

FY 2023 – FY 2025 MULTI-YEAR PLAN REQUEST FOR PROPOSAL BUDGET INSTRUCTIONS

The application packet has been designed to standardize and expedite the review of your grant application. NO OTHER FORMAT WILL BE ACCEPTED. Long or elaborate responses will not enhance the prospects of approval. Unless otherwise required by instructions, we urge constraint in attaching extra sheets or paper to answer these questions. If, however, additional pages are needed as an attachment to a particular form, these pages may be added.

Each applicant agency is only required to submit the *Section I: Agency Information* packet once for this RFP.

A separate *Section II: Program Information* section of the application must be submitted for each service category for which abidder is applying.

Applications must be typed and formatted and organized as specified. All attachments will be uploaded into the Shared File.

SECTION I: AGENCY INFORMATION

SECTION I - COVER SHEET

Complete the application cover sheet, page A-1, with agency information.

ASSURANCES AND COMPLIANCE WITH APPLICABLE LAWS/REGULATIONS

The forms on page A-2 and A-3 should be reviewed and signed by the person duly authorized to conduct the agency's legal responsibilities.

ASSURANCE OF COMPLIANCE WITH TAX REQUIREMENTS

Complete the table on page A-4 according to the instructions provided on the page. If necessary, attach additional information directly behind page A-4. Sign the page.

MINORITY CONTRACTOR STATUS/BOARD OF DIRECTORS

- Indicate whether your agency is a minority contractor using the designated criteria on page A-5.
- Indicate the total number of Directors on the Board and the frequency of meetings.
- List the board members, noting those who are minority with an asterisk (*) and their credentials. Provide copies of the minutes from the last three (3) board meetings labeled as **Attachment A** at the end of the *Section I: Agency Information* portion of the proposal.

INSURANCE

Indicate on the chart on page A-6 the amount of insurance coverage that the applicant agency has. Attach copies of the cover page for each type of insurance, to be included as **Attachment B** at the end of the *Section I: Agency Information* portion of the proposal. If the agency does not currently have the minimum requirements, indicate intent to purchase the required insurance upon notice of a grant award.

AGENCY INFORMATION NARRATIVE

Provide a concise narrative addressing each question on pages A-7 through A-9. Long or elaborate responses will not enhance the prospects of approval. Unless otherwise required by instructions, we urge constraint in attaching extra sheets or paper to answer these questions. Label the narrative as **Attachment C**.

- **Agency Profile**

Provide a brief description of the agency's background, mission, length of operations, experience in serving the target population, experience providing the proposed service(s), and total services offered. Include an organizational chart as **Attachment D** at the end of the *Section I: Agency Information* portion of the proposal.

- **Financial Management**

- Provide a description of the agency's financial management of the agency. Include details regarding any audit findings as **Attachment E** at the end of the *Section I: Agency Information* portion of the proposal.

- Copy of the certified audit (or unaudited financial statements) as **Attachment F**;
- IRS Form 941 with proof of payment as **Attachment G**;
- IRS Tax Return (i.e., Form 990 or 1120) as **Attachment H**;
- Articles of Incorporation as **Attachment I**;
- Agency's 501 c (3) notification letter as **Attachment J**;
- And a copy of the most recent Annual Report as **Attachment K**.
- **Agency Administration**
Provide a description of the agency's administrative capabilities, by answering each question concisely. Attach copies of resumes of management to demonstrate experience and qualifications at the end of the application as **Attachment L**.
- **Client Grievance Procedures**
Describe the agency's client grievance procedure and how clients will be made aware of this procedure. A sample Client Bill of Rights that may be adopted as is, or revised for your specific agency, has been included in the Instruction portion of the RFP. Provide, as **Attachment M** at the end of the *Section I: Agency Information* portion of the proposal, a copy of the agency's grievance procedure and indicate the agency's commitment to adopt the DAAA Model.

SECTION II: PROGRAM INFORMATION

REMINDER: Complete additional *Section II – Program Information* packets in their entirety for each separate service category!

SECTION II - COVER SHEET

Complete the program information cover sheet on page A-11. Be sure to indicate the appropriate Service Category and the amount of funding requested. Note the number of clients to be served and the number of units to be provided. Refer to the specific service definitions in the RFP Instructions for the definition of a unit of service.

PROGRAM NARRATIVE

Provide a concise narrative addressing each question on pages A-11 through A-13. Long or elaborate responses will not enhance the prospects of approval. Unless otherwise required by instructions, we urge constraint in attaching extra sheets or paper to answer these questions.

Label the narrative as **Attachment 1** at the end of the *Section II: Program Information* portion of the proposal.

Statement of Need

Clearly state the specific need the proposed project will address. Demonstrate an understanding of how the proposed project will impact needs.

