



**REQUEST FOR PROPOSALS
(RFP NO. 19-001)**

In-Home Aide Services

Proposals Due:

November 27, 2018

2:00 P.M.

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ATTACHMENTS

- I. ADDENDUM ACKNOWLEDGEMENT**
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- IV. AFFIDAVIT OF COMPLIANCE (E-Verify)**
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In-Home Aide Services

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PROPOSAL SCHEDULE

(Note: The below dates are subject to change)

Advertisement Date	October 24, 2018 and October 28, 2018
Pre-Proposal Conference Date/Site Visit	November 7, 2018 at 2:00 P.M. Rooms 2423 & 2424
Last Question Date	November 13, 2018 by 3:00 P.M.
Proposal Due Date	November 27, 2018 by 2:00 P.M.



REQUEST FOR PROPOSALS

In-Home Aide Services

(RFP No. 19-001)

ISSUE DATE: Date: October 24, 2018 and October 28, 2018

ISSUING DEPARTMENT: Durham County Department of Social Services
414 East Main Street
Business Office 3rd Floor
Durham, NC 27701

Proposals will be received until 2:00 P.M., on November 27, 2018, to provide in-home aide services to Durham County Department of Social Services vulnerable-adult customers with personal care and home-management needs to help them remain in their own homes. These services are designed to maximize the skill-set of customers so that they can be as self-productive as possible.

All inquiries concerning the Scope of Services, Proposal Submission Requirements or Procurement Procedures should be directed to:

Administrative Officer Robyn Riley, (919) 560-8122
Business Office
Email: rriley@dconc.gov

Proposals shall be mailed and/or hand delivered to the Issuing Department shown above, and the envelope shall bear the name and number of this Request for Proposals (RFP). It is the sole responsibility of the Proposer to ensure that his/her Proposal reaches the Department of Social Services by the designated date and hour indicated above.

In compliance with this Request for Proposals and to all the terms and conditions imposed herein, the undersigned offers and agrees to furnish the goods and services described in accordance with the attached signed proposal.

Firm Name: _____

Date: _____

Address: _____

By: _____
(Name Typed/Printed)

Phone: _____

(Signature in Ink)



LEGAL NOTICE

In-Home Aide Services

REQUEST FOR PROPOSALS (RFP No. 19-001)

Durham County Department of Social Services will receive proposals for In-Home Aide Services on November 27, 2018 in the Durham County Human Services Building, Department of Social Services, 414 East Main Street, Durham, North Carolina 27701. No proposals will be accepted after the official time and date.

A Pre-Proposal Conference will be held on November 7, 2018 in Durham County Human Services Building, Department of Social Services, 414 East Main Street, 2nd Floor, Rooms 2423 and 2424, Durham, NC 27701.

INSTRUCTIONS TO PROPOSERS

RFP 19-001

1. In order for a proposal to be considered, it must be based on terms, conditions and scope of services contained herein and must be a complete response to this RFP. **One (1) hard copy Original, One (1) hard “copy” of the Original, and a soft copy of your Proposal on a flash drive shall be submitted to the Issuing Department. The original Proposal should be marked “Original”. The copies must consist of all documents that are included in the “Original” Proposal.** No other distribution of the Proposal shall be made by the Proposer. Proposals shall be limited to twenty (20) single-sided pages or less and must be signed by an authorized representative. The letter of introduction, section dividers, detailed Résumés, forms, and dividers are not included in this page limit. Each Proposal should be bound in a single volume with all relevant documentation. The Department may elect to require oral presentations after receipt of the proposals.
2. **PRE-PROPOSAL CONFERENCE:** A Pre-Proposal Conference will be held from **2:00 P.M. to 4:00 P.M. on Wednesday, November 7, 2018 located in Durham County Human Services Building, Department of Social Services, 414 East Main Street, 2nd Floor in conference rooms 2423 and 2424, Durham, North Carolina 27701.** The purpose of this Conference is to allow all potential Proposers an opportunity to present questions and obtain clarifications relative to this solicitation. While attendance at this Conference will not be a prerequisite to submitting a proposal, all potential Proposers are strongly encouraged to attend and read the entire solicitation in advance. Any changes resulting from this Conference will be issued in a written Addendum to the solicitation.
3. **COMMUNICATION WITH PROPOSERS:** All communications between the Department of Social Services and prospective Proposers shall be in writing. E-mailed questions will be accepted and can be sent to rriley@dconc.gov. Any inquiries, requests for interpretation, technical questions, clarification, or additional information shall be directed to **Administrative Officer Robyn Riley** at the email address above. All questions concerning this RFP shall reference the RFP number, section number and paragraph. Questions and responses affecting the Scope of Services will be provided to all Proposers by issuance of an Addendum. **All questions shall be received by the Department of Social Services no later than 3:00 P.M., on November 13, 2018. NO EXCEPTIONS.**
4. **PROPOSAL DUE DATE:** Proposals will be received until **2:00 P.M., on November 27, 2018.** Proposals must be mailed, or hand delivered to: **Durham County Health and Human Services, Department of Social Services, Attn: Administrative Officer Robyn Riley, 414 East Main Street, Durham, NC 27701.** Proposals shall be dully marked and/or identified with Proposer name, address and RFP number.
5. **LATE PROPOSALS:** Proposals received after the date and time specified will not be considered for award and will be returned to the Proposer unopened.
6. **VENDOR APPLICATION:** All Proposers shall complete and submit the Vendor Application along with the W-9 Form. This information will be used to create or update the County’s electronic vendor database upon award of contract.
7. Proposers are required to make a good faith effort to include Minority and Women Business Enterprises (M/WBEs) as part of their management team. Describe the program (plan) that your company has developed to encourage participation by M/WBEs to meet or exceed the goals set by the County of Durham’s M/WBE Program Ordinance. Include a copy of that plan in your response. Provide documentation of M/WBE participation that you have achieved over the past two years on both public and private construction projects. Outline specific efforts that your Company takes to notify M/WBE firms of opportunities for participation. Indicate the M/WBE participation goal that you expect to achieve on this project.

Durham County hereby establishes the following goals for the expenditure of funds with M/WBE firms. Questions concerning M/WBE should be directed to Rick Greene, Assistant Procurement Manager, at (919) 560-0059.

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE Availability % <i>(Median Availability)</i>
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
Overall MWBE Participation Goal =					25.0%

Each Proposer shall make good faith efforts to subcontract the established percentage stated with small business concerns, owned and controlled by M/WBEs. The Proposers are required to submit information about participating M/WBEs with their Proposal on the enclosed forms Affidavits A through C. The information shall include the name and address of each M/WBE, a description of the work to be performed by each, and the dollar value of the work to be performed by each. Any Proposer who fails to achieve the indicated M/WBE participation goal stated above is required to provide documentation demonstrating that good faith efforts were made in an attempt to meet the established goal. Any Proposal that does not include M/WBE information and documentation may be considered non-responsive.

An M/WBE is a business that is at least 51% owned and controlled by minority group members or women. An M/WBE is bona fide only if the minority group or female ownership interests are real and continuing and not created solely to meet the M/WBE requirement. In addition, the M/WBE shall itself perform satisfactory work or service or provide supplies under the contract and not act as a conduit. The contractual relationship shall be bona fide owned and controlled as: (1) a sole proprietorship legitimately owned by an individual who is a minority group member or female; (2) a partnership or joint venture controlled by minorities and/or females;; (3) a corporation or other entities controlled by minorities or females, and in which at least 51% of the voting interests and 51% of the beneficial ownership interests are legitimately held by minorities and/or females. These persons shall control the management and operations of the business on a day-to-day basis:

A person who is a citizen or lawful permanent resident of the United States and who is:

a “Black American”; a person having origins in any of the black racial groups of Africa;

an “Hispanic American”; a person of Spanish culture with origins in Mexico, Central or South America, or the Caribbean, regardless of race; a “Native American Indian tribe”; a federally recognized Indian tribe means an Indian tribe, or band, nation, rancheria, pueblo, colony, or other organized group or community, including any Alaska native village, which is recognized by the Secretary of the Interior on October 1, 1985 as having special rights and is recognized as eligible for service provided by the United States to Indians because of their status as Indians, a tribe that has a pending application for Federal recognition on October 1,1985.

8. **DISCREPANCIES AND OMISSIONS:** Should a Proposer find discrepancies in, or omissions from the

documents, or should be in doubt as to their meaning, he/she should at once notify the Department, and a written Addendum shall be issued. The Department will not be responsible for any oral instructions. Acknowledgment of any Addendum received shall be noted on the Addendum Acknowledgement Form included in the Proposal. In closing of a contract, any Addendum issued shall become a part thereof.

9. **SECURITY OF NON-PUBLIC RECORDS:** Pursuant to N.C.G.S. § 132-1.7, entitled, "Sensitive Public Security Information", public records, as defined in G.S. 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Therefore, all information provided, received, gathered or obtained by BIDDER containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities shall be held confidential and shall be used by the BIDDER only for the purpose of responding to this bid. All plans and drawings shall be returned to the Department. Any breach of this paragraph by the BIDDER may result in BIDDER being barred from being awarded any contracts with the DEPARTMENT.
10. **E-VERIFY:** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the Department utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the DEPARTMENT.

