

**STANDARD CONTRACT PROVISIONS**  
**FOR USE WITH THE NOT-FOR-PROFIT HOSPITAL CORPORATION**  
**SUPPLIES AND SERVICES CONTRACTS**

**DECEMBER 27, 2010**

<b>1. OFFICIAL STANDARD CONTRACT PROVISIONS:</b>	<b>3</b>
<b>2. COUNCIL APPROVAL OF CONTRACTS:</b>	<b>3</b>
<b>3. ANTI-DEFICIENCY LIMITATIONS:</b>	<b>3</b>
<b>4. APPROPRIATION OF FUNDS REQUIRED:</b>	<b>4</b>
<b>5. MULTIYEAR CONTRACT APPROPRIATIONS:</b>	<b>4</b>
<b>6. CONTRACTS THAT CROSS FISCAL YEARS:</b>	<b>4</b>
<b>7. HOSPITAL EMPLOYEES, OFFICERS AND BOARD MEMBERS NOT TO BENEFIT:</b>	<b>4</b>
<b>8. INDEMNIFICATION AND LIABILITY:</b>	<b>5</b>
<b>9. QUICK PAYMENT:</b>	<b>5</b>
<b>10. TAXES:</b>	<b>6</b>
<b>11. RECOVERY OF DEBTS OWED THE HOSPITAL:</b>	<b>7</b>
<b>12. COVENANT AGAINST CONTINGENT FEES:</b>	<b>7</b>
<b>13. SHIPPING INSTRUCTIONS:</b>	<b>7</b>
<b>14. QUALITY AND WARRANTIES:</b>	<b>7</b>
<b>15. INSPECTION OF SUPPLIES:</b>	<b>8</b>
<b>16. INSPECTION OF SERVICES:</b>	<b>9</b>
<b>17. WAIVER:</b>	<b>9</b>
<b>18. DISPUTES:</b>	<b>9</b>
<b>19. MEDIATION AND ARBITRATION:</b>	<b>10</b>
<b>20. APPOINTMENT OF ATTORNEY:</b>	<b>11</b>
<b>21. DEFAULT:</b>	<b>11</b>
<b>22. CHANGES AND MODIFICATIONS:</b>	<b>13</b>
<b>23. TERMINATION FOR THE CONVENIENCE OF THE HOSPITAL:</b>	<b>13</b>
<b>24. RETENTION AND EXAMINATION OF RECORDS:</b>	<b>15</b>
<b>25. NON-DISCRIMINATION CLAUSE:</b>	<b>16</b>
<b>26. HEALTH AND SAFETY STANDARDS:</b>	<b>17</b>
<b>27. TERMINATION OF CONTRACTS FOR CERTAIN CRIMES AND VIOLATIONS:</b>	<b>17</b>

<b>28. WAY TO WORK AMENDMENT ACT OF 2006:</b>	<b>18</b>
<b>29. PUBLICITY:</b>	<b>19</b>
<b>30. FREEDOM OF INFORMATION ACT:</b>	<b>20</b>
<b>31. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA):</b>	<b>20</b>
<b>32. CONFIDENTIALITY OF INFORMATION:</b>	<b>20</b>
<b>33. TIME:</b>	<b>20</b>
<b>34. PATENTS:</b>	<b>20</b>
<b>35. RIGHTS IN DATA:</b>	<b>20</b>
<b>36. INSURANCE:</b>	<b>23</b>
<b>37. CERTIFICATION OF FACTUAL INFORMATION:</b>	<b>25</b>
<b>38. WALSH HEALEY ACT:</b>	<b>26</b>
<b>39. DEPARTMENT OF LABOR WAGE DETERMINATIONS:</b>	<b>26</b>
<b>40. SERVICE CONTRACT ACT OF 1965:</b>	<b>26</b>
<b>41. 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT FOR CONTRACTS SUBJECT TO THE FIRST SOURCE EMPLOYMENT AGREEMENT ACT:</b>	<b>32</b>
<b>42. FIRST SOURCE AGREEMENT AND REQUEST FOR FINAL PAYMENT:</b>	<b>33</b>
<b>43. SUBCONTRACTING REQUIREMENTS:</b>	<b>34</b>
<b>43. MISCELLANEOUS:</b>	<b>36</b>
<b>44. PREVIOUS OWNER:</b>	<b>36</b>

**1. Official Standard Contract Provisions:**

In accordance with section 4602.1 of the Not-for-Profit-Hospital Corporation (“Hospital”) Procurement Rules, approved on September 30, 2010 by the Hospital Board of Directors, the Chief Contracting Officer hereby prescribes the following Standard Contract Provisions for use with the Not-for-Profit Hospital Corporation Supplies and Services Contracts (“Standard Contract Provisions”).

