

## Georgia Department of Public Health

### Service Provider AGREEMENT for Babies Can't Wait Program Services

Solicitation Title <b>NA</b>	Solicitation Number <b>NA</b>	Contract Number
1. This Contract is entered into between the Georgia Department of Public Health and the Contractor named below: (hereafter called Contractor or Service Provider)		
2. Contract to Begin:	Date of Completion:	Renewals:
3. Performance Bond, if any: <b>NA</b>	Other Bonds, if any: <b>NA</b>	
4. Maximum Amount of this Contract: <b>Fee-For-Service (FFS)</b>	Total Financial Obligation of the Department for the First Fiscal Year: <b>FFS</b>	Total Financial Obligation of the Department for each Renewal Period if Renewed: <b>FFS</b>

**IN WITNESS WHEREOF, this Contract has been executed by the parties hereto.**

5.

Contractor's Name *(If other than an individual, state whether a corporation, partnership, etc.)*

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing

Address

6.

**Georgia Department of Public Health**

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing

Address

**2 Peachtree Street, NW | Atlanta, GA 30303**

7. Authorized Person to Receive Contract Notices for Department:

**Business Owner:**

Kelli Rayford, Director CYSN  
Maternal and Child Health Unit  
2 Peachtree Street, NW, 11th Fl  
Atlanta, GA 30303  
Phone: (888) 651-8224 | Email: [DPH-BCW-BIBS@dph.ga.gov](mailto:DPH-BCW-BIBS@dph.ga.gov)

**Contract Administrator:**

Kay Russell, Contract Coordinator  
Maternal and Child Health Unit  
2 Peachtree Street, NW, 11th Fl  
Atlanta, GA 30303  
Phone: (404) 657-6713 | Email: [Kay.Russell@dph.ga.gov](mailto:Kay.Russell@dph.ga.gov)

Authorized Person to Receive Contract Notices for Contractor:

**Service Provider/Agency Contact's Name:**

8. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Contract:

Attachment 1 Department of Public Health Terms and Conditions for Contracts for Services

Attachment 2 Vendor Lobbyist Disclosure (pursuant to Georgia Executive Order Number 10.01.03.01, 2003)

Attachment 3 Districts Served and Services Provided

Attachment 4 Additional District Requirements

Attachment 5 Business Associates Agreement (BAA)

**ATTACHMENT 1**  
**TERMS AND CONDITION FOR SERVICES CONTRACTS**

**A. DEFINITIONS AND GENERAL INFORMATION**

1. **Definitions.** The following words shall be defined as set forth below:

- i. **“ADA”** means Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, *et seq.* The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of Telecommunication Device for the Deaf (TDD)/telephone relay service.
- ii. **“Child”** means individual under the age of three that has been referred or determined eligible for the Babies Can't Wait (BCW) program that has a confirmed disability or established developmental delay, as defined by the State, in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive.
- iii. **“Contractor”** means the provider of the Services under the Contract as identified in paragraph 1 on page 1.
- iv. **“Department”** means the Georgia Department of Public Health.
- v. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. Section 1181 *et seq.*, a federal law that includes requirements to protect patient privacy, security, and data integrity of electronic medical records, to prescribe methods and formats for exchange of electronic medical information, and to uniformly identify providers and participating hospitals.
- vi. **“Fee-For-Service (FFS) Medicaid”** means the joint Federal and State program of medical assistance established by Title XIX of the Social Security Act, which in Georgia is administrated by the Department of Community Health.
- vii. **“FERPA” means** the Family Education Rights and Privacy Act and is a federal statute. The purpose of FERPA is two-fold, to ensure that parents have access to their children's educational records and to protect the privacy rights of parents and children by limiting access to these records without parental consent.

FERPA deals with:

- access to educational records
  - parental right to inspect and review records
  - amendment of records
  - destruction of records
- viii. **“Medicaid Care Management Organization (CMO)”** refers to one of three CMO partnerships (Amerigroup Community Care, Peach State Health Plan, and WellCare) between the CMOs and the Georgia Department of Community Health, Medical Assistance Plans Division.
  - ix. **“Payor of Last Resort”** means funds under this part may not be used to satisfy a

financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act.

- x. **"Purchase Instrument"** means the documentation issued by the Department to the Contractor for a purchase of Services in accordance with the terms and conditions of the Contract. The Purchase Instrument should reference the Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, claims, and any other requirements deemed necessary by the Department.
- xi. **"Parent"**, in accordance with 34 CFR 303.27, means:
  - a. A biological or adoptive parent of a child;
  - b. A foster parent;
  - c. A guardian generally authorized to act as the child's parent, or authorized to make early intervention, education, health or developmental decisions for the child (but not the State if the child is a ward of the State) ;
  - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or,
  - e. An educational surrogate who has been appointed by the Office of Special Education.
- xii. **"Services"** means the services and deliverables as provided for in this Contract.
- xiii. **"Service Provider"** means any individual or agency credentialed by an Early Intervention Coordinator (EIC) to provide BCW services.
- xiv. **"Subcontract"** means any contract between the Service Provider and a third party, including another Service Provider, to perform a specified part of the Service Provider's obligations under this Agreement.
- xv. **"Subcontractor"** means any third party who has a contract with the Service Provider to perform a specified part of the Service Provider's obligation under this Agreement.
- xvi. **"Suspension"** means the temporary interruption of the Agreement by the Department subject to a period of time determined by the Department. Reinstatement is contingent on compliance with the provisions of the Agreement as determined by the Department.

## 2. General Information

The purpose of this Agreement is to establish the obligations and expectations between the Department and the Service Provider, and to ensure that quality services are made available to eligible children and their families according to Part C of the "Individuals with Disabilities Education Improvement Act of 2004" (IDEA), Public Law 108-446 otherwise known as Part C or the Early Intervention Program for Infants and Toddlers with Disabilities. In Georgia, this program is known as BCW/Part C of the Individual with Disabilities Education Act (IDEA), Public Law 108-446.

The intent of IDEA is for participating agencies and individual providers to plan and provide services collaboratively in order to deliver a comprehensive, coordinated and quality program of services to each eligible child and family. Interagency coordination

and communication are essential to achieving programmatic outcomes for children and families.

By signing this Agreement, the Service Provider represents to the Department that it is willing and able to provide the support and resources needed to implement the BCW service delivery model.

## **B. INDEPENDENT CONTRACTOR**

The Service Provider is an independent contractor for whom no federal or state income tax will be deducted by the Department, and for whom no retirement benefits, workers' compensation protection, survivor benefit insurance, unemployment insurance, group life insurance, vacation and sick leave, liability protection, or similar benefits available to Department employees will accrue.

The Department and the District will not provide office space or supplies. In addition, there will be no compensation for registration or travel for meetings or conferences.