Service/Program Description

- **OVERVIEW** – State the service to be delivered by your project to meet the need stated under Statement of Need. In completing this section, it is recommended that you reference the applicable service definition. Within the stated guidelines, please keep in mind that we are asking for a description of your proposed services and programs.
- **PROGRAM DESIGN** – Provide clear, concise responses to all the items listed. Additional information is requested for specific service categories only (as indicated).
- **COMMUNITY TO BE SERVED** – If not serving the entire PSA, provide a sketch of a map showing the exact boundaries where your service(s) will be provided. Include this map as **Attachment 2** at the end of the *Section I: Program Information* portion of the proposal.
- **TARGET POPULATION** – Plans for targeting frail, low-income, minority, and disabled older adults should be clearly developed and stated. Also, the statement must assure that elderly members of Native American tribes and organizations will be provided access to services.

NOTE: Successful applicants will be required to provide a comprehensive work plan including goals, objectives, and time lines.

Project Management and Staffing

Provide detailed management plans that clearly delineate each program member's area

of responsibility and how key staff will be accountable for carrying out their responsibilities. Include job descriptions as [Attachment 3](#) at the end of *Section I: Program Information* portion of the proposal. Describe the management and direct service experience of the program staff. Describe the duties and qualifications of current staff and of any staff to be filled. Describe the agency experience with turnover of program staff. If direct service staff is treated as independent contractors, attach a determination from the IRS that this designation is appropriate and acceptable. This documentation should be included as [Attachment 4](#) at the end of the *Section I: Program Information* portion of the proposal.

Programmatic Capacity

Indicate the number of clients served daily and on an annual basis. Also describe plans to initiate new programs.

Procurement of Other Resources

Describe plans to procure other resources for support of the proposed program.

CONSULTANT/CONTRACTUAL SERVICE AFFILIATION AGREEMENT

Complete this form on page A-14 only if consultant services or an affiliate agency will assist in service provision under this project. If services are to be provided by an affiliate agency or consultant, the relationship of that agency or consultant to the applicant agency, and the individual service provided, must be clearly established. Use a separate form for each consultant. Each consultant should also be clearly indicated in the budget. This documentation should be included as [Attachment 5](#) at the end of the *Section I: Program Information* portion of the proposal.

GENERAL BUDGET INFORMATION

MULTI-YEAR CONTRACTS – FY 2023 – FY 2025

When applicable, an updated budget and work plan will be required for each subsequent funding year of the contract period.

LOCAL MATCH REQUIREMENTS

Non-Federal local match is the contribution of local share required to match Federal and/or State funds.

Federal and State Funds

The minimum required percentage of local match for Federal or State fund is 10% for the first year of funding; 15% for the second year and maintenance of effort, thereafter.

Maintenance of Effort

Federal policy requires maintenance of effort for local match established that was previously generated and above the minimum local match required.

Pursuant to *Office of Management and Budget – Super Circular 2 CFR part 200 § 200.306 -Cost Sharing or Matching* states:

“All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

- Are verifiable from the recipient's records.
- Are not included as contributions for any other federally-assisted project or program.
- Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- Are allowable under the applicable cost principles.
- Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- Are provided for in the approved budget when required by the Federal awarding agency.
- Conform to other provisions of this Circular, as applicable.”

An example of how to compute the amount of local match required is as follows (Note that the example used represents a 10% minimum match):

Step A

Grant Request divided (/) by 0.90 equals (=) Factor (in dollars)

$$\$54,387 / 0.90 = \$60,430$$

Step B

Factor minus (-) Grant Request equals (=) Minimum Local Match (in dollars)

$$\$60,430 - \$54,387 = \$6,043$$

Minimum Match (10%) = \$6,043

ELIGIBLE AND INELIGIBLE EXPENSES

- **Eligible Expenses**

The following list indicates generally allowable cost categories for which Title III funds may be expended:

Accounting	Exhibits
Advertising	Insurance and Indemnification
Audit Services	Maintenance and Repair Costs
Budgeting	Material Costs
Building Lease	Meetings and Conferences
Communications	Memberships
Compensations for Personnel Services (such as wages, salaries, and employee fringe benefits)	Volunteer Reimbursement Expenses
Data Processing	Professional Services
Disbursing Services	Training and Education
Equipment Cost (limited)	Travel
	Printing and Reproduction

- **Ineligible Expenses**

Ineligible costs are generally the following:

Bad Debts	Labor Relations Costs
Construction	Losses
Contingencies and Miscellaneous Expenses	Organization Costs
Contributions and Donations	Purchase of Vehicles
Fines and Penalties	Relocation Costs
Interest and Other Financial Costs	Severance Pay

INDIRECT COSTS

Indirect costs are also ineligible. While it is recognized that DHHS does permit such costs, with regard to the administration of Title III programs, DHHS policy also permits individual state discretion on determining the eligibility of claiming such costs.

