (b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
 - (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

F.5.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

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

F.6.1 For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).

F.6.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

F.6.3 The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

F.6.4 The Contractor agrees that at least 51% of the new employees hired to perform the Contract shall be District residents.

F.6.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

F.6.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate

submission of falsified data.

F.6.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Contractor fails to meet its hiring requirements.

F.6.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

F.6.9 The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in Section 36 (Disputes) of HBX Standard Contract Provisions 2016 (Attachment G.1).

F.6.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

F.7 **RESERVED**

F.8 **FAIR CRIMINAL RECORD SCREENING**

F.8.1 The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this Section F.8). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

F.8.2 Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

F.8.3 After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

F.8.4 The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

F.8.5 This section and the provisions of the Act shall not apply:

- (a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
- (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
- (c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

F.8.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the D.C. Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

F.9 **EXCHANGE PRIVACY AND SECURITY COMPLIANCE**

The Contractor shall comply in all respects with the Exchange Privacy and Security Compliance Addendum (Attachment A) to this Contract.

F.10 **SUBCONTRACTS**

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

F.11 **INSURANCE**

A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense 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- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

General liability, commercial auto, workers' compensation and property insurance policies (if applicable to this agreement) shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

The contractor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

DCHBX should collect, review for accuracy and maintain all warranties for goods and services.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non- owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of 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.

All insurance required by paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of the Government of the District of Columbia.

4. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.
5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting

from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

C. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

- D. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

- E. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.

- F. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

- G. 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.

- H. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit

changes or if 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. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

- I. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia
Health Benefit Exchange Authority
And mailed to the attention of:
Kenneth Wallington, Contracting Officer
1225 I Street, NW 4th Floor Washington, DC 20005
(202) 741-0846
kenneth.wallington@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- J. **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.
- K. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.

F.12

ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST

F.12.1

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

rules, in addition to any other remedies available.

F.12.2

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

F.12.3

Before any contractor can be retained to perform legal services under the Contract, on behalf of the DCHBX, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the Contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the Contract that require waiver pursuant to Rule 1.7(b) because the contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the Contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the Contract, whether or not such representations are related to the matter for which the work is to be performed under the Contract.

F.12.4

The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the Contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be

performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the Contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

F.12.5

Before any contractor can be retained pursuant to the Contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct (“RPC”) 1.6, 1.7, 1.8, 1.9 and 1.10. Contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, (http://app.ocp.dc.gov/pdf/DCEB-2018-R-0001_ATTT2.pdf), a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

F.11

ATTACHMENTS

The following attachments are incorporated in this contract by reference:

Attachment A – Exchange Privacy and Security Compliance

Attachment B–Norton Rose Fulbright, Letter of Engagement, dated 3/10/2023

Attachment G.1 – HBX Standard Contract Provisions, as amended

F.11.1

Attachment A – Exchange Privacy and Security Compliance is hereby amended as such:

1. Section C.1.d.i – In the Sentence “Contractor shall provide and/or assist HBX with providing individuals with a simple and timely means to access and obtain their PII in a readable form and format.” **Delete** “provide and/or”.
2. Section F.8.d – This subsection is deleted.

F.112

Attachment G.1 – HBX Standard Contract Provisions are hereby amended as such:

1. § 12. Freedom of Information Act is stricken.
3. § 13. Subcontracting Requirements are waived.
4. § 24 Insurance – The Insurance requirements in the SCP are replaced by the Insurance requirements in the contract document under section F.11 Insurance.
5. § 28 Inspection of Supplies provision is deleted.
6. § 29 Inspection of Services provision is deleted except for item (b).
7. § 31 Default provision is deleted.
8. § 32 Indemnification provision is stricken.

F.12

ORDER OF PRECEDENCE

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

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) Norton Rose Fulbright, Letter of Engagement, dated 3/10/2023