



Contracts Management

September 22, 2016

To Potential Offerors: *Sent via e-mail*

Subject: Request for Quotations # 17-0137

The Hilo Medical Center, (HMC), of the East Hawaii Region of the Hawaii Health Systems Corporation, an Agency of the State of Hawaii, is soliciting a quotation for:

Grant Writing Services

If your firm is interested in providing these services, please review the “**Statement of Work**” below, and provide a written quotation, not later than **1:00 PM (HST), Thursday, October 5, 2016**. The quotation must address and contain, at a minimum, the following:

1. A list of relevant experience of the firm with similar projects;
2. Resumes and related project experience of key personnel;
3. Two (2) references from relevant projects conducted within the past two (2) years;
4. Written acknowledgement agreeing to provide the services and are qualified pursuant to requirements of the “Scope of Services”;
5. A narrative detailing your firm’s method of approach to the Statement of Work, explaining your methodology of providing the services requested; and
6. The quote should provide an hourly rate for the consultant(s) involved in the project; the estimated number of hours to be worked by each consultant(s); and a total “Not-to-Exceed” dollar amount, listing any and all additional costs & travel expenses.

Please submit your quotation no later than the due date and time listed above to:

Hilo Medical Center
Contracts Management Office
ATTN: Gary L. Callahan, Senior Contracts Manager
1190 Waianuenue Avenue
Hilo, Hawaii 96720-2020

Quotations may be submitted via e-mail to gcallahan@hhsc.org prior to the due date and time shown above. Vendors submitting quotations via e-mail shall provide an original signed hard copy of the quote to the address above within five (5) business days after the due date.

The quotations received will be reviewed on a “Best Value” basis with the contract award being offered to the vendor whose total quotation is deemed to be in the best interest of the State to accept.

Also attached are the General Conditions, *Attachment 2*, Special Conditions, *Attachment 3*, and our Business Associate Agreement, *Attachment 4*, which will be a part of the subsequent contract to be awarded. These are included for your review.

Please direct all inquiries pertaining to this letter to my attention, at (808) 932-3112 or via e-mail at gcallahan@hpsc.org. Thank you for your interest in providing the referenced consultant services to Hilo Medical Center.

Sincerely,

A handwritten signature in black ink, appearing to read "G. L. Callahan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gary L. Callahan
Senior Contracts Manager

Attachments

Scope of Services

1.0. Background. Hilo Medical Center (“HMC”) is the largest facility in the Hawaii Health Systems Corporation. Established in 1897, HMC has grown from a 10-bed hospital erected by the Hawaiian Government into the present facility of 275 licensed beds. Current capacity includes 141 licensed acute care beds including a 20 bed psychiatric unit, and a separate 134 bed licensed skilled nursing facility. The current facility was built in 1984 on roughly 20.5 acres of land adjacent to the picturesque Wailuku River. Also on the campus are the Hawaii Pacific Oncology Center, and the Yokio Okutsu Veterans Center. HMC is the largest employer in Hilo providing roughly 1,200 jobs.

Hilo Medical Center, a 127 licensed bed acute care medical facility in conjunction with its Long Term Care Facility consisting of 30 licensed beds are requesting proposals from qualified vendors who have demonstrated relevant experience in providing grant acquisition services; consisting of researching healthcare grant opportunities, grant writing, submission, and follow up as necessary.

2.0 Scope of Services:

Hilo Medical Center is seeking a Consultant to perform the following:

- 1) Identify grant resources including, but not limited to federal, state, foundations, agencies and other organizations;
- 2) Research potential grant opportunities;
- 3) Complete all paperwork associated with the grant application;
- 4) Submit any necessary supporting documents with the grant application;
- 5) Maintain and provide a monthly report naming potential grant opportunities and the state at which the Consultant is at in the grant process, (research, writing, pending application, etc.) of each;
- 6) Supervise, direct and manage quality control and quality assurance standards;
- 7) Provide work-related record keeping (time and expenses) and insure proper reporting as necessary;
- 8) Other services as deemed appropriate by the Hospital; and
- 9) Work closely with Hospital employees on grant reporting requirements

3.0 Submission Requirements & Evaluation: In response to this Request for Quotations the Consultant shall provide the following:

- Letter of Interest and Executive Summary: a Letter explaining your interest should include an Executive Summary summarizing your firm’s method of approach to this Scope of Work, relevant qualifications and experience;
- Respondent Profile, history, Organizational Chart with Staff Profiles:
 - a.) List firm name and business address, including phone number, e-mail address and facsimile number;
 - b.) Indicate the year your firm was established and the type of business (i.e. Inc., LLC, etc.); and
 - c.) Provide names for your key personnel that will be involved in the grant research/writing services.