## **C. HOLD HARMLESS**

The Service Provider will indemnify, defend, and save harmless the State of Georgia, the Georgia Department of Public Health, and the Local Board of Health, its officers, agents, and employees from any claims and losses sustained by any person or entity who may be injured or damaged by the Service Provider in the performance of this Agreement, as well as any claims and losses sustained by any contractors, subcontractors, or entities furnishing services or materials at the request of the Service Provider in connection with the performance of this Agreement.

## **D. SERVICE PROVIDER RESPONSIBILITIES**

The Service Provider agrees to:

### **1. Standards and Credentialing**

- a) Enroll as a provider in the Georgia Fee-for-Service (FFS) Medicaid/Peachcare for Kids Program, pursuant to the Georgia Department of Community Health (DCH) policies and procedures, if providing a FFS Medicaid reimbursable service. *Exclusions from FFS Medicaid enrollment include: special instructors, nurses in BCW who only review medical records, interpreters and translators, non-licensed family trainers, parent educators and vision teachers.*
- b) Enroll as a provider in one (1) or more Georgia Medicaid Care Management Organizations (CMO) pursuant to the CMO's policies and procedures if providing a Medicaid CMO reimbursable service for children enrolled in the respective CMO. *Exclusions from Medicaid CMO enrollment include: service coordinators, special instructors, interpreters and translators, vision teachers, nurses in BCW who only review medical records, parent educators, non-licensed family trainers and transportation company providers.*
- c) Enroll in the Babies Information and Billing System (BIBS) as a Service Provider by completing the required forms as listed on the BIBS website <http://dph.georgia.gov/Babies-Cant-Wait>.

- d) Refer all potentially eligible children to the BCW system point of entry within two (2) days of identification. The District will determine eligibility for BCW and perform intake and other supportive services prior to the Individualized Family Service Plan (IFSP).
- e) Meet and maintain all applicable and necessary standards and regulations for licensing, credentialing, program licensure, and funding requirements for services provided and the physical facilities, in accordance with the ADA standards, which services are made available as applicable.
- f) Complete, once every five (5) years, a criminal history check for every person performing services under this Agreement in accordance with BCW requirements. The Service Provider is responsible for the cost of this criminal history check.
- g) Agree to submit to local district Early Intervention Coordinator (EIC), within 30 business days prior to contract execution:
  - i. Copy of professional license, if applicable.
  - ii. Proof of Medicaid identification number, if applicable.
  - iii. Copy of service coordinator certificate, if applicable.
  - iv. Copy of criminal history check performed within the last five (5) years.
  - v. Copy of Liability Insurance, excluding Language Interpreters/Translators.
  - vi. Copy of college transcript for non-licensed providers and service coordinators.
- h) Furnish the Department proof of certificates of insurance, described in this Agreement, within ten (10) business days of contract execution and prior to any renewal period:
  - i. Professional liability (malpractice) insurance for services in this Agreement with a minimum of \$1,000,000 per occurrence / \$3,000,000 in aggregate;
  - ii. Worker's compensation, unless exempt; and
  - iii. Commercial General liability insurance covering all operations and the indemnification clause in this Agreement with a minimum of \$1,000,000 per occurrence / \$2,000,000 in aggregate. Sole proprietors or corporate entities employing one (1) service provider shall be exempt from this requirement.
- i) Certify that the Service Provider has not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. If at any time during the term of this Provider Agreement, the Service Provider is debarred, suspended, or declared ineligible from participating in government contracts, for whatever reason, the Service Provider shall immediately notify Department and District of debarment by the State or placement on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

- j) Ensure that its agents or subcontractors are subject to at least the same obligations that apply to the Service Provider and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of protected health information (“PHI”), that are applicable to this Agreement.
- k) Comply with all applicable state and federal laws, rules and regulations regarding a drug-free workplace - (e.g. the Drug-Free Workplace Act of 1988 (34 CFR Part 85, Subpart F); Executive Order 12549, Debarment and Suspension (34 CFR Part 85).
- l) Meet and maintain all standards, guidelines, and program policies as set forth by the Department for Part C implementation in Georgia, described in the BCW Fiscal Policy Manual and Supporting Bulletins, located on DPH website at website <http://dph.georgia.gov/Babies-Cant-Wait>.
- m) Refrain at all times from divulging any information concerning the child or family to an unauthorized person without the informed, written consent of the parent(s) and protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages pursuant to the Family Educational Rights and Privacy Act (FERPA 20 U.S.C. § 1232g; 34 C.F.R. Part 99) and the Individuals with Disabilities Education Act (IDEA, 34 C.F.R. Part 300).
- n) Notify the Department and the District in writing within thirty (30) days of a change in any of the following: ownership, corporate name, tax identification number, licensure, certification, registration status, mailing address, email address (used for BCW), contact phone number or change in certification/licensure status, CMO enrollment, and insurance coverage.
- o) Notify the Department and District in writing within thirty (30) days of the filing if at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against the Service Provider.
- p) Notify the Department within ten (10) business days of notification for any investigation of misconduct, fraud, abuse, or termination by Medicaid/CMOs.
- q) Implement the use of universal safety precautions when providing direct service with each child to assist in controlling the spread of infectious disease;
- r) Not in any manner discriminate against any person because of ancestry, color, creed, disability (mental or physical) including HIV and AIDS, handicap, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, sex (including gender and gender identity), sexual orientation, or veteran status pursuant to Title VII of the Civil Rights Act of 1964, as amended, or in Section 504 of the Rehabilitation Act of 1973, as amended, and in any subsequent legislation pertaining to civil rights.
- s) Not engage in any form of unlawful harassment, including sexual harassment or power abuse, with respect to any persons with whom Service Provider may interact in the performance of this contract, and Service Provider will take all reasonable steps to prevent harassment from occurring.