**2. Council Approval of Contracts:**

In accordance with section 111 of the Not-for-Profit Hospital Corporation Establishment Temporary Act of 2010, A18-0525, effective August 3, 2010, prior to contract award the Council of the District of Columbia must approve all contracts authorizing total expenditures exceeding one million dollars within a 12 month period and all multiyear contracts.

**3. Anti-Deficiency Limitations:**

(a) Pursuant to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2008) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, the Hospital cannot obligate itself to any financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated by the Congress of the United States (the “Congress”) and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in this Agreement creates an obligation of the Hospital in anticipation of an appropriation by Congress for such purpose, and the Hospital’s legal liability for the payment of any amount under this Agreement does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Hospital’s known potential financial obligations under this Agreement for such fiscal period. In addition, in the event that the District proposes to issue bonds or notes to refund the bonds subject to this Agreement, the Mayor of the District of Columbia or other appropriate official, and if any payments under this Agreement have not been made, the Mayor shall include in a budget application submitted to the Council of the District of Columbia the amount necessary to fund the Hospital’s known unpaid amounts. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amount under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Hospital will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation.

(c) Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the Hospital shall have any personal liability in connection with the

breach of the provisions of this Section or in the event of a Default by the Hospital under this Agreement.

(d) This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No Hospital employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

**4. Appropriation of Funds Required:**

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

**5. Multiyear Contract Appropriations:**

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

**6. Contracts That Cross Fiscal Years:**

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

**7. Hospital Employees, Officers and Board Members not to Benefit:**

Unless a determination is made as provided herein, no officer or employee or Board Member of the Hospital will be admitted to any share or part of this contract or to any benefit that may arise there from, and any contract made by the Contracting Officer or any Hospital employee, officer or Board Member authorized to execute contracts in which they or an employee of the Hospital will be personally interested shall be void, and no payment shall be made thereon by the Hospital or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Hospital employee shall not be a party to a contract with the Hospital and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Hospital's needs cannot reasonably otherwise be met. The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

## **8. Indemnification and Liability:**

(a) The Contractor agrees to defend, indemnify and hold harmless the Hospital, its officers, agencies, departments, agents, and employees (collectively the "Hospital") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any Hospital property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

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

(c) Hospital shall not be liable for special, indirect, consequential (including, but not limited to, lost profits), special, exemplary or punitive damages arising out of or relating to this Contract. Hospital's liability for any claim of any kind arising out of or relating to this Contract will not exceed the price of the goods or services giving rise to the claim.

## **9. Quick Payment:**

(a) The Hospital will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before: the 3rd day after the required payment date for meat or a meat product; the 5th day after the required payment date for an agricultural commodity; or the 15th day after the required payment date for any other item.

(b) Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

(c) The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the Hospital for work performed by any subcontractor under this contract: Pay the subcontractor for the proportionate share of the total

payment received from the Hospital that is attributable to the subcontractor for work performed under the contract; or notify the Hospital and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

(d) The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before: the 3rd day after the required payment date for meat or a meat product; the 5th day after the required payment date for an agricultural commodity; or the 15th day after the required payment date for any other item.

(e) Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

(f) A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the Hospital is a party. The Hospital may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

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

#### **10. Taxes:**

(a) The Hospital is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued for Federal Excise Tax. The following statement may be used by the Contractor when claiming tax deductions for Federal Excise Tax exempt items sold to the Hospital:

The Not for Profit Hospital Corporation is Exempt from Federal Excise Tax –  
Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland.

(c) The following statement may be used by the Contractor when claiming tax deductions for Maryland Sales Tax:

The Not for Profit Hospital Corporation is Exempt From Maryland Sales Tax, Registered With The Comptroller of the Treasury as follows: a) Deliveries to Glenn Dale Hospital – Exemption No. 4647 b) Deliveries to Children's Center – Exemption No. 4648 c) Deliveries to other Hospital Departments or Agencies – Exemption No. 09339  
Registration No. 53-600.

