

Community-Based Emergency Transitional Residential Environment for Veterans who are Homeless

Bay Pines VA Healthcare System Statement of Work

I. Introduction

The Secretary of the VA has set a zero-tolerance policy for homelessness within the Veteran population. This calls for enhancing current homeless service capacity as well as developing new programs and initiatives in concert with community and Federal partners. The intent of this Statement of Work (SOW) is for VA to engage a community provider(s) to offer services to Veterans who are homeless.

The Department of Veteran Affairs intends to award an Indefinite Delivery Indefinite Quantity (IDIQ) Requirements contract for Contracted Emergency Residential Shelter (CERS) lodging for Homeless Veterans.

II. Purpose

The residential environment will provide housing and supportive service to Veterans who are homeless and Veterans at imminent risk of homelessness. The services will be furnished to beneficiaries for Veterans whose care is specifically authorized by the Department of Veterans Affairs, Bay Pines VA Healthcare System (BPVAHCS).

It is understood that the type of patients to be cared for under this contract will require care and services above the level of meals, room and board. Care services will include: a supervised, alcohol and drug free environment, supportive case management services and provision of transportation to and from medical care at the BPVAHCS.

The per diem rate established shall be an all-inclusive rate for services delivered. Costs associated with Veteran care shall be determined by bed days of care, per month. In addition, the facility shall be located in one of the following counties: Charlotte, Collier, or Lee County. Preference will be given to facilities that can accommodate families and female Veterans.

III. Policy

In accordance with Title 38 Code of Federal Regulations (CFR) Section 17.53: "The admission of any patient to a private or public hospital at the Department of Veterans Affairs expense will only be authorized if a Department of Veterans Affairs medical center or other Federal facility to which the patient would otherwise be eligible for admission is not feasibly available.

A Department of Veterans Affairs facility may be considered as not feasibly available when the urgency of the applicant's medical condition, the relative distance of the travel involved, or the nature of the treatment required makes it necessary or economically advisable to use public or private facilities.

In those instances, where care in public or private hospitals at the Department of Veterans Affairs expense is authorized because a Department of Veterans Affairs or other Federal facility was not feasibly available, as defined in this sections, the authorization will be continued after admission only for the period of time required to stabilize or improve the patient's condition to the extent that further care is no longer required to satisfy the purpose for which it was initiated."

IV. Scope of Work

1. The Contractor endorses a low demand housing first service model, shall offer 24-hour supervised environment to include a semi-private or private room with bath access, communal dining with three meals/day and healthy snacks, and laundry facilities on site.
2. The Contractor shall offer 24-hour supervised environment to include a clean, safe, home-like setting, semi-private or private room with bath access, communal dining with three meals/day and healthy snacks, laundry facilities on site including soaps, and a climate-controlled indoor recreational area for reading, writing, watching television, playing games, relaxing, and/or socializing.
3. Each Veteran shall be furnished with a bed, pillow, sheets, pillow case, bath towel, face cloth, hand towel, blankets, linens, a place to hang clothes, dresser drawers, and a locked cabinet/drawer for medications/valuables.
4. The Contractor shall target Veterans who are homeless as defined by HUD and/or VHA guidelines.
5. The residential setting will provide appropriate access and services for female Veterans. The residential setting will maintain and adjust environments to support women Veterans' dignity, respect, and safety. Physical and psychosocial privacy must be provided to women Veterans. Separate, safe, and secure sleeping arrangements for women Veterans are required, as are safe and secure bathroom arrangements. In mixed-gender units, this includes but is not limited to, proximity to staff and door locks. Gender-specific personal care and hygiene products are to be provided.
6. The Contractor shall provide face-to-face check in on each shift (3 shifts per 24 hours) to ensure that the resident is alert, oriented, and not in distress. Shift reports shall be completed to ensure that the information about the resident's care is handed off from shift to shift. Check-in intervals shall be increased for residents recently discharged from an inpatient treatment setting.