## 2. Services and Documentation

- a) Respond to the parent or family of the child within three (3) business days from the receipt of a referral. Service Provider must enter the information related to the disposition of the referral into the BIBS, within seven (7) business days of each referral update.
- b) Provide early intervention services to any BCW eligible child upon referral by the District or by any authorized agent of the Department as set forth in the IFSP.
- c) Render early intervention services in accordance with accepted professional standards and policies established by the Department pursuant to those pertinent federal statutes and regulations. The services provided on behalf of children eligible for BCW Part C Early Intervention Services shall have the services provided in accordance with the Individual Family Service Plan (IFSP) as defined in the BCW Standards & Implementation Manual and the Notice of Infant/ Toddler & Family Rights under BCW.
- d) Provide initial BCW eligibility evaluations and/or assessments at no charge to the family or the family's private insurance, as required by federal Part C regulations. If consent to use personally identifiable information has been obtained, providers must bill FFS Medicaid, and Medicaid CMOs for initial eligibility evaluations or initial assessments for program planning. Private insurance must be billed for evaluations or assessments program planning that occur after the initial eligibility evaluations or initial assessments for program planning.
- e) Produce Provider Notes: Enter all eligibility documentation and progress notes into BIBS within fourteen (14) calendar days of completion of service. If the Service Provider is a Service Coordinator, enter coordination notes into BIBS within 7 calendar days of completion of service.
- f) Participate in the IFSP 6-month review and annual review and provide written progress summary for each individual child/family receiving early intervention services. Written progress summary, evaluation and assessment documentation must be entered into BIBS within fourteen (14) calendar days of completion of service.
- g) Enter all supporting documentation into the BIBS data system in accordance with BCW requirements. Supporting documentation to include provider progress notes, claims: date of service, authorizations, Current Procedural Terminology (CPT) codes, units of service, International Classification of Diseases (ICD-CM) codes, and reimbursement rate received for all services provided to children and families.
- h) Service Providers must complete a parent signed voucher documenting the service was rendered and must maintain this documentation in the Service Provider records. Vouchers are available on the DPH website at <http://dph.georgia.gov/Babies-Cant-Wait>.
- i) Always notify the assigned Service Coordinator of any planned or recommended changes in the delivery of services to eligible children under this Agreement prior to implementing any changes, including the termination of services prior to when the IFSP indicates the services will be terminated. This will allow the assigned Service Coordinator to meet required procedural safeguards timelines for five-calendar day written Parental Prior Notice.

### 3. Claim Submission and Reimbursement

- a) The Department shall be the payor of last resort and shall ONLY provide reimbursement for eligible early intervention services, at the BCW rate, not otherwise covered by the primary payor (FFS Medicaid, Medicaid CMO, or private insurance) , in accordance with the BCW Fiscal Policy manuals and Supporting Bulletin.
- b) The Department shall ONLY provide reimbursement for the difference between the private insurance payment and the BCW rate, where the private insurance rate is the lesser.

The Service Provider agrees to:

- a) Verify the child's eligibility with the primary payor(s) prior to rendering services.
- b) Obtain prior authorization from the primary payor not more than 45 days prior to beginning services with the eligible child and family; and maintain all required documentation needed for authorizations and entering claims information into the BIBS.
- c) Appeal directly to the appropriate Medicaid CMO, prior authorization denial of eligible services. Prior authorization denials for eligible services not resolved by the Medicaid CMO, within 25-days of the initial request, should be submitted to the Department for approval, in accordance with the BCW Fiscal Policy manual and supporting bulletins, which requires therapy providers to begin eligible early intervention services within 45 days of the referral.
- d) Submit claims for eligible services, not otherwise covered by the primary payor, directly to the Department, via BIBS, not more than sixty (60) days following the date(s) of service.
- e) Accept the FFS Medicaid and Medicaid CMO rate (or any portion) as payment in full.
- f) Submit claims reimbursed by the private insurer for eligible services, and corresponding Explanation of Benefits (EOB) or Remittance Advice (RA), to the Department, not more than thirty (30) days following receipt of payment.
- g) Appeal directly to the primary payor(s), all claims denied due to circumstances within the provider's control, including but not limited to filing errors, missing or incorrect information, initial or corrected claims filed past the timely filing deadline, etc. The Department will not process or provide reimbursement for claims denied for circumstances within the provider's control.
- h) Submit claims denied and appeal upheld by the primary payor(s), and the EOB/RA to the Department via the BIBS, not more than sixty (60) days following the primary payor's denial. The Department will not process or provide reimbursement claims submitted to the Department past the timely filing deadline.
- i) Refund, via check or money order, to the Department any duplicate payment, overpayment, or otherwise incorrect payment not more than thirty (30) days of



receipt of the payment or written notification of the incorrect payment, whichever is sooner. If applicable, funds may be recouped from future payments.

4. Records and Record Keeping

- a) Provide copies of, or access to, early intervention services records or other information to the Department and/or District upon request by the Department or District for the determination of BCW eligibility or BCW authorization of early intervention services or determination of the amount of payment for BCW services or auditing/monitoring purposes.
- b) Maintain accurate clinical records for a period of at least five years from discharge from early intervention services, or until any audit is completed and every exception resolved, whichever is longer. Permit access to these records by the Department, the District, the federal Departments of Health and Human Services and of Education or their assignees.

5. Training

- a) Attend any training that is mandatorily required by the Department or District.

6. District Requirements

- a) Refer to and comply with the additional district requirements described in Attachment 4—Additional District Requirements.

**E. RESPONSIBILITIES OF THE DEPARTMENT**

The Department agrees to:

- 1. Inform the Service Provider of the requirements and procedures to become an enrolled BCW Service Provider and of changes in those requirements and procedures.
- 2. Provide access to all appropriate policies and procedures, including complete copies of the BCW Standards and Implementation Manual, policy memos, Action Bulletins, relevant training notices and other necessary items in a timely manner.
- 3. Make best effort to pay all non-third party reimbursable services at the established BCW rates for eligible services provided and delivered to eligible children and their families as set forth in their IFSPs within thirty (30) days of submission of approved claims to the Department, via the BIBS, contingent upon the following: The Service Provider has entered all supporting documentation of the services delivered and an acceptance and confirmation from BIBS has been received. Claims, progress notes and other supporting documentation must be submitted in BIBS. The Department may deny claims due to incorrect claim data, failure to respond to a correctable claim's problem or data not being submitted within the timeframes specified in this Agreement.
- 4. Make best effort to pay the Service Provider at the established BCW rate, within thirty (30) days of submission and upon the presentation of a valid claim denial reflecting eligible services provided and delivered to eligible children and their families as set forth in their IFSPs. Claims, progress notes and other supporting documentation must be submitted to the Department via the BIBS, per established billing standards.

## **F. MUTUAL AGREEMENTS**

The Parties mutually agree to:

1. Ensure that federal fund sources or state early intervention (Part C) funds are used only when no other funds are available, in compliance with the Federal Part C payor of last resort requirement. Documentation of this payor of last resort requirement shall be reflected in the IFSP Meeting Notes and in the clinical record maintained by the child's assigned Service Coordinator.
2. Ensure the provision of early intervention services using appropriately credentialed and licensed providers and maintain the integrity of the IFSP process through accurate and timely implementation of the services as mutually determined and agreed to by the IFSP Team, and consented to in writing by the child's parents. Service Providers must meet training requirements established by the Department and District.
3. Ensure effective implementation of procedural safeguards for each eligible child and family; and each Service Provider shall ensure that family members are knowledgeable about the services being provided, and if applicable, transition activities within and from the Part C/Babies Can't Wait Program.
4. Participate in the planning and development of individual IFSPs. The Service Provider must ensure that all modifications to an existing IFSP are made through the assigned Service Coordinator, the IFSP process and discussed in the BCW team meeting. The Service Provider may not bill or receive reimbursement for services in excess of those services listed and amounts detailed on the IFSP, or change or terminate services for an eligible child without first notifying the child's assigned Service Coordinator prior to the anticipated date of service change so that the Service Coordinator has ample time to give the family five calendar day written prior notice.
5. Participate in routine monitoring and supervision activities as set forth by the Department and District, including self-assessment, on-site monitoring, data collection and reporting obligations, record or chart audits, financial audits, complaint investigation, and consumer satisfaction surveys.
6. The Department and the Service Provider agree that in the performance of this Agreement, there will be no discrimination against any person because of race, color, sex, sexual orientation, religion, national origin, ancestry, age, veteran status, disability, handicap or any other factor specified in Title VII of the Civil Rights Act of 1964, as amended, and in Section 504 of the Rehabilitation Act of 1973, as amended, and in any subsequent legislation pertaining to civil rights.

