

TABLE OF CONTENTS

| | <u>Page No.</u> |
|---|------------------------|
| Table of Contents | 1 |
| Important Notes to Offerors | 3 |
| Schedule of Supplies or Services and Price/Costs | 4 |
| Description/Specifications and Work Statement | 6 |
| ATTACHMENT: | 7 |
| Business Associate Agreement | 17 |

IMPORTANT NOTES TO OFFERORS:

This procurement shall use the procedures in subsection FAR 8.405-2 to order the described services prices at rates established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelist. Award will to the schedule contractor that represents the best value based upon the analysis of evaluation factors and price reasonableness.

Federal Supply Schedule Number: Please provide the Federal Supply Schedule Contract Number assigned to your firm by the GSA, if available, in the space provided below:

GS- _____
Expiration date: _____
Tax Identification Number: _____

PAYMENT: For implementing EFT payments, please contact your Financial Institution for assistance in completion of the Payment Information Form – **SF 3881** (Attachment No. 1), and submit to VA Finance Center in Austin, Texas.

SEND OFFERS for furnishing the supplies or services in the solicitation to the address specified in Block 9, or if hand carried, to Dept of Veterans Affairs, Health Administration Center, 300 S. Jackson, Suite 444, Denver Colorado 80209, until the date and time specified in Block 8.

CAUTION - LATE Submissions, Modifications, and Withdrawals: See provision 52.212-1. All offers are subject to all terms and conditions of this solicitation.

NOTICES

PERIOD OF ACCEPTANCE

The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers. FAR Provision 52.212-1.

GOVERNING REGULATIONS

This procurement is being conducted in accordance with FAR Part 12, Acquisition of Commercial Items; and, Part 8, Required Sources of Supplies and Services.

BASIS FOR AWARD

The Government will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Government. The following factors shall be used to evaluate offers: a) Technical Capability of the item offered to meet the Government's requirements; b) Past Performance; and c) Price.

These factors will be weighted, as follows:

Technical capability is more important than past performance. Both of these factors are more important together than price.

Offerors are required to furnish, for the purpose of evaluating responsibility/past performance, the names, addresses, telephone numbers, and fax numbers of a minimum of three (3) facilities for which the same or similar services have been furnished is required.

CONTRACT ADMINISTRATION DATA

1. The Contracting Officer is the only person authorized to approve changes or modify any of the requirements under this contract/agreement. The contractor shall communicate with the Contracting Officer on all matters pertaining to contract administration. Only the Contracting Officer is authorized to make commitments or issue change orders that would effect price, quantity, or quality of performance of this contract. If the contractor effects any such change at the direction of any person other than the Contracting Officer, the change shall be considered to have been made without authority and no adjustment will be made to the contract price to cover any increase in costs incurred as a result thereof.
2. The Contracting Officer reserves the right to designate one or more representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished to the contractor.

SCHEDULE OF SUPPLIES/SERVICES AND PRICES/COSTS

Purpose:

The purpose of this Statement of Work is to provide adequate description to contract for auditing and recovery services of VA payments made for Non-VA hospital care. The primary objective is to identify and recover improper payments made for such care on the basis of billing and procedural inconsistency compared to health industry standards, supporting medical documentation, and VA policy, law and regulations. Regulatory citations referenced in this document are electronically available through the Government Printing Office at www.gpo.gov.

Background:

1. Department of Veterans Affairs (VA), Veterans Health Administration (VHA), healthcare system is currently structured into 21 geographically defined Veterans Integrated Service Networks (VISNs), composed of approximately 170~~2~~ Medical Centers (VAMCs) and in excess of 600 community-based outpatient clinics.
2. Veterans who are eligible for VA healthcare benefits may, in some circumstances, receive inpatient services from non-VA providers. VA reimburses healthcare providers an established amount dependent upon the services rendered. Care provided to veterans by non-VA medical providers is referred to as Fee Basis care (FEE). FEE care is approved and monitored by VHA and the extent of the services rendered is governed by VA regulations Title 38 Code of Federal Regulations (CFR) 17.52 through 17.56, 17.120 through 17.132 and 17.1000 through 17.1008. Reimbursement for inpatient services is generally subject to a Diagnostic Related Group (DRG) prospective payment system methodology primarily based upon Centers for Medicare and Medicaid Services (CMS) reimbursement schedules plus the annually determined VA surcharge rate for certain pass-through amounts. Reimbursement for inpatient services exempted from DRG prospective payment methodology is primarily based upon an operating cost-to-charge ratio as determined by CMS plus the annually determined VA surcharge rate for certain pass-through amounts. FEE authorization and payment documentation is presently maintained at the responsible VA Medical Center. However,