For the State of Michigan, the Commission on Services to the Aging has adopted a policy that does not permit an applicant agency to claim indirect costs to carry out the operation of a Title III funded project. Examples may include, but are not limited to, executive salaries, accounting, auditing, and budgeting salaries, clerical, receptionist, switchboard, and other clerical service salaries.

If an applicant agency is awarded a grant but does not keep adequate and detailed time records of these expenses, DAAA will declare such expenses as indirect costs and will disallow them.

PROGRAM INCOME

Program income is that income which is dependent upon earnings or contributions provided for a service rendered and proceeds from program fund-raising activities. These earnings or contributions or proceeds from project-supported activities furnished in whole or in part with Federal grant funds must be used to expand the program as approved by the Prime Contractor.

Program income cannot be used as local match by the Subcontractor.

Program income must be used in accordance with the additive alternative and expended in the year in which it is generated. Agencies must report program income generated on a monthly basis.

Under the additive alternative, program income must be used for allowable costs under the program through which it is generated. It can be used to increase or expand the services offered.

Older persons may not be denied service because of their unwillingness or inability to contribute to the cost of service.

Agencies may not use a means test to determine eligibility for service.

Agencies must inform clients receiving service that they may donate to the specific service.

Agencies must establish procedures to ensure safe collection and handling of program income.

LINE ITEM BUDGET INSTRUCTIONS

NOTE: This budget section is to be utilized for the following services only: Caregiver Education, Support and Training, Elder Abuse Prevention, Kinship Support Services, Legal Assistance Outreach and Assistance, Vision Services. Budget pages 1-5.

For Adult Day Services and Assistance to the Hearing Impaired and Deaf skip to Unit Cost Budget. Budget page 6.

READ THE FOLLOWING INSTRUCTIONS IN THEIR ENTIRETY BEFORE COMPLETING THE BUDGET FORMS.

Complete the Supporting Budget Schedules BEFORE completing the Budget Summary.

The Supporting Budget Schedules are designed to relate line-item costs (listed under Budget Category) with the activities to be undertaken by the project during the proposed budget year.

Enter *all* estimated costs to be met from DAAA Grant Funds, local non-federal participation (cash or in-kind), or Other Resources.

If a cost item listed under any Budget Category (see pages 2-5) is to be used in support of more than one program, the costs related to the item must be allocated across the number of programs for which the item is used or involved.

Example: If any individual staff member's time is spent on more than one activity, the related salary and fringe benefits costs must be distributed among the appropriate programs based on the percentage of time spent for each program activity.

BUDGET CATEGORIES (BY LINE ITEMS)

SALARY (Page 2 of 5)

This category is to include the compensation paid to all permanent and part-time employees. *This does not include professional fees, contractual services, or personnel hired on a personal contract basis.*

Enter the total salary costs for each position in the appropriate section (administrative staff or program staff). If there is more than one source of funds for an employee, enter each amount in the appropriate column. Where volunteers are to be used as in-kind, list the number of volunteers and their service value. Enter the total cost in Column D. Enter the percentage of each salary that will be charged to the DAAA in the last column.

The Total Salaries from Columns A-D should be carried to the Budget Summary Page 1 of 5 and entered into Line 1 *Salary*, Columns A-D.

In determining budget categories 1 and 2, the term **administrative staff** describes those persons who direct, plan, and/or supervise agency operations, and the administrative support staff, such as the executive secretary. **Program staff** describes those persons who carry out program functions: for example, program aides, chore workers, clerks, typists, custodians, volunteers.

FRINGE BENEFITS (Page 3 of 5)

This category is to include the employer's contributions for insurance, retirement, FICA, unemployment insurance, and other similar benefits for all permanent and part-time employees. For each position listed on Page 2 of 5, enter the total dollar amount of fringe benefits paid by the project on behalf of that position(s) in the appropriate column provided, and in the appropriate section (administrative staff or program staff.) Enter the total value of fringe benefits in Column D.

Enter the percentage of fringe benefits the agency pays to total salaries in the appropriate column (total fringe benefits paid by the agency divided by actual total salary paid by the agency). Enter the percentage of fringe benefits that will be charged to the DAAA in the appropriate column (total DAAA fringe divided by total DAAA salary.) Note: the percent of fringe benefits charged to DAAA should be the same as the percent of salary charged to DAAA.

Enter the amount of Administrative Staff costs (salary and fringe) paid by the DAAA as a percentage of the DAAA funding plus Local Match on Page 1 of 5, Column A, Line 16. **No more than 10% of the grant award should be used for administrative costs.**

The Total Fringe from Columns A-D should be carried to the Budget Summary Page 1 of 5 and entered into Line 2 *Fringe*, Columns A-D.

CAPITAL EXPENDITURES/EQUIPMENT (Page 1 of 5, Line 3)

This category is to be used for all stationery or moveable equipment. An item is defined as equipment if the cost of a single unit or piece of equipment, including the necessary accessories and installation costs, is five thousand dollars (\$5,000) or more and the item has a life expectancy of one year or more (Federal Regulations, Title 45, Part 74).