## **G. TERM, TERMINATION and SUSPENSION**

1. This Provider Agreement shall become effective upon DPH approval and remain in effect until June 30, 2015 subject to the provision for cancellation herein. The Department shall have the option, in its sole discretion, to renew the Contract for additional one-year terms, for up to four (4) renewal periods. Upon the Department's election, in its sole discretion, to renew any part of this Contract, the Service Provider shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the Department and the Service Provider. The Contract shall be renewed with the same terms and conditions unless otherwise agreed upon in writing by both parties.

2. **Termination for Cause.** The Department may terminate this Agreement immediately, notwithstanding the advance-notice provisions specified above, if:
  - i. The Service Provider breaches any of the terms or conditions of this Provider Agreement.
  - ii. The Department determines, in its sole discretion, that appropriated and otherwise unobligated funds are no longer able to satisfy the obligations of the Department under this Agreement.
  - iii. The Department discovers a petition in bankruptcy or similar proceeding has been filed by or against the Service Provider.
  - iv. The Service Provider is convicted of fraud
  - v. Adverse findings per the criminal history;
  - vi. The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a risk to life, health, or safety
  - vii. The Contractor fails to comply with confidentiality laws or obligations
3. In no event will the Department be obligated to pay for any services performed by the Service Provider after the effective date of termination. After sending or receiving notice of termination, the Service Provider agrees to continue to provide services up to 12:01 a.m. on the effective date of termination.
4. **Termination for Convenience.** Following thirty days' written notice, the Department may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination for convenience, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Services provided under the Contract to the Department up to and including the date of termination.
5. **Suspension.** The Department may suspend this Agreement immediately if:
  - i. Service Provider loses their certification
  - ii. Service Provider incurs a lapse in licensure
  - iii. Service Provider incurs a lapse in liability insurance
  - iv. Service Provider is under investigation for misconduct, fraud, or abuse
  - v. Service Provider is a Service Coordinator or non-licensed provider and does not obtain the required number of continuing education units (CEUs)
  - vi. There is a loss of funding under which the Department funds the BCW program

## **H. CONFIDENTIALITY REQUIREMENTS**

1. The Parties to this Agreement shall treat all information about the children and families served by BCW as confidential information and shall not use any information so obtained, in any manner, except as may be necessary for the proper discharge of their legal obligations.
2. The Parties to this Agreement also agree to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its amendments, rules, procedures, and regulations and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), regarding confidentiality of information about individuals receiving services.
3. Service Provider agrees to comply with the terms and conditions of the Business Associate Agreement, which is attached hereto as Attachment 5 and made a part of this Agreement.

## **I. CONFLICT RESOLUTION**

The parties agree to make good faith efforts through personal negotiations to resolve any dispute that may arise between them. The laws of the State of Georgia shall govern all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. In the event any civil action is commenced in connection with this Agreement, such civil action shall be brought in the State or Superior Court of Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.

In the event of a dispute, the Department may, in its discretion, elect to refer any dispute to non-binding mediation, or to binding arbitration under the auspices of the American Arbitration Association.

## **J. NOTICE**

All notices under this Agreement shall be deemed duly given upon delivery, if delivered by hand, or three calendar days after posting, if sent by registered or certified mail, return receipt requested, to a Service Provider at the address on page 1, Paragraph 7 of this Agreement and to the State Office at the address set forth below.

Georgia Department of Public Health  
Attn: Babies Can't Wait  
2 Peachtree Street, NW, 11<sup>th</sup> Floor  
Atlanta, Georgia 30303

## **K. AMENDMENT**

No amendment, waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either Party unless confirmed in writing by both Parties.

**L. CONTRACT ASSIGNMENT**

The Parties to this Agreement shall not assign this Agreement, in whole or in part, without the prior written consent of the Georgia Department of Public Health, and any attempted assignment without such approval shall be null and void.

**M. SEVERABILITY**

If any provision of this Agreement is declared to be unenforceable, the remainder of this Agreement shall continue to be of full force and effect.

**N. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations, or contracts.

**ATTACHMENT 2**

**VENDOR LOBBYIST DISCLOSURE AND REGISTRATION CERTIFICATION FORM**

Pursuant to Executive Order Number 10.01.03.01 (the "Order"), which was signed by Governor Sonny Perdue on October 1, 2003, Contractors with the state are required to complete this form. The Order requires "Vendor Lobbyists," defined as those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the state or those who oppose such a contract, to certify that they have registered with the State Ethics Commission and filed the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. Consequently, every vendor desiring to enter into a contract with the state must complete this certification form. False, incomplete, or untimely registration, disclosure, or certification shall be grounds for termination of the award and contract and may cause recoupment or refund actions against Contractor.

In order to be in compliance with Executive Order Number 10.01.03.01, please complete this Certification Form by designating only one of the following:

Contractor does not have any lobbyist employed, retained, or affiliated with the Contractor who is seeking or opposing contracts for it or its clients. Consequently, Contractor has not registered anyone with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

Contractor does have lobbyist(s) employed, retained, or affiliated with the Contractor who are seeking or opposing contracts for it or its clients. The lobbyists are:

---

---

---

Contractor states, represents, warrants, and certifies that it has registered the above named lobbyists with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Signatory

## ATTACHMENT 3 DISTRICTS SERVED/SERVICES PROVIDED

### A. DISTRICTS/COUNTIES SERVED

Service Provider will provide approved services in the following district(s). Check where therapy services will be provided. If you will only do an evaluation in a county, do NOT check that county:

<p><b>District 1-1 Northwest (Rome)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Bartow      <input type="checkbox"/> Gordon</p> <p><input type="checkbox"/> Catoosa      <input type="checkbox"/> Haralson</p> <p><input type="checkbox"/> Chattooga      <input type="checkbox"/> Paulding</p> <p><input type="checkbox"/> Dade      <input type="checkbox"/> Polk</p> <p><input type="checkbox"/> Floyd      <input type="checkbox"/> Walker</p>	<p><b>District 5-1 South Central (Dublin)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Bleckley      <input type="checkbox"/> Pulaski</p> <p><input type="checkbox"/> Dodge      <input type="checkbox"/> Telfair</p> <p><input type="checkbox"/> Johnson      <input type="checkbox"/> Treutlen</p> <p><input type="checkbox"/> Laurens      <input type="checkbox"/> Wheeler</p> <p><input type="checkbox"/> Montgomery      <input type="checkbox"/> Wilcox</p>	<p><b>District 8-2 Southwest (Albany)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Baker      <input type="checkbox"/> Lee</p> <p><input type="checkbox"/> Calhoun      <input type="checkbox"/> Miller</p> <p><input type="checkbox"/> Colquitt      <input type="checkbox"/> Mitchell</p> <p><input type="checkbox"/> Decatur      <input type="checkbox"/> Seminole</p> <p><input type="checkbox"/> Dougherty      <input type="checkbox"/> Terrell</p> <p><input type="checkbox"/> Early      <input type="checkbox"/> Thomas</p> <p><input type="checkbox"/> Grady      <input type="checkbox"/> Worth</p>
<p><b>District 1-2 North GA (Dalton)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Cherokee      <input type="checkbox"/> Murray</p> <p><input type="checkbox"/> Fannin      <input type="checkbox"/> Pickens</p> <p><input type="checkbox"/> Gilmer      <input type="checkbox"/> Whitfield</p>	<p><b>District 5-2 North Central (Macon)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Baldwin      <input type="checkbox"/> Jones</p> <p><input type="checkbox"/> Bibb      <input type="checkbox"/> Monroe</p> <p><input type="checkbox"/> Crawford      <input type="checkbox"/> Peach</p> <p><input type="checkbox"/> Hancock      <input type="checkbox"/> Putnam</p> <p><input type="checkbox"/> Houston      <input type="checkbox"/> Twiggs</p> <p><input type="checkbox"/> Jasper      <input type="checkbox"/> Washington</p> <p><input type="checkbox"/> Wilkinson</p>	<p><b>District 9-1 Coastal (Savannah)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Bryan      <input type="checkbox"/> Glynn</p> <p><input type="checkbox"/> Camden      <input type="checkbox"/> Liberty</p> <p><input type="checkbox"/> Chatham      <input type="checkbox"/> Long</p> <p><input type="checkbox"/> Effingham      <input type="checkbox"/> McIntosh</p>
<p><b>District 2 North (Gainesville)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Banks      <input type="checkbox"/> Lumpkin</p> <p><input type="checkbox"/> Dawson      <input type="checkbox"/> Rabun</p> <p><input type="checkbox"/> Forsyth      <input type="checkbox"/> Stephens</p> <p><input type="checkbox"/> Franklin      <input type="checkbox"/> Towns</p> <p><input type="checkbox"/> Habersham      <input type="checkbox"/> Union</p> <p><input type="checkbox"/> Hall      <input type="checkbox"/> White</p> <p><input type="checkbox"/> Hart</p>	<p><b>District 6 East Central (Augusta)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Burke      <input type="checkbox"/> Lincoln</p> <p><input type="checkbox"/> Columbia      <input type="checkbox"/> McDuffie</p> <p><input type="checkbox"/> Emanuel      <input type="checkbox"/> Richmond</p> <p><input type="checkbox"/> Glascock      <input type="checkbox"/> Screven</p> <p><input type="checkbox"/> Jefferson      <input type="checkbox"/> Taliaferro</p> <p><input type="checkbox"/> Jenkins      <input type="checkbox"/> Warren</p> <p><input type="checkbox"/> Wilkes</p>	<p><b>District 9-2 Southeast (Waycross)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Appling      <input type="checkbox"/> Coffee</p> <p><input type="checkbox"/> Atkinson      <input type="checkbox"/> Evans</p> <p><input type="checkbox"/> Bacon      <input type="checkbox"/> Jeff Davis</p> <p><input type="checkbox"/> Brantley      <input type="checkbox"/> Pierce</p> <p><input type="checkbox"/> Bulloch      <input type="checkbox"/> Tattnell</p> <p><input type="checkbox"/> Candler      <input type="checkbox"/> Toombs</p> <p><input type="checkbox"/> Charlton      <input type="checkbox"/> Ware</p> <p><input type="checkbox"/> Clinch      <input type="checkbox"/> Wayne</p>
<p><b>District 3-1 Cobb/Douglas</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Cobb      <input type="checkbox"/> Douglas</p>	<p><b>District 7 West Central (Columbus)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Chattahoochee      <input type="checkbox"/> Quitman</p> <p><input type="checkbox"/> Clay      <input type="checkbox"/> Randolph</p> <p><input type="checkbox"/> Crisp      <input type="checkbox"/> Schley</p> <p><input type="checkbox"/> Dooly      <input type="checkbox"/> Stewart</p> <p><input type="checkbox"/> Harris      <input type="checkbox"/> Sumter</p> <p><input type="checkbox"/> Macon      <input type="checkbox"/> Talbot</p> <p><input type="checkbox"/> Marion      <input type="checkbox"/> Taylor</p> <p><input type="checkbox"/> Muscogee      <input type="checkbox"/> Webster</p>	<p><b>District 10 Northeast (Athens)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Barrow      <input type="checkbox"/> Madison</p> <p><input type="checkbox"/> Clarke      <input type="checkbox"/> Morgan</p> <p><input type="checkbox"/> Elbert      <input type="checkbox"/> Oconee</p> <p><input type="checkbox"/> Greene      <input type="checkbox"/> Oglethorpe</p> <p><input type="checkbox"/> Jackson      <input type="checkbox"/> Walton</p>
<p><b>District 3-2 Fulton</b></p> <p><input type="checkbox"/> Fulton</p>	<p><b>District 3-3 Clayton (Jonesboro)</b></p> <p><input type="checkbox"/> Clayton</p>	<p><b>District 3-4 East Metro (Lawrenceville)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Gwinnett      <input type="checkbox"/> Rockdale</p> <p><input type="checkbox"/> Newton</p>
<p><b>District 3-5 DeKalb</b></p> <p><input type="checkbox"/> DeKalb</p>	<p><b>District 4 LaGrange</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Butts      <input type="checkbox"/> Lamar</p> <p><input type="checkbox"/> Carroll      <input type="checkbox"/> Meriwether</p> <p><input type="checkbox"/> Coweta      <input type="checkbox"/> Pike</p> <p><input type="checkbox"/> Fayette      <input type="checkbox"/> Spalding</p> <p><input type="checkbox"/> Heard      <input type="checkbox"/> Troup</p> <p><input type="checkbox"/> Henry      <input type="checkbox"/> Upson</p>	<p><b>District 8-1 South (Valdosta)</b></p> <p><i>All Counties</i></p> <p><input type="checkbox"/> Ben Hill      <input type="checkbox"/> Irwin</p> <p><input type="checkbox"/> Berrien      <input type="checkbox"/> Lanier</p> <p><input type="checkbox"/> Brooks      <input type="checkbox"/> Lowndes</p> <p><input type="checkbox"/> Cook      <input type="checkbox"/> Tift</p> <p><input type="checkbox"/> Echols      <input type="checkbox"/> Turner</p>