beginning in May 2004, payment documentation for FEE will be transitioned to the Health Administration Center, Denver, Colorado.

3. VA reimburses non-VA healthcare providers for inpatient services provided to certain dependents of veterans under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Spina Bifida Healthcare (SB), and Children of Women Vietnam Veterans (CWVV) programs. VA reimburses healthcare providers an established amount dependent upon the services rendered. Only the CHAMPVA program applies beneficiary cost-sharing and annual deductible when determining payment amounts. These programs reimburse providers primarily based upon Department of Defense, TRICARE reimbursement schedules. Care provided under these programs is furnished under the authority of Title 38 CFR 17.270 – 17.278 and 17.900 – 17.905. Authorization and payment documentation is maintained at the VA Health Administration Center (HAC), Denver, CO.
4. VA payments under the FEE, CHAMPVA, SB and CWVV programs for hospital care are included in the scope of this contract. Excluded from this contract are payments related to outpatient professional services, domiciliary, State home, contract nursing homes, any payments made by VA under contract or sharing agreement, and any payments made by VA for care furnished outside the United States and its territories.
5. The estimated annual workload for FEE is 345,600 payments totaling approximately two hundred and sixty million dollars. The estimated annual workload for CHAMPVA, SB and CVWW is 9,000 payments totaling forty-five million dollars.

PRICING SCHEDULE

To offer incentive efficiencies, pricing shall be based on a percentage split of actual recoveries. The contract requires a retrospective review of inpatient payments for future years of work, from fiscal year 2003 through fiscal year 2006. Work is accomplished one year in arrears so that fiscal year 2003 work is reviewed during FY 2004. The contractor must clearly explain their pricing schedule and any variances in that schedule for each year of the contract (base and three option years).

| <u>AUDIT SERVICES PERCENTAGE SPLIT</u> | |
|---|--|
| Base Year | Contractor Split Percentile: 29.5% |
| Option Year I | Contractor Split Percentile: 29.5% |
| Option Year II | Contractor Split Percentile: 29.5% |
| Option Year III | Contractor Split Percentile: 29.5% |

DESCRIPTION, SPECIFICATIONS, WORK STATEMENT AND REQUIREMENTS

Scope of Contract

1. The scope of this contract is to perform a retrospective review of qualifying VA payments for hospital care paid by VA during fiscal year 2003 through fiscal year 2006. VA fiscal year begins each October 1st and ends each September 30th. The review will be conducted one year in arrears so that fiscal year 2003 payments are reviewed in fiscal year 2004. The contractor shall complete review of each fiscal year's caseload within one year of date of receipt of the payment data from VA. The review includes collecting and analyzing the payment and medical supporting documentation for VA payments on contractor selected cases, determining overpayments or underpayments, reporting results, establishing debts, and completing follow-up actions.
2. The Contractor must review a minimum of 30% of claims referred for each program either chosen by criterion or by random selection basis.
3. The purpose of this contract is to identify and recover any overpayments, report underpayments, and identify any fraud and abuse trends in the qualifying programs. The contractor shall review qualifying claims to verify that the provider coding for services billed was rendered and appropriately coded and that the VA payment methodology used to pay for the inpatient services was correct and proper. To appropriately determine the right payment amount, medical documentation must be obtained from the health care provider and reviewed to determine whether (1) Correct codes were billed to VA, (2) Correct data was input by VA for payment, and (3) Correct payment methodology was applied by VA.

