

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF CONTRACT AWARD

TO:	DATE ISSUED:	December 28, 2016
A.W. Holdings, LLC dba Benchmark Human Services	AGREEMENT NO:	17-014-3-RFP
8515 Bluffton Road	AGREEMENT TITLE:	'Early Intervention Services'
Fort Wayne, IN 46809		

THIS IS A NOTICE OF A CONTRACT AWARD AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS

The contract term covered by this Notice of Award is effective January 1, 2017 thru December 31, 2019.

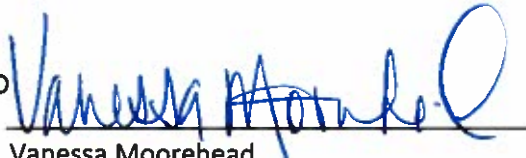
The contract documents consist of the terms and conditions of Agreement No. 17-014-3-RFP, including any exhibits or attachments.

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: William Swiss	TELEPHONE NO.:	(260) 207-5610
	EMAIL ADDRESS:	EArmstrong@benchmarkhs.com
COUNTY CONTACT: Ifiok Ibanga	TELEPHONE NO.:	(703) 228-5583
	EMAIL ADDRESS:	libanga@arlingtonva.us

CONTRACT AUTHORIZATION

AUTHORIZED SIGNATURE: 
Name: Vanessa Moorehead
Title: Procurement Officer
Date: 12/28/16

Distribution: Contractor: 1 Contract Folder: 1 Administrative Officer: 1 Purchasing Admin: 1

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201

AGREEMENT NO. 17-014-3-RFP

THIS AGREEMENT is made, on the date of execution by the County, between A.W. Holdings, LLC dba Benchmark Human Services ("Contractor") an Indiana, LLC authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Attachment A – Scope of Work
- Attachment B – Business Associate Agreement
- Attachment C – County Nondisclosure and Data Security Agreement (Contractor)
- Attachment D – County Nondisclosure and Data Security Agreement (Individual)

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work", Attachment A. The primary purpose of the Work is to provide Early Intervention services to children who are residents of Arlington County, exhibit documented developmental disability or developmental delay, and are under the age of three years old. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than December 31, 2019 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Renewal, authorize continuation of the Agreement not more than two additional 12-month periods, from January 1, 2020 to December 31, 2022 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

This is a fee for service contract. The Contractor agrees to the Virginia Early Intervention rates established by the Virginia Department of Medical Assistance Services.

The rate represents the total cost of providing a unit of service, including not only the direct costs of services provided, but also administrative and support costs such as billing, reporting, interpretation and personnel development.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will be in accordance to the Virginia Early Intervention rates established by the Virginia Department of Medical Assistance Services.

7. STANDARD OF CARE

The County is entering into this Contract in reliance on the Contractor's experience and abilities with respect to performing the services hereunder. In performing the Work, the Contractor will ensure that it and its agents and employees exercise the degree of skill and care that is normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Contractor will re-perform, without additional compensation, any services not meeting this Customary Standard of Care.

The Contractor will be responsible for the professional quality, completeness, technical accuracy and coordination of all designs, drawings, specifications, costs estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's consultants. The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, complete and appropriate for the purposes intended; and the project, if constructed in accordance with such plans, drawings, specifications, and other documents, will be structurally sound and complete and a properly functioning facility suitable for the purposes for which it is intended.

The Contractor is responsible for all costs and expenses incurred by the County, including increased construction costs, when such costs and expenses are the result of any violation of this Standard of Care section. The County's review, approval or acceptance of or payment for any services required under this Contract does not release the Contractor from any liability for breach of this Standard of Care.

8. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

9. ADJUSTMENTS FOR CHANGE IN SCOPE

The County may order additions, deletions and other revisions in the Work within the general scope of the project. If the Contractor believes that any change is not within the scope of the project or warrants additional compensation, the Contractor must notify the Project Officer as soon as the County requests the change; and the Contractor must then provide written notice of its position to the Project Officer within ten calendar days. The Contractor's notice must detail and document the basis for the claimed amount of additional compensation. The Contractor will not receive any additional compensation pursuant to this paragraph unless the parties execute a written Contract amendment and the County issues a purchase order consistent with the amendment.

10. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Attachment B includes all costs and expenses of providing the services described in this Contract.

11. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

12. * NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

13. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

14. * COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

15. BACKGROUND CHECK

All employees or subcontractors whom the Contractor assigns to work on this Contract must pass the County's standard background check. The background check will include fingerprinting by the County Sheriff's Office and a credit check.

16. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

17. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

18. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

19. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

20. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

21. **TERMINATION**

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

1. **Termination for Unsatisfactory Performance.** If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. **Termination for Breach or Default.** If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs

within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

22. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnities") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

23. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnities, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses

to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

24. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

25. OWNERSHIP AND RETURN OF RECORDS

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

26. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the

County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement.** The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Attachment C or D) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.
- (b) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- (e) **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the

return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.

(f) **Notification of Security Incidents**. The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.

(g) **Subcontractors**. If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

27. * ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

28. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

29. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

30. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

31. * RELATION TO COUNTY

The Contractor is an independent Contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

32. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

33. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

34. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

35. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

36. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

37. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

38. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

39. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

40. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

41. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

42. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

43. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

44. ATTORNEY'S FEES

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

45. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION or DATA SECURITY AND PROTECTION.

46. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

47. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

48. NOTICES

Unless otherwise provided in writing, all written notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

A.W. Holdings, LLC dba Benchmark Human Services
8515 Bluffton Road
Fort Wayne, Indiana 46809
Attention: William Swiss, CEO

TO THE COUNTY:

Leah Davidson, Project Officer
2110 Washington Boulevard 3rd Floor
Arlington, Virginia 22204

AND

Michael E. Bevis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

49. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

51. HIPAA COMPLIANCE

The Contractor must comply with the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor is designated a Business Associate for purposes of this Contract and must execute the attached Arlington County Business Associate Agreement (Attachment B). Pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic

Health Act ("HITECH"), § 13401, the Contractor must also enter into an agreement with any subcontractors that, in a form approved by the County, requires the subcontractor to protect PHI to the same extent as the Arlington County Business Associate Agreement. The Contractor must ensure that its subcontractors notify the Contractor immediately of any breaches in security regarding PHI. Software and platforms used in performance of this Contract must be HIPAA compliant.

The Contractor takes full responsibility for HIPAA compliance, for any failure to execute the appropriate agreements with its subcontractors and for any failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH. The Contractor will indemnify the County for any and all losses, fines, damages, liability, exposure or costs that arise from any failure to comply with this paragraph.

If any work performed under this Contract results in the design, development or maintenance of or responsibility for the content or format of any County web sites or for the County's presence on third-party web sites, the Contractor must perform such work in compliance with ADA.

52. ADA COMPLIANCE

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor also must respond promptly to and cooperate fully with all inquiries from the U.S. Department of Labor.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- a. Access to Programs, Services and Facilities: The Contractor must ensure that its programs, services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor must provide equivalent services in an accessible alternate location or manner.
- b. Effective Communication: Upon request, the Contractor, must provide appropriate communication aids and services so that qualified persons with disabilities can participate equally in the Contractor's programs, services and activities. Communication aids and services can include, but are not limited to, qualified sign language interpreters, Braille documents and other means of facilitating communications with people who have speech, hearing or vision impairments.
- c. Modifications to Policies and Procedures: The Contractor must modify its policies and procedures as necessary to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services and activities. For example, individuals' service animals must be allowed in the Contractor's offices or facilities, even if pets are generally prohibited.
- d. No Extra Charges: The Contractor may not charge a person with a disability or any group of individuals with disabilities to cover the cost of providing aids or services or of reasonable modifications to policies and procedures.

53. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from

Insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent Contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be provided with the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be provided with the certificate.
- f. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- h. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

A.W. HOLDINGS, LLC dba BENCHMARK HUMAN
SERVICES

AUTHORIZED
SIGNATURE: 

AUTHORIZED
SIGNATURE: 

for NAME: MICHAEL E. BEVIS
TITLE: PURCHASING AGENT
DATE: 12/28/16

NAME: WILLIAM J. SWISS
TITLE: CEO
DATE: 12/22/16

ATTACHMENT A

SCOPE OF WORK

1. SCOPE OF SERVICES:

- A. The Contractor shall provide Early Intervention Services for children ages 0 to 3 years of age who reside in Arlington County and meet the County's eligibility criteria for early intervention services in the Commonwealth of Virginia, in compliance with the Policies and Procedures of the Infant & Toddler Connection of Virginia <http://www.infantva.org/ovw-PoliciesProcedures.htm>.
- B. The Contractor shall provide the following Early Intervention Teams:
 - 1. Speech Therapy
 - 2. Occupational Therapy
 - 3. Physical Therapy
 - 4. Developmental Services
- C. The Contractor will provide all services in accordance with the current Infant & Toddler Connection of Virginia Practice Manual <http://www.infantva.org/Pr-PracticeManual-Forms.htm>. It is expected that all services will be family centered, reflect a primary provider approach, and be delivered in accordance with the adult learning strategies promoted by Arlington PIE and the state Part C office.

2. CASE ASSIGNMENT PROCESS:

- A. A weekly assignment process is used to ensure that the child's services are met according to the Individualized Family Service Plan (IFSP). Arlington County Parent Infant Education (ARLINGTON PIE) reserves the right, at any time to assign or reassign children to the Contractor considering family choice, program operations and the Contractors' ability to meet the child's IFSP. The ARLINGTON PIE procedure for assigning children for services is reviewed periodically and may be modified over the course of the contract to ensure best practices.
- B. On Monday of each week, the ARLINGTON PIE Scheduling Coordinator will send an email containing pertinent information about children in need of EI services from the week prior. The Contractor must respond by 5:00 p.m. Tuesday of the same week stating whether the Contractor is able to serve the child. ARLINGTON PIE personnel will assign the children via a notification email and convey the child's IFSP to the Contractor within 48 hours. Contractor staff are required to contact the family within 24 hours of receipt of referral. Contractor staff are required to contact the Service Coordinator no later than COB Friday of the same week regarding the date and time of the first visit that was offered and the family's response. The decision regarding which children will be assigned, will be at the discretion of ARLINGTON PIE staff, reflecting insurance network status, the best interests of the family, child and system sustainability and Contractor availability for assignment.
- C. Any child who has not been selected by the Contractor shall be assigned to one of the Contractors who has offered to provide the same service to a different child. When children have been posted

on the assignment list for two consecutive weeks without any Contractor offering to provide the appropriate services, they will be assigned to the Contractor in rough proportion to the percentage of ARLINGTON PIE children served by each Contractor. This provision is limited to children posted on the assignment list without special conditions requested by the family, such as service delivery at a certain time of day or service delivery utilizing a language other than English.

3. TASK TO BE PERFORMED:

A. SERVICE DELIVERY

1. Contractor shall comply with all Federal and State regulations, including those outlined in the Commonwealth of Virginia Notice of Child and Family Rights and Safeguards. (See <http://infantva.org>)
2. Provide services in accordance with the child's IFSP and in keeping with Part C requirements for occupational therapy, physical therapy, speech/language therapy, and developmental services/infant education and/or family counseling and support services.
3. Provide early intervention supports and services at a frequency that matches the families and other caregivers' need for support in using intervention strategies. Assure that there is an active collaboration between parents and service providers. Family members or other caregivers must be involved in each early intervention session, as the service provider's primary function is coaching the family.
4. Provide services in the child's natural environments (i.e. where the child would be if he or she did not have a developmental delay) and integrate services into the child and family's daily activities and routines, as mandated by Part C.
5. As needed, the Contractor may be asked to provide a dual disciplinary team to conduct assessment for service planning for eligible children in the child's natural environment. Assessment must be functional in nature and must focus on the child's strengths and needs when participating in his or her daily routines. Providers must use a standardized developmental tool in order to anchor the age levels produced by the assessment team.
6. Contractor shall notify designated ARLINGTON PIE personnel which of the children posted on the assignment list the Contractor can provide services for. Provide appropriate documentation according to the Virginia Practice Manual for every contact with families related to the planning and implementation of the IFSP. All required documentation should be submitted with monthly invoices including:
 - a) Progress notes for each visit;
 - b) Cancellations;
 - c) Formal Teaming
7. Contractor may be involved in developing transition plans for those children who require special services after ARLINGTON PIE services have been completed.
8. Contractor shall provide services in a manner consistent with Natural Learning Environment

Practices (see Section II, Definitions), and ITC ARLINGTON/ARLINGTON PIE trainings.