7. Therapeutic and Rehabilitative Services including:
- a. To promote a therapeutic environment, a daily 30-minute daily Community Meeting shall be facilitated by staff.
 - b. Structured activities including a variety of therapeutic group, physical, and recreational activities. Examples would include WRAP, Seeking Safety, Life Skills, Coping Skills, Anger Management, Hygiene, Preventative Health Education, and Leisure Skills.
 - c. Health and personal hygiene maintenance, including education, support, and supplies.
 - d. Monitoring of medications to include a "Safe Medication Policy," which requires a reconciliation of medication by a licensed RN on admission and assignment to a level of medication management. Levels shall have staff monitoring of self-administration of medication as the most restrictive level and residents having possession of their medications for self-medication as the least restrictive. The facility shall complete random inspections of medication in the resident's possession to ensure compliance. The goal of medication management is to reduce risk of misuse and to educate the Veterans about taking their medications appropriately so they can successfully return to independent living.
 - e. Supportive social service, in collaboration with case managers, VA, or other community resources.
 - f. Professional counseling, as required, including emphasis on self-care skills, adaptive coping skills, and, as appropriate, vocational counseling, in collaboration with VA and other community resources.
 - g. Opportunities for immediate learning and/or development of responsible living practices with a goal of achieving a more adaptive level of psychosocial functioning and internalizing knowledge of the illness and/or recovery process. This will include improving social skills, personal relationships, health, and personal hygiene maintenance. Expectation is that residents will be up, dressed, and participating in the milieu daily. Exceptions may be considered for those who work nights; however, ongoing need for exception shall require approval by the VA Liaison or designee.
 - h. The residential treatment setting will provide a clean and sober environment and support for an alcohol and/or drug-free lifestyle. Veterans are prohibited from using or possessing alcohol and non-prescribed drugs while residing in the residential treatment setting. To ensure a substance-free environment, residents must consent to

alcohol and drug screenings on a regular, random, or as-clinically-indicated basis. Monitoring procedures include observed sample collection in a private space specifically designed for this purpose or with other methods to ensure that samples are not adulterated (e.g., temperature strips) and promote rapid preliminary feedback (e.g., breathalyzer), with laboratory confirmation available for disputed results. Quantitative urine toxicology screening may be used in cases where an abused substance may remain in a resident's system for a number of days or weeks. Slips and relapses are a part of recovery and must be used as opportunities to engage Veterans in treatment and recovery. These events must be handled therapeutically using a non-judgmental approach that will assist the Veteran with identifying triggers and developing strategies and skills to maintain sobriety. The Contractor shall be responsible for submitting policies and procedures regarding the methods of drug screening to be utilized.

- i. The residential setting is responsible to provide transportation assistance to and from the Bay Pines VA Healthcare System, employment and housing opportunities, court appointments, and therapeutic recreational activities. Transportation assistance may include, but not limited to transportation via facility vehicle, providing bus passes or taxi voucher. If the Contractor transports Veterans via facility vehicle, the Contractor shall provide hours of operation, number of drivers, vehicle type/size, vehicle registration, insurance coverage, and driver credentials to include applicable licenses with no more than 3 points.
 - j. Discharge planning shall begin at admission in collaboration with VA staff. All discharges will be handled therapeutically. Regardless of the reason for discharge, the same process will occur:
 - (1) Veteran will be involved in the discharge planning process.
 - (2) Veteran will be provided with clear information regarding the discharge.
 - (3) Facility staff will assess the veteran's overall mental health and take appropriate action if necessary.
 - (4) If the Veteran does not have a housing plan, facility staff will arrange for transitional or temporary housing.
 - (5) The facility staff will obtain the Veteran's forwarding address and/or contact phone number.
8. Outreach shall be conducted by the Contractor and VA homeless outreach staff. All admissions shall have concurrence of VA. If a Veteran arrives at the facility during weekends or after the normal business hours of 8:00am and 4:30pm, the provider may accept the Veteran; however, VA staff have right of approval/disapproval for payment. The provider shall conduct screenings and process admissions a minimum of five business days per week, excluding federal or other agency-recognized holidays. The Contractor shall be

responsible for submission of policies and procedures regarding program admission and screening.