Correct codes billed to VA. The medical industry uses ICD standard coding terminology to bill payers for services provided. For selected cases the contractor will be required to determine if the provider correctly coded the bill submitted to VA for payment consideration. The contractor will obtain medical documentation from the provider to determine whether the description of the services provided support the coding on the bill. Sufficiency of medical documentation is key to an appropriate determination. The documentation must justify the diagnoses, admission, treatments performed, continued care, and level of care. All medical documentation requested from the providers of care shall be at contractor cost.

Correct data input by VA. The provider's billing invoice statements, such as billing form UB-92, must be compared to the data entered into the VA automated payment system to validate that vendor, veteran, and health services information, such as type of bill, dates of service and diagnostic and procedure codes, that are used to determine proper payment were correctly and properly input.

Correct payment methodology applied by VA.

- 1) Payment methodology for FEE hospital care is detailed in VA regulation and in the VHA Policy Manual and Fee Basis Guidebook, available upon award of the contract. The following provides FEE payment methodology in general.

Hospitals not exempt from DRG methodology are generally paid using the VA pricer. The pricer components used by VA have the same values as contained in the CMS pricer. The VA pricer payment includes the base DRG operating amount, the capital amount, and applicable stay and cost outliers. VA adds to the pricer payment amount an established annual rate to compensate for the costs of direct medical education, organ acquisition, and rural nonphysician anesthetists. For example,

- 1) In cases where payment is for a full course of treatment, i.e. the patient is discharged home from a non-VA hospital, the hospital is paid the full DRG amount.
 - 2) In cases where the patient is transferred to another facility to complete the course of medical treatment, VA pays the transferring hospital an amount based upon the pricer for each patient day of care, not to exceed the full DRG rate.
 - 3) In cases where VA does not authorize the entire hospital stay, VA pays the hospital an amount based upon the pricer for each patient day of care authorized.
- b) Distinct hospital units excluded from the Medicare DRG and hospitals that do not participate in Medicare are paid at the VA determined national cost-to-charge ratio times the billed charges.

CBO MEDICAL RECOVERY AUDIT
RFP 741-10-04

- 2) The CHAMPVA, SB and CWVV programs use the Department of Defense TRICARE Standard program inpatient payment methodology to determine the payment amount. Any differences from the TRICARE standard methodology is documented in Policy and/or Procedure guides, available upon award of the contract.
4. All work performed by the contractor must be done in accordance with VA Regulations and Directives.
5. The contractor shall be provided a point of contact for each VISN, the HAC, each VA Medical Center, and the Austin Financial Service Center. The point of contact will assist in providing the contractor VA payment documentation and resolve local issues.
6. FEE data will be made available to the contractor from the responsible VA office. This data will consist of multiple parts, including the Non-VA hospital file (NVH), FEE Payment file, and Vendor file. Contractor must have an automated data system in place to receive, manipulate, convert, compile, and transmit demographic and payment information and data needed to conduct the review and account for collection and reporting actions to and from VA. Paid data will be provided to contractor for each previous fiscal year by November 1st of each year.
7. Case Data for CHAMPVA, SB, and CWVV programs will be provided by HAC to the contractor in one data file for each previous fiscal year by November 1st of each year.
8. Exchange of information, establishing debts, and collection activity will be accomplished and shared electronically. HAC will provide the contractor its file structure upon award of contract to enable contractor to design its computer systems to accomplish electronic exchange and maintenance of data with HAC.
9. Underpayment situations will be reported to VA with no other follow-up actions required by contractor.

Administrative Requirements

1. The contractor shall furnish the necessary services and qualified personnel, facilities, equipment, materials, and supplies needed to perform the requirements set forth in this statement of work.
2. The contractor shall have all the necessary resources required for performance within 90 days of the award of the contract.
3. The contractor shall maintain files, reports, and records and provide VA with complete and accurate information of all actions upon request.
4. The contractor shall continuously evaluate the effectiveness of all administrative actions and report the results of the evaluations to the Contracting Officer (CO) and Contracting Officer Technical Representative (COTR).
5. The contractor shall thoroughly train its staff.
6. The contractor shall maintain a sufficient number of staff dedicated to operations, administration, customer service, and support of services under this contract to include, at a minimum, the following staff. The contractor may propose additional staff beyond the minimum listed below, with specific expertise to fully meet the requirements outlined in this statement of work.
 - a. Program Director. A Program Director will be assigned who has documented skills and experience in directing the accomplishment of work equal or comparable to the requirements under this contract.
 - b. Medical Director. A Medical Director's service will be required, as necessary, to review complex cases and appeals and provide opinions regarding the complexity of the service and sufficiency of related medical documentation.
 - c. Registered Health Information Administrator (RHIA, formerly Registered Record Administrator, RRA). The RHIA may also be the Program Director. The RHIA will oversee the collection, interpretation, and analysis of data to ensure billing was appropriately coded and payment made according to VA regulations.

