

## **Youngstown Developmental Center Specifications for Medical Director**

The Youngstown Developmental Center (YDC) is a residential center operated by the Ohio Department of Developmental Disabilities which serves individuals with intellectual disabilities. The Medical Director plans, coordinates and directs medical services at the center in conjunction with the nursing, program and administrative staff of YDC. A successful on-call physician will need to have, or acquire, a basic understanding of individuals with intellectual disabilities living in an intermediate care residential setting.

### **Contractor Qualifications**

The physician must be licensed to practice medicine as issued by the State Medical Board pursuant to sections 4731.41 and 4731.281 of the Ohio Revised Code and remain licensed throughout the duration of the contract. Preference will be given to candidates trained in internal medicine or family medicine. Candidate must have admitting privileges under their name to St. Elizabeth's Health Center in Youngstown Ohio.

As physician to approximately 86 individuals of the center, The Medical Director will provide diagnosis/evaluation/medical treatment for them, including emergency medical care. Initiates medication/ treatment orders. Reviews all medical consultations and recommendations by contract and outside medical providers and translates them into medical orders as appropriate. Signs in/out when serving individuals on grounds and prepares billing statements for hours worked. When not in a sign-in status, serves individuals by taking phone calls, responding to faxes, etc. Supervises and directs and evaluates assigned staff- both medical and non-medical. Oversees all contractual medical services provided. Provides consultation with other medically oriented staff (dentist, psychiatrist), not directly in the line of supervision. Treats special cases during scheduled hours either in the on-campus clinic or the individual's residence. Assists in developing policies and procedures pertaining to medical issues and ensures compliance with federal and state laws/rules as well as Licensure/Medicaid standards.

Chairs/participates in monthly Med/Psych committee on Thursday, quarterly Health and Safety meetings and individual team meetings as applicable. Advanced notice will be given for scheduling.

**Any modification, variations or addendums to the above specified duties or services shall result in the immediate disqualification of that bid.**

### **Work Schedule**

The exact on-call schedule will be developed with the Director of Nursing and it can be flexible. The Medical Director will be expected to be on campus at least 10 hours per week with an expectation that the Director will average 15 hours per week over the fiscal year. The physician may expect to have an initial orientation to become familiar with specific YDC policies and key staff. This orientation time will be compensated for at the contract rate.

Contractors who have multiple physicians will designate no more than two physicians to assume the Medical Director's duties. This commitment will help assure consistency of information and decision making.

If the need arises to provide a new/different physician during the duration of the contract, it is the contractor/corporation's responsibility to make the individual physician available for initial orientation at YDC at no cost to the center.

**Period of Service**

The duration of the contract will be from September 1, 2014 through June 30, 2015 (the remainder of the fiscal year). This contract may be renewed up to two years by mutual agreement of the parties.

**Submission of Proposal**

Proposals should be based **on an hourly rate**. Proposals should be returned in a sealed envelope to **Youngstown Developmental Center, 4891 East County Line Road, Mineral Ridge, Ohio, 44440** with the words “**Medical Director Proposal at YDC**” written on the outside of the envelope. Proposals are due no later than **2:00 p.m. on Monday, August 11, 2014**.

The provisions of the Ohio Department of Developmental Disabilities Personal Service Contract will become part of the final agreement between the successful offeror and the Center. Therefore, the evaluation process resulting in the final award of a contract rests with the Center and the Ohio Department of Developmental Disabilities. The Center and the Ohio Department of Developmental Disabilities reserve the right to determine that the award of a contract would not be in the best interest of the Center, the Ohio Department of Developmental Disabilities, or the State of Ohio. An example of the Personal Service Contract template is attached to this Request for Proposals. Minor changes to the contract template will occur once the contract is awarded.

The Center and the Ohio Department of Developmental Disabilities reserve the right to accept or reject any and all offers, in whole or in part, and may determine that any irregularities or deviations from the specifications do not result in the offeror being non-responsive, provided this does not affect the amount of the offer or result in a competitive advantage to the offeror.