- Experience in providing Grant Research/Writing Services: provide a complete list of all relevant experience within the past few years, including successful grant writing services provided to other healthcare providers;
- References: Provide 2 to 3 names, phone numbers and email addresses for references that would be capable of explaining and confirming your firm's capacity to successfully complete the research/writing services being requested; with at least one reference being related to healthcare; and
- Include any miscellaneous information that is relevant to your firm's submittal.

4.0 Hospital Responsibilities: The Hospital will:

- Reimburse the Consultant for labor and direct expenses related to specific grant research/writing services with preapproval from the Technical Representative of this Agreement;
- Other than what may be included in the burdened hourly rate for the writing services, not be invoiced for the cost of support services and general overhead for the operation of the Consultant's main office;
- Furnish meeting rooms as needed for the Consultant to interview relevant Hospital staff when developing responses to grant applications; and
- Reimburse Consultant for pre-approved, necessary travel expenses at prevailing rates, for travel that is required for specific grants.

5.0 Compensation: Consultant shall provide a description of their pricing structure (how you normally charge for grant research, writing and submission services). Typical hourly or per project fees may be included.

6.0 Agreement Term: The term of the awarded Agreement will be for one year with two (2) 1-year extensions which may be exercised by the mutual agreement of both parties. The term of this Agreement may not exceed three (3) years.

HAWAII HEALTH SYSTEMS CORPORATION GENERAL CONDITIONS (SHORT FORM)

OTHER TERMS AND CONDITIONS. The General Conditions (Short Form) are attached hereto and made a part of this Agreement. In the event of a conflict between the General Conditions (Short Form) and the vendor terms and conditions, the General Conditions (Short Form) shall control.

1. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR warrants that it and none of its employees, agents, or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least annually and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above sentences are true and to immediately cancel this Agreement in the event they are violated.
 2. **NONDISCRIMINATION.** No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any Federal, State, or County law.
 3. **INDEMNIFICATION AND DEFENSE.** The CONTRACTOR shall defend, indemnify and hold harmless HHSC, the contracting facility and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorney's fees and costs, and all claims, suits and demands therefor, arising out of or resulting from any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.
 4. **UNILATERAL RIGHTS OF HHSC.** HHSC may take the following actions in writing at any time during the pendency of this Agreement: (1) Terminate the Agreement in whole or in part for the convenience of HHSC. Any such termination shall be done in good faith and not arbitrarily or capriciously; (2) Order changes in the work within the scope of the Agreement; (3) Order changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement; (4) Suspend or stop the work provided for in the Agreement for a period not to exceed sixty (60) days. If any adjustments in price are occasioned by such actions on the part of HHSC, or by variations in quantity for definite or indefinite quantity Agreements, the price adjustments shall be made pursuant to the provisions of Section 103D-501(b), Hawaii Revised Statutes, or, for Agreements not governed by Chapter 103D HRS, then by mutual agreement of the parties.
 5. **TERMINATION FOR DEFAULT.** If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified, or any extension thereof, or commits any other substantial breach of this Agreement, HHSC may terminate the CONTRACTOR'S right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. CONTRACTOR shall not be in default if the cause of the delay or failure in performance arises out of causes such as: acts of God, acts of a Public enemy, fires, floods, epidemics or labor disputes.
 6. **VOLUNTARY TERMINATION.** Either party may, in its sole discretion, terminate this Agreement without cause upon giving the other party at least sixty (60) days prior written notice. As of the effective date of termination, neither party shall have any further rights or obligations under said Agreement except: (1) As otherwise provided in this Agreement; (2) for rights and obligations accruing prior to the effective date of termination; or (3) rights arising as a result of any breach of the
- this Agreement.
7. **GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii.
 8. **COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all Federal, State, and County laws, ordinances, codes, rules, and regulations as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement. This specifically includes Sections 103-55 and 103-55.5, Hawaii Revised Statutes, dealing with wages, hours and working conditions of employees of contractors providing services or construction.
 9. **WARRANTIES.** CONTRACTOR warrants that it has all legal rights, title and interest in all products or goods sold, leased or licensed to HHSC. CONTRACTOR also warrants that such products substantially conform to all descriptions, specifications, representations, schedules and publications of CONTRACTOR and/or orders. Unless the warranty period provided by CONTRACTOR is longer, CONTRACTOR warrants that all products provided by CONTRACTOR shall be free from defects in materials, performance, workmanship and design for a period of one year. The Warranty period shall commence after Acceptance, as defined in this Agreement. CONTRACTOR further warrants that it will perform any services required under this Agreement with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC.
 10. **ACCESS TO BOOKS AND RECORDS.** If the value or cost of services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period CONTRACTOR agrees as follows:
 - a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written requests, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General or the Comptroller General's duly authorized representative, such books, documents and records as may be necessary to certify the nature and extent of the cost of such services; and
 - b. If any such services are performed by way of subcontract with another organization and the value or cost of such subcontracted services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period, such subcontractors shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 9.a immediately above. The availability of CONTRACTOR'S books, documents and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of these paragraphs relating to access to books and records shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
 11. **CORPORATE COMPLIANCE PROGRAM.** A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that

