





DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY (DCHBX) CONTRACT/AWARD

1. Contract Number <b>DCHBX-2020-C-0002</b>		2. Effective Date <b>See Block 13C</b>		3. Requisition/Purchase Request/Project No. <b>Page 1 of 39</b>	
4. Name and Address of Contractor:  <b>IdeaCrew, Inc. 1150 Connecticut Avenue, NW STE710 Washington, DC 20036 Attn: Dan Thomas 202-688-3130</b>				5. Delivery Address:  <b>DC Health Benefit Exchange Authority 1225 "I" Street, NW, 4<sup>th</sup> Floor Washington, DC 20005</b>	
				6. Contractor shall submit all invoices to:  <b>Via electronic format through the DC Vendor Portal, <a href="https://vendorportal.dc.gov">https://vendorportal.dc.gov</a></b>	
7. Reserved for future use				8. Accounting and Appropriation Data	
9A. Item	9B. Supplies/Services	9C. Quantity	9D. Unit	9E. Unit Price	9F. Total
	<b>Consulting Services- IT Support Services- SEE SECTION B- PRICE SCHEDULE</b>				<b>NTE \$7,000,000.00</b>
<b>Contracting Officer will Complete Item 10 or 11 as Applicable: Item 10 is Applicable</b>					
<b>(X) 10. CONTRACTOR'S NEGOTIATED AGREEMENT</b> (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.)			<b>( ) 11. AWARD</b> (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) <b>Trevor W Garner CFO 1/8/00</b>			13A. Name of Contracting Officer <b>Annie R. White</b>		
12B.   (Authorized Representative's Signature)		12C. Date	13B. District of Columbia   (Contracting Officer's Signature)		13C. Date  <b>1/15/2020</b>



## **SECTION B**

### **CONTRACT TYPE AND PRICE SCHEDULE**

**B.1** The DC Health Benefit Exchange Authority (HBX) requires the contractor to provide information technology support services in two broad areas:

1. Design, development, and implementation of software customizations and enhancements to the DC Health Link exchange platform ("C&E"); and
2. Specialized IT staffing services as needed ("ITS").

**B.2** **INDEFINITE DELIVERY – INDEFINITE QUANTITY (IDIQ) CONTRACT**

**B.2.1** This is an Indefinite Delivery-Indefinite Quantity (IDIQ) Contract for the supplies or services specified in Section C and effective for the period of performance stated in Section D.

**B.2.2** For each IDIQ contract awarded, the minimum guaranteed contract amount for the Base Period and for each Option Period is **\$500.00**. HBX is not obligated to order any services beyond the stated minimum amount.  
The maximum amount of any task order or purchase order shall be no greater than the maximum contract ceiling amount of **\$7,000,000.00**

**B.2.3** Delivery of performance shall be made only as authorized by task orders or delivery orders issued in accordance with the Ordering Clause at Section D.4. There is no limit on the number of orders that may be issued. There is no guarantee on the number of orders that the successful contractor(s) will receive or the amount of money beyond the minimum order guarantee set forth in Section B.2.2.

**B.2.4** Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Parties' rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period; provided that the contractor shall not be required to perform under this Contract beyond six (6) months from the date of expiration of the Contract.

### B.3 PRICE SCHEDULE

#### B.3.1 BASE PERIOD

CLIN	DESCRIPTION	PRICING TO BE DETERMINED UPON ISSUANCE OF TASK & DELIVERY ORDERS
001	Customizations & Enhancements	

CLIN	DESCRIPTION	FIXED HOURLY LABOR RATE
002 SUBCLIN	IT Staffing Services Labor Category	
0001	<b>Subject Matter Expert</b>	
0001A	Level 1	\$150.00
0001B	Level 2	\$165.00
0001C	Level 3	\$180.00
0002	<b>Project Director</b>	
0002A	Level 1	\$146.00
0002B	Level 2	\$158.00
0002C	Level 3	\$170.00
0003	<b>Project Manager</b>	
0003A	Level 1	\$120.00
0003B	Level 2	\$135.00
0003C	Level 3	\$150.00
0004	<b>System Specialist</b>	
0004A	Level 1	\$110.00
0004B	Level 2	\$135.00
0004C	Level 3	\$170.00
0005	<b>Consultant – Business Analyst</b>	
0005A	Level 1	\$100.00
0005B	Level 2	\$115.00
0005C	Level 3	\$130.00
0006	<b>Web Application Developer</b>	
0006A	Level 1	\$105.00
0006B	Level 2	\$125.00
0006C	Level 3	\$140.00
0007	<b>Database Administrator/Analyst</b>	
0007A	Level 1	\$110.00
0007B	Level 2	\$125.00
0007C	Level 3	\$145.00

### B.3.2 OPTION YEAR ONE

CLIN	DESCRIPTION	PRICING TO BE DETERMINED UPON ISSUANCE OF TASK & DELIVERY ORDERS
101	Customizations & Enhancements	

CLIN	DESCRIPTION	FIXED HOURLY LABOR RATE
102	IT Staffing Services (SOW § C.4.3)	
SUBCLIN	Labor Category	
1001	<b>Subject Matter Expert</b>	
1001A	Level 1	\$153.00
1001B	Level 2	\$168.30
1001C	Level 3	\$183.60
1002	<b>Project Director</b>	
1002A	Level 1	\$148.92
1002B	Level 2	\$161.16
1002C	Level 3	\$173.40
1003	<b>Project Manager</b>	
1003A	Level 1	\$122.40
1003B	Level 2	\$137.70
1003C	Level 3	\$153.00
1004	<b>System Specialist</b>	
1004A	Level 1	\$112.20
1004B	Level 2	\$137.70
1004C	Level 3	\$173.40
1005	<b>Consultant – Business Analyst</b>	
1005A	Level 1	\$102.00
1005B	Level 2	\$117.30
1005C	Level 3	\$132.60
1006	<b>Web Application Developer</b>	
1006A	Level 1	\$107.10
1006B	Level 2	\$127.50
1006C	Level 3	\$142.80
1007	<b>Database Administrator/Analyst</b>	
1007A	Level 1	\$112.20
1007B	Level 2	\$127.50
1007C	Level 3	\$147.90

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**Health Benefit Exchange Authority (HBX)**  
**IdeaCrew, Inc.**  
**Contract No.: DCHBX-2020-C-0002**

Health Benefit Exchange Authority (HBX)  
IdeaCrew, Inc.  
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### B.3.2 OPTION YEAR TWO

CLIN	DESCRIPTION	PRICING TO BE DETERMINED UPON ISSUANCE OF TASK & DELIVERY ORDERS
201	Customizations & Enhancements	

CLIN	DESCRIPTION	FIXED HOURLY LABOR RATE
202 SUBCLIN	IT Staffing Services Labor Category	
2001	<b>Subject Matter Expert</b>	
2001A	Level 1	\$156.06
2001B	Level 2	\$171.67
2001C	Level 3	\$187.27
2002	<b>Project Director</b>	
2002A	Level 1	\$151.90
2002B	Level 2	\$164.38
2002C	Level 3	\$176.87
2003	<b>Project Manager</b>	
2003A	Level 1	\$124.85
2003B	Level 2	\$140.45
2003C	Level 3	\$156.06
2004	<b>System Specialist</b>	
2004A	Level 1	\$114.44
2004B	Level 2	\$140.45
2004C	Level 3	\$176.87
2005	<b>Consultant – Business Analyst</b>	
2005A	Level 1	\$104.04
2005B	Level 2	\$119.65
2005C	Level 3	\$135.25
2006	<b>Web Application Developer</b>	
2006A	Level 1	\$109.24
2006B	Level 2	\$130.05
2006C	Level 3	\$145.66
2007	<b>Database Administrator/Analyst</b>	
2007A	Level 1	\$114.14
2007B	Level 2	\$130.05
2007C	Level 3	\$150.86

### B.3.2 OPTION YEAR THREE

CLIN	DESCRIPTION	PRICING TO BE DETERMINED UPON ISSUANCE OF TASK & DELIVERY ORDERS
301	Customizations & Enhancements	

CLIN	DESCRIPTION	FIXED HOURLY LABOR RATE
302 SUBCLIN	IT Staffing Services Labor Category	
3001	<b>Subject Matter Expert</b>	
3001A	Level 1	\$159.18
3001B	Level 2	\$175.10
3001C	Level 3	\$191.02
3002	<b>Project Director</b>	
3002A	Level 1	\$154.94
3002B	Level 2	\$167.67
3002C	Level 3	\$180.41
3003	<b>Project Manager</b>	
3003A	Level 1	\$127.34
3003B	Level 2	\$143.26
3003C	Level 3	\$159.18
3004	<b>System Specialist</b>	
3004A	Level 1	\$116.73
3004B	Level 2	\$143.26
3004C	Level 3	\$180.41
3005	<b>Consultant – Business Analyst</b>	
3005A	Level 1	\$106.12
3005B	Level 2	\$122.04
3005C	Level 3	\$137.96
3006	<b>Web Application Developer</b>	
3006A	Level 1	\$111.43
3006B	Level 2	\$132.65
3006C	Level 3	\$148.57
3007	<b>Database Administrator/Analyst</b>	
3007A	Level 1	\$116.73
3007B	Level 2	\$132.65
3007C	Level 3	\$153.88

### B.3.2 OPTION YEAR FOUR

CLIN	DESCRIPTION	PRICING TO BE DETERMINED UPON ISSUANCE OF TASK & DELIVERY ORDERS
401	Customizations & Enhancements	

CLIN	DESCRIPTION	
402	IT Staffing Services	
SUBCLIN	Labor Category	
4001	<b>Subject Matter Expert</b>	
4001A	Level 1	\$162.36
4001B	Level 2	\$178.60
4001C	Level 3	\$194.84
4002	<b>Project Director</b>	
4002A	Level 1	\$158.04
4002B	Level 2	\$171.02
4002C	Level 3	\$184.01
4003	<b>Project Manager</b>	
4003A	Level 1	\$129.89
4003B	Level 2	\$146.13
4003C	Level 3	\$162.36
4004	<b>System Specialist</b>	
4004A	Level 1	\$119.07
4004B	Level 2	\$146.13
4004C	Level 3	\$184.01
4005	<b>Consultant – Business Analyst</b>	
4005A	Level 1	\$108.24
4005B	Level 2	\$124.48
4005C	Level 3	\$140.72
4006	<b>Web Application Developer</b>	
4006A	Level 1	\$113.66
4006B	Level 2	\$135.30
4006C	Level 3	\$151.54
4007	<b>Database Administrator/Analyst</b>	
4007A	Level 1	\$119.07
4007B	Level 2	\$135.30
4007C	Level 3	\$156.95

## SECTION C

### SPECIFICATIONS / STATEMENT OF WORK

#### C.1 SCOPE

The Contractor shall provide information technology support services in three broad areas:

1. Design, development, and implementation of software customizations and enhancements to the DC Health Link exchange platform (“C&E”); and
2. Specialized IT staffing services as needed (“ITS”).

#### C.2 BACKGROUND

C.2.1 The Health Benefit Exchange Authority (HBX) is a quasi-governmental, independent agency established by the District of Columbia Government to implement a state-based health insurance marketplace in the District, in accordance with the Patient Protection and Affordable Care Act of 2010 (ACA), as amended, and the Health Benefit Exchange Authority Establishment Act of 2011 (D.C. Official Code §§ 31-3171-01—31-3171-07). HBX provides access to quality and affordable health care to all District residents and small businesses through Qualified Health Plans (QHPs) sold on the exchange marketplace. HBX is responsible for certifying QHPs that: meet certain qualifications (including the provision of essential health benefits); follow established limits on cost sharing; and meet other requirements.

C.2.2 HBX provides these services through its online marketplace, DC Health Link. HBX also manages the operation of the DC Health Link Contact Center, mandated by the ACA to provide customer service assistance to consumers regarding eligibility and enrollment. DC Health Link is a “one-stop shop” where individuals and small businesses can research and purchase QHPs, and determine eligibility for Medicaid, private health insurance, as well as premium tax credits and cost-sharing reductions which help individual market consumers pay for private coverage. There are numerous options available through DC Health Link: individual health coverage with financial assistance (including Medicaid, premium tax credits, and cost sharing reductions), individual private health insurance without financial assistance, small business employer enrollment, and small business employee enrollment.

C.2.3 DC Health Link serves as the small business marketplace for all businesses in DC that have 50 or fewer full-time equivalent employees and offer health insurance. DC Health Link systems enable small businesses to offer health insurance coverage to their employees, and allow those employees to shop and select for their coverage

based on their employer's selections.

- C.2.4 Customers can use online tools on the DC Health Link website and apply for coverage, or call the DC Health Link Contact Center for assistance. There are also trained brokers or in-person assisters registered with DC Health Link available to employers, employees, and individuals to help with both eligibility and enrollment.
- C.2.5 Annually, following the plan certification process, DC Health Link loads plan information (including Summaries of Plan and Benefits and plan rate information) into its systems. In order to validate the accuracy of plan and rate loading, DC Health Link provides issuers with an opportunity to test and validate in a non-production environment. This process is supported by HBX IT staff and contractors. HBX may also provide similar services, including ongoing IT O&M, to other state, local, or federal entities.
- C.2.6 In order to provide these various services and fulfill its mission, HBX operates and maintains highly available IT systems to serve multiple customers; comply with applicable Federal and local laws, regulations, and policies; automate business functions; and provide DC Health Link customers with user-friendly, reliable IT services.