**B. SERVICES PROVIDED**

The Service Provider has represented to the Department the ability to provide the following approved service(s) that have been credentialed by the Early Intervention Coordinator (EIC) in the district(s) which they provide services:

Assistive Technology Services

- Assistive Technology Provider
- Audiologist

Family Training (FT) and Counseling Services

- FT Counseling-Licensed Provider
- FT Social Worker-Licensed Provider
- FT Speech Pathologist-Licensed Provider
- FT Early Interventionist- Non-Licensed Provider

Health Services

- Physician
- Physician Assistant

Language Interpreters/Translators Services

- Interpreters for the Deaf
- Translator – Non Spanish Foreign Language
- Translator – Spanish Language

Nursing Services

- Registered Nurse
- Licensed Practical Nurse
- Licensed Nurse Practitioner

Nutrition Services

- Dietitian

Occupational Therapy Services

- Occupational Therapist

Physical Therapy Services

- Physical Therapist

Psychological Services

- Psychologist

Service Coordination Services

- Service Coordinator
- Intake Coordinator

Social Work Services

- Social Worker

Special Instruction Services

- Early Intervention Assistant
- Early Interventionist
- Early Intervention Specialist

Speech-Language Pathology Services

- Speech and Language Pathologist
- Clinical Fellowship Year (CFY)

Transportation Services

- Transportation Company Provider

Vision Services

- Optometrist
- Ophthalmologist
- Vision Teacher
- Vision Educator

**SERVICE DESCRIPTION:**

\_\_\_\_\_ Service Provider agrees to perform all services selected in Section B (Services Provided) in all districts selected in Section A (Districts/Counties Served).

**OR**

\_\_\_\_\_ Service Provider will perform certain services selected in Section B (Services Provided) in different districts selected in Section A (Districts/Counties Served) as follows:

- District \_\_\_\_\_ Services approved to perform \_\_\_\_\_
- District \_\_\_\_\_ Services approved to perform \_\_\_\_\_
- District \_\_\_\_\_ Services approved to perform \_\_\_\_\_

*(If performing services in more than 3 Districts, attach a separate page with the remaining information.)*

Provider/Agency Name \_\_\_\_\_ Date \_\_\_\_\_



**ATTACHMENT 4  
ADDITIONAL DISTRICT REQUIREMENTS**

For the indicated “districts served” in Attachment 3 Section A of this contract, the Service Provider agrees to the following listed District requirements:

District	District Requirements
1-1 Northwest (Rome)	None
1-2 North Georgia (Dalton)	None
2 North (Gainesville)	None
3-1 Cobb-Douglas	<ol style="list-style-type: none"> <li>1. Service Providers are required to attend 3 hrs of Interagency Coordinating Council (ICC) events or activities sponsored by the Local ICC. Service Provider not provided any reimbursement or payment for these activities.</li> <li>2. Annual level background check.</li> <li>3. If district funds available, new provider shadowing of evaluations and intervention sessions paid at \$50.00 per hour (up to 5 hours).</li> <li>4. If district funds are available, new provider training paid at \$20.00 per hour for licensed providers and \$15.00 per hour for non-licensed providers, up to 10 hours. Payments made in 3 installments: after 3 months of service - 1<sup>st</sup> payment of 1/3 of total, after 6 months of services - 2<sup>nd</sup> payment of 1/3 of total) and after 9 months of service - last payment of 1/3 of total).</li> </ol>
3-2 Fulton	None
3-3 Clayton (Jonesboro)	None
3-4 East Metro (Lawrenceville)	Refer to Easter Seal North Georgia (ESNG) Provider Agreement contract
3-5 DeKalb	Service Providers are required to attend two (2) Child Find/ICC meetings/events. Service Provider not provided any reimbursement or payment for these activities; however District may supplement with possible CEUs and/or SCEIS credits.
4 LaGrange	None
5-1 South Central (Dublin)	None
5-2 North Central (Macon)	<ol style="list-style-type: none"> <li>1. Evaluations and assessments must be entered in BIBS within 3 calendar days; first day being day evaluation was completed.</li> <li>2. Test protocols must be turned in by the 10th of each month.</li> <li>3. Service Coordinators must enter the IFSP documentation into BIBS within 5 calendar days of completion and have their paperwork turned into the district office within 8 calendar days.</li> <li>4. Parent signed vouchers must be turned in monthly, typically by the 10th of the month for the previous month of supports.</li> <li>5. Service Coordinators must attend monthly scheduled Service Coordinator meetings. Service Provider not provided any reimbursement or payment for these required meetings. Service Coordinator is responsible for reading the meeting minutes and getting any hand outs etc. for any meeting that they do not attend.</li> <li>6. Background check and drug screening policy 6.2.3.1 - A Georgia Crime Information Center (GCIC) and National Crime Information Center (NCIC) background check is required. Background checks completed within 6 months prior to the contract date may be accepted. A drug screen is required. Providers may be subject to random drug screenings. Providers are responsible for the costs associated with the drug screening and background checks.</li> </ol>
6 East Central (Augusta)	None
7 West Central (Columbus)	None

District	District Requirements
8-1 South (Valdosta)	<ol style="list-style-type: none"> <li>1. Service Coordinators must attend at least ten (10) monthly scheduled BCW Staff Meetings. Service Provider not provided any reimbursement or payment for these required meetings. Service Coordinator is responsible for learning what was discussed at any meeting they do not attend.</li> <li>2. Service Coordinators are required to turn in all documents within ten (10) calendar days of any IFSP meeting. All service coordination notes are to be turned in by the 5th of every month.</li> <li>3. Service Coordinators must complete six (6) public awareness activities per quarter. Public Awareness sheets must be turned in at the end of each quarter.</li> <li>4. Service Coordinators are responsible for checking their work email and BCW mailbox minimally every three (3) business days for information and returned documents from the Local Lead Agency. Calls from Service Coordinator Supervisor and/or EI Coordinator are to be returned within twenty-four (24) business hours unless extenuating circumstances.</li> </ol>
8-2 Southwest (Albany)	<ol style="list-style-type: none"> <li>1. Evaluations and assessments must be entered in BIBS within 3 calendar days; first day being day evaluation was completed.</li> <li>2. Service Coordinators must enter the IFSP documentation into BIBS within 5 calendar days of completion and have their paperwork turned into the district office within 8 calendar days.</li> <li>3. Parent signed vouchers must be turned in monthly, typically by the 10th of the month for the previous month of supports.</li> </ol>
9-1 Coastal (Savannah)	<p>Service providers must attend three (3) out of six (6) ICC annual events. Service Provider not provided any reimbursement or payment for these activities.</p>
9-2 Southeast (Waycross)	<ol style="list-style-type: none"> <li>1. Service Coordinators must enter the IFSP documentation into BIBS within 5 calendar days of completion and have their paperwork turned into the district office within ten (10) calendar days.</li> <li>2. Service Coordinators must attend at least ten (10) monthly scheduled Service Coordinator meetings. Service Provider not provided any reimbursement or payment for these required meetings. Service Coordinator is responsible for reading the meeting minutes and getting any handouts etc. for any meeting that they do not attend.</li> <li>3. Special Instructors must attend all scheduled Special Instructor meetings, not to exceed once a quarter, or request an approved absence in advance by contacting the Early Intervention Coordinator. Service Provider not provided any reimbursement or payment for these required meetings. The special Instructor is required to acquire any information shared during quarterly meetings.</li> </ol>
10 Northeast (Athens)	<ol style="list-style-type: none"> <li>1. Service Coordinators and Special Instructors must attend all scheduled meetings with Early Intervention Coordinator, not to exceed once per month for Service Coordinators and once per quarter for Special Instructors, or request an approved absence in advance from the Early Intervention Coordinator. Contractors not provided any compensation for meeting attendance.</li> <li>2. All initial evaluations completed must be submitted no later than 2:00 PM on Tuesday of the following week. Test protocols must be turned in by the 10th of each month for all evaluations completed the previous month.</li> <li>3. All contractors must complete two individual face to face meetings per contract year with the Early Intervention Coordinator to review compliance with contract requirements and BCW Standards.</li> </ol>

## ATTACHMENT 5

### BUSINESS ASSOCIATE AGREEMENT

**WHEREAS**, the Georgia Department of Public Health (“DPH”) and <Contractor Name> (“Contractor”) have entered into the attached Contract, whereby Contractor will provide functions, activities, or services to DPH involving the use of Protected Health Information (“PHI”) as defined by Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);

**WHEREAS**, DPH is required by HIPAA to enter into a Business Associate Agreement with entities which provide functions, activities, or services on behalf of DPH involving the use of PHI;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, DPH and Contractor agree as follows:

1. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in HIPAA and Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or “HITECH”), and in the implementing regulations of HIPAA and HITECH, now and as they may be amended in the future. Together HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the “Privacy Rule and the Security Rule.”
2. Subject to the limitations of this Agreement, Contractor may use or disclose PHI only to the extent necessary to meet its responsibilities as set forth in the Contract, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by DPH.
3. Contractor warrants that the individuals described on Attachment D-1 require access to PHI in order to perform services under the Contract. Contractor shall update Attachment D-1 as necessary.
4. Contractor warrants that the individuals described on Attachment D-2 require access to a DPH information system in order to perform services under the Contract. Contractor shall notify the DPH Project Leader no less than 24 hours in advance if any other individuals will need access to the DPH information system
5. Contractor warrants that only individuals designated by title or name on Attachments D-1 and D-2 will request or access PHI from DPH, that they will only do so in the performance of services under the Contract, and that these individuals will only request the minimum necessary amount of information in order to perform those services.
6. The parties agree that Contractor is a “Business Associate” to DPH within the meaning of the Privacy and Security Rule. Contractor shall comply with all obligations of the Privacy Rule and Security Rule that apply to DPH, and shall comply with all Privacy Rule and Security Rule requirements that apply to Business Associates. Contractor further warrants that it maintains and follows written policies and procedures to achieve and maintain compliance with the Privacy and Security Rules that apply to Business Associates, and that it will update such policies and procedures as necessary in order to comply with the and changes to the

Privacy and Security Rules. These policies and procedures, and evidence of their implementation, shall be provided to DPH upon request.

7. All communications related to compliance with this Agreement will be forwarded to the following Privacy and Security Contacts:

A. At DPH: Simone Brathwaite  
HIPAA Privacy Officer, Office of General Counsel  
2 Peachtree Street, 9<sup>th</sup> Floor  
[spbrathwaite@dhr.state.ga.us](mailto:spbrathwaite@dhr.state.ga.us)  
404-232-1682

Juandolyn Kashiri, CISM  
Information Security Officer (ISO)  
2 Peachtree Street, NW  
[Juandolyn.Kashiri@dph.ga.gov](mailto:Juandolyn.Kashiri@dph.ga.gov)  
404.463.0802

B. At Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Contractor further agrees:

- A. Contractor will not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or law.
- B. Contractor will establish, maintain and use appropriate administrative, physical, and technical safeguards to prevent loss, use, or disclosure of the PHI other than as provided for by this Agreement, the Contract, or law.
- C. Contractor will implement and use administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of DPH.
- D. In addition to the safeguards described above, Contractor shall impose access controls that restrict access to PHI to the individuals listed on D-1 and D-2, as amended from time to time.
- E. Contractor will password-protect and encrypt all electronic PHI for transmission and for storage on portable computers and media devices.
- F. Contractor will mitigate, to the extent practicable, any harmful effect that result from a loss, use, or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract, or law. Contractor shall bear the costs of mitigation, which shall include the reasonable costs of credit monitoring or credit restoration when the use or disclosure results in exposure of information commonly used in identity theft

(including name, date of birth, and Social Security Number.)

- G. Contractor will maintain a written Business Associate Agreement with any agent or subcontractor that will receive, maintain, or transmit on Contractor's behalf any PHI received from DPH. Such Agreement shall provide that Contractor's agent or subcontractor agrees to the same restrictions and conditions of this Agreement with respect to PHI that Contractor receives from DPH, and that Contractor's agent or subcontractor assumes the same duties with regard to the PHI that Contractor has assumed under this Agreement. Contractor further agrees that if it becomes aware of a pattern of activity or practice of its agent or subcontractor that constitutes a material breach or violation of its Agreement with Contractor, then Contractor shall take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the Agreement.
- H. Contractor will immediately report to DPH any known or suspected loss, use, or disclosure of PHI that is not authorized by this Agreement, the Contract, or law.
- I. Make an initial report to DPH in writing in such form as DPH may require within three business days after Contractor learns of a suspected unauthorized loss, use, or disclosure of PHI. This report will include the following:
- i. The nature of the loss, use, or disclosure, a brief description of what happened, the date it occurred, and the date Contractor discovered the incident;
  - ii. The specific data points of PHI involved in the loss, use, or disclosure;
  - iii. The names of all persons with knowledge of the loss, use, or disclosure, and the names or categories of persons who may have obtained access to the PHI as a result;
  - iv. The corrective or investigative actions taken or to be taken in order to mitigate harmful effects, and to prevent further losses, uses, or disclosures;
  - v. Recommended protective actions to be taken by individuals whose PHI may have been lost, used, or disclosed; and
  - vi. Whether Contractor believes that the loss, use, or disclosure constitutes a "Breach" as defined by 45 CFR 164.402.
- J. Contractor will, upon request by the DPH Privacy Officer or the DPH Information Security Officer, provide a complete report of the Breach to DPH including a root cause analysis and a proposed corrective action plan. Upon request by DPH, Contractor shall implement the corrective action plan and provide proof of implementation.
- K. Contractor will report to the DPH Privacy Officer and the DPH Information Security Officer any successful unauthorized access, modification, or destruction of PHI or

interference with system operations in Contractor's information systems as soon as practicable but in no event later than three business days of discovery.