**11. Recovery of Debts Owed the Hospital:**

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

**12. Covenant against Contingent Fees:**

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

**13. Shipping Instructions:**

Unless otherwise specified in the Contract, each case, crate, barrel, package, or containers of any kind, delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk.

Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point. All shipping, completion and delivery dates are firm. Shipment of Goods will be F.O.B. destination, unless otherwise set forth on the front. Supplier will ship freight prepaid. Supplier must suitably pack or otherwise prepare for shipment all Goods to prevent damage in transit. Supplier must comply with all carrier requirements.

**14. Quality and Warranties:**

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

(b) Contractor warrants and covenants that all Goods and Services delivered: (i) do and will conform with this Contract and all specifications; (ii) are and will be free from defects in materials, workmanship and design; (iii) are and will be free from liens, restrictions, reservations, security interests or encumbrances; (iv) are and will be suitable for, and perform in accordance with, the particular purposes (A) for which they were purchased by Hospital and (B) for which they were designed, manufactured or constructed; (v) do and will perform and process date arithmetic and date/time data in a consistent and accurate manner, accepting and responding to two-digit year-date input, correcting or supplementing as necessary, and in a manner that is unambiguous as to century; (vi) do and will, to the extent Goods will be or are used in combination with other Hospital software, hardware or firmware, properly interoperate with the software, hardware or firmware, including, without limitation, the exchange of date/time data;

and (vii) with respect to Services only, will be provided by individuals that have the expertise, skills, training and professional education to perform the Services in a professional manner. Contractor will provide Hospital with the manufacturer's new product warranty, as applicable upon delivery of all goods.

(c) Contractor will, at Hospital's request and without additional expense to Hospital, promptly correct defects or replace non-conforming Goods. If Contractor does not promptly correct defects or replace non-conforming Goods, Hospital, after written notice to Contractor, may make corrections or replace Goods and charge Contractor for the cost incurred.

(d) Contractor warrants that neither Goods nor Services, nor Hospital's use of Goods or Services, will constitute an infringement of any patent, copyright, trademark, service mark, intellectual property right or the misappropriation of any trade secret or the violation of a right of publicity or a nondisclosure obligation.

(e) Contractor warrants that Goods and Services requiring the use of any software or data provided on a network or stand-alone desktop computer will not contain any software viruses or other malicious computer instructions, devices or techniques that can or were designed to threaten, infect, damage, disable or shut down a computer system or any component of a computer system, including its security or user data. At Hospital's request, Contractor will provide a master copy of any software necessary to operate the Goods or Services in object code format for comparison and correction.

## **15. Inspection of Supplies:**

(a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point,. Upon the Contractor's failure to cure within ten (10) days after date of notification, the Hospital may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

(c) The Hospital has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The Hospital may reject nonconforming supplies with or without disposition instructions.

(d) The Contractor shall bear all risk on rejected materials or supplies after notification of rejection. The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(e) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the Hospital may either (1) by contract



or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

#### **16. Inspection of Services:**

(a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Hospital covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Hospital during contract performance and for as long afterwards as the contract requires. The Hospital has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Hospital will perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Hospital performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties. If any of the services do not conform to the contract requirements, the Hospital may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Hospital may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.

(d) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the Hospital may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the Hospital that is directly related to the performance of such services, or (2) terminate the contract for default.

#### **17. Waiver:**

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach of the contract or a waiver of any contract provision. Failure by Hospital to insist upon strict performance by Contractor of any of its obligations under this Contract will not waive any subsequent or other default or failure to perform by the Contractor.

#### **18. Disputes:**

(a) All claims by a Contractor against the Hospital arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following: (1) A description of the claim and the amount in dispute; (2) Any data or other information in support of the claim; (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and (4) The Contractor's request for relief or other action by the Contracting Officer.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

(c) The Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim.

(d) The Contracting Officer's written decision shall do the following: (1) Provide a description of the claim or dispute; (2) Refer to the pertinent contract terms; (3) State the factual areas of agreement and disagreement; (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding; (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted; (6) Indicate that the written document is the contracting officer's final decision; and (7) Inform the Contractor of the right to seek further redress by appealing the decision as provided for below.