In the response review process, the fact that there is a finding for recovery as defined in R.C. 9.24 may be considered in the scoring process, and a response rejected for this reason alone.

By submitting a signed proposal for this service, the vendor affirms that, as applicable to the vendor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committee.

It is the policy of the Ohio Department of Developmental Disabilities that there shall be a minimum of one year from the date of retirement from State service to consider for rehire/Personal Service Contract with the Department. However, when the individual has taken advantage of an Early Retirement Incentive Plan (ERIP), the length of time between retirement and consideration for rehire/Personal Service Contract shall be the greater of one year or the amount of service that was purchased for the individual in the ERIP. The Director retains discretion to waive this requirement for good cause shown.

If the apparent contractor is a corporation, the person who will be providing the service must be selected by the corporation and be interviewed by the YDC supervisor within approximately two weeks of the proposed opening. If this stipulation is not fulfilled the proposal can be refused.

Final acceptance of any bid will be subject to the contractor/vendor successfully passing a background check as required by DODD’s Administrative Rules (which includes but is not limited to a check of the DODD Abuser Registry, fingerprints and licensing). Should any area(s) of concern be identified during the background check(s), the bid may automatically be disqualified. The contractor will assume costs of the background checks, as required by DODD Licensure Rules if they have more than one person performing services. **End of Specifications. The following is attached for information purposes only.**

Fund	Account	ALI	Department	Program	Grant	PO Number	CB and/or R&P Number (if applicable)

**Ohio Department Developmental Disabilities**  
**PERSONAL SERVICE CONTRACT**

**SECTION A. CONTRACT PARTIES**

This contract is entered into between the Ohio Department Developmental Disabilities (Agency), on behalf of the following:

Name of Developmental Center, Office, or other Contracting Entity	Address (Street, City, State, Zip)
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**and**

Contractor's Name	Address (Street, City, State, Zip)	OAKS Vendor Number
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**Type of Service Provided:**

**SECTION B. EFFECTIVE DATES**

1. This contract is effective: \_\_\_\_\_ through \_\_\_\_\_ unless terminated prior thereto pursuant to Section G. Services shall not begin until Agency receives OBM approved Purchase Order.
2. Renewal Clause-Contract Extension. By mutual written agreement of the parties, this Contract may be renewed for up to an additional two years.

**SECTION C. COMPENSATION**

1. The Contractor will be paid for the term of this contract as follows (check option a or b):
  - a. Fee Schedule. Attach Fee Schedule to Contract or include Fee Schedule in Section D.1.a.
  - b.  Hourly Rate. Complete the information below

Fiscal Year	Rate per Hour	Maximum Hours Worked	Maximum Fiscal Year Contract Amount

2. Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Contract.
3. Contractor shall submit a valid invoice on letterhead for the compensation incurred consistent with this Section, within twenty (20) days of the end of each month. Each invoice shall contain the following information:
  - a. a description of the services performed;
  - b. date of the services rendered;
  - c. a total for the invoice;
  - d. vendor's name and remit to address; and
  - e. Department's name and address.
4. Agency shall pay Contractor within thirty (30) days of receipt and approval of the invoice.
5. This Contract does not guarantee a minimum amount of service. Services shall be performed on an as needed basis as directed by Agency.

#### **SECTION D. DUTIES OF CONTRACTOR**

1. Contractor shall:
  - a. List duties and associated fees.
  - b. Contractor shall maintain all necessary licenses or registrations. Contractor shall perform all services with reasonable care, skill and diligence as would normally be provided by an experienced consultant and in accordance with industry standards.

OR – (select either the paragraph above or below – whichever is most applicable then delete the other and this note)

Contractor shall maintain all necessary licenses and registrations. All services shall be performed in accordance with: (1) generally accepted standards of care in the community and the quality criteria adopted by the Agency; (2) policies of the Agency; and (3) applicable rules and standards for the certification of an intermediate care facility for the mentally retarded.
  - c. The contractor reports directly to (name and title of supervisor) \_\_\_\_\_ who will verify the contract's time and service charged to this contract.
2. When delivering services in any direct services position to individuals residing in a Developmental Center, Contractor shall comply with all duties listed in Addendum B.
  - a. "Direct services position" means an employment position in which the employee has the opportunity to be alone with, or exercises supervision or control over one or more individuals with a developmental disability.