the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, and contractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

12. **BUSINESS ASSOCIATE ADDENDUM.** By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (<http://bit.ly/HHSC-BAA>) and is applicable to all Business Associates. Said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.
13. **INSURANCE.** The CONTRACTOR shall obtain and maintain and keep in force throughout the time of performance of services under this Agreement general and professional liability insurance issued by an insurance company authorized to do business in the state of Hawaii in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) aggregate. HHSC shall be named as an additional insured under the CONTRACTOR'S policies for any liability arising out of or resulting from occurrences during or in connection with the performance of the CONTRACTOR'S services under this Agreement. At the request of HHSC, CONTRACTOR will provide HHSC a certificate of insurance showing compliance with these provisions. CONTRACTOR shall carry workers' compensation insurance in accordance with applicable law.
14. **CAMPAIGN CONTRIBUTIONS.** CONTRACTOR acknowledges that it is unlawful under Section 11-355, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.
15. **ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
16. **DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as

a seller under 42 U.S.C. Sec.1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.

17. **COSTS AND EXPENSES.** Any reimbursement due the CONTRACTOR for per diem cost and transportation expenses under this Agreement is subject to the following limitations:
- Reimbursement for air transportation shall be actual cost or coach class airfare, whichever is less.
 - Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable (i.e., hotel and meals) shall be \$145 per day, which consists of \$85 for hotel and \$60 for food, computed on quarter days. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by HHSC, other than those items listed in subparagraphs a. and b., above. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the HHSC technical representative.
 - CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.
18. **CONFIDENTIALITY OF MATERIAL.**
- All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, business plans, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
 - All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F.HRS.
19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof, shall be construed together and shall constitute one and the same Agreement.

[End of Document]

SPECIAL CONDITONS**1. INSURANCE REQUIREMENT.**

During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained Professional and General Liability Insurance coverage (the "POLICY") for CONTRACTOR and its Employees rendering the services at HHSC. The POLICY shall be maintained with a Company or Companies approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate, or such greater amount as may be required from time to time by HHSC Corporate Bylaws. Said POLICY shall provide that HHSC shall receive not less than THIRTY (30) days notice prior to any cancellation or material change or reduction of coverage. No material change or reduction may be made without HHSC approval. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance and a copy of the policy. Thereafter, prior to the expiration of each policy period, the insurance carrier for the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request certified copy of the policy. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR employees in the statutory amounts. Failure to maintain or cause to be maintained insurance in accordance with the provisions set forth herein shall be a material breach of this AGREEMENT and shall provide HHSC with the option of pursuing remedies for breach and/or immediate termination of this AGREEMENT.

2. The parties to this Agreement certify that they shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of this Agreement.
3. The CONTRACTOR must provide written notice to Hilo Medical Center's Contracting Officer upon receipt of notification that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. The Contracting Officer may, upon receipt of such written notice, immediately terminate this Agreement if the Contracting Officer or HHSC determine that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

BUSINESS ASSOCIATE ADDENDUM (PRIVACY AND SECURITY)**I. BUSINESS ASSOCIATE AGREEMENT**

Section 1. **Use of Protected Health Information.** Contractor (hereinafter “Business Associate”) may use PHI to provide the services under the Agreement. Business Associate shall not use PHI received from HHSC in any manner that would constitute a violation of the Privacy Rule if so used by HHSC or a violation of this Addendum. Business Associate shall further ensure that its directors, officers, employees, contractors, and agents do not use PHI received from HHSC in any manner that would constitute a violation of the Privacy Rule if so used by HHSC or a violation of this Addendum. Business Associate may use PHI for Business Associate’s proper management and administration, or to carry out the legal responsibilities of Business Associate. Business Associate will not use PHI to create de-identified information for purposes unrelated to providing the services under the Agreement without HHSC’s advance approval. Business Associate will use and request only the minimum PHI necessary to accomplish the permissible purpose of the use or request and will comply with HHSC’s minimum necessary policies.