(e) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Hospital for an amount equal to the unsupported part of the claim in addition to all costs to the Hospital attributable to the cost of reviewing that part of the Contractor's claim. Liability shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(f) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

(g) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(g) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(i) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

### **19. Mediation and Arbitration:**

(a) If the Hospital and the Contractor agree in writing, any dispute arising from or in connection with the Contract or its breach, or relating to the Contract, whether framed in contract, tort or otherwise, will be referred to non-binding mediation in accordance with the appropriate American Arbitration Association's Mediation Rules.

(b) If the Hospital and Contractor further agree in writing, any dispute arising under or in connection with the Contract or its breach, or relating to the Contract, whether framed in contract, tort or otherwise, and which is not resolved by mediation, will be resolved by binding

arbitration. The arbitration panel shall be comprised of an individual designated by the Hospital, an individual designated by the Contractor, and an individual mutually agreeable to both the Hospital and the Contractor or selected pursuant to the rules of the American Arbitration Association if the parties cannot agree as to the third arbitrator. The arbitration process shall be conducted in accordance with the appropriate Arbitration Rules of the American Arbitration Association then in effect.

(c) In addition to such rules, the following shall also apply: (1) Each party shall give the other prompt access to any documents the other reasonably requests that relate to the dispute being resolved. If any disputes arise between the parties concerning document production, they may be reported to the arbitrator(s) by telephone, and the arbitrator(s) shall decide them promptly, based upon a telephone conference call or informal written submissions if the arbitrator(s) consider them necessary; (2) If any party considers deposition testimony necessary, upon request, the arbitrator(s) shall order such discovery. However, the arbitrator(s) shall endeavor to limit the number and extent of any such depositions; (3) Unless the parties hereafter agree to another location, arbitration hearings shall be conducted in Washington, D.C. at a location agreed upon by the parties. (4) The arbitrator(s) shall base their decision on a strict interpretation of the Contract, and on any relevant facts submitted by the parties via documentary evidence or sworn testimony, without bias against or partiality to either party. The decision shall be in writing. Any award of the arbitrator(s) shall be final and binding on the parties and judgment may be entered on the award by any court of competent jurisdiction.

(d) Each party shall pay for its own attorneys' fees and its share of the cost of arbitration.

(e) Notwithstanding the above, if a third party brings any claim against the Hospital, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Hospital may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

**20. Appointment of Attorney:**

(a) The Contractor does hereby designate and appoint \_\_\_\_\_ as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

Attorney Name: \_\_\_\_\_  
Attorney Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney Phone: \_\_\_\_\_  
Attorney Email: \_\_\_\_\_

**21. Default:**

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

(b) In the event the Hospital terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Hospital may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the Hospital for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Hospital or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Hospital, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Hospital, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Hospital has an interest.

(e) Payment for completed supplies delivered to and accepted by the Hospital will be at the contract price. Payment for manufacturing materials delivered to and accepted by the Hospital will be at the contract price. Payment for manufacturing materials delivered to and accepted by the Hospital for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a

dispute concerning a question of fact within the meaning of the clause of this contract entitled “Disputes”. The Hospital may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Hospital against loss because of outstanding liens or claims of former lien holders.

(f) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the Hospital, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 23 for Termination for Convenience of the Hospital.

(g) The rights and remedies of the Hospital provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(h) As used in paragraph (c) of this clause, the terms “subcontractor(s) means subcontractor(s) at any tier.

## **22. Changes and Modifications:**

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes or modifications in the contract within the general scope hereof. If such change or modification causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change or modification is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

## **23. Termination for the Convenience of the Hospital:**

(a) The Hospital may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Hospital’s interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders except as necessary to complete the continued portion of the contract.

- (3) Terminate all contracts to the extent they relate to the work terminated.
- (4) Assign to the Hospital, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the Hospital will have the right to settle or pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Hospital completed work, supplies, and other materials produced or acquired for the work terminated.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Hospital under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

(e) The Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated.

(f) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer, except that if the Contractor failed to submit the termination settlement proposal within the time provided, and failed to request a time extension, there shall be no right of appeal. If the Contracting Officer has made a determination of the

amount due, the Hospital will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(g) In arriving at the amount due the Contractor under this clause, there shall be deducted: (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract; (2) Any claim which the Hospital has against the Contractor under this contract; and (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Hospital.

(h) The Hospital may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Hospital upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

#### **24. Retention and Examination of Records:**

(a) The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Hospital under the contract that results from this solicitation. The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract. The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, Hospital, or other personnel duly authorized by the Contracting Officer.