#### **SECTION E. NATURE OF CONTRACT**

1. Agency enters into this Contract in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. It is specifically understood that the nature of the services to be rendered under this Contract are of such a personal nature that Agency is the sole judge of the adequacy of such services. Agency thus reserves the right to terminate this Contract should Agency at any time be dissatisfied with Contractor's performance of its duties under this Contract.
2. In the event of a termination of this Contract by Agency, Contractor shall be reimbursed in accordance with Section G.
3. Agency may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice, Contractor shall comply with such instructions and fulfill such requests to Agency's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Contract. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor.

## **SECTION F. CERTIFICATION OF FUNDS**

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Contract shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Agency gives Contractor written notice that such funds have been made available to Agency by Agency's funding source.

## **SECTION G. TERMINATION OF CONTRACT**

1. Agency may, at any time prior to the completion of services by Contractor under this Contract, suspend or terminate this Contract with or without cause by giving twenty (20) days written notice to Contractor.
2. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by Agency, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Contract, including, without limitation, results, conclusions resulting therefrom, and any other matters Agency requires.
3. Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with invoices as required under Section C. In the event of suspension or termination, any payments made by Agency for which Contractor has not rendered services shall be refunded.

4. In the event this Contract is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Agency all work products and documents which have been prepared by Contractor in the course of providing services under this Contract. All such materials shall become and remain the property of Agency, to be used in such manner and for such purpose as Agency may choose.
5. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.
6. Contractor may terminate this Contract with or without cause upon thirty (30) days prior written notice to Agency.

## **SECTION H. INDEPENDENT CONTRACTOR**

1. No relationship of employer and employee is created by this contract. Contractor will act hereunder as an independent contractor with no claim under this Contract or otherwise against Agency or the State of Ohio for business expenses, travel expenses, vacation pay, sick pay, retirement benefits, workers compensation, or disability or unemployment insurance benefits or employee benefits of any kind. Neither Contractor nor any of its employees is eligible to participate in any employee benefit or retirement plans offered by Agency or the State of Ohio. Agency shall withhold no payroll or employment taxes of any kind.
2. Contractor is solely responsible for all of Contractor's business expenses, including the payment or withholding of all federal, state and local income taxes, workers compensation insurance, social security and unemployment insurance, and the payment of wages and salaries, travel expenses, insurance of every kind, and health and retirement plans. Contractor shall indemnify and hold Agency harmless from and against any and all claims, demands, liabilities, losses, damages and expenses resulting in any manner from any act or omission of Contractor or its employees related to its obligation to pay and withhold income tax, social security, unemployment insurance and to maintain worker's compensation insurance.

## **SECTION I. RECORD KEEPING**

1. Until the expiration of six (6) years after the termination of this Contract, Contractor will, upon proper request, allow Agency, the Comptroller General of the United States, the U.S. Department of Health and Human Services, the State of Ohio, the Ohio Medicaid Fraud Control Unit and the Ohio Department of Medicaid and their duly-authorized representatives access to Contractor's books, documents and records necessary to certify the nature and extent of costs of reimbursable services provided under this Contract. For each subcontract in excess of \$10,000, the Contractor shall require the subcontractor to agree to these record keeping provisions. If Contractor is requested to disclose any books, documents or records relevant to this Contract for the purpose of an audit or investigation by any government agency, Contractor shall immediately notify Agency of the nature and scope of the request and shall make available to Agency all books, documents and records relevant to the request.
2. All provisions under this section survive the expiration or termination of this

Contract.