END OF INSTRUCTIONS TO PROPOSERS

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, handicap, age, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, handicap, age, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the nondiscrimination clause.
- B. The contractor will 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 without regard to race, handicap, age, color, religion, sex, or national origin.
- C. The contractor will 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 advising the labor union or workers' representative of the contractor's commitments under the Equal Employment Opportunity section of this contract and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. In the event of the contractor's noncompliance with nondiscrimination clauses of this contract or with any such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Department contracts.
- E. The contractor will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Board of County Commissioners of the County of Durham, North Carolina so that such provisions will be binding such Subcontractor or Proposer.

QUALIFICATIONS AND SUBMISSION REQUIREMENTS

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The Proposal must include all the information set forth in this Section and other Sections of this RFP and should be organized and tabbed appropriately. Unnecessary elaborate brochures or other materials beyond those sufficient to present a complete and effective response to this solution are not desired and may be construed as an indication of the Proposer's lack of cost consciousness. Therefore, elaborate artwork, expensive paper and bindings, etc., are strongly discouraged.

One (1) Original hard copy, One (1) hard copy of the Original, and a soft copy of your proposal on a flash shall be submitted to the Issuing Department.

Tab 1 – Signed Forms

This Tab should include the following forms and information.

- a. **Addendum Acknowledgement Form**
- b. **Non-Collusion Affidavit not to be returned with your Proposal. However, this form must be submitted with each pay request for documentation of contract payment to M/WBEs.**
- c. **Vendor Application/W-9 Form**
- d. **Affidavit of Compliance (E-verify)**
- e. **Signed Proposal Signature Sheet (page 4)**
- f. **Proposal Form (page 18)**

Tab 2 – Executive Summary

This Tab should provide a brief summary of the Proposer's understanding of the Scope of Services presented in this RFP and emphasize any unique aspects or strengths of the Proposal.

Tab 3 – Corporate Overview

This Tab should present an overview of the Proposer's organization and should include:

- a. Firm's name, address, phone and fax numbers, firm history, email address and phone number of the firm's representative for the Proposal.
- b. Evidence that the Contractor is a corporation, is in good standing and qualified to conduct business in North Carolina.
- c. Copies of business licenses, professional certifications or other credentials.
- d. State brief history of the company. (State size of the company and type of organization).
- e. How long has company been in business?
- f. Has company ever done business with Durham County or Durham County Department of Social Services, if so how many years and which locations?
- g. How many employees does your company currently employ? Part time, Full time.
- h. What was your company's annual employee turnover rate for each of the past three years?
- i. Audited financial statements dating back three (3) years, if available. Also, submit Dun & Bradstreet Report for the most recently audited fiscal year, if available. If not available, a statement as to why not available along with a copy of the financials that is available including revenue and net profit/loss statements.
- j. A copy of any SAS 70 Service Auditor's Report done within the last three (3) years. If no SAS 70 report has been performed, please specify. For more details on SAS 70 Reports, visit the following web site: <http://www.sas70.com/about.htm>
- k. A brief description of any past or pending litigation in which the Contractor was involved during the past five (5) years. If the Contractor has not been involved in any lawsuits, please indicate.

Tab 4 – Approach

This Tab should present the Proposer’s approach to providing the services specified in this RFP. This Tab should describe the services to be provided, who will provide the services, how the services will be provided, etc. This Tab should include a description of activities, such as the project methodology and timeline for project completion, etc. The Proposer should also include in this Section its plan for managing the work requirements. Most of the proposed responses to the requirements found in Section 4.0 – Work/Requirements, should be included under this Tab. Requirements of Proposers, in addition to the requirements below:

- a. Contractor to provide approach to deliver services during inclement weather or disasters.
- b. Contractor to provide approach to serve Department of Social Services clients living in rural areas of Durham County.

Tab 5 – Organization and Staffing

This Tab should present the Proposer’s proposed organization structure and staffing chart showing specific job classifications, number of employees and full-time equivalent employees by position and reporting relationships. Résumés for all managerial and key personnel should be provided in sufficient detail to be able to determine the nature and depth of each individual’s relevant experience. This Tab should also identify any of the required services that the Proposer intends to subcontract, if any, providing for each (i) the reasons for subcontracting, (ii) the proposed subcontractor’s responsibilities, and (iii) information identifying proposed subcontractor’s name, location, relevant personnel and experience. The Proposer’s proposed M/WBE utilization and explanation of their involvement on this project must also be included under this Tab.

Tab 6 – Qualifications and Experience

In this Tab, the Proposer should describe its track record in performing services comparable to those specified in this RFP and other information relevant to making a determination as to the ability of the Proposer to perform these services. This tab should also include a list of all similar work performed by your firm over the past five (5) years. This list should include the name of each client, a client contact and telephone number, the size and Scope of Work provided, effective dates of the contract(s) with this client, and the annual contract amount. Requirements of Proposers, in addition to the requirements below:

- a. A list of clients where the contractual relationship was not completed and severed for reasons other than convenience. A brief description of why the relationship was severed and the name of the Implementer and the Implementer’s Engagement Manager and Project Manager are also required.
- b. Description of the implementer’s project management capabilities and experience and provide references to other projects of similar size and complexity as part of the Proposal.

Tab 7 – Conflict of Interest

In this Tab the Proposer should describe any involvement that your firm, its employees, or its owner(s) have that may constitute a conflict of interest.

Evaluation and Award Criteria

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Based on the evaluation criteria outlined below, all Proposals will be evaluated and scored by the Evaluation Committee designated by the Durham County Department of Social Services. Written or oral discussions may be requested to resolve issues relating to individual proposals.

1. **Evaluation Criteria**

Proposals will be evaluated using the following criteria:

- a. Experience in providing this type of service for this size contract.
- b. Public Sector Experience
- c. Demonstrated ability to meet commitments requested in the RFP
- d. Qualifications of staff to be assigned to this project
- e. Specific plans and methodology for providing the proposed services
- f. References from at least three (3) similar clients
- g. Financial stability
- h. Price
- i. Compliance with Durham County M/WBE requirements
- j. Training

2. **Award of Contract**

The Department reserves the right to award to multiple Contractors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals. Price shall be considered but shall not be the sole determining factor. Once the proposals are ranked and the most qualified firm(s) are determined, the Department may conduct further negotiations, and/or request presentations from firm(s) to further assist in the clarification of information and selection process.

The Department reserves the right to accept or reject, in whole or in part, such proposals as appears in its judgment to be in the best interest of the Department.

In-Home Aide Services**SCOPE OF SERVICES****RFP 19-001**

This Scope of Services is an integral part of the contract between the Durham County Department of Social Services (hereinafter referred to as "Department"), and _____ (Hereinafter referred to as "Contractor"), which contract is dated _____.

CONTRACTOR hereby agrees to provide services and/or materials to the Department pursuant to the provisions set forth below.

PURPOSE: The purpose and intent of the Request for Proposals (RFP) is to solicit proposals from qualified firms to provide In-Home Aide Services to Department's vulnerable-adult customers with personal care and home-management needs to help them remain in their own homes. These services are designed to maximize the skill-set of customers so that they can be as self-productive as possible. Currently, Durham serves between 200-250 per month with a waiting list of 100+ customers. The Department's goal is to serve all vulnerable-adult customers.

Contractor will keep confidential any information about a customer which is shared by Department and to comply with all State licensing standards, all applicable accrediting standards and any other standards or criteria that may be established by the Division of Social Services to assure quality of services. Contractor also agrees to comply with terms of section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, maintain appropriate program records, customer case files, and valid authorization for services (DSS-5027) for each customer.

1. **INVOICE PAYMENT:** Invoices submitted will be paid net 30 days. Invoices shall be forwarded to the County's Designated Representative for review and payment approval.
2. **TERMS OF CONTRACT:** The initial term of the contract will be from January 1, 2019 through June 30, 2019 with the option to renew up to four (4) additional terms in one-year increments (July 1st through June 30th), for a total possible life of five terms (5 years) at the sole discretion of the Department. The Department shall make notice of such intent to renew approximately sixty (60) days prior to the expiration of the current term. Any renewal shall be based on satisfactory performance by the Contractor(s) during the previous years for the services provided. Price increases may be negotiated only at time of renewal.
 - a. **CANCELLATION OF CONTRACT:** The Department of Social Services reserves the right to cancel and terminate any resulting contract(s), in part or in whole, without penalty, upon 30 days written notice to the Contractor. Any contract cancellation shall not relieve the Contractor(s) of the obligation to deliver and/or perform services on all outstanding orders issued prior to the effective date of cancellation.
3. **DEPARTMENT DESIGNATED REPRESENTATIVE:** For purposes or questions about this contract, Janeen Gordon is the person to contact. She can be reached at 919-560-8622. For purposes of customer service needs, please contact the assigned social worker or the supervisor, Tammie Tate. Ms. Tate can be reached at 919-560-8618. For questions regarding invoice payments, call Robyn Riley, Administrative Officer at 919-560-8122 or Sophia Burton, Contracts at 919-560-8114.

4. **BACKGROUND:** The purpose is to establish a contract to provide In-Home Aide Services to Department's vulnerable-adult customers with personal care and home-management needs to help them remain in their own homes. These services are designed to maximize the skill-set of customers so that they can be as self-productive as possible.