(b) The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have

the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

## **25. Non-Discrimination Clause:**

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

(b) The following clauses apply to this contract:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. The affirmative action shall include, but not be limited to the following: (a) employment, upgrading or transfer; (b) recruitment, or recruitment advertising; (c) demotion, layoff, or termination; (d) rates of pay, or other forms of compensation; and (e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting



agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to his books, records and Accounts, pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the Hospital to enter into such litigation to protect the interest of the Hospital.

## **26. Health and Safety Standards:**

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

## **27. Termination of Contracts for Certain Crimes and Violations:**

(a) The Hospital may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if: (1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or (2) There has been any breach or violation of: (A) Any provision of the Procurement Practices Act of 1985, as amended, or (B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this section, the Contractor: (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and (2) Shall refund all profits or fixed fees realized under the Contract.

(c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

## **28. Way to Work Amendment Act of 2006:**

(a) Except as described below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 et seq.) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

(b) The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage rate.

(c) The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

(d) The Department of Employment Services may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov). If the living wage is adjusted during the term of the contract, the Contractor shall be bound by the applicable wage rate as of the effective date of the adjustment, and the Contractor may be entitled to an equitable adjustment.

(e) The Contractor shall provide a copy of the fact sheet to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

(f) The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

(g) The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 et seq.

(h) The requirements of the Living Wage Act of 2006 do not apply to: (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law; (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage; (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility; (4) Contracts for services needed immediately to prevent or respond to a disaster or

eminent threat to public health or safety declared by the Mayor; (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006; (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006; (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District; (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)); (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

(i) The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **29. Publicity:**

The Contractor shall at all times obtain the prior written approval from the Contractor Officer before the Contractor, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, makes any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract. Contractor shall not, without Hospital's prior written consent, make any news release, public announcement, denial or confirmation of this Contract, its value, or its terms. Nothing in this Contract grants Contractor the right to use any trademarks, service marks, trade names or logos proprietary to Hospital. If Contractor is granted a right to use Hospital's marks, Contractor will do so only in strict compliance with Hospital's guidelines. All information relating to this Contract is "Hospital Confidential Information." Contractor may only use and copy the Hospital Confidential Information to perform its obligations under this Contract. Contractor will not disclose Hospital Confidential Information to any third party without the written consent of the Hospital. Upon cessation of work, or upon request, Contractor must return all documents and other materials that contain or relate to Hospital Confidential Information. Hospital Confidential Information does not include information that is: (i) rightfully known by Contractor prior to negotiations leading to this Contract; (ii) independently developed by Contractor without reliance on the Hospital Confidential Information; or (iii) part of the public domain or is lawfully obtained by Contractor from a third party without any confidentiality violation

**30. Freedom of Information Act:**

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the Hospital to make available for inspection and copying any record produced or collected pursuant to a Hospital contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The Hospital will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

**31. Americans with Disabilities Act Of 1990 (ADA):**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

**32. Confidentiality of Information:**

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

**33. Time:**

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

**34. Patents:**

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

**35. Rights in Data:**

(a) "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

(b) The term "Technical Data", as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document

research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(c) The term "Computer Software", as used herein means computer programs and computer databases. "Computer Programs", as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

(d) The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

(e) All data first produced in the performance of this Contract shall be the sole property of the Hospital. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the Hospital under this Contract, are works made for hire and are the sole property of the Hospital; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the Hospital the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the Hospital all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the Hospital until such time as the Hospital may have released such data to the public.

(f) The Hospital will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to: Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any Hospital installation to which the computer may be transferred by the Hospital; Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative; Copy

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

(g) The restricted rights set forth in section (f) are of no effect unless the data is marked by the Contractor with the following legend: “RESTRICTED RIGHTS LEGEND Use, duplication, or disclosure is subject to restrictions stated in Contract No. (*“insert contact number with contractor’s name”*)”; and if the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the Hospital’s rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Hospital of liability with respect to such unmarked software.

(h) In addition to the rights granted in Section (f) above, the Contractor hereby grants to the Hospital a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section (f) above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Hospital under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Hospital under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Hospital any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

(i) Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Hospital’s or the Contractor’s rights in that subcontractor data or computer software which is required for the Hospital.