## **SECTION J. CONFLICTS OF INTEREST, ETHICS, AND LEGAL COMPLIANCE**

1. No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Contract or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
2. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Agency in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless Agency shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
3. Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2011-03K. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws and Executive Order.
4. Contractor represents and warrants that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.
5. Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
6. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
7. Contractor represents and warrants that neither it nor any of its employees or agents are excluded from participation under any Federal health care program, as defined under 42 U.S.C. Section 1320a-7b(D), for the provision of items or services for which payment may be made under a Federal health care program; Contractor has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that Contractor knows is excluded from participation in any Federal health care program, and no final adverse action, as defined under 42 USC Section 1320a-7e(g) has occurred or

is pending against Contractor or to its knowledge against any employee contractor or agent engaged to provide items or services under this Contract (collectively, "Exclusions/Adverse Actions"). Contractor shall notify Agency of any Exclusions/Adverse Actions within five (5) business days of its learning of such Exclusions/Adverse Actions.

8. Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
9. Contractor warrants that it has not entered into, nor shall it enter into, other Contracts, without prior written approval of Agency, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other Contracts.
10. Contractor represents and warrants that neither it nor any of its employees or agents has been convicted of any offense set forth in Section 5123.081(E) of the Ohio Revised Code.
11. Contractor affirms that neither it nor any of its employees or agents is presently holding a civil service position with the State of Ohio. The Contractor (if an individual) declines a civil service position for the reason(s) identified below.
  - contractor is not an individual
  - not interested in benefits
  - not interested in civil service appointment
  - compensation and benefits is inadequate
  - other

## **SECTION K. NONDISCRIMINATION**

1. Pursuant to O.R.C. Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, veteran status, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Contract.
2. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race, color, religion, sex, age, national origin, veteran status or disability.
3. Pursuant to Ohio Revised Code Section 125.111, Contractor shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.
4. Contractor shall not discriminate in the provision of services on account of

race, color, religion, sex, age, natural origin, veteran status or disability.

## **SECTION L. LIABILITY**

1. Contractor agrees to indemnify and to hold Agency and the State of Ohio harmless and immune from any and all claims, costs and liabilities for injury or damages arising from this Contract which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Contract. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

OR – (select either the paragraph above or below – then delete the other and this note; use the paragraph below if contracting with another public agency, use the paragraph above for all other contracts)

1. Each party shall accept and be responsible for its own acts or omissions, as well as those of its employees discharging its obligations under this Agreement. Nothing in this Agreement shall be interpreted or construed to place any responsibility for acts or omissions of one party or its employees onto the other party.
2. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
3. Contractor shall purchase and maintain comprehensive general and professional liability insurance each in the minimum amount of \$1,000,000 per occurrence. Upon request, Contractor shall furnish Agency with a certificate of coverage.

## **SECTION M. COMPLIANCE WITH LAWS**

1. Contractor, in the execution of duties and obligations under this Contract, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.
2.
  - a. The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment.
  - b. The Contractor also affirms, understands, and agrees to immediately notify Agency of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.
  - c. The Agency is not obligated and shall not pay for any services provided under this Contract that the Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and Contractor shall immediately return to the Agency all funds paid for those

services. In addition, if the Contractor or any of its subcontractors perform any such services outside of the United States, the Agency may, at any time after the breach, terminate this Contract for such breach, upon written notice to the Contractor. If the Agency terminates the Contract, the Agency may buy substitute services from a third party, and the Agency may recover the additional costs associated with acquiring the substitute services.

d. If the Contractor or any of its subcontractors prepares to perform services, changes or shifts the location(s) of services performed by the Contractor or its subcontractors under this Contract to a location(s) outside of the United States, but no services are actually performed, the Contractor has 30 days to change or shift the location(s) of services performed to location(s) within the United States. The Agency may recover liquidated damages in the amount of 5% of the value of the contract for every day past the time permitted to change or shift the location(s).

## **SECTION N. CONFIDENTIALITY**

1. Contractor agrees that all data, reports and information received from Agency shall be used only for the services to be provided under this Contract. Contractor agrees that all discussions with Agency personnel and all reports prepared by Contractor are confidential. Contractor agrees to maintain the confidentiality of all such information and will not release such information without the prior written authorization of Agency.
2. Contractor  IS or  IS NOT a "business associate" pursuant to the definition under the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder specifically 45CFR160.03. If Contractor is a business associate then Contractor shall comply with Addendum A.
3. All provisions under this section survive the expiration or termination of this Contract.

## **SECTION O. ENTIRE CONTRACT/WAIVER**

1. This Contract contains the entire Contract between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
2. This Contract supersedes any and all previous Contracts, whether written or oral, between the parties.
3. A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

## **SECTION P. NOTICES**

All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon mailing and shall be sent to the addresses set forth below:

[Name]  
DODD  
[Title]  
[Address]

[Name]  
[Contractor Name]  
[Title]  
[Address]

**SECTION Q. SEVERABILITY**

The provisions of this Contract are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

**SECTION R. CONTROLLING LAW**

This Contract and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder.

**SECTION S. SUCCESSORS AND ASSIGNS**

Neither this Contract nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of Agency.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first written above.

Ohio Department of Developmental Disabilities  
Director

[Contractor Name]  
[Title]

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Ohio Department of Developmental Disabilities  
Disabilities  
Deputy Director

Ohio Department of Developmental  
Superintendent (if applicable)

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM A**  
**Business Associate Addendum**

This Business Associate Addendum (the "Addendum") is entered into by and between the Ohio Department of Developmental Disabilities ("Agency") and Contractor.

Whereas, Agency and Contractor are parties to an agreement entered into contemporaneously herewith ("Underlying Agreement"); and

Whereas, Agency, pursuant to the Underlying Agreement, provides Contractor with certain individually identifiable protected health information that is necessary for Contractor to perform the services called for in the Underlying Agreement and is subject to protection under the Health Insurance Portability and Accountability Act of 1996("HIPAA") and the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164 ("Rules"); and Subtitle D of the Hitech Act, American Recovery and Reinvestment Act of 2009; and

Whereas, the parties purpose for entering into this Addendum is to comply with the requirements of applicable laws and regulations, including but not limited to HIPAA, Hitech, and the Rules.

NOW, THEREFORE, in consideration of the forgoing and the promises and mutual covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meaning as set forth in the Rules.
2. Duties and Responsibilities of Contractor:
  - A. Contractor acknowledges and agrees that all protected health information (the "PHI"), as defined by the Rules, provided to Contractor by Agency is confidential and the property of Agency without regard to medium of storage or method of transmission of such information. Contractor agrees to keep all PHI confidential.
  - B. Except as otherwise limited in this Addendum, Contractor may use or disclose PHI necessary to perform functions, activities, or services for, or on behalf of, Agency as specified in the Underlying Agreement or for the proper management and administration of Contractor, provided that such use or disclosure would not violate the Rules if done by Agency.
  - C. Contractor agrees to take reasonable steps necessary to protect the security and confidentiality of PHI so as to enable Agency to comply with HIPAA, Hitech, the Rules and other laws relating to the privacy and security of PHI, which are now in force or which may hereafter be in force, including, without limitation, the following actions:
    - (1.) use or disclose PHI only as permitted or required by the Underlying Agreement and this Addendum, or as Required by Law; and