5. **QUALIFICATIONS/REQUIREMENTS OF CONTRACTOR:**

Contractor must be licensed by the Division of Health Service Regulation (DHSR), accredited by a nationally recognized accreditation organization, or certified by the Division of Aging and Adult Services as specified by standards or by state directives that have amended the standards. DHSR issues license to a Contractor to provide personal care for In-Home Aide service. DHSR does not identify Levels of Care, e.g. Level II or III Personal Care. If Contractor is licensed for Personal Care they are licensed to provide both levels and Contractor's policy will establish whether they provide Level II and or Level III. Contractors providing Home Management Only Levels I-IV are certified by DAAS.

An entity that provides an IHA program must have a written document that specifies how staff is to administer and manage the IHA program, with particular policies addressing what levels of service are to be provided, whether the service is directly provided or subcontracted, whether respite care is to be provided, whether or not waiting lists or inquiry lists are used, if applicable how the waiting or inquiry list is maintained, whether or not there is a client priority policy, and the entity's appeals policy. NOTE: Department will not contract with an agency who is subcontracting their services. SSBG and State In-Home Fund guidelines do not require attention to maintenance of waiting lists, a client priority policy, or an appeals policy. All agencies licensed to provide In-Home Aide personal care services require policies for administration and management of the program. (10A NCAC 13J.1001)

6. **TARGET POPULATION/STATEMENT OF NEED/SERVICE DESCRIPTION:**

In-home aide and home-management services shall include customers having one or more ADL or IADL deficits and be eighteen years of age or older. Each service agreement designed by Department's social worker and based upon the client's needs and input shall include one or more of the following services:

- Grooming: oral hygiene, hair care, shaving
- Bathing: shower, sponge bath, tub bath and skin care
- Dressing
- Feeding and hydration; including meal preparation
- Toileting and incontinence care; colostomy care
- Care of hearing aids, eyeglasses, prosthetic devices and personal equipment
- Personal environment housekeeping/laundry; linen care; bed-making (occupied, unoccupied)
- Essential errands: grocery shopping; medicine shopping
- Assisting clients with passive range of motion exercises; ambulation; transfers, including shower and toilet
- Positioning customers in bed and/or chair; adjusting orthotic devices
- Correcting environmental hazards

7. **LIST OF DELIVERABLES:**

If a nurse's aide has concerns about a customer's health and safety that they will contact their supervisor immediately. If it is a matter of life and death, 911 shall be contacted. Contractor will then contact Department within twenty-four (24) hours.

Contractor shall deliver, as per individual service agreement, specific services as outlined in the agreement. The specific In-Home Aide services shall be delivered at requested time and on requested

days. If the normally assigned aide isn't available, Contractor will meet the customer's need with a substitute aide.

In addition, Contractor is responsible for the following:

- A. Service all Customers (Urban or Suburban/City limits/County limits). No Ejection/Rejection of customers based on Customer location.
- B. Assessment and annual reassessment.
- C. Process/procedure for selecting qualified aide to align with the needs of the designated assignment.
- D. Process/procedure for assigning aide to customer.
- E. Process/procedure for supervision of aides based on In-Home Aide contact standards for in-home aide supervision.
- F. Process/procedure to assure aide competency levels.
- G. Policy for financial obligations of employer.
- H. Process and transmit payments to employees in a timely and accurate manner.
- I. Process/procedure for back up service to customer when usual assigned aide is out.
- J. Process/procedures to assure communication between with the customer and Department.
- K. Process/procedure regarding communicating the service plan with the aide to begin the customer assignment.
- L. Policy to assure compliance with the county procurement plan to meet all local, state, and federal requirements.

8. **SPECIAL STAFFING/TECHNICAL/EQUIPMENT NEEDS:**

All aides who work with clients must have demonstrated competence for the tasks they have been assigned to perform. The files maintained by Contractor should have written documentation of each aide's competency to perform these tasks at the time the task is assigned for the aide to function independently. Those aides who perform tasks at Level III Personal Care must be registered as NA I's and listed on the Nurse Aide registry maintained by the NC Division of Health Service Regulation. Those aides who perform tasks that would require them to be NA II's must have documentation that they were competency tested to perform the tasks. Any NA I's to perform tasks from the NA II task list have to be approved to provide up to four specific tasks and have an agreement with the NC Board of Nursing prior to assigning these specified tasks to the NA I.

Aide supervisor contact is very important and must have been observed at least twice in the homes of DSS clients in the first month of employment for new hires. Other visits during the first month would be made as needed to help the aide respond to client needs.

Aide supervisory contact for those aides who aren't new hires shall occur within the first week of service upon assignment. Supervisors must contact them within the first calendar week of service either by telephone call or home visit. For aides serving Level I Home Management and Level II Home Management a quarterly visit to the home of at least one client the aide is serving is required. For aides providing service to Level II Personal Care clients the supervisor is required to visit each client's residence at least every three months with or without the in-home aide's presence and at least annually while the in-home aide is providing care to the client.

- For aides serving Level II Personal Care clients, supervisory visits must be in compliance with Home Care Licensure Rules (10 NCAC 13J.1110). Individuals performing monitoring should familiarize themselves with Licensure Rules. These Rules are available through the NC Division of Health Service Regulation at www.dhhs.state.nc.us/dhrs/.
- Supervisors are responsible for contacting all clients receiving service at Levels II and III personal care by phone call or home visit each month to check on their status. Supervisors

should contact the aide every month to ensure service provision is appropriate for the client's needs.

Supervisors must be on duty whenever an aide is working with a client. This includes the "after hours" working with a client when the agency is normally closed such as evenings, overnights, and weekends. Supervisory RN's and LPN's shall be registered based upon their educational requirements.

Contractor will have written assurances that competency testing is appropriately administered, and aides have been properly trained to pass the required competency testing.

9. **DRUG FREE WORKPLACE:**

Contractor acknowledges and certifies that it understands that the following acts by Contractor, its employees and/or agents performing services on Departmental property is prohibited.

- The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs, and;
- Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).

Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by Department in addition to any criminal penalties that may result from such conduct.

10. **TITLE VI REGULATIONS:**

Department is required, annually, to ensure that Contractor collects and maintains the following information about Title VI Training:

- a. Date(s) of Title VI Training
- b. Title of Title VI Training
- c. Name and Title of Each Attendee

Title VI Training should include, but not limited to:

- a. Language assistance policies and procedures, resources available to support such procedures, methods of effective use of interpreters, and familiarization with the discrimination complaint process
- b. Cultural awareness information, including specific cultural characteristics of the groups served by Contractor to provide a better understanding of, and sensitivity to, the various cultural groups to ensure equal delivery of services.

By March 1st, of each year, Contractor is to provide Department's Designated Point of Contact with a complete listing of Contractor's staff that provides direct service to Department's Clients that verifies they have completed Title VI Training.

11. **BEHAVIOR OF CONTRACTOR'S PERSONNEL:**

Department is committed to creating and maintaining an environment free from harassment and other forms of misconduct that fundamentally compromise the working environment of Department.

All Contractor's Staff performing work/services at a Department's facility shall take all necessary steps to assure that none of its employees engage in harassment or intimidation relating to personal

beliefs or characteristics of anyone on Department's premises, including, but not limited to race, religion, color, sex, or national origin, or disabilities. Such harassment is unacceptable and will not be condoned in any form by Department.

If such conduct occurs, Contractor will take all necessary steps to stop it and prevent its future occurrence, including but not limited to the immediate dismissal of personnel. This policy shall be strictly enforced.

12. **PROCESS FOR ENTERING/EXITING/COMPLETING SERVICE:**

Department's DSS social worker will complete a service agreement with a customer detailing time of service, days of the week the service is to be delivered, and under what circumstances service shall be terminated. This service agreement will be mailed to Contractor.

14. **MONITORING PLAN SCHEDULE:**

Contract monitoring will occur quarterly.

15. **OUTCOMES OF CONTRACT:**

Contractor will provide services as outlined in the service agreement. Contract outcomes shall involve the number of hours of service, days of service, and the specific services to be delivered, as per agreement. Successful outcomes shall be reflected in whether Contractor is meeting the agreement specifics (i.e. is Contractor arriving on time to service the customer, are they providing the designated services to the customer, are they fulfilling the hours of care each day). In addition, customer should be satisfied with the quality of care provided. Social workers will routinely talk with their clients to determine their level of satisfaction. A satisfied customer not only shall receive the services as outlined in their service agreement, but also shall be treated with respect and dignity in how they're being spoken to and physically assisted. The primary outcome shall be a satisfied customer who, as a result of IHA, shall be able to continue to live in a home environment and age-in place.

16. **SCHEDULES/TIMELINES:** Invoices shall be submitted on a monthly basis and itemized based on the date of service provided, type of service, units and identified expenses. Invoices shall be forwarded to Department's Designated Point of Contact for review and payment approval and payable net thirty (30) days Department will pay at the rate of **\$15.52 per hour of service.**



PROPOSAL FORM

RFP 19-001

In accordance with the attached instructions, terms, conditions, and Scope of Services we submit the following proposal to the Durham County Department of Social Services.