9. The Contractor staff shall develop a highly-individualized treatment plan with each Veteran, with goals reasonably expected to be accomplished within 30 days. Individualized treatment plans will reflect a recovery orientation that includes the Veteran's identification of his/her strengths, needs, abilities and preferences as well as the definition of treatment goals and steps to achievement. The plan will include time parameters and measurable objectives along with expected dates for review and revision. The Contractor shall be responsible for submission of treatment planning procedures to ensure compliance with minimum standards.
10. Admission to the contract facility is for a maximum of 30 consecutive days. Utilizing VA Liaison staff, treatment planning discussions, and information on available programs/services in the area, the Contractor shall encourage its Veteran residents to work towards transitional or permanent housing from the time of admission. All extensions will require approval of the Liaison, HCHV Coordinator, or Designee. The Transition Plan must clearly state how extension(s) will benefit the Veteran and identify housing goals that will specifically be addressed and implemented during the extension.
11. The Contractor will maintain records necessary to determine bed days of care so that monthly invoices submitted to VA for payment are accurate and timely. The Contractor will provide the VA with a bed roster a minimum of three times a week, to include names, last four digits of the Veterans' Social Security numbers, admission dates, prior discharges, and anticipated discharges occurring within two weeks. Should a patient be absent in an unauthorized manner, payment for services for that Veteran may be continued for a period of two (2) days, provided that there is an active outreach attempt on the part of the residential treatment setting and strong likelihood that the patient will return. Absences in excess of 48 hours will not be reimbursable, except with prior approval by VA. Approval by VA will depend on documentation and justification for the absence and will be determined on a case by case basis. In the event of a Veteran's death, the Contractor will notify the VA within one hour, and the Contractor will safeguard and secure the Veteran's personal effects.
12. Documentation required by the Contractor:
 - a. The residential treatment setting must comply with the requirements of "Confidentiality of Certain Medical Records" (38 U.S.C 7332), and the "Confidentiality of Alcohol and Drug Abuse Patients Records" (42 CFR, Part II) when appropriate, and shall be part of the contract. There will be no re-disclosure of patient information by the Contractor.

- b. All records will be maintained with such security and confidentiality as required, and will be made available on a need-to-know basis to appropriate VA staff members involved with the treatment program of the Veterans concerned.
- c. To protect Veteran identity, all email notifications and documents will be sent to the VA designee using a unique case number. No social security numbers or Veteran names may be sent via email.
- d. Essential identifying data relevant to the Veteran, including appropriate assessments and history of the Veteran's homelessness.
- e. Data relevant to the Veteran's admission and anticipated length of stay.
- f. A record or log of medical orders or prescriptions issued by physicians. VA and facility staff will coordinate a system to ensure that a change in medication such as discontinued prescriptions is communicated.
- g. A Treatment Plan must be submitted by the residential facility to the VA designee within 3 days of admission. Treatment Plan should identify a Veteran's **S**trengths, **N**eeds, **A**bilities, and **P**references, including needs beyond scope of program, and referrals made for additional services. Goals should be developed with active participation from the Veteran and expressed in the words of the Veteran served. Goals should include a plan for more stable housing, which may include a VA residential program. Objectives should be **S**pecific, **M**easurable, **A**ttainable, **R**ealistic, **T**imely, and reasonably expected to be accomplished within 30 days. Interventions should identify who is responsible for implementation, frequency/duration of intervention, and techniques/methods/services used. Treatment Plans should include identification of support systems including family/social/community (or reason for lack thereof). The Contractor shall be responsible for submission of procedures to ensure compliance with minimum standards regarding treatment planning.
- h. Transition Plan (TP) within 3 days of admission. TP is developed with the Veteran served, family (if applicable), and Treatment Plan team members to ensure seamless transition when the Veteran transfers to another level of care, another program, and/or prepares for planned discharge. The TP should identify a Veteran's current progress in his/her own recovery or move towards well-being (including securing stable housing); gains achieved during program participation; the Veteran's need for support systems or other types of services that will assist in continuing his/her recovery, well-being, or community integration; information on the continuity of the Veteran's medication(s) when applicable; referral information such as contact name, telephone number, location, hours, days of services when applicable; communication of information on options and resources available if symptoms recur; and additional services needed. The Contractor shall be responsible for submission of procedures to ensure compliance with minimum standards regarding transition planning.
- i. Treatment Plan updates shall occur weekly or more frequently if indicated, to include any changes in the Veteran's goals and measures of movement toward rehabilitation goals. The Contractor shall be responsible for