CBO MEDICAL RECOVERY AUDIT
RFP 741-10-04

- d. Registered Health Information Technician (RHIT, formerly Accredited Record Technician, ART). The RHIT will verify the completeness and accuracy of the billing and appropriate entry for payment. The RHIT will be a specialist in coding diagnoses and procedures for reimbursement and research.
 - e. Certified Coding Specialist (CCS). The CCS will be skilled in classifying medical data from patient records and providing findings regarding inappropriate coding and reimbursement for action. The CCS shall have ICD-9-CM and CPT coding experience, working knowledge of DRG's, VA coverage guidelines, and payment methodologies.
 - f. Information Technologist (IT). The IT will be skilled in information technology and electronic media used in the development, preparation, maintenance, sharing of data using computers and telecommunications .
7. The contractor shall develop a specifically tailored audit program for the VA and procedures for the areas targeted for review. The focused review strategy, to include reporting, must be presented to and approved by the CO, and COTR.
 8. If the contractor has a potential "conflict of interest" involving one of the identified facilities to be audited (audited facility is part of the contractor's other business entities), they must immediately notify the COTR as to the possible conflict. The COTR in coordination with the CO will make the determination if the audit will be performed by the contractor or if the identified facility will be waived from this contract.
 9. Audits performed by the contractor are subject to review by VA.
 10. The contractor will refer any potentially abusive or fraudulent pattern of billing identified through the audit process to the COTR for determination of appropriate action.
 11. Notifying the provider of audit results:
 - a. Initial Letter: The contractor shall notify the provider in writing of case review findings with notice that the provider has a period of 30 calendar days to appeal an adverse determination. The Contractor will process all appeals.

- b. Follow-up Letter: If no response is received within 30 days from the date of the initial letter of overpayment determination, a follow up letter will be sent establishing the debt.
 - c. Final Demand Letter: If no response is received within 60 days from the date of the initial letter of overpayment determination, a follow up letter will be sent notifying the provider of federal payment offset procedures. VA will provide the contractor the offset language to be used.
 - d. If no payment is received within 121 days from the date of the initial letter of overpayment determination, VA will submit the overpayment amount to Department of Treasury for offset from applicable federal payments.
 - e. If the audit revealed a situation of potential fraud, the contractor shall discuss the findings with the COTR prior to notifying the provider of an overpayment.
 - f. Each letter to a provider must be on contractor letterhead that includes the name and address of the contractor. The contractor shall include in each letter to a provider the name, title, and telephone number of the contractor's employee who can answer and respond to the provider's questions or concerns about the information contained in the letter.
 - g. All appeals processed by the contractor are subject to VA compliance review with VA regulation and policy. VA reserves the right to withhold or overturn appellate decisions.
12. The contractor shall maintain a case summary for each instance of overpayment or underpayment identified for action. At a minimum the case file shall include:
- a. Information reviewed, date, source, actions taken to substantiate an overpayment
 - b. Amount of overpayment or underpayment and the method used for calculation
 - c. Summary of VA's applicable payment guidelines
 - d. Copies of related correspondence

- e. Any interviews to substantiate overpayment or underpayment
- f. Detailed information regarding the provider such as name, address, tax identification number, etc.