PROPOSED COST OF SERVICE: Please enter the per hour of service cost and total proposed cost based on thirty-five (35) clients.

ESTIMATE COST FOR:

Thirty-five (35) clients

\$_____/per hour of service

2 hours per day

5 days per week for a total of 20 days per month

(Total Proposed Cost in Writing)

I certify that the contents of this proposal are known to no one outside the firm, and to the best of my knowledge all requirements have been complied with.

Date: _____

Authorized Signature:

Name

Title

NO PROPOSAL REPLY FORM

TO: Durham County
Department of Social Services
414 East Main Street
Durham, NC 27701

PROPOSAL #: RFP No. 19-001

PROPOSAL TITLE: In-Home Aide Services

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received an invitation, but does not wish to submit a proposal, state their reason(s) below and return to this office. This information will not preclude receipt of future invitations unless you request removal from the Bidders' List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

_____ 1. We do not wish to participate in the proposal process.

_____ 2. We do not wish to submit a proposal under the terms and conditions of the Request for Proposal document. Our objections are:

_____ 3. We do not feel we can be competitive.

_____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.

_____ 5. We do not wish to sell to the Durham County Department of Social Services. Our objections are:

_____ 6. We do not sell the items/services on which Proposals are requested.

_____ 7. Other: _____

FIRM NAME

DATE

SIGNATURE

PHONE

_____ We wish to remain on the Bidders' List.

_____ We wish to be deleted from the Bidders' List.

ADDENDUM ACKNOWLEDGEMENT
(RFP NO. 19-001)

Receipt of the following Addendum is acknowledged:

Addendum no. _____ Date _____

Addendum no. _____ Date _____

Addendum no. _____ Date _____

Addendum no. _____ Date _____

Addendum no. _____ Date _____

Signature: _____ Date: _____

Name of Firm

Attachment II

NON-COLLUSION AFFIDAVIT

State of North Carolina
County of Durham
Department of Social Services

_____, being first duly sworn, deposes and says that:

1. He/She is the _____ of _____, the Proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a **collusive** or **sham** Proposal;
4. Neither the said Proposer nor any of its officers, partners, owners agents, representatives, employees or parties of interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a **collusive** or **sham** Proposal in connection with the contract for which the attached Proposal has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the Proposal price of any other Proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Durham or any person interested in the proposed contract; and
5. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

Signature of Proposer

Date

Subscribed and sworn before me,
this ____ day of _____, 20XX

(Seal)

Notary Public

Notary Public
My Commission Expires: _____

M/WBE FORMS
(Affidavits A-C and Appendix E)

Affidavit A

ATTACH TO BID

State of North Carolina AFFIDAVIT A - List of the Good Faith Effort

COUNTY OF DURHAM

Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:
(A minimum of 5 areas must be checked in order to have achieved a "good faith effort")

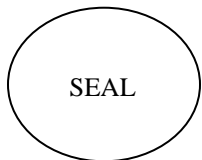
- 1-Contacted minority businesses that reasonably could have expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2-Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3-Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4-Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority business.
- 5-Attended pre-bid meetings scheduled by the public owner.
- 6-Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7-Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8-Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Bidder's suppliers in order to help minority businesses in establishing credit.
- 9-Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10-Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cashflow demands.

In accordance with GS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____ Title: _____



State of North Carolina, County of _____
Subscribed and sworn to before me this ____ day of _____ 20__
Notary Public _____
My commission expires _____

Affidavit B

ATTACH TO BID – IF YOU ARE NOT UTILIZING SUBCONTRACTORS

State of North Carolina AFFIDAVIT B - Intent to Perform Contract with Own Workforce

COUNTY OF DURHAM

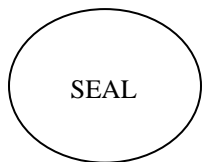
Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for
he _____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____
Signature: _____
Title: _____



State of North Carolina, County of _____
Subscribed and sworn to before me this ___ day of _____ 20__
Notary Public _____
My commission expires _____

Affidavit C

ATTACH TO BID - IF YOU HAVE M/WBE PARTICIPATION

State of North Carolina AFFIDAVIT C - Portion of the Work to be Performed by Minority Firms

COUNTY OF DURHAM

Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE Availability % (Median Availability)
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
Overall MWBE Participation Goal =					25.0%

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____ (Project Name)

Project ID No. _____ Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority businesses enterprises. Work will be subcontracted to the following firms listed below. Attach additional sheets if needed.

Firm Name(Street Address/Zip/Telephone)	*Minority Category	Work Description	Dollar Value	Percentage of Goal

***Minority categories:** Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (I), Female (**F**)

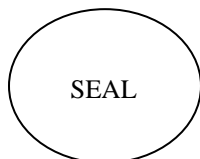
Pursuant to GS 143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this ____ day of _____ 20__

Notary Public _____

My commission expires _____

(NOTE: This form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If you do not meet the M/WBE Goal, the Bidder shall provide the following documentation of his Good Faith Efforts within **72 hours** after notification of being the low bidder.

State of North Carolina AFFIDAVIT D – Good Faith Efforts

COUNTY OF DURHAM

Durham County Goals for M/WBE Participation in the Procurement of goods, Services, and Construction

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE Availability % <i>(Median Availability)</i>
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
Overall MWBE Participation Goal =					25.0%

Affidavit of _____

(Name of Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.

I will expend a minimum of ____% of the total dollar amount of the contract with minority businesses enterprises. Work will be subcontracted to the following firms listed below. Attach additional sheets if needed.

Name and Phone Number	*Minority Category	Work description	Dollar Value	Percentage of Goal

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**)

Documentation of the Bidder’s good faith efforts to meet the goals set forth in the provisions. Examples of documentation include, but are not limited to, the following evidence:

- A. Copies of solicitation for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need to equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

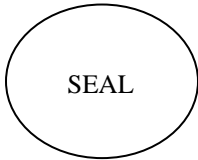
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this ____ day of _____ 20__

Notary Public _____

My commission expires _____

Appendix E

MWBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Total Contract Amount	Amount Paid this Period	Total Payment Amount to date	Percentage of Work Completed	Scheduled Start Date	Scheduled End Date

***Minority categories:** Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**)

Date: _____ Approved/Certified By: _____

Name

Title

Signature

THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT

Attachment IV

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM
DEPARTMENT OF SOCIAL SERVICES**

**AFFIDAVIT OF COMPLIANCE
with N.C. E-Verify Statutes**

I, _____ (hereinafter the "Affiant"), being duly authorized by and on behalf of _____ (hereinafter "Contractor") after first being duly sworn hereby swears or affirms as follows:

1. Contractor understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Article 2 of Chapter 64 of the North Carolina General Statutes; and
2. Contractor understands that an "Employer", as defined in NCGS§64-25(4), is required by law to use E-Verify to verify the work authorization of its employees through E-Verify in accordance with NCGS§64-26(a). The term "Employer" does not include State agencies, counties, municipalities, or other governmental bodies.
3. Contractor is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in the state of North Carolina. (mark Yes or No)
 - a. YES _____
 - b. NO _____
4. Contractor will ensure compliance with E-Verify to the extent applicable and will ensure compliance by any subcontractors subsequently hired by Contractor to perform work under Contractor's contract with Durham County Department of Social Services.

This ____ day of _____, 201__.

Signature of Affiant

Print or Type Name: _____

State of _____

County of _____

Signed and sworn to (or affirmed) before me, this the ____
day of _____, 201__.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

Attachment V

**NORTH CAROLINA
DURHAM COUNTY
DEPARTMENT OF SOCIAL SERVICES**

SERVICE CONTRACT

THIS CONTRACT is made, and entered into this the _____ day of _____, 2018, by and between the **DURHAM COUNTY DEPARTMENT OF SOCIAL SERVICES**, a political subdivision of the State of North Carolina, (hereinafter referred to as “DEPARTMENT”), and _____ a corporation duly authorized to do business in the state of North Carolina, (hereinafter referred to as “CONTRACTOR”).

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

- 1. SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the services and/or materials under this contract pursuant to the provisions and specifications identified in “Attachment 1” (hereinafter collectively referred to as “Services”). Attachment 1 is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.

The DEPARTMENT will perform on-going contract monitoring to ensure that the terms of this contract are complied with. CONTRACTOR agrees to cooperate with the DEPARTMENT in its monitoring process and provide documentation and/or information requested during the term of this Agreement for the purpose of monitoring the services provided by CONTRACTOR.

- 2. TERM OF CONTRACT.** The Term of this contract for services is from _____ to _____ unless sooner terminated as provided herein.

- 3. PAYMENT TO CONTRACTOR.** CONTRACTOR shall receive from DEPARTMENT an amount not to exceed _____ Dollars (\$ _____) as full compensation for the provision of Services. DEPARTMENT agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the DEPARTMENT, in accordance with this contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to DEPARTMENT by the end of the month during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by DEPARTMENT.

- 4. INDEPENDENT CONTRACTOR.** DEPARTMENT and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of DEPARTMENT for any purpose in the performance of CONTRACTOR’s duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR’s activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

- 5. INDEMNIFICATION.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the DEPARTMENT and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONTRACTOR’s performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or subcontractors under this Contract or under contracts entered into

by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONTRACTOR, a subcontractor, an employee of a subcontractor, or an agent of the CONTRACTOR or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 6. INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the DEPARTMENT. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. CONTRACTOR shall advise the DEPARTMENT of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. CONTRACTOR'S insurance shall be primary and any insurance or self-funded liability programs maintained by the DEPARTMENT shall not contribute with respect to the CONTRACTOR's insurance. DEPARTMENT shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

6.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

6.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage.

6.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than \$1,000,000 per occurrence.

By requiring insurance herein, the DEPARTMENT does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to the DEPARTMENT in this Contract. CONTRACTOR shall provide the DEPARTMENT a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the DEPARTMENT at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the DEPARTMENT, which immunity is hereby reserved to the DEPARTMENT.

7. TERMINATION.

7.1. EVENT OF DEFAULT. Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or

- c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the County may take one or more or all of the following actions:

1. Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or
2. Deduct any and all expenses incurred by the County for damages caused by the Contractor's Event of Default; and/or
3. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

7.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination. Termination of this Contract, under either section 7.1 or 7.2, shall not form the basis of any claim for loss of anticipated profits by either party.

- 8. DEPARTMENT NOT RESPONSIBLE FOR EXPENSES.** DEPARTMENT shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.
- 9. EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
- 10. COMPLIANCE WITH LAWS.** CONTRACTOR shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by DEPARTMENT and CONTRACTOR may be declared ineligible for further DEPARTMENT contracts.
- 11. HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
- 12. NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by DEPARTMENT, and CONTRACTOR may be declared ineligible for further DEPARTMENT contracts.
- 13. EMPLOYMENT ADVERTISING REQUIREMENTS.** CONTRACTOR shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.

14. E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the DEPARTMENT.

15. AFFORDABLE CARE ACT REQUIREMENTS (Applicable Only to Staffing Agencies). Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides “minimum value” to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham County are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham County against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this contract as a Staffing Company, CONTRACTOR shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and to indemnify the County against any associated 4980H penalties. **Please complete Exhibit A and return with this contract.**

16. SECURITY BACKGROUND CHECKS. The Contractor is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining County identification badges and allowed unescorted access to County facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff’s Office will conduct background investigations for those Contractor employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a County contract unless explicitly mandated by law.

The Contractor will send the results of the background checks to their County point of contact who will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the Contractor’s County point of contact of the results of the review. A Contractor can appeal a negative determination by the Security Manager to the County Manager for final disposition. Appeals need to be submitted in writing to the contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check.

This information will be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract, and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific county buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the County Representative. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff’s Office will make the security determination. The Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual

from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

17. AUDIT RIGHTS. For all Services being provided hereunder, DEPARTMENT shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.

18. DISPUTE RESOLUTION PROCEDURE. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between DEPARTMENT and the CONTRACTOR, arising from this Agreement or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

19. EXISTENCE. CONTRACTOR warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of _____ and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.

20. CORPORATE AUTHORITY. By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONTRACTOR.

21. SUCCESSORS AND ASSIGNS. CONTRACTOR shall not assign its interest in this Contract without the written consent of DEPARTMENT. CONTRACTOR has no authority to enter into contracts on behalf of DEPARTMENT.

22. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF DURHAM
DEPARTMENT OF SOCIAL SERVICES
ATTN: ROBYN RILEY, BUSINESS OFFICE
414 EAST MAIN STREET / PO BOX 810
DURHAM, NORTH CAROLINA 27701**

CONTRACTOR
ATTN: _____

- 23. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
- 24. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- 25. **REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in Exhibit B – Federal Uniform Guidance Contract Provisions Certification.
- 26. **ENTIRE CONTRACT.** This contract, including Attachment 1, shall constitute the entire understanding between DEPARTMENT and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized officer or agent.

**DURHAM COUNTY
DEPARTMENT OF SOCIAL SERVICES**

William Rose, Director T

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Budget Control Act.

Susan Tezai, Durham County Chief Financial Officer

CONTRACTOR

By: _____
Authorized Representative

Print Name/Title: _____

ATTACHMENT 1” to follow

ATTACHMENT C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS AND CERTIFICATION REGARDING NONDISCRIMINATION

Durham County Department of Social Services/Human Services

- I. By execution of this Agreement the Contractor certifies that it will provide a drug-free workplace by:
- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (A);
 - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the agreement, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
 - E. Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;
 - F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

II. The site(s) for the performance of work done in connection with the specific agreement are listed below:

1.

(Street address)

(City, county, state, zip code)

2.

(Street address)

(City, county, state, zip code)

Contractor will inform the County of any additional sites for performance of work under this agreement.

False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment
45 C.F.R. Section 82.510. Section 4 CFR Part 85, Section 85.615 and 86.620.

Certification Regarding Nondiscrimination

The Vendor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on

ATTACHMENT D

Conflict of Interest

The Board of Directors/Trustees or other governing persons, officers, employees or agents are to avoid any conflict of interest, even the appearance of a conflict of interest. The Organization's Board of Directors/Trustees or other governing body, officers, staff and agents are obligated to always act in the best interest of the organization. This obligation requires that any Board member or other governing person, officer, employee or agent, in the performance of Organization duties, seek only the furtherance of the Organization mission. At all times, Board members or other governing persons, officers, employees or agents, are prohibited from using their job title, the Organization's name or property, for private profit or benefit.

A. The Board members or other governing persons, officers, employees, or agents of the Organization should neither solicit nor accept gratuities, favors, or anything of monetary value from current or potential contractors/vendors, persons receiving benefits from the Organization or persons who may benefit from the actions of any Board member or other governing person, officer, employee or agent. This is not intended to preclude bona-fide Organization fund raising-activities.

B. A Board or other governing body member may, with the approval of Board or other governing body, receive honoraria for lectures and other such activities while not acting in any official capacity for the Organization. Officers may, with the approval of the Board or other governing body, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If a Board or other governing body member, officer, employee or agent is acting in any official capacity, honoraria received in connection with activities relating to the Organization are to be paid to the Organization.

C. No Board member or other governing person, officer, employee, or agent of the Organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

1. The Board member or other governing person, officer, employee, or agent;
2. Any member of their family by whole or half blood, step or personal relationship or relative-in-law;
3. An organization in which any of the above is an officer, director, or employee;
4. A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment or contracts.

D. **Duty to Disclosure** -- Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to the Board or other governing body or one's supervisor immediately.

E. **Board Action** -- When a conflict of interest is relevant to a matter requiring action by the Board of Directors/Trustees or other governing body, the Board member or other governing person, officer, employee, or agent (person(s)) must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the possible conflict of interest. After disclosure of all material facts, and after any discussion with the person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists. In addition, the person(s) shall not participate in the final deliberation or decision regarding the matter under consideration and shall leave the meeting during the discussion of and vote of the Board of Directors/Trustees or other governing body.

F. Violations of the Conflicts of Interest Policy -- If the Board of Directors/Trustees or other governing body has reasonable cause to believe a member, officer, employee or agent has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Board of Directors/Trustees or other governing body determines the member, officer, employee or agent has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

G. Record of Conflict -- The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement that presents a possible conflict of interest, the content of the discussion, including any alternatives to the transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Approved by:

Name of Organization

Signature of Organization Official

Date

NOTARIZED

State of North Carolina

County of _____

I, _____, Notary Public for said County and State, certify
that _____ personally appeared before me this day

and acknowledged that he/she is _____ of
_____ [enter name of entity]

and by that authority duly given and as the act of the Organization, affirmed that the foregoing Conflict of Interest Policy was adopted by the Board of Directors/Trustees or other governing body in a meeting held on the _____ day of _____, _____.

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public

(Official Seal)

My Commission expires _____, 20 ____

Attachment E – No Overdue Tax Debts

Instructions: Contractor should copy (cut and paste) this form to Contractors letterhead and complete this certification for all funds received. Contractor should enter appropriate data in the yellow highlighted areas. The completed and signed form must be provided to the Durham County Department of Social Services.

Contractor's Letterhead

[Date (mmddyyyy)]

To: Durham County Department of Social Services

Certification:

We certify that the [insert organization's name] does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S.) 143C-10-1b.

Sworn Statement:

[Name of Board Chair] and [Name of Second Authorizing Official] being duly sworn, say that we are the Board Chair and [Title of the Second Authorizing Official], respectively, of [insert name of organization] of [City] in the State of [Name of State]; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Board Chair

[Title of Second Authorizing Official]

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: _____

¹ G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.”

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

DURHAM COUNTY DEPARTMENT OF SOCIAL SERVICES

(REQUIRED IF ANY FEDERAL FUNDS ARE INVOLVED & CONTRACTOR PROVIDES HEALTH, CHILD CARE, EDUCATION OR LIBRARY RELATED SERVICES TO CHILDREN UNDER 18 IN AN INDOOR FACILITY)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS:

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the Contractor certifies that it will comply with the requirements of the Act. The Contractor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-grantees shall certify accordingly.

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature.)