Enter the dollar amount of such costs under the appropriate Source of Funds and enter the total cost in Column D. Columns A, B, and C should equal D.

UTILITIES/RENT (Page 1 of 5, Line 4)

This category is to include the cost of utilities such as heat, electricity, or gas, or for space utilized by the program, including donated space used as in-kind.

Distribute the costs across the appropriate Source of Funds. Enter the total cost in Column D.

SUPPLIES (Page 1 of 5, Line 5)

This category is to be used for all consumable and short-term items (less than two years) or small equipment items consisting of less than five thousand dollars (\$5,000) per item.

Distribute the costs across the appropriate Source of Funds columns, and enter the total in Column D.

TRAVEL (Page 1 of 5, Line 6)

This category is to include the travel costs of all full-time and part-time employees, as well as volunteer reimbursements for travel. This includes costs for mileage, per diem, lodging, registration fees for approved seminars and conferences, and other travel costs incurred by employees.

Total the travel and conference costs and distribute the total to the appropriate Source of Funds columns, and enter the total cost in Column D.

Conferences

This includes the costs of mileage, per diem, lodging, and registration fees.

COMMUNICATIONS (Page 1 of 5, Line 7)

This category is to include the costs of telephone, postage, photocopying, newsletters, etc.

Printing is the cost for composition, typesetting, folding, and production of newsletters, brochures, and so forth.

Reproduction includes the costs of rental of photocopy machines, as well as the cost of supplies such as paper, ink, etc.

Total the cost and enter the amounts in the appropriate Source of Funds columns. Enter the total of A, B, and C in Column D.

CONSULTANTS (Page 4 of 5, Line 8)

This category is to include the cost of independent contractors (as defined by the Internal Revenue Service), consultant fees, travel related to services provided by the consultant, per diem, etc.

Distribute the costs for each consultant/activity to the appropriate Source of Funds, and enter the total in Column D. The Totals from Columns A-D should be carried to the Budget Summary Page 1 of 5 and entered into Line 8 *Consultants*, Columns A-D.

OTHER COSTS (Page 4 of 5)

This category is to include miscellaneous items such as training, insurance, audit expenses, etc.

Describe the type of Other Cost. Distribute the costs for each item listed to the appropriate Source of Funds, and enter the total in Column D.

The Totals from Columns A-D should be carried to the Budget Summary Page 1 of 5 and entered into Line 9 *Other Costs*, Columns A-D.

PROGRAM INCOME

Enter this amount in Columns C and D on line 11, page 1 of 5.

LOCAL MATCH NON-FEDERAL PARTICIPATION (Page 5 of 5)

See the previous General Budget Information section for the minimum local match requirements.

Cash Resources - Identify the Funding Source, purpose of allocation (line item), and amount of all non-Federal cash resources used as local shares.

Non-Cash Resources - Identify by category the source, purpose of allocation (line item), and amount of all non-Federal, non-cash resources used as local share. This includes the services of volunteers as described in Note 2.

NOTE 1: Budget Categories identified in the Local Match Section of Page 5 of 5 should appear in the appropriate Line Items throughout Pages 1-5 of the Supporting Budget Pages.

Identify and record the local funding resources (other than Federal funds) necessary to support each service category. For both cash and non-cash resources, indicate source and purpose of the allocation (line item). The total Local Match must agree to the Local Match reported on Page 1 of 5 Column B.

NOTE 2: If the services of volunteers have been included as in-kind and as part of non-Federal participation for the proposed service, the applicant agency

must identify the rate of pay and schedule used to compute their contributed participation.

The value of anything donated in the performance of the service (office space, equipment, etc.) must be verified by supporting documentation (submittal of a statement from the agency's accountant, etc.). If other activities are occurring at the agency, all Federal costs must be prorated to the actual space, utilities, etc., used to operate the service.

Attach statements from other groups which are contributing cash to support the proposed service (e.g., financial institutions, community block grant agency, etc.)

OTHER RESOURCES (Page 5 of 5)

Identify and record OTHER RESOURCES (other than the local match money) which are necessary to support the service for which the contract award was made. For both cash and

non-cash resources, indicate the Budget Category, Funding Source, and the dollar amount on Page 5 of 5. The total Other Resources must agree to the Other Resources reported on Page 1 of 5 Column C.

NOTE: *Examples of such resources could be RSVP positions or other Federal money which has been awarded to the agency such as in the field of education, law enforcement, mental health, social service, etc. In the case where the agency's local match commitment exceeds the required minimum, but is necessary for the operation of the service, this overage can be reported as OTHER RESOURCES.*

BUDGET SUMMARY (Page 1 of 5)

Complete the following steps:

Enter the legal name of the applicant

agency. Enter appropriate service category.

NOTE: Budget period will generally not extend past September 30th of any calendar year.

Enter the budget period for which the application is being made.