### **C.3 KEY TERMS & ACRONYMS**

- C.3.1 ACA – the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119.
- C.3.2 Active Directory Services (AD or ADS) – Microsoft technology that provides network services.
- C.3.3 Automatic Data Processing (ADP) – processing information using a computer.
- C.3.4 Amazon Web Services (AWS) – HBX operates DC Health Link entirely in the Amazon cloud, and utilizes common AWS services including EC2, S3, Route53, ELB.
- C.3.5 Brokers – Brokers are licensed under DC law to sell health insurance and may be certified through DC Health Link to serve individuals, families, small businesses and their employees.
- C.3.6 Business Intelligence (BI) – BI technologies provide historic, current, and predictive views of business operations.
- C.3.7 Customer Information Control System (CICS) – a transaction server that runs primarily on IBM mainframe systems.

- C.3.8 Cascading style sheets (CSS) – a language used to describe the look and formatting of a document written in a markup language.
- C.3.9 Commercial, off-the-shelf (COTS) – items such as ready-made software or hardware that are customarily used by the general public and sold in substantial quantities in the commercial marketplace. Also known as “commercially available off-the-shelf.”
- C.3.10 CI/CD or CICD – continuous integration and continuous delivery. HBX uses CI/CD tools, including Jenkins, for code management purposes.
- C.3.11 Cloud Computing – the provision of on-demand computing and related services (e.g. database hosting) over the internet. Cloud computing services are hosted by a third-party provider (e.g. Amazon Web Services, Microsoft Cloud, etc.)
- C.3.12 C&E – Customization, enhancement, or feature enhancements. The terms are used interchangeably to describe any new or improved features or customizations to DC Health Link, beyond the current state of the production system at a given point in time.
- C.3.13 Database (DB) – a structured collection of records or data stored in a computer system.
- C.3.14 DB2 Enterprise Server Edition (DB2) – a relational database management system, one of IBM’s families of relational database management system software products.
- C.3.15 Database administrator (DBA) – person responsible for the environmental aspects of a database.
- C.3.16 Database management system (DBMS) – computer software that manages databases. A DBMS allows users and software to store and retrieve data in a structured way.
- C.3.17 DC or District – used interchangeably to refer to the District of Columbia Government.
- C.3.18 DC Health Link – HBX’s online health insurance marketplace accessed at the URL [DCHealthLink.com](https://dchealthlink.com). DC Health Link operates on open source software located at <https://github.com/dchbx>.
- C.3.19 Dynamic Host Configuration Protocol (DHCP) – a network application protocol used by devices to obtain configuration information for operation in an Internet Protocol network. This protocol reduces system administration workload, allowing devices to be added to the network with little or no manual intervention.

- C.3.20 Dynamic hypertext markup language (DHTML) – a collection of technologies used to create interactive and animated websites by using a combination of a static markup language (such as HTML), a client-side scripting language (such as JavaScript), a presentation of definition language (such as CSS) and the Document Object Model.
- C.3.21 Domain name system (DNS) – a hierarchical naming system for computers, services, or any resource participating in the Internet. It associates various information with the domain names assigned to each of the participants.
- C.3.22 Electronic Data Interchange (EDI) – the process of transacting data between trading partners in a standardized, agreed-upon format. HBX uses EDI X12 to transact enrollment and other data between its systems and those managed by insurance carriers.
- C.3.23 EnrollApp – the health insurance enrollment portal developed by HBX through which individuals, small businesses, and their employees access and enroll in private health insurance. The open source software for EnrollApp is located at <https://github.com/dchbx/enroll>.
- C.3.24 Enterprise data warehouse (EDW) – a repository of an organization’s electronically stored data, designed to facilitate reporting and analysis.
- C.3.25 Enterprise resource planning (ERP) – a system that is used to manage and coordinate all the resources, information and functions of a business.
- C.3.26 ESRI – a software development and services company providing geographic information system software and geodatabase management applications.
- C.3.27 Geographic information system (GIS) – a system for creating, storing, analyzing and managing spatial data and associated attributes.
- C.3.28 Glue Database – the EDI transaction system of record used by HBX to serve as the repository for enrollment information which is exchanged with trading partners such as health insurance carriers. The open source software for GlueDB is located at <https://github.com/dchbx/gluedb>.
- C.3.29 Graphical user interface (GUI) – user interface that allows people to interact with electronic devices such as computer and handhelds with images rather than text commands.
- C.3.30 HBX – District of Columbia Health Benefit Exchange Authority.
- C.3.31 Hypertext markup language (HTML) – the predominant markup language for web pages, which provides a means to describe the structure of text-based information

in a document and to supplement text with interactive forms, embedded images and other objects.

- C.3.32 Hypertext transfer protocol (HTTP) – protocol (utilizing TCP) to transfer hypertext requests and information between serves and browsers. When implemented using Secure Socket Layer (SSL) this protocol is referred to as HTTPS.
- C.3.33 Internet information services (IIS) – a set of Internet-based services for servers created by Microsoft for use with Windows.
- C.3.34 Information Security (INFOSEC) – protecting information and information systems from unauthorized access, use, disclosure, disruption, modification or destruction.
- C.3.35 Internet protocol (IP) – IP is the primary protocol in the Internet Layer of the Internet Protocol Suite and has the task of delivering distinguished protocol datagrams (packets) from the source host to the destination host solely based on their addresses.
- C.3.36 Information technology (IT) – the study, design, development, implementation, support or management of computer-based information systems, particularly software applications and computer hardware.
- C.3.37 Java Platform, Enterprise Edition (J2EE) – a widely used platform for server programming in the Java programming language.
- C.3.38 Java stored procedure (JSP) – a set of SQL statements, written in the Java programming language, grouped together as an executable unit.
- C.3.39 Jenkins – a self-contained, open source automation server which can be used to automate all sorts of tasks related to building, testing, and delivering or deploying software. See <https://jenkins.io/>.
- C.3.40 Key performance indicators (KPI) – financial and non-financial measures or metrics used to help an organization define and evaluate how successful it is, typically in terms of effectiveness.
- C.3.41 Local area network (LAN) – a computer network covering a small local area, such as a home or office.
- C.3.42 National Institute of Standards and Technology (NIST) – a federal laboratory whose mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology.

- C.3.43 Network operations center (NOC) – one or more locations from which control is exercised over a computer, television broadcast or telecommunications network.
- C.3.44 Network monitoring system (NMS) – a system that constantly monitors a computer network for slow or failing components and notifies the network administrator in case of outages via email, pager or other alarms.
- C.3.45 Online analytical processing (OLAP) – a type of software and tools used to perform real-time, complex analysis of data stored in one or more databases.
- C.3.46 Online transaction processing (OLTP) – a type of software and tools used to perform real-time creation and editing of data in a database.
- C.3.47 O&M – operations and maintenance.
- C.3.48 Open Enrollment – a limited period of time every year when D.C. residents can enroll in a health insurance plan for the next plan year. For individuals and families, the annual open enrollment season is every fall and usually lasts 3 months, typically from November 1 to January 31. If an employer offers health insurance, the open enrollment time will be shorter and at a different time.
- C.3.49 Operation system (OS) – a software program that enables the computer hardware to communicate and operate with the computer software.
- C.3.50 Portable document format (PDF) – a file format created by Adobe Systems for document exchange. PDF is used for representing two-dimensional documents in a manner independent of the application software, hardware and operating system.
- C.3.51 Perl – a high-level, general-purpose, interpreted, dynamic programming language, developed as a general-purpose Linux scripting language to make report processing easier.
- C.3.52 PHP – a scripting language originally designed for producing dynamic web pages. It has evolved to include a command line interface capability and can be used in a stand-alone graphical application.
- C.3.53 Project Management Professional (PMP) – a certification offered by the Project Management Institute.
- C.3.54 Quality assurance (QA) – planned and systematic processes that provide confidence in a product’s suitability for its intended purpose.
- C.3.55 Quality control (QC) – used in developing systems to ensure software is designed and produced to meet or exceed customer requirements.
- C.3.56 Redmine – an open source, cross-platform and cross-database project management

- web application. See <https://www.redmine.org/>. HBX uses Redmine for software development and ongoing operations trouble ticket management.
- C.3.57 Related systems – Related systems include, but are not limited to, EnrollApp, Glue Database, AWS, Jenkins, and Redmine.
- C.3.58 Storage area network – an architecture to attach remote computer storage devices (such as disk arrays, tape libraries and optical jukeboxes) to servers in such a way that the devices appear as locally attached to the operating system.
- C.3.59 Service level agreement (SLA) – a clause, set of clauses, or appendix to a service contract that specifies the required level of service or minimum standards for service. In practice, the term SLA often refers to the delivery time for performance, such as timelines for remedying technical failures.
- C.3.60 System Modification Program/Extended (SMP/E) – a standard utility used in conjunction with IBM’s z/OS operating system. SMP/E is the common installation tool for managing operating system components and middleware on z/OS.
- C.3.61 Storage Networking Industry Association (SNIA) – an association of producers and consumers of storage networking products, whose goal is to further storage networking technology and applications.
- C.3.62 Secure sockets layer (SSL) – cryptographic protocol that provides security and data integrity for communications over networks such as the Internet.
- C.3.63 Structure Query Language (SQL) – a database computer language designed for the retrieval and management of data in relational database management systems.
- C.3.64 Ticket – HBX manages its customer support functions via Salesforce and Redmine. A “ticket” refers to a Redmine or Salesforce ticket that requires intervention by either an HBX employee or a contractor, as determined by the ticket author.
- C.3.65 Transmission control protocol and Internet protocol (TCP/IP) – the Internet Protocol Suite (commonly known as TCP/IP) is the set of communications protocols used for the Internet and other similar networks.
- C.3.66 Visual Basic .NET (VB.NET) – an object-oriented computer language that can be viewed as an evolution of Microsoft’s Visual Basic (VB) implemented on the Microsoft .NET Framework.
- C.3.67 Virtual local area network (VLAN) – a group of hosts with a common set of requirements that communicate as if they were attached to the broadcast domain, regardless of their physical location.
- C.3.68 VMware – a commercial software that provides a completely virtualized set of

hardware to the guest operating system.

- C.3.69 Voice over Internet Protocol (VoIP) – a family of transmission technologies for delivery of voice communications over IP networks such as the Internet or other packet-switched networks.
- C.3.70 Wide area network (WAN) – a computer network that covers a broad area.
- C.3.71 Windows Internet Name Service (WINS) – a central mapping of host names to network addresses.
- C.3.72 Wireless fidelity (Wi-Fi) – uses one of the IEEE 802.11 wireless standards to achieve a wireless network.
- C.3.73 Extensible Markup Language (XML) – a general-purpose specification for creating custom markup languages.
- C.3.74 Extensible stylesheet language (XSL) – a family of transformation languages that allow one to describe how to format or transform files encoded in the XML standard.
- C.3.75 XML schema definition (XSD) – one of several XML schema languages.

#### **C.4 REQUIREMENTS**

##### **C.4.1 DESIGN, DEVELOPMENT AND IMPLEMENTATION OF SOFTWARE CUSTOMIZATIONS AND ENHANCEMENTS TO THE DC HEALTH LINK EXCHANGE PLATFORM (C&E; CLIN No. 001)**

- C.4.1.1 Customizations and enhancements refer to any new feature or function to the DC Health Link system. C&Es are generally designed to improve the customer experience or increase agency efficiency and operations.
- C.4.1.2 The need for C&Es to the DC Health Link system may be identified by customers, employees, brokers, or other stakeholders. Each requested customization or enhancement goes through a review and approval process designed to focus HBX's limited resources on improvements that best serve DC residents.
- C.4.1.3 Task orders for C&E shall be issued in accordance with the ordering procedures of Section D.4.

##### **C.4.2 SPECIAL IT STAFFING SERVICES (ITS; CLIN No. 002)**

- C.4.2.1 The Contractor shall, when needed by HBX, provide expert IT consulting services by qualified personnel in various labor categories. Expert consulting services are of a specialized nature and may include, but are not limited to:

- i. advising and consulting in areas such as sequencing of IT development to ensure HBX delivers the highest priority C&E at the best value for the Agency;
- ii. enhancing and strengthening processes related to the Software Development Lifecycle (SDLC) to provide defect-free software to HBX; and
- iii. staffing and resource levels necessary to achieve targeted customer service turnaround times to provide District residents with a high-quality, responsive customer experience.

C.4.2.2 Task orders for ITS services shall be issued in accordance with the ordering procedures of Section D.4.

## **C.5 PERSONNEL**

C.5.1 The Contractor shall provide highly qualified personnel to fulfill the programmatic needs of HBX in the required work to assist management in identifying objectives, vision, mission and goals as they relate to the project.

C.5.2 Substitutions of Key Personnel are permitted with prior approval from the HBX Chief Information Officer (CIO) or the CIO's designee.