9. Contractor shall maintain a minimum of one intervention team that consists of at least one of each of the following service providers:
 - a) Speech Language, Therapist
 - b) Physical Therapist,
 - c) Occupational Therapist
 - d) Developmental Specialists
10. Contractor shall inform ARLINGTON PIE Service coordinators and the families themselves of the full clinical team assigned to each family. When a family is determined by the IFSP team to require services from a different discipline, it is expected that those services will be provided by a member of the clinical team assigned to that family. If other team members exist as part of a separate company or entity, insurance network status will be taken into account when deciding which individual to utilize as a secondary provider. If the secondary provider works for a different entity than the primary provider, formal and informal teaming is still required and formal teaming must be documented.
11. Contractor shall hold schedule and hold team meetings on a regular basis, with the frequency of a minimum of once per month. If the Contractor has created multiple teams, the various teams may meet simultaneously or at different times. A Team Meeting note for each child discussed shall be completed and sent to the ARLINGTON PIE along with the monthly invoices.
12. Contractor shall ensure that team meetings are scheduled on a monthly basis at times reasonable for ARLINGTON PIE service coordinators' and interventionists' attendance (Arlington PIE business hours 8:00 a.m. – 5:00 p.m. Monday through Friday).
13. Contractor shall assign a clinical supervisor. Clinical supervisors are responsible for training their clinical staff to teach parents. Clinical supervisors shall be experienced early intervention practitioners who are skilled in using the coaching interaction style as an adult learning strategy. The clinical supervisor will be responsible for the training and enhancement of the clinical skills of each therapist in his or her own discipline, as well as supporting the growth of trans-disciplinary skills for all staff members. It is critical that clinical supervisors demonstrate a strong commitment to the Natural Learning Environment Practices that support the parents and caregivers of children with developmental delays and/or disabilities in understanding the critical role of everyday activity settings and child interests as the foundation for children's learning opportunities. If clinical supervisors also provide direct services, Contractors should ensure that sufficient time in their schedule is allotted to the supervisory role. Early Intervention Clinical Supervisors must meet quarterly, at a minimum, with ARLINGTON PIE staff, either individually or as a group.
14. Contractor shall assign an early intervention program supervisor. Early Intervention Program Supervisors shall be experienced practitioners who will have supervisory responsibility for the staff's implementation of the service delivery guidelines put forward in the Practice Manual and in trainings presented by the state Part C office and by ARLINGTON PIE. The early intervention program supervisor should be knowledgeable regarding best practices for

service delivery in Early Intervention and demonstrate a commitment to staying current with new developments in this field. The supervisor will participate in both the training of new staff members and enhancing the skills of current staff members. Early Intervention Program Supervisors must meet quarterly, at a minimum, with ARLINGTON PIE staff, either individually or as a group.

15. Contractor shall provide all service providers with training, support, and work time necessary to fulfill the requirements of their positions.
16. Ensure that each service provider, full-time or part-time, is a member of at least one clinical team.
17. Ensure that each service provider, full or part time, attends the ARLINGTON PIE Arlington Orientation sessions within one year of hire.
18. Ensure that all staff members are certified by the state Part C office as Early Intervention Professionals and update their certification as required by the state.
19. Ensure that all staff members meet the licensure requirements as outlined in the Practice Manual for their specific discipline.