Line 10: Subtotal amounts in Columns

A-D. Line 12: Total amounts in Columns A-D.

Line 13: Enter the percentage of local match (as a percentage of DAAA funds plus LocalMatch).

Line 14: Number of

Clients. Line 15: Number

of Units.

Line 17: DAAA Cost per Client (DAAA funds divided by

clients). Line 18: DAAA Cost per Unit (DAAA funds divided by units).

Line 19: Total Cost per Client (Total budget divided by

clients). Line 20: Total Cost per Unit (Total budget divided by units).

Certification: Budget must be signed by an authorized representative of the applicant agency.

Enter the title of the authorized representative and the date signed.

A careful review of the budget is encouraged to ensure accuracy and completeness.

FEE FOR SERVICE: COST PER UNIT ANALYSIS INSTRUCTIONS

NOTE:

This budget section is to be utilized for the following services only: Adult Day Services and Assistance to the Hearing Impaired and Deaf.

For all other services, please go to page I - 29 (LINE-ITEM BUDGET)

- **AGENCY NAME AND SERVICE**

Indicate the agency name and the proposed service(s).

- **SERVICE LEVELS**

- Indicate the funding requested for each service category (i.e., capitation). The capitation for each service category is listed beginning on page I - 2.
- Indicate the proposed number of (unduplicated) clients to be served for each service category.
- Indicate the proposed number of units to be provided for each service category.

- **UNIT COST ANALYSIS**

Provide details on the components of the cost per unit.

- **Wages** – Includes wages paid to all permanent and part-time employees. Program staff describes those persons who carry out program functions: for example, program aides, chore workers, clerks, typists, custodians.
- **Fringes** – Includes the employer's contributions for insurance, retirement, FICA, unemployment insurance, and other similar benefits for all permanent and part-time employees.
- **Operating Costs** – Includes the direct expenses incurred in operating the program, such as supplies, mileage, etc.
- **Administrative Costs** – Includes expenses incurred in directing an organization, but not directly involved in program operations, such as salaries of executives, costs of general services (accounting, human resources), etc. Administrative staff

describes those persons who direct, plan, and/or supervise agency operations, and the administrative support staff, such as the executive secretary. **No more than 10% of the grant award should be used for administrative costs.**

The **sum** of the costs of wages per unit, fringes per unit, operating costs per unit, and administrative costs per unit should equal the **total cost per unit**.

- **LOCAL MATCH**

See the previous General Budget Information section for the minimum local match requirements.

- **Amount** – Indicate the amount of non-Federal, cash or non-cash, resources to be provided by the agency as local match to support each service category.
- **Item** – Indicate the purpose of allocation (i.e., line item).
- **Source** – Identify the source of local match.

NOTE:

If the services of volunteers have been included as in-kind and as part of non-Federal participation for the proposed service, the applicant agency must identify the rate of pay and schedule used to compute their contributed participation.

The value of anything donated in the performance of the service (office space, equipment, etc.) must be verified by supporting documentation (submittal of a statement from the agency's accountant, etc.). If other activities are occurring at the agency, all Federal costs must be prorated to the actual space, utilities, etc., used to operate the service.

Attach statements from other groups which are contributing cash to support the proposed service (e.g., financial institutions, community block grant agency, etc.)

BUSINESS ASSOCIATE AGREEMENT

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This Business Associate Agreement is entered into as of _____, 20 ____
(Effective Date), by and between the Detroit Area Agency on Aging ("Covered Entity") and
("Business Associate").

Agency Name

WITNESSETH:

WHEREAS, Covered Entity has entered, or will enter into an agreement (the "Underlying Agreement") with Business Associate, whereby Business Associate has agreed to provide certain services to Covered Entity;

WHEREAS, to provide such services to the Covered Entity, Business Associate must have access to certain protected health information ("Protected Health Information" or "PHI"), as defined in the Standards for Privacy of Individually identifiable Health Information (the "Privacy Standards") set forth by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), part of the American Recovery and Reinvestment Act of 2009 ("ARRA") and the Genetic Information Nondiscrimination Act of 2008 ("GINA");

WHEREAS, to comply with the requirements of the Privacy Standards, HIPAA, and HITECH, Covered Entity must enter into this Business Associate Agreement with Business Associate.

WHEREAS, the provisions of this Agreement shall override, supersede, and control over any conflicting provision of the Underlying Agreement, provided that all non-conflicting provisions of the Underlying Agreement shall remain in full force and effect.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

- **Definitions**

All capitalized terms in this Business Associate Agreement that are not defined by this Business Associate Agreement will have the meaning ascribed to them by 45 C.F.R. Parts 160-164 or in the HITECH Act.