Section 2. **Business Associate’s Acknowledgement.** Business Associate acknowledges its obligation to, and shall, comply with the HIPAA Security Rule, the Breach Notification Rule, and certain provisions of the HIPAA Privacy Rule and hereby agrees to comply with same.

Section 3. **Disclosure of PHI.** Business Associate may disclose PHI to provide the services under the Agreement. Business Associate shall not disclose PHI received from HHSC in any manner that would constitute a violation of the Privacy Rule if so disclosed by HHSC or a violation of this Addendum. Business Associate shall further ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from HHSC in any manner that would constitute a violation of the Privacy Rule if so disclosed by HHSC or a violation of this Addendum. Business Associate may disclose PHI only in a manner permitted pursuant to this Addendum or as required by law. Business Associate will disclose and request only the minimum PHI necessary to accomplish the permissible purpose of the disclosure or request, and will comply with HHSC’s minimum necessary policies.

If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure: (1) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Addendum, and only disclosed as required by law or for the purposes for which it was disclosed to such third party; (2) an agreement from such third party to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

Section 4. **Safeguards Against Misuse of Information.** Business Associate agrees that it will implement all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

Section 5. **Safeguards to Protect the Confidentiality, Integrity, and Availability of Electronic PHI.** Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of HHSC as required by the Security Rule. Business Associate shall further ensure that its directors, officers, employees, contractors, subcontractors, and any other agents to whom it provides such information agree to implement reasonable and appropriate safeguards to protect it.

Section 6. **Reporting of Disclosures and Uses of PHI.** Business Associate shall, within **three (3) business days** of becoming aware of a disclosure or use of PHI in violation of this Addendum, including a breach of unsecured PHI as provided in the Breach Notification Rule, by Business Associate, its officers, directors, employees, contractors, or agents, or by a third party to which Business Associate disclosed PHI pursuant to Section 3 of this Addendum, report any such disclosure or use to HHSC. Business Associate shall mitigate to the extent practicable any harmful effect that is known or is likely resulting from a use or disclosure in violation of this Addendum and/or of HIPAA.

Section 7. **Reporting of Security Incidents.** Pursuant to the Security Rule, Business Associate shall, within **three (3) business days** of becoming aware of any security incident, including a breach of unsecured PHI, report such security incident to HHSC.

Section 8. **Costs of Notification.** Business Associate is responsible for any and all costs incurred for notification of individuals or their representatives, as required by applicable authority including but not limited to 45 CFR 164.400 et seq., and for mitigation of any known or likely harm (including but not limited to reasonable costs for credit monitoring and credit restoration services for affected individuals) resulting from any privacy breach or security incident committed by Business Associate, its officers, directors, employees, contractors or agents, or by a third party to which Business Associate disclosed PHI pursuant to Section 3 of this Agreement. This provision shall survive termination of the Agreement.

Section 9. **Agreements by Third Parties.** Business Associate shall not allow any third party to create, receive, maintain, or transmit PHI on Business Associate's behalf unless: (a) required by law; or (b) as permitted by this Addendum and the Agreement. Business Associate shall ensure that any subcontractor that creates, receives, maintains, or transmits PHI on Business Associate's behalf agrees in writing to: (i) the same or more stringent restrictions, terms, and conditions that apply through this Addendum to Business Associate with respect to such PHI; and (ii) comply with the applicable provisions of the Security Rule. Business Associate shall not disclose PHI to any person outside of the United States without the written approval of HHSC. Business Associate shall not allow a subcontractor to create, receive, maintain, or transmit PHI on Business Associate's behalf unless Business Associate first has conducted reasonable due diligence of the subcontractor's information security and determined that such security is reasonable.

Section 10. **Access to Information.** Within five (5) days of a request by HHSC for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to HHSC such PHI, for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to HHSC. Any decision to deny access to PHI requested by an individual shall be made only by HHSC.

Section 11. **Availability of PHI for Amendment.** Within five (5) days of receipt of a request from HHSC for the amendment of an individual's PHI or record regarding an individual (for so long as the PHI is maintained), Business Associate shall provide such information to HHSC for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526, as amended from time to time.