C.5.3 Required labor categories and corresponding labor qualifications are listed in Attachment C

C.5.4 Upon issuance of any C&E project Task Order, the Contractor shall provide HBX with a staffing plan that includes at least the following elements:

- i. Name of each individual;
- ii. Title/functional role of each individual;
- iii. Schedule for each individual, indicating the days and hours the individual will work;
- iv. Forward-looking schedule for the period from contract award or exercise of an option year through February 28, 2020 to demonstrate how the Contractor shall ensure service delivery requirements will be met during Open Enrollment Season (see Section C.3.48), which is HBX's busiest period); and
- v. Regular updates to the staffing schedule at least monthly.

## **C.6 HOURS OF OPERATION**

C.6.1 Normal HBX business hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

C.6.2 The Contractor shall provide support five (5) days per week, Monday through Friday, for eight (8) hours per day during normal HBX business hours. The Contractor may,

with the prior consent of the HBX, perform work between the hours of 7:30 a.m. through 12:00 midnight.

- C.6.3 Because of the nature of the services HBX provides District residents, work may be required at times other than during normal HBX business hours, for example, during Open Enrollment. HBX may therefore require the Contractor to provide support outside of normal HBX business hours, including on weekends and holidays, as required to meet business needs.

## **C.7 PLACE OF PERFORMANCE**

- C.7.1 The Contractor shall provide services from a workspace approved by HBX.
- C.7.2 The Contractor's workspace must comply in all respects with the Exchange Privacy and Security Compliance Addendum to this Contract (Attachment B).
- C.7.3 The Contractor's workspace must be configured such that all HBX data is protected at all times in the same fashion as if it was located at an HBX-managed site. For example, access to the space should be restricted to personnel working on the HBX project. Devices that can access HBX data must be secured by a username and password that only the user knows. Wireless networks must be password-protected. Access to HBX databases must be restricted to only those personnel who have a need to access.
- C.7.4 Contractors may also provide employees who work on a remote basis if authorized in writing by the HBX Contract Administrator.

## **C.8 PERIODIC REPORTING, MEETING AND REVIEW**

The Contractor shall communicate regularly with the HBX Contract Administrator and report on relevant activities, as described below.

### **C.8.1 MEETINGS**

- C.8.1.2 On a weekly basis, the Contractor shall meet (either telephonically or in person) with the HBX Contract Administrator and other authorized HBX staff as required. The weekly meetings will include a standing agenda item to discuss project spending as compared to budget (where applicable) and any risks or issues to the successful performance and completion of assignments or delivery of projects.
- C.8.1.3 The HBX Contract Administrator and/or authorized HBX staff and Contractor staff shall meet ahead of Open Enrollment periods to develop testing and deployment schedules related to preparing for open enrollment.

C.8.1.4 The Contractor shall participate in other meetings with HBX staff as needed.

C.8.1.5 For contractors providing C&E under CLIN No. 001 and ITS under CLIN No. 002, HBX staff and Contractor staff shall also meet telephonically on a weekly basis to review project status.

## **C.8.2 REPORTS**

### **C.8.2.1 Project Status Reports**

The Contractor shall on a weekly basis provide a status report on all approved software customization and enhancement projects, and all IT Staffing Services, including but not limited to reporting on the following:

- i. Status of each project or service;
- ii. Milestones achieved in the prior week;
- iii. Milestones expected in the current week;
- iv. Risks or issues to the budget or the established timeline; and
- v. Spending analysis of each project or service (budget versus actual)

C.8.2.2 All reports shall be submitted in the latest HBX-compatible version of applications identified within the Microsoft Office Suite.

## **C.9 PRIVACY AND SECURITY AWARENESS TRAINING**

C.9.1 The Contractor shall require all personnel (to include all subcontractor personnel) with access to Personally Identifiable Information (PII) to receive HBX Privacy and Security Awareness Training.

C.9.2 The Contractor shall require all personnel whose role includes access to PII, and all personnel that are likely to see PII because of their proximity to individuals authorized to access PII, to receive approximately three (3) hours HBX Privacy and Security Awareness Training at least annually, as provided by or developed by HBX. The Contractor shall cooperate in good faith to ensure all workforce timely enroll and receive the annual HBX Privacy and Security Awareness Training.

C.9.3 The Contractor agrees to administer and/or receive HBX Privacy and Security Training in response to any contractor-related privacy or security incidents and/or breaches (including Subcontractor-related privacy or security incidents) at no cost to HBX.

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- C.9.4 The Contractor shall require its personnel to certify (manually or electronically) acceptance of responsibilities for privacy and security requirements at least annually and provide these certifications to HBX.
- C.9.5 The Contractor shall retain copies of aforementioned certifications for five (5) years.

**SECTION D**  
**PERIOD OF PERFORMANCE & DELIVERABLES**

**D.1 TERM OF CONTRACT**

The term of the Contract shall be from Date of Award through September 30, 2020.

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

D.2.1 HBX 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 HBX 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 HBX to an extension. The exercise of an option is subject to the availability of funds. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

D.2.2 If HBX exercises an option, the extended Contract shall be considered to include this option provision.

D.2.3 The price for the option period 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 five (5) years.

**D.3 DELIVERABLES**

D.3.1 The Contractor shall provide the following deliverables:

<b>Contract Section</b>	<b>Deliverable</b>	<b>Due</b>
C.8.2.1	Software Development Status Report <i>(when applicable)</i>	Weekly
C.8.2.1	IT Staffing Services	Weekly
E.5	Staff Timesheets	Monthly <i>(prior to submission of invoices)</i>

- D.3.2 The Contractor shall submit to HBX, as a deliverable, the report described in Section F.6.2 that 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, final payment to the Contractor shall not be paid pursuant to Section E.7.2.

**D.4 ORDERING CLAUSE**

- D.4.1 Any C&E and ITS supplies and services (CLIN Nos. 002 and 003, respectively) to be furnished under of this Contract shall only be ordered through the issuance, in writing, of task or delivery orders executed by the HBX Contracting Officer (CO). The CO is the only person authorized to issue task or delivery orders under this Contract.
- D.4.2 Task orders may be issued on a firm fixed-price (FFP) or labor-hour basis, or a combination thereof.
- D.4.3 All task orders, or portions thereof, issued on a labor-hour basis will be subject to a not-to-exceed (NTE) price ceiling to be determined at the time of issuance, and may be subject to a fixed level of effort (LOE) or labor mix (labor categories and hours).
- D.4.4 All task or delivery orders are subject to the terms and conditions of this Contract. In the event of a conflict between the terms of an order and the terms of the Contract, the terms of the Contract shall control.
- D.4.5 In the event that a new labor category or categories not listed in CLIN No. 003 are required, the Contractor and HBX will negotiate labor rates for the new categories. The new categories and rates (including annual price escalation, if any) will be incorporated into the Contract, through a bilateral Modification, for the remainder of the Contract term, including all options.

**D.5 REQUESTS FOR TASK ORDER PROPOSALS**

- D.5.1 HBX may issue Requests for Task Order Proposal (RFTOP) for C&E and ITS services. The RFTOP will describe the business need and any technical requirements, and will generally be issued using simplified means, e.g., by email.
- D.5.2 The RFTOP may request pricing on a FFP or labor-hour basis, or a combination thereof, depending on the type and number of projects or the amount of services required.
- D.5.3 For task orders (or portions thereof) issued on a labor-hour basis, the RFTOP may specify a fixed LOE and labor mix, or permit the Contractor to propose its own LOE and labor mix. Proposals for labor-hour type task orders shall be developed using the Contractor's labor rates under CLIN No. 003. Contractors are encouraged to offer discounts from their CLIN No. 003 labor rates, but in no event shall the Contractor's

task order proposal quote prices exceeding the Contractor's applicable CLIN No. 003 labor rate for the current performance period.

- D.5.4 For all request for development projects, the contractor shall provide a cost breakdown on how the "not to exceed amount" or "fixed price amount" was developed. This breakdown shall include the labor categories and rates listed in CLIN 002. For labor categories required that are not included in CLIN 002, paragraph D.4.5 shall apply.

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**SECTION E**  
**CONTRACT ADMINISTRATION**

**E.1 CONTRACTING OFFICER**

- E.1.2 Contracts will be entered into and signed on behalf of HBX only by the designated Contracting Officer (CO), whose contact information is:

Annie R. White  
Contracting Officer  
DC Health Benefit Exchange Authority  
1225 "I" Street, NW 4<sup>th</sup> Floor  
Washington, DC 20005  
202-741-0846  
[annie.white@dc.gov](mailto:annie.white@dc.gov)

- E.1.3 The CO is the only person authorized to approve changes in any of the requirements of this Contract.
- E.1.4 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 executed by the CO.
- E.1.5 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 may be made in the contract price to cover any cost increase incurred as a result thereof.

**E.2 CHANGES**

- E.2.1 The CO may, at any time, by written order (and without notice to the surety, if any), make changes in the Contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the Contract, or in the time required for performance, an equitable adjustment may be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that if the CO determines that the facts justify such action, the CO may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 36 (Disputes) of HBX Standard Contract Provisions 2016 (Attachment A).
- E.2.2 HBX shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the Contract or subcontract, including work under an HBX-issued change order, when the

additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this Contract, unless the CO:

- i. agrees with the Contractor, and if the subcontractor if applicable, on a price for the additional work;
- ii. obtains a certification of funding to pay for the additional work;
- iii. makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
- iv. provides the Contractor with written notice of the funding certification.

E.2.3 The Contractor shall include in its subcontracts a clause that requires the Contractor to:

- i. within 5 business days of its receipt of notice the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
- ii. pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within 10 days of receipt of payment from the District; and
- iii. notify the subcontractor and CO in writing of the reason the Contractor withholds any payment from a subcontractor for the additional work.

E.2.4 Neither HBX, the District, the Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays, until the parties agree on a price for the additional work.

### **E.3 CONTRACT ADMINISTRATOR**

E.3.1 The Contract Administrator (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 contact information for the CA is:

Catherine Bennett  
Information Technology Program Manager  
DC Health Benefit Exchange Authority  
1225 Eye Street, NW  
Washington, DC 20005  
[catherine.bennett@dc.gov](mailto:catherine.bennett@dc.gov)

E.3.2 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:

- i. 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;
- ii. coordinating site entry for Contractor personnel, if applicable;
- iii. 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;
- iv. 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 HBX payment provisions (Section E.4); and
- v. maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoices or vouchers.

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

- i. award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments, or modifications;
- ii. grant deviations from or waive any of the terms and conditions of the contract;
- iii. increase the dollar limit of the Contract, Task Order and/or Delivery Order, or authorize work beyond the dollar limit of the Contract, Task Order and/or Delivery Order;
- iv. authorize the expenditure of funds by the Contractor;
- v. change the period of performance; or
- vi. authorize the use of HBX 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 HBX, 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.4.5 HBX will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

## **E.5 QUICK PAYMENT ACT**

### **E.5.1 INTEREST PENALTIES TO CONTRACTORS**

E.5.1.1 HBX will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, as amended, 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. No interest penalty shall be paid if payment for the completed delivery or service is made on or before the required payment date. The required payment date shall be the date on which payment is due under the terms of this Contract or not later than 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

E.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.

### **E.5.2 PAYMENTS TO SUBCONTRACTORS**

In addition to subcontract provision required under Section 7(e) of HBX Standard Contract Provisions 2016 (Attachment A), the Contractor shall include in each subcontract under this Contract a provision that obligates the Contractor, at the election of the subcontractor, to participate in negotiation or mediation as an alternative to administrative or judicial resolution of a dispute between them.

## **E.6 HOURLY LABOR RATE CEILING**

E.6.1 The price ceilings for specified hourly labor rates are set forth in Section B.

E.6.2 The hourly rates in this Contract shall be fully loaded and include wages, overhead, general and administrative expenses, and profit. The total cost to HBX shall not exceed the ceilings specified in Sections B.

- E.6.3 The Contractor agrees to use its best efforts to perform the work specified in this Contract and meet all obligations under this Contract within the hourly rate ceilings.
- E.6.4 The Contractor must notify the CO, in writing, whenever it has reason to believe that the total cost for the hourly labor rates of this Contract will be either greater or substantially less than the hourly rate ceilings.
- E.6.5 As part of the notification, the Contractor must provide the CO a revised estimate of the total cost of the hourly labor rates of this Contract.
- E.6.6 HBX is not obligated to reimburse the Contractor for hourly rates incurred in excess of the hourly rate ceilings specified in Sections B. The Contractor is not obligated to continue providing hourly labor rates under this Contract (including actions under the Termination clauses of this Contract), or otherwise incur costs in excess of the hourly rate ceilings specified in Section B until the CO notifies the Contractor, in writing, that the estimated cost has been increased and provides revised hourly rate ceilings for the hourly rate items in this Contract.
- E.6.7 No notice, communication, or representation in any form from any person other than the CO shall change the hourly labor rate ceilings. In the absence of the specified notice, HBX is not obligated to reimburse the Contractor for any costs in excess of the hourly rate ceilings, whether such costs were incurred during the course of contract performance or as a result of Termination.

**E.7 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- E.7.1 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.6.5.
- E.7.2 HBX shall not make final payment to the Contractor until the HBX Chief Financial Officer 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

### CONTRACT CLAUSES

#### **F.1 APPLICABILITY OF HBX STANDARD CONTRACT PROVISIONS**

HBX Standard Contract Provisions 2016 (Attachment A) 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 ~~striktthrough~~) and incorporated in current form in relevant sections of the Contract.

#### **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 14 dated 7/16/2019**, 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 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 MANDATORY SUBCONTRACTING REQUIREMENTS**

- F.7.1 For all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- F.7.2 If there are insufficient SBEs to completely fulfill the requirement of paragraph F.7.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- F.7.3 A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections F.7.1.1 and F.7.1.2.
- F.7.4 Except as provided in F.7.1.5 and F.7.1.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- F.7.5 If the prime contractor is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, the CBE member of the certified joint venture shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. If the CBE member of the certified joint venture prime contractor performs less than 50% of the

contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- F.7.6 Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- F.7.7 A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

**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 G.3) to this Contract.

**F.10 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 Contracting Officer giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the 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. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies 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 affected 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 Grantee and subcontractors.

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 vendor 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).

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 this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a Crime policy including 3<sup>rd</sup> party fidelity to cover dishonest acts of the Contractor, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of \$100,000 per occurrence.
5. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$10,000,000 per occurrence or claim, \$10,000,000 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 be 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. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.
6. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 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.

7. 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) \$10,000,000 per occurrence and \$10,000,000 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.

**B. 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.

- C. **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.

- D. **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.**

- E. **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.

- F. **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.

- G. **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.

- H. **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 HBX contract number. Evidence of insurance shall be submitted to:

Annie R. White  
Contracting Officer  
Health Benefit Exchange Authority  
1225 "I" Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20002  
202/741-0846  
[Annie.white@dc.gov](mailto:Annie.white@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).

- I. **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.
- J. **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.

## SECTION G

### ATTACHMENTS & ADDENDUM

The following attachments are incorporated, either in whole, in relevant part, or by reference, and made a part of the Contract:

Attachments	Document
A	HBX Standard Contract Provisions 2016
B	Exchange Privacy and Security Compliance Addendum

#### **G.6 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 or in relevant part) and made a part of the Contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract
- (3) HBX Standard Contract Provisions 2016
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended (E-Sourcing DOC446790)
- (6) Best and Final Offers (BAFO)
- (7) Proposals



**STANDARD CONTRACT PROVISIONS  
2016**

**1225 I Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20005**



## STANDARD CONTRACT PROVISIONS

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## 1. Definitions

The terms Mayor, HBX, Contracting Officer, Contract Administrator, and HBX mean the Mayor of District of Columbia, the Health Benefit Exchange Authority, the current HBX Contracting Officer, HBX Contract Administrator designated to oversee the contract, and the Government of District of Columbia, respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

## 2. Time

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

## ~~3. Invoice Payment~~

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

## ~~4. Invoice Submittal~~

- ~~(a) The Contractor shall submit proper invoices on a monthly basis. Invoices shall be prepared and submitted to [hbxinvoice@dc.gov](mailto:hbxinvoice@dc.gov).~~
- ~~(b) To constitute a proper invoice, the Contractor shall submit the following information on the invoice:~~
  - ~~(1) Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);~~
  - ~~(2) Contract number and invoice number;~~
  - ~~(3) Description, price, quantity and the date(s) that the supplies or services were delivered or performed;~~
  - ~~(4) Other supporting documentation or information, as required by the Contracting Officer;~~
  - ~~(5) Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;~~
  - ~~(6) Name, title, phone number of person preparing the invoice;~~
  - ~~(7) Name, title, phone number and mailing address of person (if different from the person identified in above) to be notified in the event of a defective invoice; and~~
  - ~~(8) Authorized signature.~~

## 5. Assignment of Contract Payments

- (a) 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.

- (b) Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.
- (c) 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).”

#### **6. ~~Interest Penalties to Contractors~~**

~~(a) HBX will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:~~

- ~~(1) the 3rd day after the required payment date for meat or a meat product;~~
- ~~(2) the 5th day after the required payment date for an agricultural commodity; or~~
- ~~(3) the 15th day after the required payment date for any other item.~~

~~(b) 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.~~

#### **7. Payments to Subcontractors**

(a) The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by HBX for work performed by any subcontractor under this contract:

- (1) Pay the subcontractor for the proportionate share of the total payment received from HBX that is attributable to the subcontractor for work performed under the contract; or
- (2) Notify HBX 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

(b) 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. 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:

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

(c) 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.

(d) 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 or HBX is a party. Neither the District of Columbia nor HBX maybe interpleaded in any judicial or administrative proceeding involving such a dispute.

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

**~~8. Authority of the Contracting Officer~~**

- ~~(a) Contracts will be entered into and signed on behalf of HBX only by a designated HBX Contracting Officer.~~
- ~~(b) The CO is the only person authorized to approve changes in any of the requirements of this contract.~~
- ~~(c) 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.~~
- ~~(d) 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.~~

**9. Authority of the Contract Administrator**

- (a) 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:
  - (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;
  - (2) Coordinating site entry for Contractor personnel, if applicable;
  - (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;
  - (4) Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
  - (5) Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- (b) 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.
- (c) The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to HBX, to take all corrective action necessitated by reason of the unauthorized changes.

**10. ~~Department of Labor Wage Determination~~**

~~The Contractor shall be bound by the Wage Determination No. 2005-2103, Revision 16, dated July 8, 2015, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 et seq., and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein. 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 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.~~

**11. Publicity**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer 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.

**12. Freedom of Information Act**

- (a) 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 Contract Administrator (CA) who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act.
- (b) If either the District or HBX receives a request for a record maintained by the

Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

### ~~13. Subcontracting Requirements~~

~~The following subcontracting requirements are mandated by the District of Columbia Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005, as amended, (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.) and apply unless a waiver has been approved by the Director of the Department of Small and Local Business Development (DSLBD) under D.C. Code § 2-218.51. (a) A prime contractor that is certified as a small, local or disadvantaged business enterprise is not required to comply with the provisions of this section.~~

~~(a) For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.~~

~~(b) If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.~~

~~(c) A contractor that is required to subcontract by law must submit a notarized statement detailing its subcontracting plan, as follows. Once accepted, the subcontracting plan cannot be changed without the consent of the Director of DSLBD. Each subcontracting plan shall include the following:~~

~~(1) The name and address of each subcontractor;~~

~~(2) A current certification number of the small or certified business enterprise;~~

~~(3) The scope of work to be performed by each subcontractor;~~

~~(4) The price to be paid by the prime contractor to each subcontractor.~~

~~(d) Once any required subcontracting plans are approved under this contract, the Contractor shall provide copies of executed contracts with the subcontractors identified in the subcontracting plan to the CO, Director of DSLBD, project manager, and the District of Columbia Auditor. On a quarterly basis, the contractor shall also provide a quarterly report for each subcontractor identified in the subcontracting plan that includes the following:~~

~~(1) The price to be paid by the prime contractor under the subcontract;~~

~~(2) A brief description of the goods procured or the services subcontracted for;~~

- ~~(3) The amount paid by the prime contractor to the subcontractor under the subcontract; and~~
- ~~(4) A copy of any fully executed subcontracts not provided in a prior quarterly report.~~
- ~~(e) The Contractor must meet on an annual basis with DSLBD, the CO, project manager, and District of Columbia Auditor to provide an update of the subcontracting plan for utilization of small business enterprises and certified business enterprises. DSLBD will notify the Contractor of the meeting in writing at least 30 days prior to the meeting date.~~
- ~~(f) A prime contractor shall ensure that subcontractors meet the criteria for responsibility described in the Health Benefit Exchange Authority's Contracting Policies and Procedures (available at <http://hbx.dc.gov/node/476592>).~~
- ~~(g) If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default clause of the Standard Contract Provisions.~~
- ~~(h) There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.~~
- ~~(i) A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.~~
- ~~(j) Contractors failing to comply with mandatory subcontracting requirements, subcontracting plan, or reporting are also subject to the penalties set forth in D.C. Code § 2-218.63.~~

#### ~~14. New Hire Requirements and First Source Employment Agreement~~

~~Contracts valued at \$300,000 or more are subject to the First Source Employment Agreement Act of 1984, as amended (D.C. Official Code §2-219.01 et seq.), as follows:~~

- ~~(a) 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:~~
- ~~(b) 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. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees~~
- ~~(c) The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract which the Contractor shall agree that:~~
- ~~(d) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and~~
- ~~(e) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.~~
- ~~(f) The Contractor shall submit to DOES, no later than the 10th of each month following execution of the contract, a First Source Agreement Contract Compliance Report ("contract compliance report") to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:
  - ~~(1) Number of employees needed;~~
  - ~~(2) Number of current employees transferred;~~
  - ~~(3) Number of new job openings created;~~
  - ~~(4) Number of job openings listed with DOES;~~
  - ~~(5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and~~~~
- ~~(g) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - ~~(1) Name;~~
  - ~~(2) Social security number;~~
  - ~~(3) Job title;~~
  - ~~(4) Hire date;~~
  - ~~(5) Residence; and~~
  - ~~(6) Referral source for all new hires.~~~~
- ~~(h) If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents. With the~~

~~submission of the Contractor's final request for payment from HBX, the Contractor shall:~~

- ~~(1) Document in a report to the Contracting Officer its compliance with this clause; or~~
- ~~(2) Submit a request to the Contracting Officer for a waiver of compliance and include the following documentation: (i) Material supporting a good faith effort to comply; (ii) Referrals provided by DOES and other referral sources; (iii) Advertisement of job openings listed with DOES and other referral sources; and (iv) Any documentation supporting the waiver request.~~

~~(i) The Contracting Officer may waive the provisions of section (h) if the Contracting Officer finds that:~~

- ~~(1) A good faith effort to comply is demonstrated by the Contractor;~~
- ~~(2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson;~~
- ~~(3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or~~
- ~~(4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.~~

~~(j) Upon receipt of the contractor's final payment request and related documentation pursuant to sections (h), the Contracting Officer shall determine whether the Contractor is in compliance with section (h) or whether a waiver of compliance pursuant to section (i) is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.~~

~~(k) Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section (h), or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the Contracting Officer pursuant to this section.~~

~~(l) The provisions of sections (h) through (k) do not apply to nonprofit organizations.~~

## **15. 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.

**16. Americans with Disabilities Act of 1990 (ADA), as amended**

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.

**17. Way to Work Amendment Act of 2006**

- (a) Except as described in (h) below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006, as amended (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.
- (b) The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the District of Columbia Office of Contracting and Procurement website at [www.ocp.dc.gov](http://www.ocp.dc.gov).
- (c) 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.
- (d) The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).
- (e) The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 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.
- (f) 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.
- (g) 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) 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.

- (i) A contractor may seek an exemption 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.

## **18. 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 and Contractor must comply with all Equal Employment Requirements.

## **19. Subcontracting Restrictions**

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 HBX 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 HBX, the Contractor shall remain liable to HBX for all Contractor's work and services required hereunder.

## **20. Interference**

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

## **21. Contracts that Cross Fiscal Years**

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

appropriations.

**22. Confidentiality of Information**

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

The Contractor shall comply with HBX's Privacy and Security Policies for Exchange Operations found on the DC Health Link website and be in compliance with all federal laws including those for exchange operations set forth at 45 C.F.R. 155.260 and security standards consistent with those required for covered entities by 45 CFR Parts 164.306, 164.308, 164.310, 164.312, and 164.314, as applicable. Contractor will execute a data use agreement with HBX if requested.

**23. Covenant Against Contingent Fees:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, HBX will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

**~~24. Insurance~~**

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

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

- ~~b. **Automobile Liability Insurance.** The Contractor shall provide automobile liability insurance to cover all owned, hired or non owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.~~
- ~~c. **Workers' Compensation Insurance.** The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.~~
- ~~d. **Employer's Liability Insurance.** The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.~~
- ~~e. **Duration.** The Contractor shall carry all required insurance until all contract work is accepted by HBX, 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.~~
- ~~f. **Minimum Requirements.** 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.**~~
- ~~g. **Liability.** 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.~~
- ~~h. **Measure of Payment.** HBX 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.~~
- ~~i. **Notification.** The Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.~~
- ~~j. **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 to the Contracting Officer.~~
- ~~k. **Disclosure of Information.** The Contractor agrees that HBX may disclose the name and contact information of its insurers to any third party which presents a claim against HBX 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.~~

## 25. **Rights in Data**

- (a) “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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) All data first produced in the performance of this Contract shall be the sole property of HBX. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for HBX under this Contract, are works made for hire and are the sole property of HBX; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to HBX the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give HBX 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 HBX until such time as HBX may have released such data to the public.
- (f) HBX will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed

will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

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

(g) The restricted rights set forth in section (f) are of no effect unless:

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

#### **RESTRICTED RIGHTS LEGEND**

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

- (2) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on HBX'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 HBX of liability with respect to such unmarked software.

- (h) In addition to the rights granted in Section (f) above, the Contractor hereby grants to HBX a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section (f) above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by HBX under this contract. Unless written approval of the CO is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by HBX under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for HBX any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.
- (i) Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish HBX's or the Contractor's rights in that subcontractor data or computer software which is required for HBX.
- (j) For all computer software furnished to HBX with the rights specified in Section I.5.5,

the Contractor shall furnish to HBX, a copy of the source code with such rights of the scope specified in Section (e). For all computer software furnished to HBX with the restricted rights specified in Section (f), HBX, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided HBX under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

- (k) The Contractor shall indemnify and save and hold harmless HBX, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- (l) Nothing contained in this clause shall imply a license to HBX under any patent, or be construed as affecting the scope of any license or other right otherwise granted to HBX under any patent.
- (m) Paragraphs (f), (g), (h), (k) and (l) above are not applicable to material furnished to the Contractor by HBX 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.