- ***Breach.*** “Breach shall have the same meaning as the term “Breach” in 45 CFR § 164.402.
- ***Electronic Protected Health Information.*** “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103.
- ***Individual.*** “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- ***Privacy Rule.*** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, subparts A and E.
- ***Protected Health Information (PHI).*** “Protected Health Information (PHI)” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of a covered entity, including from any other business associate of Covered Entity. As used herein, the term “business associate” in lower case letters shall have the same meaning as the term “business associate in 45 CFR §160.103.
- ***Required By Law.*** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.

- **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR §164.304.
- **Security Rule.** “Security Rule” shall mean the Security Standards and Implementation Specifications in 45 CFR Part 160 and Part 164, subpart C.
- **Transaction.** “Transaction” shall have the meaning given the term “transaction” in 45 CFR §160.103
- **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the meaning given the term “unsecured protected health information” in 45 CFR §164.402.

- **Safeguarding Privacy and Security of Protected Health Information**

- **Permitted Uses and Disclosures.** Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on Covered Entity's behalf or receives from Covered Entity (or another business associate of the Covered Entity) and to request Protected Health Information on CoveredEntity's behalf (collectively, “Covered Entity's Protected Health Information”) only:

- **Functions and Activities on the Covered Entity's Behalf.** To perform those services referred to in the established services agreement.

- **Business Associate's Operations.** For Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that, with respect to disclosure of Covered Entity's Protected Health Information, either:

- the disclosure is Required by Law; or
- if before the disclosure, the Business Associate obtains from the person or entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the person or entity will:
 - Hold Covered Entity's Protected Health Information in confidence and use or further disclose Covered Entity's Protected Health Information only for the purpose for which Business Associate disclosed Covered Entity's Protected Health Information to the person or as the person or entity is Required by Law; and
 - notify Business Associate within two (2) business days of any instance of which the person or entity becomes aware in which the confidentiality of Covered Entity's Protected Health Information was breached.
- **Minimum Necessary.** Business Associate's use, disclosure or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, pursuant to 45 CFR § 164.502, unless excepted by HIPAA and as required by the HITECH Act, any uses or disclosures of Protected Health Information shall be limited to the Minimum Necessary.
- ***Prohibition on Unauthorized Use or Disclosure.*** Business Associate will neither use nor disclose Covered Entity's Protected Health Information, except as permitted or required by this Agreement or in writing by Covered Entity or as Required by Law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's Protected Health Information in a manner that would violate the Privacy Rule, the Security Rule, or the HITECH Act if done by Covered Entity.
- ***Information Safeguards.***
 - **Privacy of the Covered Entity's Protected Health Information.** Business Associate will maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made to a use or disclosure otherwise permitted by this Agreement.

- **Security of the Covered Entity's Electronic Protected Health Information.** As required by the Security Rule and the HITECH Act, Business Associate will maintain, and use reasonable and appropriate administrative, technical, and physical safeguards to protect against reasonably anticipated threats or hazards to, and to ensure the security and integrity of, Protected Health Information; to protect against reasonably anticipated unauthorized use or disclosure of Protected Health Information; and to reasonably safeguard Protected Health Information from any intentional or unintentional use or disclosure in violation of this Business Associate Agreement.

- **Policies and Procedures.** Business Associate shall maintain written policies and procedures, conduct risk analyses, and train and discipline its workforce in accordance with the Privacy Rule, the Security Rule, and the HITECH Act.

- **Subcontractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Agreement or in writing by Covered Entity to disclose Covered Entity's Protected Health Information and/or Electronic Protected Health Information, to provide reasonable assurance, evidenced by a written contract pursuant to 45 CFR § 164.308, that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Covered Entity's Protected Health Information and/or Electronic Protected Health Information that are applicable to Business Associate under this Agreement, including reasonable and appropriate safeguards to protect it. Upon request of Covered Entity, Business Associate will provide to Covered Entity a copy of such written contract, or such portion thereof as documents Business Associate's compliance with this paragraph.

- **Prohibition on Sale of Records.** Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR § 164.508, a valid authorization that expressly specifies that his/her Protected Health Information can be further exchanged for remuneration by the entity receiving the individual's Protected Health Information.

- (d) **Penalties For Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the privacy rule and security rule, as amended by the HITECH Act.

- **Obligations of the Covered Entity**

Covered Entity shall notify the Business Associate of:

- Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;
- Any changes in, or revocation of, permission by an Individual to use or disclose his/her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and
- Any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

- **Permissible Requests by the Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

- **Individual Rights**

- **Access.** Business Associate will, within ten (10) calendar days following Covered Entity's request, make available to Covered Entity or, at Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of Covered Entity's Protected Health Information about the individual that is in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 CFR §164.524.

If Protected Health Information is held in an Electronic Health Record then, pursuant to 45 CFR § 164.502 and when requested by the individual, Business Associate shall provide a copy of such individual's Protected Health Information in an electronic format to Covered Entity or, if Covered Entity expressly requests in writing either: (i) directly to the individual or (ii) if the individual so chooses, directly to an entity or person designated by the individual, provided that the individual's choice is clear, conspicuous, and specific.