(j) For all computer software furnished to the Hospital with the rights specified in Section I.5.5, the Contractor shall furnish to the Hospital, a copy of the source code with such rights of the scope specified in Section (e). For all computer software furnished to the Hospital with the restricted rights specified in Section (f), the Hospital, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the Hospital under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

(k) The Contractor shall indemnify and save and hold harmless the Hospital, its officers, agents and employees acting within the scope of their official duties against any liability,

including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

(l) Nothing contained in this clause shall imply a license to the Hospital under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Hospital under any patent.

(m) Paragraphs (f)(g)(h)(i)(k) and (l) above are not applicable to material furnished to the Contractor by the Hospital and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

### **36. Insurance:**

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

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

(c) Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(d) Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the Hospital or the jurisdiction in which the contract is performed. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

(e) Professional Liability Insurance (Errors & Omissions). The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000.00 per each Medical Incident and \$3,000,000.00 annual aggregate. The Contractor shall maintain this insurance for a minimum of five (5) years after termination of the Contract and will continue to provide the Hospital with a certificate of insurance which evidences this coverage. If the policy is terminated before the end of five years, the contractor shall provide the Hospital evidence of the purchase of an "ERP" (extended reporting period) if coverage was on a "claims-made basis".

(f) Duration of Insurance. The Contractor shall carry all required insurance until all contract work is accepted by the Hospital, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.

(g) Liability of Contractor. These are the required minimum insurance requirements established by the Hospital. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.

(h) Contractor's Property. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the Hospital.

(i) Measure of Payment. The Hospital shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

(j) Notification. The Contractor shall immediately provide the Contracting Officer with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the Contracting Officer.

(k) Certificates of Insurance. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to the Contracting Officer.

(l) Disclosure of Insurance Information. The Contractor agrees that the Hospital may disclose the name and contact information of its insurers to any third party which presents a



claim against the Hospital for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

(m) Waiver of Subrogation. Where allowed by law, the required policies, set forth above, shall contain a waiver of subrogation, either as an endorsement or on a blanket basis.

### **37. Certification of Factual Information:**

(a) This paragraph and paragraphs b through e below shall apply to contractors in regards to: (1) any procurement in which the Contracting Officer requires Factual Information with (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this Contract, the Contractor certifies that, to the best of the Contractor's knowledge and belief, any factual information submitted was accurate, complete and current as of the date specified in the contract or offer.

(b) Unless otherwise provided in the contract, Contractor shall submit financial data and certification that, to the best of the Contractor's knowledge and belief, the financial data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.

(c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished financial data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor financial data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(d) Factual information data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Factual information is not judgmental, and is therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, factual information do include the information forming the basis for that judgment. Factual information is more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

(f) The following specific information should be included as factual information, as applicable: (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit – cost trends such as those associated with labor efficiency; (6) Make or buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.

(g) If the contractor is required by law to submit factual information in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the information. The right of examination shall extend to all documents necessary to permit adequate evaluation of the factual information submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of: (1) final payment under the contract; (2) final termination settlement; or (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

### **38. Walsh Healey Act:**

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45) (the “Act”, as used in this section), the following terms and conditions apply:

All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR 50-201.3) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2) (41 U.S.C. §40). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (29 U.S.C. §214).

### **39. Department of Labor Wage Determinations:**

If this Contract is subject to the Service Contract Act, 41 U.S.C. §351, the Contractor shall be bound by the Wage Determination attached to the contract issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 et seq., and incorporated herein. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with the Service Contract Act of 1965. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

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

(a) Definitions. “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, et seq.).

(1)“Contractor,” as used in this clause, means the prime Contractor or any subcontractor at any tier.

(2)“Service employee,” as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a Hospital contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) Applicability. To the extent that the Act applies, this Contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

(c) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

(d) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(e) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

(f) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(g) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(h) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(i) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(j) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(k) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent

combinations of bona fide fringe March (2007) SCP. 20 benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

(l) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(m) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c (b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(n) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(o) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(p) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;

(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(c) Daily and weekly hours worked; and

(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(q) Pay periods : The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(r) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other Hospital contract March (2007) SCP. 22 with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor

and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the Hospital may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

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

(t) Contractor's report:

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

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

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

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

(w) (i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act, (ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in

lieu of these benefits; (iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(x) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

**41. 51% District Residents New Hires Requirements and First Source Employment Agreement for contracts subject to the First Source Employment Agreement Act:**

If applicable to the contract, the following provision applies:

(a) The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 et seq. (“First Source Act”).