**26. Patents:**

The Contractor shall hold and save HBX, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by HBX, unless otherwise specifically stipulated in the contract.

**27. Quality:**

Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

**28. Inspection Of Supplies:**

- (a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the

Contractor's failure to cure within ten (10) days after date of notification, HBX may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

- (c) The Contractor shall provide and maintain an inspection system acceptable to HBX covering supplies under this contract and shall tender to HBX for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to HBX during contract performance and for as long afterwards as the contract requires. HBX may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.
- (d) HBX has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. HBX will perform inspections and tests in a manner that will not unduly delay the work. HBX assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.
- (e) If HBX performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, HBX will bear the expense of HBX inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, HBX will not be liable for any reduction in the value of inspection or test samples.
  - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.
  - (2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest
- (f) HBX has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. HBX may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, HBX may either

- (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or
  - (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i) If this contract provides for the performance of HBX quality assurance at source, and if requested by HBX, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for HBX inspection.
- (j) HBX request shall specify the period and method of the advance notification and HBX representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if HBX representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
- (k) HBX will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. HBX failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon HBX, for non-conforming supplies.
- (l) Inspections and tests by HBX do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, HBX, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, HBX will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned HBX thereby.

**29. Inspection Of Services:**

- (a) Definition. "Services," as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contract Administrator has the authority to inspect and determine the accuracy of the services and deliverables. Services and deliverables will not be accepted for purposes of payment until the entirety of the service or deliverable has been approved by the Contract Administrator
- (c) The Contractor shall provide and maintain an inspection system acceptable to the Contract Administrator covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to HBX during contract performance and for as long afterwards as the contract requires.
- (d) HBX has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. HBX will perform inspections and tests in a manner that will not unduly delay the work.
- (e) If HBX performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- (f) If any of the services do not conform to the contract requirements, HBX may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, HBX may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- (g) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, HBX may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by HBX that is directly related to the performance of such services, or (2) terminate the contract for default.

**30. Waiver:**

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

**31. Default:**

- (a) HBX may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
  - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
  - (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in

writing) after receipt of notice from the Contracting Officer specifying such failure.

- (b) In the event HBX terminates this contract in whole or in part as provided in paragraph (a) of this clause, HBX may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated and the Contractor shall be liable to HBX for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- (c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of HBX or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- (d) If this contract is terminated as provided in paragraph (a) of this clause, HBX, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to HBX, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which HBX has an interest. Payment for completed supplies delivered to and accepted by HBX will be at the contract price. Payment for manufacturing materials delivered to and accepted by HBX will be at the contract price. Payment for manufacturing materials delivered to and accepted by HBX and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". HBX may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect HBX against loss because of outstanding liens or claims of former lien holders.
- (e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of HBX, be the same as if the notice of termination had been issued pursuant to such clause. See

Clause 20 for Termination for Convenience of HBX.

- (f) The rights and remedies of HBX provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (g) As used in paragraph (c) of this clause, the terms “subcontractor(s) means subcontractor(s) at any tier.

**32. Indemnification:**

The Contractor agrees to defend, indemnify and hold harmless HBX, its officers, agencies, departments, agents, and employees (collectively the “HBX”) from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys’ fees), resulting from arising out of, or in any way connected to activities or work performed by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. This indemnification obligation shall not apply in the event the claim is solely the result of HBX’s negligence. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any HBX property that is damaged by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. HBX agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by HBX is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by HBX as necessary to satisfy any outstanding claim which HBX may have against the Contractor.

**33. Transfer:**

No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

**34. Taxes:**

- (a) The Government of District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and District of Columbia Sales and Use Taxes.
- (b) Tax exemption certificates are no longer issued by HBX for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to HBX.

“District of Columbia Government is Exempt from Federal Excise Tax –

Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland.”

Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

- a) Deliveries to Glenn Dale Hospital – Exemption No. 4647
- b) Deliveries to Children’s Center – Exemption No. 4648
- c) Deliveries to other HBX Departments or Agencies – Exemption No. 09339

“District of Columbia Government is Exempt from Sales and Use Tax – Registration No. 53-600, District of Columbia Office of Tax and Revenue.”

**35. HBX Employees Not To Benefit:**

Unless a determination is made as provided herein, no officer or employee of HBX will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any HBX employee authorized to execute contracts in which they or an employee of HBX will be personally interested shall be void, and no payment shall be made thereon by HBX or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A HBX employee shall not be a party to a contract with HBX and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when HBX’s needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

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

**36. Disputes:**

All disputes arising under or relating to this contract shall be resolved as provided herein. A claim is a written demand by a contractor or HBX or assertion seeking the payment of money, the adjustment of contract terms, or other relief arising under or relating to a contract to which both HBX and the contractor are parties. HBX shall make all reasonable efforts to resolve contractual disputes prior to the submission of a claim, but in the event such disputes cannot be resolved, claims arising under or relating to contracts are to be handled as follows:

**A. Claims by a Contractor against the HBX**

- 1. Claim, as used in this section, means is a written assertion seeking the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract.
- 2. All claims by a contractor against HBX arising under or relating to a contract shall be in writing and shall be submitted to the Executive Director or designee for a decision.

The contractor's claim shall contain at least the following information:

- (1) A description of the claim and the amount in dispute;
  - (2) Any data or other information in support of the claim;
  - (3) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
  - (4) The contractor's request for relief or other action by the Executive Director or designee.
1. The Executive Director or designee may meet with the contractor in a further attempt to resolve the claim by agreement.
  2. For any claim of \$100,000 or less, the Executive Director or designee shall issue a decision within one hundred twenty (120) days from receipt of the claim.
  3. For any claim over \$100,000, the Executive Director or designee shall, in consultation with the Finance Committee, issue a decision within one hundred twenty (120) days of receipt of the claim.
  4. Whenever possible, the Executive Director or designee shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.
  5. The Executive Director or designee's written decision shall state the reasons for the decision reached, and shall inform the contractor of the contractor's right to an appeal: Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.
  6. Within 90 days after the date of receipt of a written decision of the Executive Director or designee, the contractor may appeal the decision to the Contract Appeals Board using the process set forth in District of Columbia Contract Appeals Board Rules (49 DC Reg. 2078 (March 8, 2002)) and DC Code §§ 2-309.03, 2-309.04, and 2-309.08. The Executive Director or designee's decision is final and subject to review only upon timely commencement of an appeal.
  7. Any failure by the Executive Director or designee to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal.
  8. Pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director or designee.

B. Claims by HBX against a Contractor

1. All claims by HBX against a contractor arising under or relating to a contract shall be decided by the Executive Director or designee.
2. The Executive Director or designee shall send written notice of the claim to the contractor with at least the following information:
  - i. A description of the claim and the amount in dispute;
  - ii. Any data or other information in support of the claim;
  - iii. The pertinent contract terms;

- iv. A brief description of HBX's efforts to resolve the dispute prior to filing the claim; and
  - v. HBX's request for relief or other action.
3. The contractor shall have (14) days to respond to the claim in writing. The written response may: identify any factual areas of agreement and dispute or provide additional data or information that is pertinent to the claim for HBX's consideration.
  4. The Executive Director or designee may meet with the contractor in a further attempt to resolve the claim by agreement.
  5. For any claim of \$100,000 or less, the Executive Director or designee shall issue a decision within one hundred and twenty (120) days from receipt of a written request from a contractor that a decision be rendered within that period.
  6. For any claim over \$100,000, the Executive Director or designee shall, in consultation with the Finance Committee, issue a decision within one hundred and twenty (120) days of receipt of the claim. Whenever possible, the Executive Director or designee shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.
  7. The Executive Director or designee's written decision shall state the reasons for the decision reached, and shall inform the contractor of the contractor's right to an appeal: Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.
  8. Within ninety (90) days after the date of receipt of a decision of the Executive Director or designee, the contractor may appeal the decision to the Contract Appeals Board. The Executive Director or designee's decision is final and subject to review only upon timely commencement of an appeal.
  9. Pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the Executive Director or designee.

**37. Termination For Convenience Of HBX:**

- (a) HBX may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in HBX's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

- (3) Terminate all contracts to the extent they relate to the work terminated.
- (4) Assign to HBX, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case HBX will have the right to settle or pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to HBX (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to HBX.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which HBX has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by HBX under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request HBX to remove those items or enter into an agreement for their storage. Within fifteen (15) days, HBX will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer

determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by HBX (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of :

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and

(iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the

termination inventory.

- (g) Except for normal spoilage, and except to the extent that HBX expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to HBX or to a buyer.
- (h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), HBX will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (i) In arriving at the amount due the Contractor under this clause, there shall be deducted:
  - (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
  - (2) Any claim which HBX has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to HBX.
- (j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.
- (k) HBX may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.
- (l)

If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to HBX upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or

  - other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this

contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to HBX, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

**38. Recovery Of Debts Owed HBX:**

The Contractor hereby agrees that HBX may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due HBX.

**39. Retention and Examination Of Records:**

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

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (2) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, HBX, or other personnel duly authorized by the Contracting Officer.

The Contracting Officer, the Inspector General and District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

**40. Non-Discrimination Clause:**

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.) ("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

- (b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
  - (b) recruitment, or recruitment advertising;
  - (c) demotion, layoff, or termination;
  - (d) rates of pay, or other forms of compensation; and
  - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).
  - (5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by HBX Executive Director or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- (9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request HBX to enter into such litigation to protect the interest of HBX.

**41. Health And Safety Standards:**

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

**42. Appropriation Of Funds:**

HBX's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of HBX for the payment of any money shall not arise unless and until such appropriation shall have been provided.

**43. Buy American Act:**

- (a) The Buy American Act (41 U.S.C. §10a) provides that HBX give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall deliver only domestic end products, except those-
  - (1) For use outside the United States;
  - (2) That HBX determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  - (3) For which HBX determines that domestic preference would be inconsistent with the public interest; or
  - (4) For which HBX determines the cost to be unreasonable.

#### **44. Service Contract Act of 1965:**

- (a) Definitions. “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).
  - (1) “Contractor,” as used in this clause, means the prime Contractor or any subcontractor at any tier.
  - (2) “Service employee,” as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a HBX contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.
- (b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.
- (c) Compensation

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.
- (2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) 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 class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.
  - (a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;
  - (b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
  - (c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

- (d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;
  - (e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;
  - (f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;
  - (g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
  - (4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe

benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
- (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:
  - (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
  - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

- (g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
  - (1) For each employee subject to the Act:
    - (a) Name and address;
    - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
    - (c) Daily and weekly hours worked; and
    - (d) Any deductions, rebates, or refunds from total daily or weekly compensation.
  - (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
  - (3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other HBX contract

with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, HBX may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded HBX contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a HBX contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

- (ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.
  - (iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.
- (2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

**45. Cost and Pricing Data:**

- (a) This paragraph and paragraphs b through e below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.
- (b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.
- (c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties~~s~~ furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

- (d) Any reduction in the contract price under paragraph c above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.
- (e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
- (f) The following specific information should be included as cost or pricing data, as applicable:
  - (1) Vendor quotations;
  - (2) Nonrecurring costs;
  - (3) Information on changes in production methods or purchasing volume;
  - (4) Data supporting projections of business prospects and objectives and related operations costs;
  - (5) Unit – cost trends such as those associated with labor efficiency;
  - (6) Make or buy decisions;
  - (7) Estimated resources to attain business goals;
  - (8) Information on management decisions that could have a significant bearing on costs.
- (g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:
  - (1) final payment under the contract;
  - (2) final termination settlement; or

- (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

**46. Contracts in Excess of One Million Dollars**

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

**47. Multivear Contract:**

If this contract is a multiyear contract, then the following provision is made part of this contract:

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both HBX and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

**48. Termination Of Contracts For Certain Crimes And Violations:**

- (a) HBX may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:
  - (1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or
  - (2) There has been any breach or violation of:
    - (A) Any provision of the Procurement Practices Act of 1985, as amended, or
    - (B) The contract provision against contingent fees.
- (b) If a contract is terminated pursuant to this section, the Contractor:
  - (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and
  - (2) Shall refund all profits or fixed fees realized under the Contract.
- (c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

**49. Governing Law**

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

LABOR CATEGORIES and QUALIFICATIONS
<p><b>Subject Matter Expert</b></p> <p>Level 1 – Bachelor’s degree in computer science, engineering, or a related field and 1-3 years’ experience relevant to specific subject matter.</p> <p>Level 2 – Master’s degree in computer science, engineering, or a related field and 3-5 years’ experience relevant to specific subject matter, or 2 additional years’ experience relevant to specific subject matter in lieu of degree requirement.</p> <p>Level 3 – Master’s degree in computer science, engineering, or a related field and over 5 years’ experience relevant to specific subject matter, or 2 additional years’ experience relevant to specific subject matter in lieu of degree requirement.</p>
<p><b>Project Director</b></p> <p>Level 1 - Bachelor’s degree in computer science, business administration, or a related field and 1-3 years’ experience directing major IT projects and initiatives.</p> <p>Level 2 - Master’s degree in computer science, business administration, or a related field and 3-5 years’ experience directing major IT projects and initiatives, or 2 additional years’ experience directing major IT projects and initiatives in lieu of degree requirement.</p> <p>Level 3 - Master’s degree in computer science, business administration, or a related field and over 5 years’ experience directing major IT projects and initiatives, or 2 additional years’ experience directing major IT projects and initiatives in lieu of degree requirement.</p>
<p><b>Project Manager</b></p> <p>Level 1 - Bachelor’s degree in computer science, business administration, or a related field and 1-3 years’ experience managing major IT projects and initiatives.</p> <p>Level 2 - Master’s degree in computer science, business administration, or a related field and 3-5 years’ experience managing major IT projects and initiatives, or 2 additional years’ experience managing major IT projects and initiatives in lieu of degree requirement.</p> <p>Level 3 - Master’s degree in computer science, business administration, or a related field and over 5 years’ experience managing major IT projects and initiatives, or 2 additional years’ experience managing major IT projects and initiatives in lieu of degree requirement.</p>
<p><b>System Specialist</b></p> <p>Level 1 – Bachelor’s degree in computer science, engineering, or a related field and 1-3 years’ experience designing, managing, operating, configuring, and maintaining cloud computing technology or 1 additional year of experience in lieu of degree requirement.</p> <p>Level 2 – Master’s degree in computer science, engineering, or a related field and 3-5 years’ experience designing, managing, operating, configuring, and maintaining cloud computing technology, or 2 additional years’ experience with cloud computing technology in lieu of degree requirement.</p>

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Level 3 - Master's degree in computer science, engineering, or a related field and over 5 years' experience designing, managing, operating, configuring, and maintaining cloud computing technology, or 2 additional years' experience with cloud computing technology in lieu of degree requirement.

### **Business Analyst**

Level 1 - Bachelor's degree in computer science, engineering, business, or a related field and 1-3 years' experience managing IT projects using Agile development methodology, from requirements gathering through delivery, including project budget management.

Level 2 – Master's degree in computer science, engineering, business, or a related field and 3-5 years' experience managing IT projects using Agile development methodology, from requirements gathering through delivery, including project budget management, or 2 additional years' experience managing IT projects in lieu of degree requirement.

Level 3 - Master's degree in computer science, engineering, business, or a related field and over 5 years' experience managing IT projects using Agile development methodology, from requirements gathering through delivery, including project budget management, or 2 additional years' experience managing IT projects in lieu of degree requirement.

### **Web Application Developer**

Level 1 – Bachelor's degree in computer science, engineering, or a related field and 1-3 years' experience designing, coding, and modifying websites, software applications and interfaces using Agile development methodology and leveraging an array of programming languages.

Level 2 – Master's degree in computer science, engineering, or a related field and 3-5 years' experience designing, coding, and modifying websites, software applications and interfaces using Agile development methodology and leveraging an array of programming languages, or 2 additional years' experience managing IT projects in lieu of degree requirement.

Level 3 - Master's degree in computer science, engineering, or a related field and over 5 years' experience designing, coding, and modifying websites, software applications and interfaces using Agile development methodology and leveraging an array of programming languages, or 2 additional years' experience managing IT projects in lieu of degree requirement.

### **Database Administrator/Analyst**

Level 1 – Bachelor's degree in computer science, engineering, or a related field and 1-3 years' experience planning and developing, and troubleshooting and maintaining, database applications, systems, and interfaces.

Level 2 – Master's degree in computer science, engineering, or a related field and 3-5 years' experience planning and developing, and troubleshooting and maintaining, database applications, systems, and interfaces, or 2 additional years' experience managing IT projects in lieu of degree requirement.

Level 3 - Master's degree in computer science, engineering, or a related field and over 5 years' experience planning and developing, and troubleshooting and maintaining, database applications, systems, and interfaces, or 2 additional years' experience managing IT projects in lieu of degree requirement.

## Attachment G.2

## EXCHANGE PRIVACY AND SECURITY COMPLIANCE ADDENDUM

### A. PURPOSE OF ADDENDUM

This addendum sets forth the privacy and security requirements applicable to all Personally Identifiable Information (PII) and Personal Information as required by the Patient Protection and Affordable Care Act (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), referred to as the ACA, and the District of Columbia Code, Chapter 31D. The ACA requires all state-based exchanges have an agreement with non-exchange entities to ensure the authorized collection, use, and disclosure of PII. Analogous to the business associate agreement that the Health Insurance Portability and Accountability Act (42 U.S.C. Section 1320d-d8) and the Health Information Technology for Economic and Clinical Health Act and their implementing regulations at 45 C.F.R. Parts 160 and 164 (collectively, "HIPAA") requires, this addendum outlines the privacy and security requirements for PII under the ACA and state-based exchanges. As such, the District of Columbia Health Benefit Exchange Authority (HBX), a state-based exchange referred to as "HBX" and [VENDOR NAME] referred to as "CONTRACTOR" agree to these terms.

### B. DEFINITIONS

The following definitions apply to this Agreement:

1. Breach: the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar terms referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. (OMB Memorandum M-07-16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*)
2. Federal Tax Information (FTI): any return or return information as defined under the Internal Revenue Service Code, 26 U.S.C. Section 6103(b)(1) and (2), received from the IRS or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. (IRS Pub. 1075, § 1.4.1)
3. Non-Exchange Entity: an entity or individual that gains access to PII submitted to HBX or collects, uses, and/or discloses PII directly from applicants, qualified individuals, or enrollees, as defined in 45 C.F.R. § 155.20, while that entity or individuals is performing functions agreed to with the Exchange. (45 C.F.R. § 155.260 *Privacy and Security of Personally Identifiable Information*)
4. Personal information: means i) an individual's name or first initial and last name or phone number or address or any one or more of the following data elements: social security number, driver's license or District of Columbia Identification Card; or credit card or debit card number, or ii) any other number or code or combination of numbers or codes, such as account number, security code, access code, or password, that allows access to or use of an individual's financial or credit account. This term does not include any publicly available information that is lawfully

made available to the general public from federal, state, or local government records. (D.C. Code § 28-3851)

5. Personally Identifiable Information (PII): any information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context. PII is any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. This includes but is not limited to name, social security number, date and place of birth, mother's maiden name, or biometric records. (See Minimum Acceptable Risk Standards, Version 2.0, *Volume 1: Harmonized Security and Privacy Framework*, Nov. 10, 2015, which cites to NIST Special Publication 800-122.)
6. Privacy Incident: is either 1) the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar terms referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic; or 2) a reasonable belief that an unauthorized acquisition of PII compromising the security, confidentiality or integrity of PII has occurred. (OMB Memorandum M-07-16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*)
7. Sensitive Personally Identifiable Information (Sensitive PII): PII, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Requires stricter handling guidelines because of the increased risk to an individual if the data are compromised.
8. Security incident: a violation or an imminent threat of a violation, of an explicit or implied information security policy, acceptable use policies, or standard information security practices. While certain adverse events such as floods, fires, electrical outages, and excessive heat can cause system crashes, they are not considered information security incidents. A security incident becomes a privacy incident when the incident involves the suspected or actual loss of PII. For Incidents that may possibly concern PII, the CONTRACTOR shall report such incidents within one (1) hour of discovery to the HBX Privacy Officer, as outlined in part F of this Agreement below. (CMS Information Security, 1.2.2.3 *Incident Response*)

### **C. APPLICABLE LAWS**

The CONTRACTOR shall follow and comply at all times with all applicable federal and District of Columbia laws, and HBX policies including the following requirements related to the privacy and security of PII. To the extent that a conflict arises between any laws or requirements, the CONTRACTOR agrees to comply with the requirements imposing a more stringent privacy and security standard.

1. Exchange Privacy and Security Requirements (45 CFR § 155.260)
  - a. The CONTRACTOR shall only collect, use, and/or disclose PII to the extent such information is necessary to perform the functions as outlined in the Underlying Agreement or as required by law.

- b. CONTRACTOR shall not use collect, use, or disclose of PII in a manner that would violate 45 C.F.R. §155.260 if done by HBX.
- c. CONTRACT shall inform HBX of any change in its administrative, technical, or operational environments to the extent that they are material in the Underlying Contract.
- d. The CONTRACTOR shall comply with the privacy and security standards consistent with the principles of 45 C.F.R. § 155.260 as set forth below:
  - i) Individual access. Individuals shall be provided with a simple and timely means to access and obtain their PII in a readable form and format, CONTRACTOR to work with HBX as outlined in Section E: Consumer Rights;
  - ii) Correction. Individuals shall be provided with a timely means to dispute the accuracy or integrity of their PII and to have erroneous information corrected or to have a dispute documented if their requests are denied, CONTRACTOR to work with HBX as outlined in Section E: Consumer Rights;
  - iii) Openness and transparency. CONTRACTOR shall be open and transparent regarding its policies, procedures, and technologies that directly affect individuals and/or their PII;
  - iv) Individual Choice. Individuals should be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their PII, CONTRACTOR to work with HBX as outlined in Section E: Consumer Rights;
  - v) Collection, use and disclosure limitations. PII shall be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately;
  - vi) Data quality and integrity. CONTRACTOR will take reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent necessary for CONTRACTOR's intended purposes and has not been altered or destroyed in an unauthorized manner;
  - vii) Safeguards. PII will be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and
  - viii) Accountability. CONTRACTOR will use appropriate monitoring and other means and methods to assure accountability with these principles and to report and mitigate non-adherence and breaches.

2. Health Information Portability and Accountability Act

- a. CONTRACTOR expressly acknowledges that HBX is not a health care provider, a health care plan, or a health care clearinghouse. Accordingly, the parties mutually acknowledge and agree that, for purposes of this Agreement, HBX is not a Covered Entity as such term is specifically defined in the Health Insurance Portability and Accountability Act (42 U.S.C. Section 1320d-d8) and the Health Information Technology for Economic and Clinical Health Act and their implementing regulations at 45 C.F.R. Parts 160 and 164 (collectively, under HIPAA).
- b. CONTRACTOR expressly acknowledges and agrees that where HBX performs a function required under applicable law pursuant to 45 C.F.R. Section 155.200, it is not acting as a Business Associate of any other Covered Entity.

3. IRS Code Section 6103 and Publication 1075  
Pursuant to 45 C.F.R. § 155.260 (a)(4)(iii) and HBX policy, return information shall be kept confidential under 26 U.S. Code Section 6103, as described by IRS publication 1075.
4. Minimum Acceptable Risk Standards for Exchanges (MARS-E), Version 2.0  
CONTRACTOR agrees to ensure compliance with the privacy and security standards outlined in MARS-E, Version 2.0, as required by law for non-exchange entities working with state-based exchanges. MARS-E, Version 2.0 is available at the Centers for Medicare and Medicaid Services, Center on Consumer Information and Insurance Oversight (CCIIO), <https://www.cms.gov/ccio/resources/regulations-and-guidance/index.html#MinimumAcceptableRiskStandards>.
5. Use of Standards and Protocols for Electronic Transactions, 45 C.F.R. § 155.270  
CONTRACTOR agrees to ensure compliance with standards and protocols for electronic transactions as required under 45 C.F.R. § 155.270.
6. Consumer Personal Information Security Breach Notification Act, D.C. Code § 28 – 3851  
CONTRACTOR shall notify HBX in writing, in the most expedient time possible, when it has an actual or suspected privacy or security incident or breach of its security system involving PII or personal information it has access to and shall take steps to restore the reasonable integrity of the data system. CONTRACTOR to work with HBX as outlined in Section F: Reporting Privacy and Security Incidents and Breaches.

**D. SAFEGUARDS AND SECURITY CONTROLS**

CONTRACTOR shall comply with the operational, technical, administrative and physical safeguards that are consistent with any applicable laws to ensure the following.

1. General Safeguards pursuant to federal exchange privacy requirements:
  - a. The confidentiality, integrity, and availability of PII created, collected, and/or used by HBX.
  - b. PII is only used by or disclosed to those authorized to receive or view it;
  - c. Return information, as such term is defined by Section 6103(b)(2) of the Code, is kept confidential under Section 6103 of the Code;
  - d. PII is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
  - e. PII is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and
  - f. PII is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules.

2. Security Controls pursuant to MARS-E 2.0 that include but are not limited to:

a. Electronic PII:

- i) Encryption. CONTRACTOR shall encrypt all PII that is in motion or at rest, including but not limited to data on portable media devices, laptops and workstations, with FIPS 140-2 compliant encryption, including but not limited to any PII transmissions which occur via website access, file transfer or e-mail. Encryption protocols implemented by CONTRACTOR shall at all times be consistent with the National Institute for Standards and Technology ("NIST") security controls concerning the protection of PII. The aforementioned encryption requirement shall at all times be applicable to PII transmissions both within and outside of HBX's secure internal network and may be fulfilled either through network-level end-to-end encryption or the encryption of any data files containing PII.
- ii) Hardware. CONTRACTOR shall ensure that any and all hardware upon which PII is stored, is secured, password-protected and only accessible by CONTRACTOR in accordance with the terms of this Agreement. CONTRACTOR shall at all times remove and permanently delete any and all PII before any such hardware is transferred or sold to a third-party or is otherwise subject to any change in ownership or control.
- iii) Log-In Credentials. CONTRACTOR shall at all times ensure that each individual user of any HBX computer system through which PII is accessed maintains his or her own unique user-id and password. CONTRACTOR shall strictly refrain from sharing individual log-in credentials and shall at all times assume responsibility for ensuring that the log-in credentials of any former employees, or other representatives who are no longer subject to this Agreement are de-activated or otherwise changed to prevent unauthorized access by any such individuals within 24 hours, including by informing HBX of need to de-activate an account if managed by HBX. CONTRACTOR must maintain a list of all active and inactive authorized users that includes the date of access and date of de-activation and shall make this list available to HBX upon request.
- iv) Server Security. Servers must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- v) Data Destruction. When no longer needed, all PII must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PII cannot be retrieved.
- vi) Access Controls. The system providing access to PII must use role based access controls for all user authentications, enforcing the principle of least privilege.

b. Paper-Based PII:

- i) Supervision of Data. CONTRACTOR shall not create or collect paper-based PII unless necessary to perform the functions as outlined in the Underlying Agreement or as required by law. Where there is paper-based PII, CONTRACTOR must ensure that PII in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk, or office. Unattended means that information is not being observed by an employee authorized to access the information.

- ii) Escorting Visitors. CONTRACTOR shall ensure visitors to areas where PII is contained shall be escorted and PII shall be kept out of sight while visitors are in the area.
  - iii) Confidential Destruction. CONTRACTOR shall dispose of PII through confidential means such as cross cut shredding.
  - iv) Removal of Data. CONTRACTOR shall not remove PII from the premises of the CONTRACTOR, unless necessary to perform the functions as outlined in the Underlying Agreement or as required by law, except with express written permission of HBX.
  - v) Faxing. Faxes containing PII shall not be left unattended and fax machines shall be in secure areas. If CONTRACTOR sends any faxes with PII, they must contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
  - vi) Mailing. Mailings of PII shall be sealed and secured from damage or inappropriate viewing of PII.
- c. Monitoring:  
CONTRACTOR shall monitor, periodically assess, and update its security controls and related systems risk to ensure the continued effectiveness of those controls.
- d. Privacy and security awareness training with regard to operational, administrative, technical, and physical safeguards.

#### **E. CONSUMER RIGHTS**

CONTRACTOR shall provide or assist HBX with the following requests related to information:

1. CONTRACTOR shall make any amendments to PII in a record that HBX directs or agrees to.
2. CONTRACTOR shall reasonably comply with any requests to restrict the use and disclosure of PII from HBX.
3. In the event any individual submits any of these requests directly to the CONTRACTOR, the CONTRACTOR shall within five (5) calendar days forward such request to HBX.
4. CONTRACTOR shall coordinate with HBX in the provision to an individual of a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of PII.

#### **F. REPORTING PRIVACY AND SECURITY INCIDENTS AND BREACHES**

CONTRACTOR shall report any actual or suspected privacy or security incidents or breaches involving personal information or PII received or authorized to access under this Agreement to the HBX Privacy Officer at [dchbx.privacy@dc.gov](mailto:dchbx.privacy@dc.gov) or with the contact information in Section J below immediately upon discovery and comply with the following requirements.

1. Initial reports of actual or suspected privacy or security incidents or breaches shall include to the extent it is known at that time, the date of the incident or breach, a brief description of what happened, the description of the types of personal information or PII involved, the names or

identification numbers of the individuals whose personal information or PII has been or is reasonably believed to have been accessed, acquired, used or disclosed, information regarding any system intrusion and any systems potentially compromised, and any other information necessary for HBX to conduct an investigation and include in notifications to relevant regulatory authorities under federal and District laws. CONTRACTOR shall follow-up with additional information as it is learned.

2. Following the submission of its initial report, CONTRACTOR shall, in coordination with HBX, immediately investigate the scope of the incident, mitigate harm that may result from the incident, and restore the security of the system to prevent any further harm or incidents.
3. CONTRACTOR shall cooperate with HBX in investigating the actual or suspected incident and in meeting HBX's obligations under applicable laws, including providing any other information necessary for HBX to conduct an investigation and to include in any notifications.
4. CONTRACTOR agrees that HBX has the final determination of whether or not a reportable privacy or security breach occurred.
5. The CONTRACTOR shall submit corrective action plan to prevent future reoccurrence. HBX reserves the right to amend or reject any corrective action plan it determines will not address or mitigate the risk of a future reoccurrence.
6. When necessary, the CONTRACTOR shall cooperate with HBX in developing content for any public statements and shall not give any statements regarding any privacy or security incident or breach involving HBX without the express written permission of HBX.
7. For privacy or security incidents or breaches attributable to the CONTRACTOR, the CONTRACTOR shall:
  - a. Pay for any costs associated with any breach notification as well as costs or damages associated with the incident or breach including any credit and/or identity monitoring that HBX, in its sole discretion determines is appropriate, to provide to affected individuals for one (1) year from a credit and identity monitoring service.
  - b. Pay for any costs associated with the corrective action plan including targeted HBX privacy and security training.

#### **G. WORKFORCE**

CONTRACTOR must ensure its workforce complies with privacy and security requirements under this agreement and applicable laws and agrees to take appropriate action against any of its workforce who fail to comply.

#### **H. AFTER TERMINATION OF AGREEMENT**

Upon completion of this Agreement, or upon termination of this Agreement, at HBX's direction CONTRACTOR shall either return all PII or PI to HBX, or shall destroy PII in a manner consistent with applicable State and Federal laws, regulations, and agency guidance on the destruction of PII and provide confirmation of return or destruction of PII in writing to the HBX Privacy Officer. If return or destruction of PII is not feasible, CONTRACTOR shall explain in writing to the HBX Privacy Officer why return or destruction is not feasible. The obligations of CONTRACTOR under this Agreement to protect

PII and to limit its use or disclosure shall continue and shall survive until all PII is either returned to HBX or destroyed. CONTRACTOR shall also maintain the confidentiality of all PII it was authorized or had access to upon completion or termination of this Agreement and/or Underlying Agreement.

**I. DOWN-STREAM ENTITIES**

CONTRACTOR shall be bound by and be responsible for the acts and omissions of its subcontractors, agents or vendors in the exchange of data with the Exchange. CONTRACTOR shall take reasonable steps to ensure compliance with the terms of this Agreement by any such individuals. CONTRACTOR shall bind all of its downstream entities such as subcontractors, agents, representatives, without limitation, to the same privacy and security standards and obligations as outlined in this Agreement and applicable federal and District of Columbia laws.

**J. MISCELLANEOUS**

Any notices or reporting required under this addendum can be sent to the following individual:


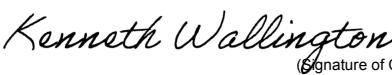
Sandy H. Ahn, Acting Privacy Officer, Attorney/Advisor

[Sandy.Ahn@dc.gov](mailto:Sandy.Ahn@dc.gov)

202.727.4063 (o); 202.384.2539 (c)

1225 "Eye" Street, NW, Suite 400

Washington, D.C. 20005

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. Contract Number <b>DCHBX-2020-C-0002</b>	Page of Pages <b>1</b>   <b>19</b>	
2. Amendment/Modification Number <b>M057</b>	3. Effective Date <b>See Block 16C</b>	4. Requisition/Purchase Request No.	5. Solicitation Caption <b>IT Consulting Services</b>		
6. Issued By:  <b>DC Benefit Exchange Authority</b> <b>1225 "I" Street, NW., 4th Floor</b> <b>Washington, DC 20005</b> 202/741-0846		7. Administered By (If other than line 6)			
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code)  <b>IdeaCrew, Inc.</b> <b>1150 Connecticut Avenue, NW STE 710</b> <b>Washington, DC 20036</b> <b>POC: Trevor Garner</b> <b>202/688-3130</b>		(X)	9A. Amendment of Solicitation No.		
			9B. Dated (See Item 11)		
			10A. Modification of Contract/Task Order No. <b>DCHBX-2020-C-0002</b>		
			10B. Dated (See Item 13) <b>13-Jan-20</b>		
Code	Facility				
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the   amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. Accounting and Appropriation Data (If Required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14					
A. This is a change order is issued pursuant to the contract.					
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.)					
C. This is a supplemental agreement to the above-numbered contract/order for negotiated equitable adjustments, to formalize a letter contract or to reflect other agreements to modify the terms of the contract.					
X D. Other (Specify type of modification and authority) <b>HIPAA Business Associate Agreement Privacy Clause</b>					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.					
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.) <b>Contract Number.: DCHBX-2020-C-0002 is hereby being modified as follows:</b>  <b>The following HBX HIPAA Business Associate Agreement Privacy Clause is incorporated into this contract by reference as ATTACHMENT A.</b>   <b>All other terms and conditions remains unchanged.</b>					
Except as provided herein, all terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect					
15A. Name and Title of Signer (Type or print) Trevor W. Garner CFO		16A. Name of Contracting Officer <b>Kenneth Wallington</b>			
15B. Name of Contractor	15C. Date Signed 02-1-22	16B. District of Columbia		16C. Date Signed	
 (Signature of person authorized to sign)		 (Signature of Contracting Officer)		2/10/2022	

## HIPAA BUSINESS ASSOCIATE AGREEMENT PRIVACY COMPLIANCE CLAUSE

This HIPAA Business Associate Agreement Privacy Compliance Clause is the standard language that must be included in contracts which involve access to the District of Columbia's HIPAA protected health information ("PHI") or creation of the same. Where applicable, to ensure HIPAA compliance, this language must be adapted and incorporated or attached to contracts, small purchases, or agreements such as Memoranda of Understanding, Memoranda of Agreement, and Donation Agreements.

For the purpose of this Business Associate Agreement ("BAA") clause, the **Department of Health Care Finance**, a covered component within the District of Columbia's ("District" or "DC") 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 C.F.R. §§ 160, 162 and 164 as amended ( "HIPAA Regulations") and **THE CONTRACTOR**, as a recipient of Protected Health Information ("PHI") or electronic PHI from the **Department of Health Care Finance ("DHCF") as facilitated by the DC Health Benefit Exchange Authority ("HBX")**, is a "Business Associate" as that term is defined by HIPAA.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Regulations.

### 1. Definitions

- a. *Business Associate* means a person or entity, who, on behalf of the District 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 government or Organized Health Care Arrangement, creates, receives, maintains, or transmits PHI 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 C.F.R § 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 C.F.R § 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 PHI 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 PHI to a Covered Entity and that requires access on a routine basis to such PHI; (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 PHI 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 health maintenance organization, HMO, with respect to a group health plan) to the plan sponsor, to the extent that the requirements of 45 C.F.R. § 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 PHI 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. §§ 160 and 164. With respect to this BAA, *Covered Entity* shall also include the designated Health Care Components of the District government's Hybrid Entity or a District agency following HIPAA's implementing regulations and best practices.
- c. *Covered Functions* means those functions of a Covered Entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.
- d. *Data Aggregation* means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI 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.
- e. *Designated Record Set* means a group of records maintained by or for a 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.
- f. *Health Care* means care, services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
  - i. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
  - ii. Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- g. *Health Care Components* means a component or a combination of components of a Hybrid Entity designated by a Hybrid Entity in accordance with 45 CFR § 164.105(a)(2)(iii)(D). *Health Care Components* must include non-Covered Functions that provide services to the Covered Functions for the purpose of facilitating the sharing of PHI with such functions of

the Hybrid Entity without Business Associate agreements or individual authorizations.

- h. *Health Care Operations* shall include (1) conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 C.F.R. § 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; (2) reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities; (3) except as prohibited under 45 C.F.R. § 164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of 45 C.F.R. § 164.514(g) are met, if applicable; (4) conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; (5) business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and (6) business management and general administrative activities of the entity, including, but not limited to: (i) management activities relating to implementation of and compliance with the requirements of this subchapter; (ii) customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer; (iii) resolution of internal grievances; (iv) The sale, transfer, merger, or consolidation of all or part of the Covered Entity with another Covered Entity, or an entity that following such activity will become a Covered Entity and due diligence related to such activity; and (v) consistent with the applicable requirements of 45 C.F.R. § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the Covered Entity.
- i. *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 Health Care Components, any other components of the entity that provide services to the Covered Functions for the purpose of facilitating the sharing of PHI with such functions of the Hybrid Entity without Business Associate agreements or individual authorizations. The District 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 BAA.
- j. *Individual* shall mean the person who is the subject of PHI in accordance with 45 C.F.R. § 160.103. The term *individual* shall also include the individual's personal representative in accordance with 45 C.F.R. § 164.502(g).