- submission of procedures to ensure compliance with minimum standards regarding treatment plan updates.
- j. Documentation shall reflect a minimum of weekly participation in clinical individual and/or group meetings. In the event of missed clinical individual or group meetings, documentation should reflect the reason for lack of participation and efforts to engage the Veteran, as appropriate.
 - k. Final summaries on each Veteran who leaves the program within 3 days of discharge, which must include a description of changes realized during the Veteran's stay in the residential program, reason for leaving, future plan, aftercare plan, and specific follow-up contact information.
 - l. Language reflecting the quality of the discharge should read "Planned" or "Unplanned".
 - m. VA staff will provide input into treatment planning process when onsite at the Program.
 - n. Other documentation and/or data reporting as requested or required by VA based on changing or subsequent local, VISN or National Contracted Residential Services program requirements. This reporting may be daily, weekly, monthly, or quarterly in duration and will follow format as required by the VA.
 - o. Documentation and/or reporting as requested by the Homeless Management Information System (HMIS).
 - p. It is agreed that the VA may readily have access to all medical records concerning the Veteran's care in the residential treatment program. Upon discharge or death of the patient, medical records on all VA beneficiaries will be retained by the program for a period of at least three years following termination of care at the BPVAHCS expense.
 - q. The facility shall complete shift reports to ensure that information about the resident's care is handed off from shift to shift.
13. The Contractor shall be responsible for compliance with following VA policies and procedures regarding incident reporting.
- a. Adverse Events shall be defined as untoward incidents, therapeutic misadventures, iatrogenic injuries, or other adverse occurrences directly associated with care or services provided. Adverse Events may result from acts of commission or omission. All adverse events require reporting and review; however, the level of review and required timeframe of reporting is determined by the type of adverse event.
 - b. Close Calls shall be defined as an event or situation that could have resulted in an Adverse Event but did not, either by chance or through timely intervention. Such events have also been referred to as "near miss" incidents. Close Calls are opportunities for learning and afford the chance to develop preventive strategies and actions. They receive the same level of scrutiny as Adverse Events that result in actual injury.