- ***Amendment.*** Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit the Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 CFR §164.526.
- ***Disclosure Accounting.*** To allow Covered Entity to meet its disclosure accounting obligations under 45 CFR §164.528.
 - **Disclosures Subject to Accounting.** Business Associate will record the information specified below (“Disclosure Information”) for each disclosure of Covered Entity's Protected Health Information, not accepted from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.
 - **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.
 - **Disclosure Information.** With respect to any disclosure by Business Associate of Covered Entity's Protected Health Information that is not accepted from disclosure accounting, Business

Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

- **Disclosure Information Generally.** Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (1) the disclosure date, (2) the name and (if known) address of the entity to which Business Associate made the disclosure, (3) a brief description of Covered Entity's Protected Health Information disclosed, (4) a brief statement of the purpose of the disclosure, and (5) any additional information to the extent required by the HITECH Act and any accompanying regulations.
- **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Covered Entity's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information

specified above for each accountable disclosure, or (1) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (2) the frequency, periodicity, or number of the repetitive accountable disclosures; and (3) the date of the last repetitive accountable disclosures.

- **Availability of Disclosure Information.** The Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to Covered Entity within fourteen (14) calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by the HHS with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual, and shall also provide a copy of such accounting to Covered Entity.

- **Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(a), or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Business Associate will comply with any restriction request if: (i) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

- **Breaches and Security Incidents**

- **Reporting.**

- **Privacy or Security Breach.** Business Associate will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement

along with any Breach of Covered Entity's Unsecured Protected Health Information. Business Associate will treat the Breach as being discovered in accordance with 45 CFR §164.410. Business Associate will make the report to Covered Entity's Privacy **Official not more than five (5) business days after Business Associate learns of such non-permitted use or disclosure**. If a delay is requested by a law-enforcement official in accordance with 45 CFR § 164.412, Business Associate may delay notifying Covered Entity for the applicable time period specified in 45 CFR §164.412. Otherwise, in accordance with 45 CFR §164.404, Business Associate's report will at least:

- Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of the Breach;
- Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other information were involved) on an individual basis;
- Identify who made the non-permitted use or disclosure and who received the non-permitted use or disclosure;
- Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
- Identify what steps the individuals who were subject to a Breach should take to protect themselves;
- all other information required, by the HITECH Act and any accompanying regulations, to be reported by a Business Associate to a Covered Entity or by a Covered Entity to the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach; and
- Provide such other information, including a written report, as Covered Entity may reasonably request.

- **Security Incidents and Unsuccessful Attempts.** Business Associate will report to Covered Entity any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report once per month, except if any such security incident resulted in a disclosure not permitted by this Agreement or Breach of Covered Entity's Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth in paragraph VI(a)(i), above.

- In the event notification to Individuals or the Secretary is required under the HITECH Act or any accompanying regulations, Business Associate will prepare and deliver such notification to Individuals and/or the Secretary on Covered Entity's behalf, only if Covered Entity specifically authorizes and requests, in writing, that Business Associate do so. Such notifications to Individuals or the Secretary will be consistent with the notification content requirements established in the HITECH Act and any accompanying regulations.

- Anything in this Agreement or in Underlying Agreement to the contrary notwithstanding, Business Associate shall be solely responsible for, and shall indemnify and hold Covered Entity (including Covered Entities, officers, directors, employees and representatives other than Business Associate) harmless from and against, any all costs, of every type and nature, incurred in preparing and delivering any Breach notification referenced in paragraph VII(a)(iii) of this Business Associate Agreement, or as the result of such Breach notification.

- **Term and Termination**

- **Term.** The term of this Agreement shall commence on the Effective Date, and shall terminate when all Protected Health Information provided to Business Associate by Covered Entity or another of Covered Entity's business associates, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

- **Right to Terminate for Cause.**

- Covered Entity may terminate this Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Agreement, and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective upon the expiration of the aforementioned thirty-day period or at such other date specified in Covered Entity's notice of termination.

- Covered Entity may terminate this Business Associate Agreement and the Underlying Agreement effective immediately upon written notice to Business Associate if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible.

- ***Return or Destruction of Covered Entity's Protected Health Information as Feasible.***

Upon termination or other conclusion of this Agreement, Business Associate will, if feasible, return to Covered Entity or destroy all of Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Covered Entity's Protected Health Information. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Further, Business Associate shall require any such subcontractor or agent to certify to Business Associate that it has returned to Business Associate (so that Business Associate may return it to Covered Entity) or destroyed all such information which could be returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

- ***Procedure When Return or Destruction Is Not Feasible.***

As promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement, Business Associate will identify all of Covered Entity's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents as permitted under this Agreement, that cannot feasibly be returned to Covered Entity or destroyed and explain why return or destruction is infeasible. To the extent return or destruction of PHI is not feasible, Business Associate's duties, rights, and obligations with respect to Covered Entity's Protected Health Information will continue in full force and effect after the termination of this Business Associate Agreement or the Underlying Agreement.