- L. Contractor will cooperate with DPH and provide assistance necessary for DPH to determine whether a Breach has occurred, and whether notification of the Breach is legally required or otherwise appropriate.
  - M. If DPH determines that a Breach has occurred as a result of Contractor's loss, use, or disclosure of PHI or failure to comply with obligations set forth in this Agreement or in the Privacy or Security Rule, then Contractor will provide all required notices to affected individuals, the Secretary of the U. S. Department of Health and Human Services, and the media, at Contractor's expense and in accordance with 45 C.F.R. Part 164 subpart D. Such notices shall be submitted in advance to the DPH Privacy Officer for approval.
  - N. Contractor will honor requests by DPH or by an individual for access to the individual's own PHI in accordance with 45 CFR 164.524; to make PHI available for amendment, and to incorporate such amendments into a designated record set in accordance with 45 CFR 164.526; to provide an accounting of all disclosures of the individual's PHI in accordance with 45 CFR 164.528; to document any such requests and the Contractor's response; and to notify DPH as soon as practicable of any such requests.
  - O. Contractor will provide access to the Secretary of the U.S. Department of Health and Human Services to Contractor's books and records and policies, practices, or procedures relating to the use and disclosure of PHI received from DPH, or created or received by Contractor on behalf of DPH.
  - P. In addition to any indemnification provisions in the Contract, Contractor will indemnify DPH from any loss or liability resulting from any violation of the HIPAA Privacy and Security Rules or Breach that arises from the conduct or omission of Contractor or its employees, agents, or subcontractors. Such liability will include without limitation all actual and direct costs, settlement payments, damages awarded, civil penalties, litigation expenses, and attorneys' fees incurred by DPH.
9. Unless otherwise provided by law, DPH agrees that it will:
- A. Notify Contractor of any new limitation in DPH's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if such limitation will affect Contractor's use or disclosure of PHI.
  - B. Notify Contractor of any change in, or revocation of, permission by an individual for DPH to use or disclose PHI if such change or revocation will affect Contractor's use or disclosure of PHI.
  - C. Notify Contractor of any restriction regarding its use or disclosure of PHI that DPH has agreed to in accordance with the Privacy Rule if such restriction will affect Contractor's use or disclosure of PHI.
  - D. Before agreeing to any changes in or revocation of permission by an individual, or any

restriction to use or disclose PHI, DPH will contact Contractor to determine feasibility of compliance. DPH agrees to assume all costs incurred by Contractor in compliance with such special requests.

10. The effective date of this Agreement shall be the same as that of the Contract. Unless otherwise terminated, this Agreement shall continue until all of the PHI provided by DPH to Contractor, or created or received by Contractor on behalf of DPH, is destroyed or returned to DPH.

A. Termination for Cause. Upon violation of a material term of this Agreement by Contractor, DPH may provide an opportunity for Contractor to cure the breach and, if Contractor fails to cure the breach, terminate the contract upon 30 calendar days' notice.

B. Termination for Convenience. In the event that the Contract is terminated for any reason, then DPH may terminate this Agreement for convenience.

C. Effect of Termination.

i. Upon termination of this Agreement, DPH shall determine whether return or destruction of PHI is feasible. If so, then Contractor shall at the direction of DPH either destroy the PHI or to return it to DPH, keeping no copies. If DPH determines that return or destruction is not feasible, then Contractor shall continue to extend the protections of this Agreement to the PHI for as long as Contractor maintains the PHI, and shall limit the use and disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible.

ii. The obligations imposed upon Contractor with respect to its care, use, and disclosure of PHI, and its duty to comply with the Privacy and Security Rule with regard to such PHI, shall survive the termination of this Agreement and the termination or completion of the Contract.

11. Nothing in this Agreement is intended to confer any rights, remedies, obligations, or liabilities upon anyone other than DPH and Contractor.

12. This Agreement is intended to supplement, and not to diminish or alter, the terms and conditions of the Contract.

**<Contractor Name>**

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**ATTACHMENT D-1**

**Individuals Permitted to Receive, Use, and Disclose DPH PHI**

The following individual, as employees or agents of Contractor, need access to DPH Protected Health Information in order for Contractor to perform the services described in the Contract:

- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_
- \_\_\_\_\_ Title: \_\_\_\_\_

Approved methods of secure delivery of PHI between Contractor and DPH:

- Secure FTP file transfer (preferred)
- Encrypted email or email sent through “secure tunnel” approved by DPH Information Security Officer
- Email of encrypted document (password must be sent by telephone only)
- Encrypted portable media device and tracked delivery method

Contractor must update this list as needed and provide the updated form to the DPH Project Leader. Use of DPH Protected Health Information by individuals who are not described on this Attachment D-1, as amended from time to time, is a violation of the Agreement.

DPH Project Leader Contact Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**ATTACHMENT D-2**

**Part 1:**

Please initial beside the correct option. Please select only one option.

\_\_\_\_\_ Contractor DOES NOT need any user accounts to access DPH Information Systems. Do not complete Part 2 of this form.

\_\_\_\_\_ Contractor DOES need user accounts to access DPH Information Systems. Please complete Part 2 of this form.

**Part 2:**

Please complete the table below if you indicated that Contractor DOES need any user accounts to access DPH Information Systems. Please attach additional pages if needed.

**List of Individuals Authorized to Access a DPH Information System Containing PHI**

The following individuals, as employees or agents of Contractor, need access to DPH Information Systems containing DPH Protected Health Information in order for Contractor to perform the services described in the Contract:

<b>Full Name</b>	<b>Employer</b>	<b>DPH Information System</b>	<b>Type of Access (Read only? Write?)</b>

The DPH Project Leader must submit a completed DPH Network Access Request Form for each individual listed above, and for anyone who might later be added to this list.

Contractor must notify the Project Leader identified in the Contract immediately, but at least within 24 hours, after any individual on this list no longer needs the level of access described. Failure to provide this notification on time is a violation of the Agreement.

Contractor must update this Attachment D-2 as needed and provide the updated form to the DPH Project Leader.

[DPH Form GC-00901A (rev. 4/2013)]