Financial Management

1. Collections from providers will be sent directly to the VA HAC. Offsets applied by Department of Treasury will be documented upon receipt of payment. Contractor shall be paid when the debt is collected by VA. Contractor shall not be paid for uncollected amounts. Upon receipt of the collections, the HAC shall deposit these payments in accordance with VA policy and procedures and furnish payment to the contractor on a weekly basis. Invoicing by the contractor is not necessary.
2. VA is unable to refer to offset any debt established for amounts less than twenty-five dollars or for any balance due less than twenty-five dollars.
3. HAC will record collections into its database and make payments to the contractor based upon the collections received without the need for contractor invoicing. Contractor will maintain similar data base, compatible with HAC, for establishment of debts and reconciliation purposes.
4. Debts established for entities in bankruptcy status will be canceled without collection action. There is no payment to contractor for these uncollected debts.
5. Contractor shall determine proper identity of debtor and establish debts accordingly.

Reporting Requirements

1. The contractor's work will require the efficient handling of a large volume of documents. Each will pass through several steps of processing and review. Effective management of such an operation requires a high level of process control. VA requires that the contractor emphasizes process management and use appropriate process management software designed for good process management, quality controls, and systematic collection of data.

2. VA reserves the right to review and evaluate the contractor's operation at any time. VA will provide the contractor with general information about the review process, but is not obligated to provide the contractor with specific details relating to how the reviews will be conducted. The contractor is expected to perform effectively and efficiently in all areas of its operations and the VA may elect to evaluate performance for any or all activities performed by the contractor.
3. Upon contract award, the contractor shall develop a monthly report of key performance and financial indicators. The contractor will report data that reflect the most important aspects of the contractor's work and track the data systematically through the life of the contract. The report will be sufficiently detailed to sort the data by program and facility. Monthly reports are required to be submitted electronically within fifteen calendar days following the end of each month. The monthly report must include the following minimum data:
 - Problems encountered and solutions implemented or proposed,
 - Issues requiring VA decisions or attention,
 - Claims review
 1. Total number and dollar value of fiscal year claims
 2. Number and dollar value of claims reviewed
 3. Number and dollar value of debts established
 - a. by reason
 4. Number and dollar value of underpayments identified
 - a. by reason
4. Within 30 calendar days following the end of each fiscal year, the contractor will provide an annual report summarizing the year's activities and accomplishments.
5. The contractor will notify the COTR immediately of any changes to key personnel assigned to this project. Appropriately qualified replacement staff must be available to ensure there are no interruptions or unnecessary delays in meeting the requirements of this contract.

Technical Requirements

1. The contractor shall designate a technical point of contact (POC) to initiate, focus, and facilitate ongoing communications and information exchange with

regard to telecommunications. The POC shall have the authority to represent/bind the contractor within the scope of telecommunications operations and supporting environments.

Contractor Responsibilities:

Security

1. The Privacy Act of 1974 (5 U.S.C. §552a), Freedom of Information Act (5 U.S.C. §552), VA Confidentiality Statutes, (38 U.S.C § 5701, 5705 and 7332), the Health Insurance Portability and Accountability Act (45 CFR Part 160 and 164), and the regulations and general instructions issued by the VA pursuant thereto are applicable to this contract.
2. The contractor shall ensure that the highest level of security is maintained for all telecommunications and its physical and operational processes. All staff shall be trained on security procedures, as well as relevant aspects of the HIPAA, Freedom of Information Act, Privacy Act and VA confidentiality statutes. The contractor shall ensure at a minimum:
 - a. Veteran and dependent privacy and confidentiality is protected to include information transmitted electronically, by e-mail or facsimile.
 - b. Potential fraud-related activities are not accessible to the general public and all evidence and documents relating to fraud allegations are secured in "lockable" cabinets.
 - c. Only the contractor's employees have access to files, computers, and other materials related to the contract activities.
 - d. Safeguard mechanisms are provided to ensure that all paper and electronic data are protected from unauthorized access and disaster such as fire or water damage,
 - e. Environmental security measures are taken (e.g. computers should be protected from electronic surges).
3. Contractor must agree to comply with HIPAA business associate requirements (attachment A).

Data exchanged electronically outside the VA network must be encrypted

Type of Contract

VA anticipates the award of a contract that contains firm fixed price based on a percentage of actual recoveries.

Contract Period

It is expected that the contract will contain one (1) base year and three renewable option years. However, if after a six-month period the cost-effectiveness of this initiative has not been demonstrated, VA maintains the right to terminate the contract at that time.