- **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of Covered Entity's Protected Health Information as specified in this

Agreement

will be continuous and survive termination or other conclusion of this Agreement and/or the Underlying Agreement.

- **Miscellaneous Provisions**

- **Definitions.** All capitalized terms in this Business Associate Agreement that are not defined by this Business Associate Agreement will have the meaning ascribed to them by 45 C.F.R. Parts 160-164 or in the HITECH Act.
- **Inspection of Internal Practices, Books, and Records.** Business Associate will cooperate with, and make its internal practices, books, and records relating to its use and disclosure of Covered Entity's Protected Health Information available to Covered Entity and to HHS to determine compliance with the Privacy Rule, HIPAA, and HITECH.
- **Amendment to Agreement.** Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS with respect to Protected Health Information, Standard Transactions, the security of Electronic Protected Health Information, or other aspects of HIPAA or the HITECH Act applicable to this Agreement or the Underlying Agreement, or that affects Business Associate's or Covered Entity's obligations under this Agreement, this Agreement will automatically be deemed amended such that the obligations imposed on Business Associate and Covered Entity remain in compliance with the final regulation or amendment to the final regulation. Further, the Covered Entity may amend the Agreement from time to time by posting an updated version of the Addendum on the Agency's website at: <http://www.aaal.c.org>, and providing the Business Associate electronic notice of the amended Agreement. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Covered Entity of its non-acceptance within 30 days of the Covered Entity's notice referenced herein. Any agreed alteration of the then current Agreement shall have no force or effect until the agreed alteration is reduced to a contract amendment and signed by the Covered Entity and the Business Associate.
- (a) **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any right or benefits to any third parties other than Covered Entity's clients.
- (d) **Regulatory References.** A reference in this Business Associate Agreement to a section in HIPAA, the Privacy Rule, the Security Rule, or the HITECH Act means the section as

amended and in effect.

- **Survival.** The respective rights of Covered Entity and obligations of Business Associate under Article VI and VII of this Agreement shall survive the expiration or termination of this Agreement for any reason,

along with any other provisions which by their nature are meant to survive termination, including but not limited to Article VIII (j)(k) and (l).

- **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy Rule, the Security Rule, and the HITECH Act. The provisions of this Agreement shall override, supersede, and control over any conflicting provision of the Underlying Agreement, provided that all non-conflicting provisions of the Underlying Agreement shall remain in full force and effect.
- **Notices.** All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses set forth below their signature, as appropriate, or at such other addresses as the parties may from time to time designate in writing in accordance with this paragraph.
- **Entire Agreement; Modification.** This Business Associate Agreement represents the entire agreement between Business Associate and Covered Entity relating to the subject matter hereof; provided, however, that all non-conflicting provisions of the Underlying Agreement remain in full force and effect. Except as specified in paragraph VIII(c) above, no provision of this Business Associate Agreement can be modified, except by a written document expressly referencing this Agreement and signed by duly authorized representatives of both parties.
- **Indemnification.** Anything in this Agreement or in Underlying Agreement to the contrary notwithstanding, Business Associate, for itself and its successors and assigns (collectively for purposes of paragraphs VIII(j) and VIII(k) only, “Indemnitors”) and at Indemnitors’ sole cost and expense, shall indemnify, defend, and hold Covered Entity and its respective officers, directors, shareholders, employees, successors and assigns (collectively for purposes of paragraphs VIII(j) and VIII(k) only, “Indemnitees”) from and against, any and all actions, suits, damages, judgments, liabilities, costs, Losses and Expenses (as hereinafter defined) of any and every kind that in any way pertain to and/or arise out of any misrepresentation, breach of warranty, or other breach, by Business Associate or any other Indemnitor, of Business Associate’s obligations under this Agreement. For the purpose of paragraphs VIII(j) and VIII(k), the term Losses and Expenses shall be deemed to include compensatory, exemplary

and punitive damages; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; costs associated with Indemnitees' response to any Security Incident or Breach of Unsecured PHI, including required notification to Individuals and/ or the Secretary; settlement amounts; judgments; and all other costs associated with any of the foregoing Losses and Expenses.

- ***Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself, and any subcontractors, employees and agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being

commenced against the Indemnitees or any of them based upon a claimed violation of HIPAA, the Privacy Rule, the Security Rule, the HITECH Act and/or any other laws or regulations relating to security and privacy, except where Business Associate or its subcontractors, employees, or agents is named in the litigation as a party adverse to the Indemnitees.

- ***Judicial and Administrative Proceedings.*** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days after receiving such request.
- ***Injunctive Relief.*** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to the Underlying Agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
- ***Binding Effect.*** This Business Associate Agreement shall be binding upon the parties hereto and their successors and assigns.

In Witness Whereof, the parties hereto have caused this Agreement to be executed effective as of the Effective Date.