CERTIFICATION REGARDING LOBBYING**DURHAM COUNTY DEPARTMENT OF SOCIAL SERVICES**
(REQUIRED IF \$25,000 OF FEDERAL PARTICIPATION IS INVOLVED)**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS:**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal, state or local government agency, a Member of Congress, a Member of the General Assembly, an officer or employee of Congress, an officer or employee of the General Assembly, an employee of a Member of Congress, or an employee of a Member of the General Assembly in connection with the awarding of any Federal or state contract, the making of any Federal or state grant, the making of any Federal or state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal or state contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal, state or local government agency, a Member of Congress, a Member of the General Assembly, an officer or employee of Congress, an officer or employee of the General Assembly, an employee of a Member of Congress, or an employee of a Member of the General Assembly in connection with the awarding of any Federal or state contract, the making of any Federal or state grant, the making of any Federal or state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal or state contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Notwithstanding other provisions of federal OMB Circulars A-122 and A-87, costs associated with the following activities are unallowable:

Paragraph A

- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;
- (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
- (3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member

or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

- (4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or
- (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

The following activities as enumerated in Paragraph B are excepted from the coverage of Paragraph A:

Paragraph B

- (1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.
- (2) Any lobbying made unallowable by subparagraph A (3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.
- (3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

Paragraph C

- (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.(3).
- (2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.
- (3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to this section complies with the requirements of this Circular.
- (4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: (1) the employee engages in lobbying (as defined in subparagraphs (a) and (b)) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

Paragraph D

Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally sponsored agreement or regulatory matter on any basis other than the merits of the matter.

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature.)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

DURHAM COUNTY DEPARTMENT OF SOCIAL SERVICES (REQUIRED IF \$25,000 OF FEDERAL PARTICIPATION IS INVOLVED)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which the proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature

Title

Agency/Organization

Date

(Certification signature should be same as Contract signature)

Attachment M

State Certification

Contractor Certifications Required by North Carolina Law

Instructions

The person who signs this document should read the text of the statutes listed below and consult with counsel and other knowledgeable persons before signing.

- The text of Article 2 of Chapter 64 of the North Carolina General Statutes can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- The text of G.S. 105-164.8(b) can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- The text of G.S. 143-48.5 (S.L. 2013-418, s. 2.(d)) can be found online at: <http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H786v6.pdf>
- The text of G.S. 143-59.1 can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- The text of G.S. 143-59.2 can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- The text of G.S. 147-33.95(g) (S.L. 2013-418, s. 2. (e)) can be found online at: <http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H786v6.pdf>

Certifications

- (1) **Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g)**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov

Local government is specifically exempt from Article 2 of Chapter 64 of the North Carolina General Statutes. However, local government is subject to and must comply with North Carolina General Statute §153A-99.1., which states in part as follows:

Counties Must Use E-Verify. - Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

- (2) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
- (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met

one or more of the conditions of G.S. 105-164.8(b); **and**

(b) [check **one** of the following boxes]

- Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a “tax haven country” as set forth in G.S. 143-59.1(c) (2) after December 31, 2001; **or**
- The Contractor or one of its affiliates **has** incorporated or reincorporated in a “tax haven country” as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.

(3) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor’s officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.

(4) The undersigned hereby certifies further that:

- (a) He or she is a duly authorized representative of the Contractor named below;
- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Contractor’s Name

Signature of Contractor’s Authorized Agent

Date

Printed Name of Contractor’s Authorized Agent

Title

Signature of Witness

Title

Printed Name of Witness

Date

The witness should be present when the Contractor’s Authorized Agent signs this certification and should sign and date this document immediately thereafter.

(County)

(Type of Facility)

STATEMENT OF ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR OTHER AGENCIES, INSTITUTIONS, ORGANIZATIONS OR FACILITIES

The _____ hereby agrees (Name of institution, organization or facility) That it will comply with the provisions of the Title VI Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, and all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines. This legislation provides direction for ensuring that all applicants and recipients are given an equal opportunity to participate in programs and services without regard to race, color, national origin, sex, age, religion, political beliefs or disability

By accepting this assurance, the entity agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized NC Division of Social Services personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the North Carolina Department of Health and Human Services, Division of Social Services, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the entity, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from North Carolina Department of Health and Human Services, Division of Social Services. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the _____ (Insert Name). Please print the address of institution, organization or facility:

Street Address City State Zip

Mailing Address City State Zip

Telephone number

Facility License #

Signature of Authorized Official

Date

Printed Name of the Authorized Official

Title



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (The "Agreement") is effective this ____ day of _____, 20__ (the "Agreement Effective Date") by and between **Durham County Department of Social Services** ("Covered Entity") and _____ ("Business Associate"), collectively, the "Parties."

WITNESSETH:

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined) and the HIPAA Breach Notification Regulations (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, the Parties wish to enter into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement(s) evidencing such arrangement), entitled _____, dated _____, is/are (hereby referred to as the "Service Agreement"); and

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain, or transmit such information on behalf of Covered Entity, in connection with the Services (as hereinafter defined) it will provide to the Covered Entity; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard the privacy, confidentiality, integrity, and availability of Individually Identifiable Health Information.

THEREFORE, in consideration of the Parties' continuing obligations under the Service Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.

a. "*Breach*" shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45C.F.R. Part 164, Subpart E (the "HIPAA Privacy Rule") which compromises the security or privacy of the PHI. "Breach" shall not include:

- (1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
- (2) Any inadvertent disclosure by a person who is authorized to access PHI at the Covered Entity or Business Associate to another person authorized to access PHI at the Covered Entity or Business Associate, respectively, or Organized Health Care Arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
- (3) A disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. "*Data Aggregation*" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by 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.



BUSINESS ASSOCIATE AGREEMENT

- c. “*Electronic Protected Health Information*” or “Electronic PHI” means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- d. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and as otherwise may be amended.
- e. “*HIPAA Breach Notification Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to require notification of breaches of unsecured PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart D, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended.
- f. “*HIPAA Omnibus Rule*” means the recently promulgated final rule entitled, “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act Other Modifications to the HIPAA Rules.” Any standards or implementation specifications described herein that have been added or modified by the HIPAA Omnibus Rule shall have a compliance date of September 23, 2013.
- g. “*HIPAA Privacy Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended.
- h. “*HIPAA Security Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and C. as amended by the HIPAA Omnibus Rule, and as otherwise may be amended.
- i. “*Individually Identifiable Health Information*” is information, including demographic data, that relates to: the individual’s past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).
- j. “*Protected Health Information (PHI)*” means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.
- k. “*Services*” means the obligations that the Business Associate agreed to fulfill under the Service Agreement.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. *Use or Disclosure.* Business Associate agrees to not use or disclose protected health information (hereinafter “PHI”) other than as:
 - (1) necessary to meet its obligations as set forth in the Service Agreement; and as
 - (2) expressly permitted or required by the Service Agreement (to the extent it is in compliance with applicable state and federal laws), this Agreement, or as required by law.
- b. *Safeguards and Compliance with the HIPAA Security Regulations.* Business Associate agrees to implement and use appropriate safeguards to appropriately protect the confidentiality, integrity, and availability of PHI and prevent unauthorized use or disclosure of the information. A description of such safeguards shall be made available to Covered Entity upon request. Notwithstanding the generality of the forgoing, Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.



BUSINESS ASSOCIATE AGREEMENT

c. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

d. *Reporting.* Business Associate agrees to report to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed PHI pursuant to Section 2.e ("Subcontractors and Agents") as soon as practicable, but in no event later than within 10 days of becoming aware of any such disclosure. Business Associate further agrees to report in writing as soon as possible, and *at least within 10 calendar days of Business Associate's discovery* of a Security Incident to Covered Entity any Security Incident of which Business Associate becomes aware.

Notwithstanding the foregoing provisions of this Section 2.d., Business Associate shall immediately, and in no case longer than 48 hours after discovery of a Breach, report to Covered Entity any Breach consistent with the Breach Notification Regulations. Business Associate must also, without unreasonable delay, identify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed as a result of the Breach, and provide such information to Covered Entity as needed in order to meet the data breach notification requirements under the Breach Notification Regulations, and in any event within twenty (20) calendar days after the discovery of the Breach. The Breach shall be considered "discovered" when the Business Associate knew or reasonably should have known when the Breach occurred.

Business Associate agrees to fully cooperate, coordinate with, and assist Covered Entity in gathering the information necessary to notify the affected individuals. Specifically, Business Associate agrees to cooperate with Covered Entity to ensure that all such Breach notices are sent without unreasonable delay, and in no case more than sixty (60) days from the discovery of the Breach, or such earlier time period as required under applicable NC State data breach notification rules. Business Associate agrees that it shall be solely responsible for all costs and expenses incurred as a result of the Breach, including costs associated with mitigation, preparation and delivery of the notices. In the event that Business Associate creates, receives, maintains, or transmits PHI on behalf of other covered entities in addition to Covered Entity, Business Associate agrees that it has the capability to identify the covered entity to which the breached information relates.

In the event of any use or disclosure of PHI in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed PHI, pursuant to Section 2.e ("Subcontractors and Agents"), that arises from the acts or omissions of Business Associate or its employees, subcontractors, agents, or representatives, and that requires notification of government agencies and patients, Business Associate will cooperate fully with Covered Entity and will carry out the notification requirements subject to Covered Entity's prior approval of any written reports, unless Covered Entity elects to carry out the notifications.

e. *Subcontractors and Agents.* In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

f. *Requests for Restrictions.* Business Associate agrees to comply with requests for restrictions on use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of such PHI.



BUSINESS ASSOCIATE AGREEMENT

g. *Access to PHI.* Upon request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, 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 forward such request to Covered Entity in the time and manner reasonably designated by Covered Entity such that Covered Entity can respond to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

h. *Amendment of PHI.* Upon receipt of a written request by or on behalf of Covered Entity for the amendment of an individual's PHI or record contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment, in the time and manner reasonably designated by Covered Entity, and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

i. *Audit and Inspection.* Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI and the security of Electronic PHI, available to Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the "Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary of HHS determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.

j. *Documentation of Disclosures.* Business Associate agrees to document such disclosures of PHI, and such information related to such disclosures, as would be required for 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 as otherwise may be amended.

k. *Accounting of Disclosures of PHI.* Upon receipt of notice by or on behalf of Covered Entity that Covered Entity has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, that information collected in accordance with Section 2.j ("Documentation of Disclosures") of this Agreement, including disclosures of PHI held by Business Associate for treatment, payment, or health care operations purposes contained within an Electronic Health Record maintained by Business Associate on behalf of Covered Entity pursuant to this Agreement, to permit Covered Entity to respond to the request in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.

l. *Prohibition on Sale of PHI.* Business Associate agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.

m. *Marketing.* Business Associate agrees that if it uses or discloses PHI for marketing purposes, it will obtain the applicable Covered Entity's written approval and such owners' authorization before making any such Use or Disclosure.

n. *Minimum Necessary Use and Disclosure.* In conducting functions and/or activities under this Agreement and/or the Service Agreement that involve the use and/or disclosure of PHI, Business Associate shall limit the use and/or disclosure of PHI to the minimum amount of information necessary as determined by



BUSINESS ASSOCIATE AGREEMENT

Covered Entity to accomplish the intended purpose of the use or disclosure, as required by 45 C.F.R. 164.502(b).

o. *Access to Network.* Business Associate agrees that, if permitted to access the County/Covered Entity's databases, it and all of its employees, agents, representatives, and subcontractors will at all times comply with any County access and other security practices, procedures, and policies established by the County/Covered Entity including, without limitation, those established pursuant to HIPAA.

p. *Red Flags Rule.* This section only applies if the Covered Entity in this Agreement is Durham County's EMS department. If Durham County EMS is subject to the Red Flags Rule (found at 16 CFR §681.1 et seq.), Business Associate agrees to assist Durham County EMS in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Durham County EMS's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Durham County EMS agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Durham County EMS of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Durham County EMS of any threat of identity theft as a result of the incident.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. *General Use and Disclosure Provisions.* Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI in connection with its performance of the Services (as set forth in the Service Agreement) if such use or disclosure of PHI would not violate the HIPAA Privacy Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b ("Specific Use and Disclosure Provisions") of this Agreement.

b. *Specific Use and Disclosure Provisions.*

(1) Except as otherwise provided in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such PHI may only be disclosed for such purposes if the disclosures are required by law or the disclosures are consistent with the applicable laws and the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:

- (a) the information will remain confidential;
- (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
- (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. OBLIGATIONS OF COVERED ENTITY

a. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations if done by Covered Entity or that is not otherwise expressly permitted under Section 3 ("Permitted Uses and Disclosures by Business Associate") of this Agreement.

5. TERM AND TERMINATION

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall terminate on _____ (INSERT TERMINATION DATE OR EVENT], unless otherwise



BUSINESS ASSOCIATE AGREEMENT

terminated in accordance with the provisions of Section 5.b ("Termination for Cause") or 8.b ("Amendment") hereof.

b. **Termination for Cause.** Upon Covered Entity's knowledge or determination of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement and the Service Agreement if Business Associate does not cure the breach within time period specified by Covered Entity, or (2) terminate this Agreement immediately. In the event that termination of the Agreement is not feasible, Business Associate acknowledges and agrees that Covered Entity has the right to report the breach to the Secretary of HHS.

Further, if Covered Entity reasonably believes that Business Associate *will* violate a *material term* of this Agreement and, where practicable, Covered Entity provides Business Associate written notice of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

c. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate shall return to covered entity all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of covered entity that the Business Associate still maintains in any form within ten (10) days of termination of this agreement and/or the service agreement unless an extended timeframe is otherwise agreed upon by both parties in writing. In the event that the return of the PHI is not feasible, the business associate may destroy the PHI and provide the County with a Certificate of Destruction. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.

Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

6. CONFIDENTIALITY

a. In the course of performing services under the Service Agreement and this Agreement, each Party may receive, be exposed to, or acquire the Confidential Information of the other Party or which belongs to a third party but is in the custody and control of a Party to this Agreement, including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any identified as confidential by the Party who owns the information ("Confidential Information"). For purposes of this Agreement, Confidential Information shall not include PHI, the confidentiality and security of which is the subject of this Agreement and is provided for elsewhere herein. The Parties, including their employees, agents, or representatives shall (a) not disclose to any third party the Confidential Information owned by the other Party, or in the custody of the other Party except as otherwise permitted by the Agreements or as required by law, (b) only permit use of such Confidential Information by employees, agents, representatives, and subcontractors having a need to know in connection with performance under the



BUSINESS ASSOCIATE AGREEMENT

Agreements, and (c) advise each of their employees, agents, representatives and subcontractors of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes only, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other if such use directly relates to the performance of services under the Agreements. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party; (b) which is later publicly released by either Party in writing; (c) which is lawfully obtained from a third party without restriction; or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

7. INDEMNIFICATION

a. Business Associate shall indemnify and hold the County harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, notification costs, attorney's fees, relating to or arising out of any breach or alleged breach of this Agreement by Business Associate, or any Breach by Business Associate or its subcontractors or agents. This Section shall survive the expiration or termination of this Agreement.

8. MISCELLANEOUS

a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HIPAA Breach Notification Regulations means the section as in effect or as amended.

b. *Amendment.* In the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty (30) days, the parties shall address, in good faith, such concern and amend the terms of this Agreement, if necessary to bring it into compliance. This Agreement may be amended or modified only in writing, signed by the Parties. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

c. *Interpretation.* Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

d. *Survival.* The obligations of Business Associate under Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns until the Business Associate has returned or destroyed all of the Covered Entities PHI in accordance with Section 5.C of this Agreement.

e. *No Third-Party Beneficiary Rights.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Data User, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

f. *Assignment.* No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

g. *Independent Contractor.* None of the provisions of this Agreement are intended to create, nor deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

h. *Governing Law.* To the extent that this Agreement is not governed exclusively by HIPAA or other provision of federal statutory or regulatory law, it will be governed and construed in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.



BUSINESS ASSOCIATE AGREEMENT

i. *Waiver.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

j. *Conflict.* The parties agree that, in the event that any provisions of the Service Agreement contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI.

k. *Severability/Compliance.* In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

Durham County Dept. of Social Services

By: William Rose
Print/Type Name

Title: Director

Sign: _____

BUSINESS ASSOCIATE:

By: _____
Print/Type Name

Title: _____

Sign: _____



HIPAA DATA USE AGREEMENT

This Data Use Agreement (the “Agreement”) is entered into by and between **Durham County Department of Social Services** (“Covered Entity”) and _____ (“Data User”), collectively, the “Parties”, and shall be effective as of _____ (the “Agreement Effective Date”).

WITNESSETH:

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined) and the HIPAA Breach Notification Regulations (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, the Parties wish to enter into an arrangement whereby the Covered Entity will provide the Data User specified limited data set(s) for the purposes of research, public health or health care operations to, and, pursuant to such an arrangement, entitled _____, dated _____, is/are (hereby referred to as the “Service Agreement”);

WHEREAS, Data User may receive such information from Covered Entity, in connection with the activities specified in the Service Agreement; and

WHEREAS, Covered Entity wishes to ensure that Data User will appropriately safeguard the privacy, confidentiality, integrity, and availability of Individually Identifiable Health Information.

THEREFORE, in consideration of the Parties’ continuing obligations under the Service Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, and that the terms set forth below shall be deemed to be modified to reflect any changes made hereafter to such terms by law or regulation.
 - a. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
 - b. “*HIPAA Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
 - c. “*Breach*” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. 164.402.
 - d. “*Covered Entity*” means a health plan, a health care clearinghouse, or a health care provider (each as defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.
 - e. “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual, that is;
 - i. created or received by a health care provider, health plan, employer, or health care clearinghouse; **and**



HIPAA DATA USE AGREEMENT

- ii. relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to 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
- iv. with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

f. “*Protected Health Information*” or “*PHI*” means Individually Identifiable Health Information, except that Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by a covered entity in its role as employer.