- c. Intentionally unsafe acts, as they pertain to patients, are defined as any events that result from a criminal act, a purposefully unsafe act, an act related to alcohol or substance abuse by an impaired provider and/or staff, or events involving alleged or suspected patient abuse of any kind.
- d. Critical Adverse Events shall be defined as (1) sentinel events as defined by the Joint Commission, which is an unexpected occurrence involving death or serious physical or psychological injury or risk thereof; (2) fire; (3) police/drug raid; (4) abduction of a Veteran; (5) homicide involving a Veteran; (6) suicide or suicide attempt; (7) alleged sexual assault of a Veteran, to include rape; (8) media events involving VA; (9) evacuation/relocation of residents; (10) the filing or attempted filing of a missing person report with law enforcement.
 - 1. At the time of a Critical Adverse Event, the staff at the contract facility will take immediate action to ensure the safety of the patient(s). If an event has the potential to place other patients, employees, or visitors at risk, staff at the contract facility must act immediately to contain the situation and safeguard those at risk.
 - 2. Critical Adverse Events shall be verbally reported by phone to the VA Liaison or representative as soon as possible, no later than one hour from the time of the contract staff learning of the incident. Receipt of a voicemail will not be an acceptable substitution for the verbal notification requirement.
 - 3. Critical Adverse Events occurring after normal business hours shall be reported to the Administrator on Duty (AOD) by phone at (727) 410-7925 as soon as possible, no later than one hour from the time of the contract staff learning of the incident.
 - 4. A written incident report shall be filed as soon as possible on the same calendar day of the required verbal notification, either by fax or encrypted email. The filing of an incident report to the VA shall not preclude the contract facility from reporting incidents appropriately to law enforcement, regulatory agencies, nor following its internal reporting procedures. Incident reports will include the following: name(s) of the individuals involved, date/time of incident, description of incident, corrective action initiated (if warranted), report number and contact information of any law enforcement involvement with the incident.
- e. Non-Critical Adverse Incidents shall be defined as (1) medication errors, including missing narcotic medication and excluding the withholding of medication when a Veteran is under the influence of alcohol or illicit substances; (2) acts of violence or abuse involving individuals at the facility; (3) missing patients who are defined as high risk and who remain missing after a full search is made of the facility and grounds; (4) significant clinical incidents/outcomes negatively affecting a group/cohort of Veterans; (5) all other adverse events, close calls, or intentionally unsafe acts not otherwise specified.
 - 1. Non-critical Adverse Events shall be reported by phone to the VA Liaison or representative on the date of the event.

2. Non-critical Adverse Events occurring after normal business hours shall be reported by the following business day no later than 10:00 am.
3. Non-critical Adverse Events occurring after normal business hours shall be reported by the following business day no later than 10:00 am.
4. The filing of an incident report to the VA shall not preclude the contract facility from reporting incidents appropriately to law enforcement, regulatory agencies, nor following its internal reporting procedures. Incident reports will include the following: name(s) of the individuals involved, date/time of incident, description of incident, corrective action initiated (if warranted), report number and contact information of any law enforcement involvement with the incident.

14. Payment:

- a. Per Diem will be paid for the day of admission or the day of discharge from the program, but not for both.
- b. If a Veteran is admitted to and discharged on the same calendar day, payment will be made for one day.
- c. Income will not be required for admission; however, contract providers may charge the Veteran up to 30% of income for program fees. Fees collected (up to \$2000.00) shall be used to cover the Veteran's expenses to transition to permanent housing; such as rent, deposits, furniture, and other costs related to setting up a household. Income shall not be a condition of admission.
- d. Payments made under the terms of the contract will constitute the total cost of residential care. The Contractor agrees that no additional charges will be billed to the beneficiary or his/her family, either by the residential treatment setting or any third party furnishing services or supplies required for such care. Veterans will not be billed for treatment services.
- e. Payment for the Residential Care Program will be made on a monthly basis for services rendered. Should a Veteran referred be absent in an unauthorized manner, payment for services for that Veteran may be continued for a period of 2 days, provided there is an active outreach attempt on the part of the Residential Care Program staff to return the Veteran to the Residential Care Program and a strong likelihood that the Veteran will return. Veteran absences from the Residential Care Program in excess of 48 hours will not be reimbursable, except with the prior approval of the VA Liaison, Homeless Program Coordinator, or designee.
- f. Admission, discharges, and unauthorized absences should be reported to the VA Liaison or designee by the close of business on the day of the event. If the event occurs overnight, the VA Liaison or designee should be notified the following morning. If the event occurs on a weekend, notification shall take place by 10:00 am Monday morning.
- g. Monthly invoices and any necessary justification documents shall be received no later than the fifteenth calendar day of the subsequent month.