GOVERNMENT HOLIDAYS:

Holidays observed by the Federal Government:

| | |
|-------------------------------|---------------------------|
| New Year's Day | 1 January |
| Martin Luther King's Birthday | Third Monday in January |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | 4 July |
| Labor Day | First Monday in September |
| Columbus Day | Second Monday in October |
| Veterans Day | 11 November |
| Thanksgiving Day | 4th Thursday in November |
| Christmas Day | 25 December |

If a holiday falls on Sunday, the following Monday will be observed as the legal holiday. When a holiday falls on a Saturday, the preceding Friday is observed as a legal holiday by U.S. Government agencies. Also included would be any day specifically declared by the President of the United States of America as a national holiday

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION
HEALTH ADMINISTRATION CENTER
AND**

Whereas, the _____ (Business Associate) provides certain services to the Department of Veterans Affairs Veterans Health Administration (Covered Entity), as required under 38 U.S.C. § 311, and

Whereas, in order for Business Associate to provide certain services to the to Covered Entity, Covered Entity discloses to Business Associate Protected Health Information (PHI) and Electronic Protected Health Information (E PHI) that is subject to protection under regulations issued by the Department of Health and Human Services, as mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”), and 45 CFR Parts 160 and 164, Subparts A and C, the Security Standard (“Security Rule”); and

Whereas, Department of Veterans Affairs Veterans Health Administration is a “Covered Entity” as that term is defined in the HIPAA implementing regulations, 45 CFR 160.103, and

Whereas, the _____, as a recipient of PHI from Covered Entity in order to provide certain services to Covered Entity, is a “Business Associate” of Covered Entity as the term “Business Associate” is defined in the HIPAA implementing regulations, 45 CFR 160.103; and

Whereas, pursuant to the Privacy and Security Rules, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the Use and Disclosure of PHI and E PHI; and

Whereas, the purpose of this Memorandum of Understanding (MOU) is to comply with the requirements of the Privacy and Security Rules, including, but not limited to, the Business Associate Agreement requirements at 45 CFR 164.308(b), 164.314(a), 164.502(e), and 164.504(e), and as may be amended.

NOW, THEREFORE, the Covered Entity and Business Associate agree as follows:

1. Definitions. Unless otherwise provided in this MOU, capitalized terms and phrases that are defined in the Privacy and Security Rules have the same meanings as set forth in the Privacy and Security Rules. When the phrase “Protected Health Information” and the abbreviation “PHI” are used in this MOU, they include the phrase “Electronic Protected Health information” and the abbreviation “E PHI”.

CBO MEDICAL RECOVERY AUDIT
RFP 741-10-04

2. Ownership of PHI. PHI provided by Covered Entity to Business Associate and its agents and subcontractors, or gathered by them on behalf of the Covered Entity, under this MOU are the property of Covered Entity.

3. Scope of Use and Disclosure by Business Associate of Protected Health Information
 - A. Business Associate is permitted to make Use and Disclosure of PHI that is disclosed to it by Covered Entity, or received by Business Associate on behalf of Covered Entity, as necessary to perform its obligations under this MOU and 38 USC 311, provided that the Covered Entity may make such Use or Disclosure under the Privacy and Security Rules, and the Use or Disclosure complies with the Covered Entity's minimum necessary policies and procedures.

 - B. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this MOU or Required by Law, Business Associate may:
 - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate;

 - (2) Make a Disclosure of the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate; provided, however, that the Disclosure is permitted by the Privacy Rule if made by the Covered Entity, or Required by Law; and provided further that where the Disclosure is not permitted by the Privacy Rule, or Required by Law, Business Associate has received from the third party written assurances that (a) the information will be held confidentially and Used or further Disclosure made only as Required By Law or for the purposes for which it was disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;

 - (3) Engage in Data Aggregation activities, consistent with the Privacy Rule; and

 - (4) De-identify any and all PHI created or received by Business Associate under this MOU; provided, that the de-identification conforms to the requirements of the Privacy Rule.

4. Obligations of Business Associate. In connection with its Use and Disclosure of PHI under this MOU, Business Associate agrees that it will:
 - A. Use or make further Disclosure of PHI only as permitted or required by the Privacy Rule, or this MOU or as Required by Law;

 - B. Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided by this MOU;

CBO MEDICAL RECOVERY AUDIT
RFP 741-10-04

- C. To the extent practicable, mitigate any harmful effect of a Use or Disclosure of PHI by Business Associate in violation of this MOU that is known to Business Associate;
- D. Promptly report to Covered Entity any Security Incident or Use or Disclosure of PHI not provided for by this MOU of which Business Associate becomes aware;
- E. Require contractors, subcontractors or agents to whom Business Associate provides PHI to agree to the same restrictions and conditions that apply to Business Associate pursuant to this MOU, including implementation of reasonable and appropriate safeguards to protect PHI;
- F. Make available to the Secretary of Health and Human Services Business Associate's internal practices, books and records, including policies and procedures, relating to the Use or Disclosure of PHI for purposes of determining Covered Entity's compliance with the Privacy and Security Rules, subject to any applicable legal privileges;
- G. If the Business Associate maintains PHI in a Designated Record Set, maintain the information necessary to document the Disclosures of PHI sufficient to make an accounting of those Disclosures as required under the Privacy rule and the Privacy Act, 5 USC 552a, and within ten (10) days of receiving a request from Covered Entity, make available the information necessary for Covered Entity to make an accounting of Disclosures of PHI about an individual in the Designated Record Set or Covered Entity's Privacy Act System of Records;
- H. If the Business Associate maintains PHI in a Designated Record Set or Privacy Act System of Records, within ten (10) days of receiving a written request from Covered Entity, make available PHI in the Designated Record Set or System of Records necessary for Covered Entity to respond to individuals' requests for access to PHI about them that is not in the possession of Covered Entity;
- I. If the Business Associate maintains PHI in a Designated Record Set or Privacy Act System of Records, within ten (10) days of receiving a written request from Covered Entity, incorporate any amendments or corrections to the PHI in the Designated Record Set or System of Records in accordance with the Privacy Rule and Privacy Act;
- J. Not make any Uses or Disclosures of PHI that Covered Entity would be prohibited from making.
- K. When Business Associate is uncertain whether it may make a particular Use or Disclosure of PHI in performance of this MOU, the Business Associate will consult with the Covered Entity before making the Use or Disclosure.
- L. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality and integrity, and availability of the PHI that Business Associate receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule.

M. Upon completion of the contract, the Business Associate shall return or destroy the PHI gathered, created, received or processed during the performance of this contract, and no data will be retained by the Business Associate, and any agents and subcontractors of the Business Associate. The Business Associate shall certify that all PHI has been returned to the Covered Entity or destroyed. If immediate return or destruction of all data is not possible, the Business Associate shall certify that all PHI retained will be safeguarded to prevent unauthorized Uses or Disclosures. Until the Business Associate has completed certification, Covered Entity will withhold 15% of the final payment of the contract.

5. Obligations of Covered Entity. Covered Entity agrees that it:

- A. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under this MOU.
- B. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under this MOU;
- C. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if such change or revocation may affect Business Associate's ability to perform its obligations under this MOU.

6. Material Breach of the MOU. Upon Covered Entity's knowledge of a material breach of this MOU by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach; and if cure is not possible, Covered Entity shall report the violation to the Secretary of Health and Human Services.

7. Termination. This MOU does not contain any termination provision because termination would be inconsistent with the statutory obligations of Business Associate under 38 USC 311.

8. Amendment. Business Associate and Covered Entity agree to take such action as is necessary to amend this MOU for Covered Entity to comply with the requirements of the Privacy and Security Rules or other applicable law.

9. No Third Party Beneficiaries. Nothing express or implied in this MOU is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- 10. Other Applicable Law. This MOU does not, and is not intended to, abrogate any responsibilities of the parties under any other applicable law.
- 11. Effective Date. This MOU shall be effective on the effective date of contract or the latest date signed by both below approval officials.

VHA

Contractor

By: _____
Name: _____

By: _____
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____