(b) The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, in which the Contractor shall agree that: The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and the first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

(c) The Contractor shall submit to DOES, no later than the 10th of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

(1) Number of employees needed; (2) Number of current employees transferred; Number of new job openings created; Number of job openings listed with DOES; Total number of all Hospital residents hired for the reporting period and the cumulative total number of Hospital residents hired; and Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:

- (a) Name;
- (b) Social security number;
- (c) Job title;
- (d) Hire date;
- (e) Residence; and
- (f) Referral source for all new hires.

(d) If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents. The provision of this section does not apply to nonprofit organizations.

(e) With the submission of the Contractor’s final request for payment from the Hospital, the Contractor shall: (1) Document in a report to the CO the Contractor’s compliance with section “(c)” of this clause; or (2) Submit a request to the Contractor Officer for a waiver of compliance



with section “(f”) and include the following documentation: (a) Material supporting a good faith effort to comply; (b) Referrals provided by DOES and other referral sources; Advertisement of job openings listed with DOES and other referral sources; and Any documentation supporting the waiver request pursuant to section “(f”).

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

(g) Upon receipt of the Contractor’s final payment request and related documentation, the Contractor Officer shall determine whether the Contractor is in compliance with section (e) or whether a waiver of compliance pursuant to section (f) is justified. If the Contractor Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contractor Officer shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the COTR.

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

#### **42. First Source Agreement and Request for Final Payment:**

(a) For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the documentation or a waiver of compliance.

(b) The Hospital shall not make final payment to the Contractor until the agency CFO has received the Contracting Officer’s final determination or approval of waiver of the Contractor’s compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

(c) The Contractor shall submit to the Hospital, as a deliverable, the report described in clause 41, above, which is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, the Hospital shall not make final payment to the Contractor.

### **43. Subcontracting Requirements:**

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

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

(c) A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections (a) and (b).

(d) Subcontracting Plan - If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with a subcontracting plan in accordance with and the provisions of section (a) and submit to the Contracting Officer for approval a subcontracting plan. Since the Contractor must obtain the approval of the Contracting Officer of the subcontracting plan, any changes to the plan will only occur with the prior written approval of the Contracting Officer.

(e) The subcontracting plan shall include the following:

- i. (e) A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- ii. (f) A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- iii. (g) The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- iv. (h) The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- v. A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- vi. Assurances that in all subcontracts that offer further subcontracting opportunities, that the prime contractor will include a statement, approved by the contracting

officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;

- vii. Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the Hospital to determine the extent of compliance by the prime contractor with the subcontracting plan;
- viii. A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the Hospital's request; and
- ix. A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award subcontracts to them.

(f) Subcontracting Plan Compliance Reporting - If the Contractor has an approved subcontracting plan required by law under this contract, the Contractor shall submit to the contracting officer and the Director of DSLBD, no later than the 21st of each month following execution of the contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly subcontracting plan compliance report shall include the following information:

- i. The dollar amount of the contract or procurement;
- ii. A brief description of the goods procured or the services contracted for;
- iii. The name of the business enterprise from which the goods were procured or services contracted;
- iv. Whether the subcontractors to the contract are currently certified business enterprises;
- v. The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- vi. A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and
- vii. A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

(g) Enforcement and Penalties for Breach of Subcontracting Plan – If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and the Contractor Officer determines the Contractor's failure to be a material breach of the

contract, the Contracting Officer shall have cause to terminate the contract under the default clause of the Standard Contract Provisions.

(h) There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

(i) A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

**43. Miscellaneous:**

Contractor will not, without Hospital's prior written consent, assign all or any part of this Contract. Hospital's rights and remedies in law or equity are cumulative and may be exercised concurrently or separately. The invalidity, in whole or in part, of any provision of this Contract will not affect the validity of any other provision. Time is of the essence in Contractor's performance. Contractor is an independent contractor and not an agent or employee of the Hospital or of any of the Hospital's affiliates. Contractor is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Contractor's employees. Contractor will not subcontract any portion of this Contract without Hospital's prior written consent. The Contract and all attachments constitute the entire agreement between the parties and supersede all previous representations, statements, negotiations, commitments and writings relating to the Contract.

**44. Previous Owner:**

Contractor acknowledges that the Hospital is not a party to any agreement between the Contractor and the previous for-profit owners of the hospital facility, and that the Hospital does not assume and is not bound by any agreement between the Contractor and the for-profit entity.

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