15. The Contractor shall ensure facility meets all applicable life/safety codes and other standards/compliance requirements as determined by VA. These include:
 - a. Adherence to Standards of the Life Safety Code (National Fire Protection Association (NFPA) #101);
 - b. Possession of applicable City, State and Federal licenses for residential settings providing substance use treatment and mental health treatment;
 - c. Acquisition of liability insurance;
 - d. Adherence to the Privacy Act: The notification and contract clauses entitled "Privacy Act Notification" as specified in Federal Acquisition Regulation (FAR) 52.224-1 and 52.224-2 is included with this contract.
16. The Contractor shall allow VA staff to inspect the facility and/or review Veteran participant treatment protocols at any time determined necessary by VA.
17. VA staff will conduct an announced, on-site review of program services once per year to ensure the contract facility residential treatment setting is in accordance with the contract agreement. The VA may also conduct unannounced on-site reviews at its discretion at any time during the life of this contract.
18. The Contractor shall be responsible for maintaining compliance with VA performance metrics, including but not limited to *Exits to Permanent Housing*, *Negative Program Exits* and *Employment at Exit*.
19. The Contractor will be responsible for the development and implementation of a Corrective Action Plan when accomplishments vary for any of the Goals, Objectives, or Performance Metrics as stated in the contract.
20. The Contractor shall ensure that transportation is available for Veterans to attend medical appointments, search for transitional or permanent housing and address other care needs such as access to spiritual care and community based abstinence meetings. Transportation may include public conveyances such as buses. To ensure timely transport for Veterans to medical appointments, the Contractor's facility shall be within the catchment area of the Lee County VA Healthcare Center and situated within reasonable walking distance to the local bus routes. Transportation for the Veterans enrolled to be provided by the Contractor.
21. A maximum of twenty (20) Veterans are expected to be served in the setting. The independent cost estimate indicates that costs associated with these services will exist for each of the following: room with bath facilities; on site laundry facilities; daily meals with communal dining; and 24/7 staff experienced with substance use dependence and mental illness. The Contractor will develop individualized treatment plans and facilitate progress at the Veteran's pace; secure facility with controlled access; communal sitting/group area with TV, recreational materials for diversionary activities; medication storage and oversight; and shared computer access for Veteran residents.

22. The contracting facility will be staffed by a core team of individuals with substance use and mental health treatment experience that typically includes occupations such as counselors, social workers, licensed practical nurses and health techs. Additional supportive services from registered nurses, pharmacy technicians, and administrative staff are expected as needed. In the contract facility residential treatment setting, there must be, at a minimum, a full-time staff member on site and available for emergencies 24 hours a day, 7 days per week. The staff member shall be located in the area where residents are residing.
23. The residential treatment setting agrees and warrants that it does not maintain nor provide dual or segregated patient facilities, which are segregated on the basis of race, creed, color or national origin. The treatment center may neither require such segregated use by written oral policies nor tolerate such use by local custom. The term facilities shall include but not be limited to rooms, wards, sections, eating areas, drinking fountains, entrances, etc.
24. The contract facility residential treatment setting agrees to accept referral of and to provide all services specified in this contract for any person determined eligible by the Liaison or designee, regardless of the race, color, religion, sexual orientation, sex or national origin of the person for whom such services are ordered.
25. The contract facility must have a grievance policy that is conspicuously posted throughout the residential facility. The grievance policy must clearly reflect that retaliation against a person will not be tolerated. Written procedures on how to file a grievance, including a grievance form should be provided to a Veteran upon admission into the contracted residential facility. Procedures should be clear, consistent, and provide for written notification regarding actions taken to address complaints.
25. Access to VA Information and VA Information Systems:
 - a. All Contractors, Sub-Contractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for Contractors must be in accordance with VA Directive and Handbook 0710, *Personnel Suitability and Security Program*. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.
 - b. The Contractor or Sub-Contractor must notify the Contracting Officer immediately when an employee with access to VA information is reassigned or leaves the Contractor or Sub-Contractor's employ. The Contracting Officer must also be notified immediately by the Contractor or Sub-Contractor prior to an unfriendly termination.
26. VA Information Custodial Language:

- a. Information made available to the Contractor or Sub-Contractor by VA for the performance or administration of this contract or information developed by the Contractor/Sub-Contractor in performance or administration of the contract shall be used only for those purposes and shall not be used in any other way without the prior written agreement of the VA. This clause expressly limits the Contractor/Sub-Contractor's rights to use data as described in Rights in Data - General, FAR 52.227-14(d) (1).
- b. VA information should not be co-mingled, if possible, with any other data on the Contractors/Sub-Contractor's information systems or media storage systems in order to ensure VA requirements related to data protection and media sanitization can be met. If co-mingling must be allowed to meet the requirements of the business need, the Contractor must ensure that VA's information is returned to the VA or destroyed in accordance with VA's sanitization requirements. VA reserves the right to conduct on-site inspections of Contractor and Sub-Contractor IT resources to ensure data security controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with VA directive requirements.
- c. Prior to termination or completion of this contract, Contractor/Sub-Contractor must not destroy information received from VA, or gathered/created by the Contractor in the course of performing this contract without prior written approval by the VA. Any data destruction done on behalf of VA by a Contractor/Sub-Contractor must be done in accordance with National Archives and Records Administration (NARA) requirements as outlined in VA Directive 6300, *Records and Information Management* and its Handbook 6300.1 *Records Management Procedures*, applicable VA Records Control Schedules, and VA Handbook 6500.1, *Electronic Media Sanitization*. Self-certification by the Contractor that the data destruction requirements above have been met must be sent to the VA Contracting Officer within 30 days of termination of the contract.
- d. The Contractor/Sub-Contractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies in this contract.
- e. The Contractor/Sub-Contractor shall not make copies of VA information except as authorized and necessary to perform the terms of the agreement or to preserve electronic information stored on Contractor/Sub-Contractor electronic storage media for restoration in case any electronic equipment or data used by the Contractor/Sub-Contractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.

- f. If VA determines that the Contractor has violated any of the information confidentiality, privacy, and security provisions of the contract, it shall be sufficient grounds for VA to withhold payment to the Contractor or third party or terminate the contract for default or terminate for cause under Federal Acquisition Regulation (FAR) part 12.
- g. If a VHA contract is terminated for cause, the associated BAA must also be terminated and appropriate actions taken in accordance with VHA Handbook 1600.01, *Business Associate Agreements*. Absent an agreement to use or disclose protected health information, there is no business associate relationship.
- h. The Contractor/Sub-Contractor must store, transport, or transmit VA sensitive information in an encrypted form, using VA-approved encryption tools that are, at a minimum, FIPS 140-2 validated.
- j. Except for uses and disclosures of VA information authorized by this contract for performance of the contract, the Contractor/Sub-Contractor may use and disclose VA information only in two other situations: (i) in response to a qualifying order of a court of competent jurisdiction, or (ii) with VA's prior written approval. The Contractor/Sub-Contractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the VA contracting officer for response.
- k. Notwithstanding the provision above, the Contractor/Sub-Contractor shall not release VA records protected by Title 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or Title 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus. If the Contractor/Sub-Contractor is in receipt of a court order or other requests for the above mentioned information, that Contractor/Sub-Contractor shall immediately refer such court orders or other requests to the VA contracting officer for response.
- l. For service that involves the storage, generating, transmitting, or exchanging of VA sensitive information but does not require C&A or an MOU-ISA for system interconnection, the Contractor/Sub-Contractor must complete a Contractor Security Control Assessment (CSCA) on a yearly basis and provide it to the COR.