- k. *Individually Identifiable Health Information* shall mean information that is a subset of health information, including demographic information collected from an individual, and;
- i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
  - ii. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - iii. That identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- l. *National Provider Identifier (NPI)* shall mean the Standard Unique Health Identifier for Healthcare Providers as defined at 42 C.F.R. § 162.406.
- m. *Organized Health Care Arrangement* shall mean (1) a clinically integrated care setting in which individuals typically receive health care from more than one health care provider; (2) an organized system of health care in which more than one Covered Entity participates and in which the participating Covered Entities: (i) hold themselves out to the public as participating in a joint arrangement; and (ii) participate in joint activities that include at least one of the following: (a) utilization review, in which health care decisions by participating Covered Entities are reviewed by other participating Covered Entities or by a third party on their behalf; (b) quality assessment and improvement activities, in which treatment provided by participating Covered Entities is assessed by other participating Covered Entities or by a third party on their behalf; or (c) payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating Covered Entities through the joint arrangement and if PHI created or received by a Covered Entity is reviewed by other participating Covered Entities or by a third party on their behalf for the purpose of administering the sharing of financial risk in accordance with 42 C.F.R. § 160.103.
- n. *Personal Representative*: shall mean a person authorized, under District or other applicable law, to act on behalf of the subject of PHI in accordance with 42 C.F.R. § 164.502(g).
- o. *Privacy and Security Official*: shall mean the person or persons designated by the District, 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 HIPAA Regulations, and other applicable federal and state privacy laws.
- p. *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 a Covered Agency's Privacy Policies and Procedures, the HIPAA Regulations and other applicable federal and state privacy laws. 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.
- q. *Privacy Rule* shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, subparts A and E.
- r. *Protected Health Information ("PHI")* means individually identifiable health information, including electronic information ("ePHI"), that is created or received by the Business

Associate from or on behalf of the Covered Entity, or agency following HIPAA best practices, which is:

- i. Transmitted by, created or maintained in electronic media; or
  - ii. Transmitted or maintained in any other form or medium;
  - iii. PHI or ePHI does not include individually identifiable health information: (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g; (ii) In records described at 20 U.S.C. § 1232(g)(a)(4)(B)(iv); (iii) In employment records held by a Covered Entity in its role as employer; and (iv) Regarding a person who has been deceased for more than 50 years.
- s. *Record* shall mean any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity.
- t. *Required By Law* means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits pursuant to 45 C.F.R. § 164.103.
- u. *Secretary* means the person serving as Secretary of the United States Department of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated.
- v. *Security Officer* means 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.
- w. *Security Rule* shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. parts 160, 162 and 164, subpart C.
- x. *Unsecured PHI* shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the U.S. Department of Health and Human Services Secretary in the guidance issue under § 13402(h)(2) of the Health Information Technology Economic and Clinical Health Act (HITECH), enacted at part of the American Recovery and Reinvestment Act of 2009 (ARRA)(Pub.L 111-5, 123 Stat 115), approved February 17, 2009.
- y. *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 Covered Entity, whether or not they are paid by the Covered Entity or Business Associate.

## 2. Obligations and Activities of Business Associate

Business Associate agrees to comply with applicable federal and District confidentiality and security laws, including, but not limited to the Privacy Rule and Security Rule and the following:

- a. Business Associate agrees not to use or disclose PHI or ePHI (other than as permitted or required by this BAA or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply with administrative, physical, and technical safeguards requirements described at 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 (“HITECH”), enacted as part of the American Recovery and Reinvestment Act of 2009 (“ARRA”) (Pub.L 111-5, 123 Stat 115) approved February 17, 2009, to maintain the security of the PHI and to prevent use or disclosure of such PHI other than as provided for by this BAA. Business Associate acknowledges that, pursuant § 13401, Business Associate must comply with the Security Rule and privacy provisions detailed in this BAA.

The additional requirements of § 13401 of HITECH that relate to security and apply to a Covered Entity shall also apply to Business Associate and shall be incorporated into an agreement between the Business Associate and the Covered Entity. Business Associate shall be directly liable for any violations of this BAA or HIPAA Regulations. A summary of HIPAA Security Standards for the Protection of ePHI, found at Appendix A to Subpart C or 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 a Privacy and/or Security Officer who is accountable for developing, maintaining, implementing, overseeing the compliance of and enforcing compliance with this BAA, the Security Rule and other applicable federal and state privacy law within the Business Associate's business. The Business Associate reports violations and conditions to the District-wide Privacy and Security Official and/or the Agency Privacy Officer of the covered component within the District's Hybrid Entity.
- d. The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA.
- e. The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the PHI not permitted or required by this BAA or other incident or condition arising out the Security Rule, including breaches of unsecured PHI as required at 45 C.F.R § 164.410, to the District-wide Privacy and Security Official or agency Privacy Officer within ten (10) business 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 U.S. Department of Health and Human Services, 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 BAA with respect to PHI received from the Business Associate, PHI created by the Business Associate, or PHI received by the Business Associate on behalf of the Covered Entity.
- g. In accordance with 45 C.F.R §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information
- h. Initially, within ten (10) business days following the commencement of this Contract, or within ten (10) business 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 BAA.
- i. The Business Associate agrees to provide access within five (5) 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 laws, rules and regulations, to PHI in a Designated Record Set, to the Covered Entity or an Individual, to facilitate the District's compliance with the requirements under 45 C.F.R. § 164.524.
- j. The Business Associate agrees to make any amendment(s) within five (5) business days to the PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R § 164.526 as directed by the District Privacy Official or by a DHCF or HBX Privacy Officer in order to facilitate the District's compliance with the requirements under 45 C.F.R. § 164.526.
- k. The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the PHI in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of DHCF Privacy Policy Operations Manual, Policy No VII.25, Standard Procedure—Identity and Authority Verification, attached hereto as Exhibit A and incorporated by reference.
- l. The Business Associate agrees to record authorizations and log such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and applicable District laws, rules and regulations.
- m. The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request at a mutually agreed upon location, during normal business hours, and in a format designated by the District's Privacy and Security Official or by a DHCF or HBX Privacy Officer and the duly authorized Business Associate Workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and applicable District laws, rules and regulations.

- n. The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy and Security Official or agency Privacy Officer and the duly authorized Business Associate Workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule.
- o. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R 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 BAA, as well as data systems storing or transmitting PHI, to verify compliance.
- q. The Business Associate may aggregate PHI in its possession with the PHI of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to other Covered Entities provided that the purpose of the Data Aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose PHI of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer/Liaison or a duly authorized Workforce member of the Covered Entity.
- r. Business Associate may de-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(a)-(b) and any associated HHS guidance. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this BAA.
- s. If the Business Associate has not submitted the District's Business Associate Questionnaire prior to contract award, the Business Associate shall file the Questionnaire with the Agency Privacy Officer/Liaison or the Agency Contract Administrator within 30 days after contract award. Business Associate shall file and submit an updated Questionnaire to the Agency Privacy Officer/Liaison or the Agency Contract Administrator on or before October 1st of each contract year. At the discretion of the Agency Privacy Officer/Liaison, Business Associates with limited access to PHI may be granted a written waiver to file a letter attesting to their HIPAA compliance on or before October 1st of each contract year. A copy of the Business Associate Questionnaire can be located at [www.ocp.dc.gov/OCP Solicitations/Required Solicitation Documents](http://www.ocp.dc.gov/OCP_Solicitations/Required_Solicitation_Documents).

### 3. Permitted Uses and Disclosures by the Business Associate

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

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) business days after the commencement of this BAA. 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 PHI (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 Government agency responsible for receiving and processing requests for PHI; 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 BAA 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 BAA 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. §§ 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 BAA 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 BAA "encrypted" shall mean the reversible conversion of readable information into unreadable, protected form so that only a recipient who has the appropriate "key" can convert the information back into original readable form. If the Covered Entity stores, uses or maintains PHI in encrypted form, or in any other secured form acceptable under the security regulations, Covered Entity shall promptly, at request, provide with the key or keys to decrypt such information and will otherwise assure that such PHI is accessible by upon reasonable request.
- viii. In the event Business Associate performs functions or activities involving the use or disclosure of PHI on behalf of Covered Entity that involve the installation or maintenance of any software (as it functions alone or in combination with any hardware or other software), Business Associate shall ensure that all such software

complies with all applicable standards and specifications required by the HIPAA Regulations and shall inform of any software standards or specifications not compliant with the HIPAA Regulations.

- c. At the request of the Covered Entity, the Business Associate agrees to amend this BAA to comply with all HIPAA mandates.

5. Sanctions

Business Associate agrees that its Workforce members, agents and subcontractors who violate the provisions of HIPAA or other applicable federal or District privacy law will be subject to discipline in accordance with Business Associate's internal 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 BAA. 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 District privacy laws, the Business Associate shall inform the District Privacy Official or the agency Privacy Officer/Liaison of the imposition of sanctions.

6. Obligations of the Covered Entity

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

7. Permissible Requests by Covered Entity

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

8. Representations and Warranties.

The Business Associate represents and warrants to the Covered Entity:

- a. That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to execute this BAA 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 BAA 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, that it, its employees, agents, subcontractors, representatives and members of its Workforce will submit a letter of good standing from the District, 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;
- c. That neither the execution of this BAA, 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 BAA;
- 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 BAA are or shall be appropriately informed of the terms of this BAA 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 BAA. Modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule will be communicated to the Business Associate, in writing, and in a timely fashion;
- f. That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this 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 no contest 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, state,

or local government agency (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect

9. Term and Termination

- a. *Term.* The requirements of this BAA shall be effective as of the date of the contract award, and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request. The PHI shall be returned in a format mutually agreed upon by and between the Privacy Official and/or Privacy Officer or their designee and the appropriate and duly authorized Workforce member of the Business Associate.; If it is infeasible to return or confidentially destroy the PHI, protections shall be extended to such information, in accordance with the termination provisions in this Section and communicated to the Privacy Official or Privacy Officer or their designee. The requirement to return PHI to the District at the end of the contract term or if the contract is terminated applies irrespective of whether the Business Associate is also a Covered Entity under HIPAA. Where a Business Associate is also a Covered Entity, PHI provided by the District, or created or received by the Business Associate on behalf of the District, a duplicate of the record may be acceptable if mutually agreed.
- b. *Termination for Cause.* Upon the Covered Entity's knowledge of a material breach of this BAA by the Business Associate, the Covered Entity shall either:
- i. Provide an opportunity for the Business Associate to cure the breach within a period of ten (10) days(or such longer period as the District may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure 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 BAA and a cure is not possible.

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

- c. *Effect of Termination.*
- i. Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all PHI received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to PHI that is in the possession of ALL subcontractors, agents or Workforce members of the Business Associate. The Business Associate shall retain no copies of PHI in any form.

- ii. In the event that the Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate shall provide written notification to the Covered Entity of the conditions that make the return or confidential destruction infeasible. Upon determination by the agency Privacy Officer/Liaison that the return or confidential destruction of the PHI is infeasible, the Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI for so long as the Business Associate maintains such PHI. Additionally, the Business Associate shall:
  - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - (2) Return to Covered Entity [or, if agreed to by Covered Entity, destroy] the remaining PHI that the Business Associate still maintains in any form;
  - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this section, for as long as Business Associate retains the PHI;
  - (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at [Insert section number related to paragraph (ender "Permitted Uses and Disclosures By The 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.
- iii. The obligations outlined in Section 2. Obligations and Activities of Business Associate shall survive the termination of this Contract.

10. Miscellaneous

- a. *Regulatory References.* A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
- b. *Amendment.* A Covered Entity and Business Associate ("the Parties") agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and HIPAA Regulations. Except for provisions Required By Law as defined herein, no provision hereof shall be deemed waived unless in expressed 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 BAA.
- c. *Survival.* The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance BAA and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply

and Services Contracts shall survive termination of the Contract.

- d. *Interpretation.* Any ambiguity in this BAA shall be resolved to permit compliance with applicable federal and District 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 laws, rules and regulations shall supersede the Privacy Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Regulations.

The terms of this BAA amend and supplement the terms of the Contract. In the event of a conflict between the terms of the BAA and the terms of the Contract, the terms of this BAA shall control; provided, however, that this BAA shall not supersede any other federal or District 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 BAA) 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 BAA and are the only parties entitled to enforce its terms. Except for the rights of Individuals, as defined herein, to have access to and amend their PHI, and to an accounting of the uses and disclosures thereof, in accordance with paragraphs (2)(f), (g) and (j) of this BAA, nothing in the BAA 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 laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this BAA and the Contract; to the extent they are applicable to this BAA 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. 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 BAA 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 BAA; 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 BAA.

- i. *Injunctive Relief.* Notwithstanding any rights or remedies under this BAA or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by the Business Associate, its Workforce, any of its subcontractors, agents, or any third party who has received PHI from the Business Associate.
- j. *Assistance in litigation or administrative proceedings.* The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or its Workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance BAA 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 BAA 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:

[ENTITY NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

[CONTACT NAME] \_\_\_\_\_

[PHONE & EMAIL] \_\_\_\_\_

If to the Covered Entity as facilitated by HBX:

Nicole Leon  
Associate General Counsel, Privacy and Security Officer  
[Nicole.Leon@dc.gov](mailto:Nicole.Leon@dc.gov)  
(202) 679-4171  
1225 "Eye" Street, NW, Suite 400  
Washington, D.C. 20005

With copy to: [dchbx.privacy@dc.gov](mailto:dchbx.privacy@dc.gov)

- l. *Headings.* Headings are for convenience only and form no part of this BAA and shall not affect its interpretation.
- m. *Counterparts; Facsimiles.* This BAA 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 BAA 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 BAA is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BAA will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this BAA 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 BAA, if necessary to bring the contested provision(s) into compliance.
- 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 BAA 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 BAA, as may be amended from time to time pursuant to Section 10. Miscellaneous, Paragraph b. Amendment, which incorporates by reference 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 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 of HHS.

ATTACHMENTS:

**EXHIBIT A**    *DHCF Privacy Policy Operations Manual, Policy No VII.25, Standard Procedure—Identity and Authority Verification*