- (2.) use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Underlying Agreement and this Addendum; and
  - (3.) implement reasonable processes to detect unauthorized disclosures of PHI and train its work force regarding these processes; and
  - (4.) to the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Underlying Agreement or this Addendum; and
  - (5.) promptly and in no case later than 10 days after discovery, report in writing to Agency any use or disclosure of the PHI not provided for by the Underlying Agreement or this Addendum, of which Contractor becomes aware. Contractor shall provide such other available information to Agency to enable it to notify individuals as required by Hitech; and
  - (6.) require any contractors or agents, including subcontractors, to whom Contractor provides PHI received from, or created or received by Contractor on behalf of Agency, to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum; and
  - (7.) make its internal practices (including policies and procedures), books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of Agency, available to the Secretary of the Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entities compliance with the Rules. Contractor shall provide Agency with a copy of any PHI that Contractor provides to the Secretary concurrently with providing such PHI to the Secretary; and
  - (8.) within fifteen (15) days of receiving a written request from Agency, provide to Agency the information necessary for the Agency to make an accounting of disclosures of PHI about an Individual as necessary for Agency to comply with 45 C.F.R. 164.528; and
  - (9.) make available information necessary for Agency to respond to an Individual's request for access to PHI about them as is necessary for Agency to comply with 45 C.F.R. 164.524. Such information shall be made available within ten (10) ten days of receiving a written request from Agency for such information. In the event an Individual contacts Contractor, or its agents or subcontractors, directly requesting access to PHI, Contractor will not grant access to PHI but will notify Agency in writing within five (5) business days of such contact; and
  - (10.) within fifteen (15) days of receiving a written request from Agency, incorporate any amendments or corrections to PHI as necessary for Agency to comply with 45 C.F.R. 164.526. In the event an Individual contacts Contractor, or its agents or subcontractors, directly about making amendment to PHI, Contractor will not make any amendments to PHI but will notify Agency in writing within five (5) business days of such contact.
3. Security Rule Provisions. Contractor agrees to the following additional obligations in order that Agency may meet its obligations under HIPAA Security Rule, 45 C.F.R. Part 164, Subpart C, with respect to electronic PHI:

- A. Contractor will employ appropriate administrative, technical, and physical safe guards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Agency.
  - B. Contractor will Report to Agency any Security Incident of which it becomes aware.
  - C. Contractor will ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.
4. Breach of Unsecured PHI. If Contractor discovers any Breach of Unsecured PHI (as the terms “Breach” and Unsecured” PHI” or “Unsecured Protected Health Information” are defined in 45 C.F. R. 164.402) that it accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses on behalf of Agency, then in accordance with 45 C.F.R. §164.410, Contractor shall notify Agency of such Breach in writing without unreasonable delay and in no event later than ten (10) days after discovery of such Breach, which written notice shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach. In addition, Contractor shall provide Agency with the following information, to the extent available at the time initial notice to Agency is provided, or promptly thereafter as such information becomes available:
- A. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach.
  - B. A description of the type of PHI that was involved (e.g., name, Social Security Number, procedure, diagnosis, treatment, etc.).
  - C. A brief description of the steps that Contractor is taking to investigate, mitigate harm, and protect against further Breaches.

5. Termination. Agency may immediately terminate the Underlying Agreement, including this Addendum, by giving Contractor written notice of termination, if Agency determines that Contractor has violated a material term of this Addendum. Alternatively, Agency may in its sole discretion provide an opportunity for Contractor to cure the breach and end the violation. If Contractor fails to cure the breach to the satisfaction of Agency, the Agency may immediately thereafter terminate the Underlying Agreement. Termination of the Underlying Agreement shall result in the termination of this Addendum.

Contractor agrees that upon termination of the Underlying Agreement, it will return or destroy all PHI received from, or created or received on behalf of Agency, that Contractor still maintains in any form and retain no copies of such information. This provision shall apply to PHI that is in the possession of Contractor and any subcontractors or agents of Contractor. In the event that returning or destroying the PHI is infeasible, as determined by Agency, Contractor agrees to extend the protections of the Underlying Agreement and this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

6. Amendment. It is the intent of the parties that the Underlying Agreement and this Addendum comply with the requirements of HIPAA, Hitech, and the Rules. Any ambiguity in the Underlying Agreement or this Addendum shall be resolved to permit Agency to comply with

HIPAA and the Rules. If necessary, the parties agree to use good faith efforts to amend the Underlying Agreement and this Addendum from time to time as is necessary for Agency to be in compliance with HIPAA and regulations promulgated thereunder.

7. Survival. The obligations of the Contractor under this Addendum shall survive the expiration or termination of the Underlying Agreement and this Addendum.
8. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall confer, upon any person other than the parties, and their permitted successors and assigns if any, rights, remedies, obligations or liabilities whatsoever.
9. Miscellaneous: As amended by this Addendum, the Underlying Agreement and all its terms and conditions shall remain in full force and effect.