27. Security Incident Investigation:

- a. The term "security incident" means an event that has, or could have, resulted in unauthorized access to, loss or damage to VA assets, or sensitive information, or an action that breaches VA security procedures. The Contractor/Sub-Contractor shall immediately notify the COR and simultaneously, the designated ISO and Privacy Officer for the contract of any known or suspected security/privacy incidents, or any unauthorized disclosure of sensitive information, including that contained in system(s) to which the Contractor/Sub-Contractor has access.
- b. To the extent known by the Contractor/Sub-Contractor, the Contractor/Sub-Contractor's notice to VA shall identify the information involved, the

- circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the Contractor/Sub-Contractor considers relevant.
- c. With respect to unsecured protected health information, the business associate is deemed to have discovered a data breach when the business associate knew or should have known of a breach of such information. Upon discovery, the business associate must notify the covered entity of the breach. Notifications need to be made in accordance with the executed business associate agreement.
 - d. In instances of theft or break-in or other criminal activity, the Contractor/Sub-Contractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and Security and Law Enforcement. The Contractor, its employees, and its Sub-Contractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The Contractor/Sub-Contractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident, or obtain injunctive relief against any third party arising from, or related to, the incident.

28. Liquidated Damages for Data Breach:

- A. Consistent with the requirements of 38 U.S.C. §5725, a contract may require access to sensitive personal information. If so, the Contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the Contractor/Sub-Contractor processes or maintains under this contract.
- b. The Contractor/Sub-Contractor shall provide notice to VA of a “security incident” as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.
- c. Each risk analysis shall address all relevant information concerning the data breach, including the following:
 - 1. Nature of the event (loss, theft, unauthorized access);
 - 2. Description of the event, including:
 - 3. Date of occurrence;

4. Data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code;
 5. Number of individuals affected or potentially affected;
 6. Names of individuals or groups affected or potentially affected;
 7. Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, e.g., unencrypted, plain text;
 8. Amount of time the data has been out of VA control;
 9. The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons);
 10. Known misuses of data containing sensitive personal information, if any;
 11. Assessment of the potential harm to the affected individuals;
 12. Data breach analysis as outlined in 6500.2 Handbook, *Management of Security and Privacy Incidents*, as appropriate; and
 13. Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.
- d. Based on the determinations of the independent risk analysis, the Contractor shall be responsible for paying to the VA liquidated damages in the amount of \$37.50 per affected individual to cover the cost of providing credit protection services to affected individuals consisting of the following:
1. Notification;
 2. One year of credit monitoring services consisting of automatic daily monitoring of at least 3 relevant credit bureau reports;
 3. Data breach analysis;
 4. Fraud resolution services, including writing dispute letters, initiating fraud alerts and credit freezes, to assist affected individuals to bring matters to resolution;
 5. One year of identity theft insurance with \$20,000.00 coverage at \$0 deductible; and
 6. Necessary legal expenses the subjects may incur to repair falsified or damaged credit records, histories, or financial affairs.

29. Security Controls Compliance Testing:

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the Contractor under the clauses contained within the contract. With 10 working days' notice, at the request of the government, the Contractor must fully cooperate and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by VA in the event of a security incident or at any other time.

30. Training:

All contractor employees and subcontractor employees requiring access to VA information shall complete the following before being granted access to VA information:

- a. Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Appendix D relating to access to VA information.
- b. Successfully complete appropriate privacy training on hire and annually, including HIPPA, Information Security Awareness, and Rules of Behavior.
 - (1) The contractor shall provide to the contracting officer and/or the COR a copy of the training documents to ensure required elements are addressed.
 - (2) Contractor Rules of Behavior, privacy, and security training for each applicable employee must be completed within 1 week of the initiation of the contract and annually thereafter, as required.
 - (3) Failure to complete the mandatory annual training and sign the Rules of Behavior annually, within the timeframe required, is grounds for suspension or termination of all physical or electronic access privileges and removal from work on the contract until such time as the training and documents are complete.

V. Location of Performance

Work shall be performed at the Contractor's facilities. Government furnished workspace will not be provided for this effort.

VII. Contract Type: Indefinite Delivery Indefinite Quantity Requirements.

VIII. Contract Period: One base year with four (4) one year options.