4. COMMUNICATION AND COLLABORATION:

- A. The Contractor shall meet monthly with ARLINGTON PIE staff to review contract performance, discuss any issues and problems. Ongoing communication regarding the scheduling of meeting is expected to ensure collaboration to ensure a partnership. Frequency of meetings after the initial six months may be modified by mutual agreement.
- B. When the Contractor becomes aware of staffing vacancies and/or changes, the Contractor must submit a plan to ARLINGTON PIE which meets requirements 1-3, below. The Service Coordinator will support families through the transitions and document as appropriate. The written plan must include the following:
 1. Notification to ARLINGTON PIE Director within 24 hours that a vacancy will exist.
 2. Details regarding the impending vacancy to include the name of the individual, position, specific dates regarding the last day of work.
 3. A preliminary written plan for continuity of care for the child within 48 hours to include:
 - a) Service Providers/Individuals caseload;
 - b) Date of departure, plan to fill the position (with dates);
 - c) Specific plan for reassignment to include communication with the child's service coordinator and the family; the plan should contain details such as whether the family has been contacted, have they agreed to working with a new therapist, date of 1st appointment, etc.).
- C. Provide a communication plan ensuring that all staff and subcontractors are informed of updates

and notices related to ARLINGTON PIE. Email and phone access must be made available for all direct services staff and subcontractors. Updated staff contact lists shall be provided to ARLINGTON PIE on a monthly basis.

- D. Provide an organizational chart delineating the roles of all staff on an annual basis and within 7 days of any changes.

5. TRAINING REQUIREMENTS:

- A. Contractor shall ensure that providers complete 30 hours of training over the 3-year certification period as required by State Part C Certification requirements with content that addresses one or more of the following and is applicable to early intervention (See <http://www.infantva.org/documents/PracManCh12.pdf>):
 - 1. Evidence based practices; Changes in policies, procedures and practices;
 - 2. Topics identified on the practitioner's professional development plan (see Responsibilities of Certified Practitioners section in the (<http://www.infantva.org/documents/PracManCh12.pdf>) for more information on professional development plans);
 - 3. Training needed for new responsibilities, such as a provider being promoted to management;
 - 4. Ensure that all staff members complete the Arlington PIE Orientation within one year of hire.
- B. Contractor shall maintain documentation of trainings completed that will be provided to ARLINGTON PIE staff upon request.
- C. The Contractor will provided receipt of state Early Intervention credentialing to include all mandatory components prior to being assigned Early Intervention children.
- D. Contractor must provide documentation that their staff has completed training on HIPPA within 90 days of the contract being signed.
- E. Contractor's Individual Providers may be barred from providing services if the training requirements are not met.
- F. Contractor shall ensure that its employees attend all technical training and professional development classes offered by the County. Contractor shall ensure that its employees follow the County's guidelines, policies and best practices, as covered by these classes. Contractor's employees' failure to follow these policies or implement these best practices shall be grounds for the County to reject that employee for the performance of this Contract, and to request a replacement.

6. QUALITY ASSURANCE

- A. Contractor shall document the provision of services as outlined in the Practice Manual (See <http://infantva.org/documents/pr-PM-PracticeManual-5-12.pdf>) and in the ITC ARLINGTON/ARLINGTON PIE HSCODE Manual. Additional required documentation and

partnership shall include, but is not limited to, credentialing information, training records, updated policies and procedures, attendance at planning meetings, and assistance with quality assurance activities. It also includes any follow-up activities or plans of correction that may be indicated.

- B. Contractor shall implement and report on a quality assurance plan to assure the requirements of the contract are provided as specified. The quality assurance plan shall be a system for identifying and correcting deficiencies in the quality of services before the level of performance becomes unacceptable and/or the County Contract Monitors point out deficiencies. Quality deficiencies require the development of a quality improvement and/or staff development plan. Quality improvement/staff development plans shall be shared with the Contractor's ARLINGTON PIE liaison and Quality Assurance Director.
- C. Contractor shall participate in state training and technical assistance related to quality assurance and system improvements.
- D. Contractor shall provide documentation that all providers at all times:
 - 1. Are certified as Early Intervention Professionals by the Virginia Part C Office (<http://www.infantva.org/documents/PracManCh12.pdf>)
 - 2. Are licensed according to their discipline by either the Virginia Department of Health professionals (http://www2.vipnet.org/dhp/cgi-bin/search_publicdb.cgi) or the Virginia Department of Education (<https://p2pe.doe.virginia.gov/tinfo/searchteacher.doc>)