2. OBLIGATIONS OF COVERED ENTITY.

a. *Limited Data Set*. Covered Entity agrees to share the following Protected Health Information with Data User(s): _____ (hereinafter the “**Limited Data Set**”). Such Limited Data Set **shall not** contain any of the following identifiers of the individual who is the subject of the Protected Health Information, or of relatives, employers or household members of the individual: names; postal address information, other than town or city, State, and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

3. OBLIGATIONS OF DATA USER.

a. *Performance of Activities*. Data User may use and disclose the Limited Data Set received from Covered Entity only in connection with the performance of the _____ [insert an activity: research activities, public health activities, and/or health care operations] described in the Service Agreement attached to this Agreement.

b. *Permitted Access to Limited Data Set*. Data User shall limit the use or receipt of the Limited Data Set to the following individuals or classes of individuals who need the Limited Data Set for the performance of the Activities:

c. *Assurances of Data User’s Non-Employee Agents*. Data User shall not disclose the Limited Data Set to any non-employee agent or subcontractor of Data User except with the prior written consent of Covered Entity. Data User shall ensure that any agents, including subcontractors, to whom it provides the Limited Data Set agree in writing to be bound by the same restrictions and conditions that apply to Data User with respect to such Limited Data Set.

d. *Nondisclosure Except As Provided In Agreement*. Data User shall not use or further disclose the Limited Data Set except as permitted or required by this Agreement.



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- e. *Use Or Disclosure As If Covered Entity.* Data User may not use or disclose the Limited Data Set in any manner that would violate the requirements of HIPAA or the HIPAA Regulations if Data User were a Covered Entity.
- f. *Identification Of Individual.* Data User may not use the Limited Data Set to identify or contact any individual who is the subject of the PHI from which the Limited Data Set was created.
- g. *Disclosures Required By Law.* Data User shall not, without the prior written consent of Covered Entity, disclose the Limited Data Set on the basis that such disclosure is required by law, without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Data User shall refrain from disclosing the Limited Data Set until Covered Entity has exhausted all reasonably available alternatives for relief.
- h. *Safeguards.* Data User shall use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided by this Agreement. A description of such safeguards shall be made available to Covered Entity upon request. Notwithstanding the generality of the forgoing, Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- i. *Reporting.* Data User shall report to Covered Entity, without unreasonable delay, and in any event on or before five (5) business days of Data User becoming aware of any use or disclosure of the Limited Data Set in violation of this Agreement or applicable law. Data User shall without unreasonable delay, and in any event on or before five (5) business days after its discovery by Date User, notify Covered Entity of any incident that involves an unauthorized acquisition, access, use, or disclosure of PHI, even if Data User believes the incident will not rise to the level of a Breach. The notification shall include, to the extent possible, and shall be supplemented on an ongoing basis with: (A) the identification of all individuals whose Unsecured PHI was or is believed to have been involved, (B) all other information reasonably requested by or on behalf of Covered Entity to enable Covered Entity to perform and document a risk assessment in accordance with 45 C.F.R. Part 164 subpart D with respect to the incident to determine whether a Breach of Unsecured PHI occurred, and (C) all other information reasonably necessary to provide notice to individuals, HHS and/or the media, all in accordance with the security breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 & 164 subparts A, D, & E. Notwithstanding the foregoing, in Covered Entity's sole discretion and in accordance with its directions, Data User shall conduct, or pay the costs of conducting, an investigation and/or pay the costs of providing, the security breach notifications pursuant to the HITECH Act.

4. MATERIAL BREACH, ENFORCEMENT AND TERMINATION.

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall terminate on _____ (INSERT TERMINATION DATE OR EVENT], unless otherwise terminated in accordance with the provisions of Section 4.c.

b. *Covered Entity's Rights of Access and Inspection.* Data User agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI and the security of Electronic PHI, available to Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the "Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary of HHS determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.



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The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Data User's facilities, systems and procedures does not relieve Data User of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Data User or require Data User's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 4.b. shall survive termination of the Agreement.

- c. *Termination.* Covered Entity may terminate this Agreement:
- i. immediately if Data User is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;
 - ii. immediately if a finding or stipulation that Data User has violated any standard or requirement of HIPAA, the HIPAA Regulations, or any other security or privacy laws is made in any administrative or civil proceeding in which Data User has been joined;
 - iii. immediately, if Covered Entity determines that Data User has breached or violated a material term of this Agreement;
 - iv. if Covered Entity reasonably believes that Data User will violate a material term of this Agreement and, where practicable, Covered Entity provides Data User written notice of such belief within a reasonable time after forming such belief, and Data User fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately; and/or
 - v. pursuant to Section 5.b. of this Agreement.
- d. *Remedies.* If Covered Entity determines that Data User has breached or violated a material term of this Agreement, Covered Entity may, at its option, pursue any and all of the following remedies:
- i. exercise any of its rights of access and inspection under Section 4.b. of this Agreement;
 - ii. take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
 - iii. terminate this Agreement immediately, in accordance with Section 4.c.
- e. *Knowledge of Non-Compliance.* Any non-compliance by Data User with this Agreement or with HIPAA or the HIPAA Regulations automatically will be considered a breach or violation of a material term of this Agreement if Data User knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
- f. *Reporting to United States Department of Health and Human Services.* If any breach or violation is not cured, and if termination of this Agreement is not feasible, Covered Entity shall report Data User's breach or violation to the Secretary of the United States Department of Health and Human Services, and Data User agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).



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g. *Disposition of Records.* Upon termination of this Agreement for any reason, Data User shall return to covered entity all protected health information received from Covered Entity, or created, maintained, or received by Data User on behalf of Covered Entity that the Data User still maintains in any form within 10 days of termination of this agreement and/or the service agreement unless an extended timeframe is otherwise agreed upon by both parties in writing. In the event that the return of the PHI is not feasible, the data user may destroy the PHI and provide the Covered Entity with a Certificate of Destruction. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Data User. Data User shall retain no copies of the protected health information. Notwithstanding the foregoing, in the event that Data User determines that returning or destroying the PHI is not feasible, Data User shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Data User shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Data User maintains such PHI. This section shall survive termination of this Agreement.

h. *Injunctions.* Covered Entity and Data User agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Data User of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 4.h. shall survive termination of the Agreement.

i. *Indemnification.* Data User shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Data User in connection with the representations, duties, and obligations of Data User under this Agreement. The parties' respective rights and obligations under this Section 4.i. shall survive termination of the Agreement.

5. MISCELLANEOUS.

a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HIPAA Breach Notification Regulations means the section as in effect or as amended.

b. *Governing Law.* To the extent that this Agreement is not governed exclusively by HIPAA or other provision of federal statutory or regulatory law, it will be governed and construed in accordance with

the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

c. *Ambiguities.* The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI and the Limited Data Set, including, but not limited to, HIPAA and the HIPAA Regulations.

d. *State Law.* Nothing in this Agreement shall be construed to require Data User to use or disclose the Limited Data Set without a written authorization from an individual who is a subject of the PHI from which the Limited Data Set was created, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.



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- e. Amendment. Covered Entity and Data User agree that amendment of this Agreement may be required to ensure that Covered Entity and Data User comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI or the Limited Data Set. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Data User does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.
- f. Independent Contractor. None of the provisions of this Agreement are intended to create, nor deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- g. Governing Law. To the extent that this Agreement is not governed exclusively by HIPAA or other provision of federal statutory or regulatory law, it will be governed and construed in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- h. Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- i. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Data User, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- j. Primacy. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement, or understanding between the parties, this Agreement shall control.
- k. Conflict. The parties agree that, in the event that any provisions of the Service Agreement contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Data User's use and disclosure of PHI.
- l. Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- m. Severability/Compliance. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

("Covered Entity") _____ ("Data User") _____

Name: _____ Name: _____

Signature: _____ Signature: _____

Title: _____ Title: _____

Date: _____ Date: _____



Vendor Application

**IT IS CRITICAL TO THE COUNTY THAT YOU COMPLETE ALL DATA - PLEASE PRINT OR TYPE
(A W-9 FORM IS REQUIRED AND MUST BE SUBMITTED WITH THIS FORM)**

1. Vendor Name: _____

Do you require a 1099? Yes ___ No ___

2. Mailing address for payments:

3. Mailing address for purchase orders, proposals and bids:

4. Contact Person _____ Phone #: _____

Email: _____ Fax #: _____

5. In what City and State is your firm licensed? _____

If licensed in NC, indicate County (for tax purposes) _____

6. Indicate your firm's organizational type:

Individual ___ Partnership ___ Corporation ___ Governmental Agency ___ Other _____

7. Is your firm a large business? Yes ___ No ___ 8. Is your firm a small business? Yes ___ No ___

9. Is your firm 51 percent or more owned and operated by a woman? Yes ___ No ___

If yes, with what governmental agencies are you certified? _____

10. Is your firm 51 percent or more owned and operated by a minority? Yes ___ No ___

If yes, with what governmental agencies are you certified? _____

Identify appropriate minority group:

Black American ___ Native American ___ Hispanic ___ Asian/Pacific ___ Asian Indian ___

11. Is your firm incorporated? Yes ___ No ___

12. Is your firm a not-for-profit concern? Yes ___ No ___

13. Is your firm a handicapped business concern? Yes ___ No ___

14. Give a brief description of goods or services your firm provides:

Signature: _____ Title: _____

Print name: _____ Date: _____

If you have any questions concerning this form, call Durham County Purchasing Division - (919) 560-0051.

**Return to: Durham County Department of Social Services
414 E. Main Street
Business Office, 3rd Floor, Contracts
Durham, NC 27701**