Section 12. **Accounting of Disclosures.** Within ten (10) days of notice by HHSC to Business Associate that HHSC has received a request for an accounting of disclosures of PHI regarding an individual made during a period of time less than six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to HHSC such information as is in Business Associate's possession and is required for HHSC to make the accounting required by 45 C.F.R. §164.528, as amended from time to time. At a minimum, Business Associate shall provide HHSC with the following information: (1) the date of the disclosure; (2) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (3) a brief description of the PHI disclosed; and (4) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to HHSC. It shall be the responsibility of HHSC to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

Section 13. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, HHSC available to the Secretary for purposes of determining HHSC's and Business Associate's compliance with HIPAA and to HHSC for purposes of determining Business Associate's compliance with this Addendum and HIPAA. Business Associate shall: (a) immediately notify HHSC of any request from the Secretary under this Section; (b) cooperate with HHSC in furnishing requested materials; and (c) provide a copy to HHSC of any materials furnished to the Secretary under this Section. Nothing in this Section shall be construed as waiving any privilege or discovery protection, including with respect to trade secrets and confidential commercial information.

Section 14. **Covered Entity Obligations.** To the extent that Business Associate is to carry out one or more of HHSC's covered obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to HHSC in the performance of such obligations.

Section 15. **No Sale of PHI.** Business Associate shall not directly or indirectly pay or receive remuneration in exchange for PHI or otherwise engage in the sale of PHI in a manner that would be impermissible for Business Associate under HIPAA or would be impermissible if done by HHSC under HIPAA. Business Associate shall not act in a manner that would cause HHSC to not be in compliance with such prohibition.

Section 16. **Sanctions.** Business Associate shall impose appropriate sanctions on any workforce member who fails to act in accordance with this Addendum and/or HIPAA.

Section 17. **Compliance with Applicable Law.** Business Associate shall comply with applicable federal and state confidentiality, privacy, and security laws, including, but not limited to, HIPAA. Business Associate shall not act or fail to act in a manner that would cause, directly or indirectly, HHSC to not be in compliance with applicable federal or state law.

Section 18. **Commencement and Termination of Electronic Access by Business Associate's Employees and Subcontractors.** Within ten (10) days of signature of this Agreement, Business Associate shall provide HHSC with a list of individual employees and subcontractors who will require access to HHSC's electronic and computer systems in order to perform duties pursuant to Business Associate's agreement with HHSC. Business Associate shall require all such persons to execute additional confidentiality documentation prior to receiving such access. If any such person terminates employment or contract status with Business Associate or its subcontractors, Business Associate shall notify HHSC no later than **five (5) business days** in advance of same, or in any event immediately upon termination, so that HHSC may terminate the individual's access to HHSC's systems.

Section 19. **Return and Destruction of PHI.** At termination of the Agreement, Business Associate shall either return or destroy all PHI received from, or created or received by Business Associate on behalf of, HHSC that Business Associate still maintains in any form. Business Associate shall further not retain any copies of such information in any form. In the event such return or destruction is not feasible, Business Associate shall (1) provide an explanation in writing to HHSC as to why such return or destruction is not feasible to HHSC's satisfaction; (2) continue to extend the protection required under this Addendum; and (3) limit any further uses and disclosures of the PHI to those purposes that make the return or destruction of the information infeasible. This provision shall survive the termination of this Agreement.

Section 20. **Termination for Violation.** Notwithstanding any other provisions of the Agreement to the contrary, if HHSC determines that Business Associate has materially breached or violated its obligations under this Addendum, and reasonable efforts to cure the breach or to end the violation are unsuccessful, HHSC shall have the right, but not the duty, to terminate this Agreement.

II. DEFINITIONS FOR USE IN THIS ADDENDUM

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule, Breach Notification Rule, or the Security Rule.

“Breach Notification Rule” shall mean the Breach Notification of Unsecured Protected Health Information Rule, 45 CFR Part 164, Subparts A and D.

"Designated Record Set" shall mean a group of records maintained by or for HHSC that is (1) the medical records and billing records about individuals maintained by or for HHSC, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (3) used, in whole or in part, by or for HHSC to make decisions about individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for HHSC.

"Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or any other media capable of storing electronic or digital data.

"Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and:

- (1) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and
- (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
 - (a) that identifies the individual, or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Privacy Rule" shall mean the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended from time to time.

"Protected Health Information" (or "PHI") shall mean Individually Identifiable Health Information that is (1) transmitted by electronic media; (2) maintained in any medium constituting electronic media; or (3) transmitted or maintained in any other form or medium. "PHI" shall not include: education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g; records described in 20 U.S.C. §1232g (a)(4)(B)(iv); employer records; or information about an individual who has been deceased for more than 50 years.

"Secretary" shall mean the Secretary of the United States Department of Health and Human Services.

"Security Incident" shall mean any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

"Security Rule" shall mean the Security Standard for electronic Protected Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and C, as amended from time to time.