7. BILLING AND FINANCE

The Contractor is required to bill third party insurance, when applicable, including Medicaid and TriCare, for all billable services, prior to billing the ARLINGTON PIE and/or the family. Contractor responsibilities for billing/finance are listed below:

- A. For clients with private third party insurance, the Contractor must bill insurance for services delivered to County approved clients according to the Contractor's contracts with individual insurance companies prior to billing Arlington PIE. The Contractor must keep and make available to the County all Explanation of Benefits (EOB) documentation for each client served and submit EOBs as part of regular audits conducted by the County. The Contractor shall also bill the client according to the sliding fee scale established by the County and according to information provided by the County concerning each client's financial liability. The Contractor may bill the County the difference between the insurance payment and the amount recovered from the family up to the early intervention rate established by the State Part C Office in accordance with the State Part C rate and billing structure. The County agrees to provide the Contractor with detailed information concerning each client's insurance policy and status, and the maximum monthly amount (Family Monthly Cap) that can be billed to the family.
- B. The Contractor is responsible for ensuring that all necessary pre-authorizations are obtained and all requirements for billing Medicaid are met.
- C. Progress notes must be submitted with each invoice or available to the PIE program through access to an electronic medical record.

- D. The subsequent contract will be a fee for service agreement. As the local lead agency, the County receives the standard Early Intervention (EI) rate established by the Virginia Department of Medical Assistance Services (DMAS). The rate represents the total cost of providing a unit of service, including not only the direct costs of services provided, but also administrative and support costs such as billing, reporting, interpretation and personnel development.
- E. The State Part C Office requires that all local Part C programs pay a uniform and consistent rate for Part C services. The rate includes billing, supervision, training, teaming and providing services in the natural environment and all other costs associated with delivery of Part C early intervention services. The rates for Part C services are as follows:

Services	Per Unit Rates	Unit
Occupational Therapy, Physical Therapy, Speech Therapy	\$37.50	15 minute unit
Education/Developmental Services	\$27.505	15 minute unit

- F. The rates and activities that can be billed are provided in the Part C Practice Manual. The rates and activities billed will change only on the authority of the State Part C Office. Contractors shall agree to accept the Part C rate structure.
- G. For clients with no insurance, the Contractor shall bill the family for services, up to the family monthly cap as shown on the Family Cost Share Agreement (Please see VA Practice Manual Chapter 11 Page 6: <http://www.infantva.org/documents/Practice%20Manual%20-%20Chapter%2011%2010%2016%20Final.pdf>) and bill the County in accordance with the rate structure specified above for the balance. The County agrees that payments will be made within thirty (30) days after receipt and approval of a correct invoice from the Contractor.
- H. The Contractor shall submit invoices to the County on a monthly basis. Invoices must include written documentation of third party billing for all clients who have private insurance. Invoices for services that were billed to insurance but have not been reimbursed by insurance must be submitted to the County within three months of the last date of service. The County may, at its sole discretion, opt to pay the invoice pending final resolution of the insurance reimbursement claim.

For such invoices with pending claims, the Contractor must submit documentation of reimbursement or denial of the claim by insurance to the County within three (3) months of the County's payment of such invoices. The County may, at its sole discretion, extend the deadline to allow the Contractor to resolve pending insurance claims. If the insurance claim results in Contractor receiving insurance reimbursement, the Contractor shall remit such reimbursement payment to the County to reconcile the invoice paid by the County, but in no event shall Contractor be required to remit payment in excess of the amount paid by the County. If the Contractor fails to submit documentation of final reimbursement or denial of the claim within the deadline stated above, inclusive of all granted extensions, it shall within thirty (30) days of such deadline repay to the County the full amount paid by the County on the invoice, and Contractor shall have no further claim against the County for payment on that invoice.

- I. The Contractor hereby agrees to retain all books, records and other documents related to this procurement for five (5) years after final payment or until audited by the County, whichever comes first. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period. If the Contractor wishes to destroy or dispose of records after audit but within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

8. **PRACTITIONER QUALIFICATIONS:**

- A. Personnel providing Part C early intervention supports and services in Virginia must meet the discipline-specific qualifications specified in Table A at the end Chapter 12 of the Virginia Practice Manual. (See <http://www.infantva.org/documents/PracManCh12.pdf>).
- B. Individual practitioners of early intervention services, except physicians, audiologists and registered dietitians, must be certified by the State Lead Agency as an Early Intervention Professional or Early Intervention Specialist and/or Early Intervention Case Manager. See the Virginia Practice Manual for information regarding the structure of Part C Early Intervention System Infrastructure. <http://www.infantva.org/documents/PracManCh2.pdf>.
- C. One-page fact sheet for individuals interested in providing early intervention services in Virginia is available at http://infantva.org/documents/pr-Handout_forPotential_providers.pdf.

9. **ARLINGTON COUNTY RESPONSIBILITIES:**

The County shall:

- A. Provide a central point of entry for families seeking Part C services.
- B. Provide maintenance and disposition of a central record for each child in the Arlington County CSB's Electronic Health Record.
- C. Conduct multi-disciplinary eligibility determination for each child.
- D. Conduct approximately 65% of the total assessments for service planning preceding the development of the initial Individualized Family Service Plan (IFSP).
- E. Develop the initial IFSP.
- F. Provide a listing of children who require services.
- G. Assign or reassign children to Contractors according to the procedure described in Section IV Case Assignment Process.
- H. Provide service coordination for every child referred to ARLINGTON PIE.
- I. Coordinate interpretation services by working directly with the Contractor to assess client need and arrange for on-site or telephonic interpretation.

- J. Provide Federal, State, and local reporting.
- K. Coordinate outreach activities.
- L. Monitor quality assurance including documentation as required by Part C. Collaborate with Contractors in the ongoing monitoring and identification of local system improvements.
- M. Provide training and technical assistance to the Contractors and Contractor's staff in the form of the ARLINGTON PIE Orientation sessions, one yearly professional development session, and ongoing technical assistance to measure and support fidelity to use of natural learning opportunities, the coaching interaction style, and a primary provider model of service delivery.
- N. Provide access to the assistive technology lending library and support related to assistive technology equipment.
- O. Designate an ARLINGTON PIE Technical Assistance Team Lead who will serve as the liaison to each Contractor. The liaison may be consulted by contract staff or management for clarification or advice related to Part C best practice. The liaison will also coordinate training and technical assistance to the Contractor.
- P. Provide family support, infant mental health consultation, direct social emotional and child mental health services, and parent groups.

Arlington County and the Infant and Toddler Connection of Arlington cannot be bound to any non-compete clause in any Contractors agreements when it pertains to the assignment of children eligible for Part C services. No such clause can contradict a family's choice of provider or assignment made by ARLINGTON PIE that is in the best interest of the child and family.

10. PRIVATE PRACTICE BY THE CONTRACTOR

Contractor shall abide by ethical and professional standards which dictate that all children from birth to age 3 who reside in Arlington County who seek Part C services from a Contractor's private practice should be referred for services to ARLINGTON PIE. Every effort will be made by ARLINGTON PIE to assign referred children eligible for Part C early intervention services to the referring Contractor(s).

- A. Contractor is prohibited from marketing additional private practice services to Part C participants while participants are receiving services provided under this contract.
- B. Contractor agrees that their private practice will not interfere with their ability to provide services required in this contract. The Contractor(s) will ensure that staff and subcontractors understand and delineate the Contractors private practice model from the Part C services model under this contract.

ATTACHMENT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between A.W. Holdings, LLC., dba Benchmark Human Services., (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, Business Associate and Covered Entity, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting.** "Accounting" means a record of disclosures of protected health information made by the Business Associate.
- b) **Breach.** "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA, which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- k) **Individual.** "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.

- l) **Protected Health Information.** "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration.** "Remuneration" means direct or indirect payment from or on behalf of a third party.
- n) **Required By Law.** "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
- p) **Security Incident.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement.** "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information.** "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and

6. Contact information for Business Associate's representatives knowledgeable about the Breach.

- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) **Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
1. Disclosure is required by Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) **Obligations of Covered Entity**

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.
- e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered

Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) Miscellaneous

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first class mail, postage prepaid at:

(1) Marcy Foster,
Arlington County Privacy Officer
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(2) Stephen Maclsaac
County Attorney
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(3) County Project Officer
Leah Davidson
2110 Washington Boulevard, 3rd Floor
Arlington, Virginia 22204

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

A.W. Holdings, LLC dba Benchmark Human Services
Attn: William J. Swiss, CEO
8515 Bluffton Road
Fort Wayne, Indiana 46809

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent Contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.

- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.

- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

Business Associate

By: Marcy Foster
(Signature)

By: [Signature]
(Signature)

Name: MARCY FOSTER

Name: William J. Swiss

Title: County Privacy Officer

Title: CEO

Date: 12/28/16

Date: 12/22/16

ATTACHMENT C

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of A.W. Holdings, LLC dba Benchmark Human Services ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, Contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 17-014-3-RFP (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any

device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work site or the County's physical facility, if the Contractor is working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, or running the latest version of an industry-standard virus protection program. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

The Contractor agrees that all duties and obligations enumerated in this Agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that its employees, agents and subcontractors are aware of and abide by the terms and conditions of this agreement and related data security provisions in the Main Agreement.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices in place to ensure confidentiality, protection, privacy and security of County information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

At the conclusion of the Project, the Contractor agrees to return all County Information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the Main Agreement.

Authorized Signature:  _____

Printed Name and Title: William J. Swiss, CEO

Date: 12/22/16

ATTACHMENT D

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(INDIVIDUAL)

I, the undersigned, agree that I will hold County-provided information, documents, data, images, records and the like confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, Contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime Contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 17-014-3-RFP (the "Project" or "Main Agreement") or which may be accessed through County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

I agree that I will maintain the privacy and security of County Information and will not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized to do so by the County Project Officer. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, or that otherwise affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

I agree that I will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly authorized and associated with my designated duties on the Project. I understand and agree that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal law/s, subjecting me and/or my employer to civil and/or criminal penalties.

I also agree that I will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person for any purpose of the Information obtained directly, or indirectly, as a result of my work on the Project. I agree to view, retrieve or access County Information only to the extent concomitant with my assigned duties on the Project and only in accordance with the County's and my employer's access and security policies or protocols.

I agree that I will take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. I will also ensure that any device or media on which County Information is stored, even temporarily, will have strict security and access control and that I will not remove, facilitate the removal of or cause any information to be removed from my employer's worksite or the County's physical facility without written authorization of the County Project Officer. If so authorized, I understand that I am responsible for the security of the electronic equipment or paper files on which the information is stored and agree to promptly return such information upon request.

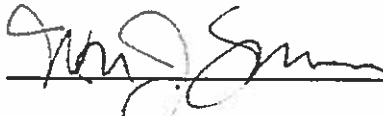
I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network is free of all computer viruses or running the latest version of an industry-standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. I will not download any County Information except as authorized by the County Project Officer and then only onto a County-approved Device. I understand that downloading onto a personally-owned Device or service, such as personal e-mail, Dropbox etc., is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. I will fully cooperate with the County to help regain possession of any County Information and to prevent its further disclosure, use or dissemination.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the highest level of administrative safeguards and best practices are in place to ensure confidentiality, protection, privacy and security of County Information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *Nondisclosure and Data Security Agreement* conflicts with the underlying Main Agreement or any local, state or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

Upon completion or termination of my work on the Project, I agree to return all County Information to the County Project Officer. I understand that this agreement remains in full force and effect throughout my work on the Project and shall survive my reassignment from the Project, termination of the above referenced Project or my departure from my current employer.

Signed: _____



Printed Name: William J. Swiss

Date: _____

12/22/16

Witnessed:

Contractor's Project Manager: _____

Printed Name: _____

Date: _____

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT