Addendum #1
Agency Wide Multifunction Devices

To: All Vendors
From: Frances Otto, Buyer II
Cc: Sharon Brauner, Buyer III, Senior Purchasing Coordinator
    Nina Cook, Purchasing Manager
Date: January 30, 2018

RE: Addendum #1 Agency Wide Multifunction Devices

For the benefit of all Vendors submitting Proposals and to avoid possible confusion, the Proposal documents are clarified as follows. Please note this Addendum #1 and all attachments are hereby incorporated into the Proposal document.

ADDENDUM

Section X Attachment(s), page 19:

SECTION X - ATTACHMENTS

A. Sample Contract – A sample contract is included for your review (Attachment A). The sample contract is included as a form reference only. The insurance requirements of the final contract may or may not be the same as in the attached Sample Contract. All respondents must submit an Evidence of Coverage Certificate with your initial response. In the event you are awarded this contract the Contracts Department will request a Certificate of Insurance at that time. The COI must demonstrate that you have appropriate insurance coverage as requested from the Contracts Department. Additionally, The HARRIS CENTER must be listed as an Additional Insured on the certificate, along with the proper and required subrogation provision(s).

As an Agency of the State, The HARRIS CENTER does not Indemnify or execute contracts with damage limitations. Contract jurisdiction lies within the state of Texas and venue shall be Harris County.

B. HUB Subcontracting Plan (Historically Underutilized Business)

C. Deviation Form

D. Notice “Not to Participate” Form
E. W-9

**Item Added:**

F. BAA Business Associate Agreement

**BUSINESS ASSOCIATE AGREEMENT UNDER THE HIPAA OMNIBUS RULE**

This Business Associate Agreement (“BAA”) between _____________ (“BUSINESS ASSOCIATE”) and THE HARRIS CENTER FOR MENTAL HEALTH AND IDD (formerly known as MHMRA of HARRIS COUNTY), (“The HARRIS CENTER”) a Community Center and an Agency of the State of Texas, with offices at 9401 Southwest Freeway, Houston, Texas 77074, under the provisions of Chapter 534 of the Texas Health & Safety Code Ann. (Vernon 1992), as amended, establishes specific legal obligations regarding the terms of the relationship between the BUSINESS ASSOCIATE and The HARRIS CENTER, as it relates to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the HITECH Act of American Recovery and Reinvestment Act of 2009, the Office of the Secretary of the Department of Health and Human Services has issued regulations governing the Standards for Privacy, Security and Breach Notification of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 ("Privacy Rule", "Security", "Breach Notification" Rules) collectively the (“HIPAA Omnibus Rule”) and

The HARRIS CENTER and BUSINESS ASSOCIATE each may be referred to as a “Party” and together may be referred to as the “Parties” to the BAA. Both Parties agree that there shall be no third party beneficiaries to this Agreement, including but not limited to individuals whose protected health information is created, received, used, and/or disclosed by BUSINESS ASSOCIATE in its role as Business Associate.

**WHEREAS,** BUSINESS ASSOCIATE and The HARRIS CENTER are Parties to the BAA pursuant to which BUSINESS ASSOCIATE provide certain computer software and related support services to The HARRIS CENTER as outlined in the original Contract, between The HARRIS CENTER and BUSINESS ASSOCIATE in connection with the provision of those support services, The HARRIS CENTER discloses to BUSINESS ASSOCIATE certain Protected Health information ("PHI") (as defined in 45 C.F.R. § 164), that is subject to protection under HIPAA and the HIPAA Omnibus Rule;

**WHEREAS,** the Office of the Secretary of the Department of Health and Human Services has issued regulations requiring certain transmissions of electronic data be conducted in specified standardized formats at 45 CFR Parts 160 and 162 ("Electronic Transactions Rule"); and

**WHEREAS,** ______________ as a recipient of PHI which receives under a BAA from The HARRIS CENTER, a Covered Entity, and therefore, is a "Business Associate" as that term is defined in the Privacy Rule;

**WHEREAS,** pursuant to the Privacy Rule, all Business Associates must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

**WHEREAS,** the purpose of this BAA is to comply with the requirements of the Privacy Rule, including, but not limited to, the BAA requirements at 45 C.F.R. §160.103.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:
DRAFT

**DEFINITIONS.** Unless otherwise provided in this BAA, the terms used in this BAA shall have the same meanings as set forth in HIPAA, the HITECH Act, and the HIPAA Rules including, but not limited to the following: Availability, Confidentiality, Data Aggregation, Designated Record Set, Health Care Operations, Integrity, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, and Subcontractor. Specific definitions are as follows:

1. “Breach” shall have the same meaning as the term “breach” at 45 CFR 164.402.
2. “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR 160.103 and in reference to the party to this BAA, shall mean the first party listed in the first paragraph of this BAA.
3. “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of the HIPAA, the HITECH Act or the HIPAA Rules, as applicable; provided that, in any case for which that date occurs prior to the effective date of this BAA, the Compliance Date shall mean the effective date of this BAA.
4. “Electronic Protected Health Information” (“Electronic PHI”) shall have the same meaning as the term “electronic protected health information” at 45 CFR 160.103.
6. “Protected Health Information” (“PHI”) shall have the same meaning as the term “protected health information” at 45 CFR 160.103.
8. “Security Incident” shall have the same meaning as the term “security incident” at 45 CFR 164.304.
10. “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” at 45 CFR 164.402.
11. “Services” shall mean the services to be provided by BUSINESS ASSOCIATE which are identified in the Underlying Contract and its Exhibits.

**SECTION 1**

**SCOPE OF USE AND DISCLOSURE**

1.01 Contractual Obligations: BUSINESS ASSOCIATE shall be permitted to use and disclose PHI that is disclosed to it by The HARRIS CENTER as necessary to perform its obligations under the Underlying Contract.

1.02 Proper Management and Administration: Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this BAA or required by law, BUSINESS ASSOCIATE may:
(a) BUSINESS ASSOCIATE/MITIGATION Use. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of BUSINESS ASSOCIATE;

(b) Disclosure to Third Party. Disclose the PHI in its possession to a third party for the purpose of BUSINESS ASSOCIATE’S proper management and administration or to fulfill any legal responsibilities of BUSINESS ASSOCIATE; provided, however, that the disclosures are required by law or BUSINESS ASSOCIATE has received from the third party written assurances that:

(1) the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and

(2) the third party will notify the BUSINESS ASSOCIATE of any instances of which it becomes aware in which the confidentiality of the information has been breached.

SECTION 2
OBLIGATIONS OF BUSINESS ASSOCIATE

In connection with its use and disclosure of PHI, BUSINESS ASSOCIATE agrees to comply with the following standards:

2.01 Limited Disclosure: Use or further disclose PHI only as permitted or required by this Business Associate BAA and agrees to make uses and disclosures and requests for PHI consistent with the or as required by law.

2.02 Required Safeguards: Use reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 64 with respect to Electronic Protected Health Information to prevent use or disclosure of PHI received from or created or received on behalf of, other than as provided for by this Business Associate BAA or as required by law. These safeguards will include but not limited to:

A. Create a training plan that includes HIPAA and internal policies and procedures pertaining to HIPAA;
B. Provide training to all employees, contractors and subcontractors on HIPAA and how the regulations help prevent the improper use or disclosure of PHI;
C. Document training completion and testing outcomes. Retain all training records;
D. Update and repeat training on a regular (annual) basis;
E. Adopting policies and procedures regarding the safeguarding of PHI, including a Risk Analysis; and
F. Enforcing those policies and procedures including sanctions for everyone found not in compliant in accordance to the Privacy Rule.
2.03 Mitigation of Improper Uses or Disclosures: To the extent practicable, mitigate any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of PHI by BUSINESS ASSOCIATE in violation of this Business Associate Agreement.

2.04 Report Unauthorized Disclosures: Promptly report in writing but no later than forty eight (48) hours to The HARRIS CENTER of first learning of any use or disclosure of PHI not provided for by this BAA of which BUSINESS ASSOCIATE becomes aware as required by 45 CFR 164.410.

2.05 Contracts With Contractors and or Subcontractors: Require contractors, subcontractors and or agents to whom BUSINESS ASSOCIATE provides PHI to agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE pursuant to this BAA.

2.06 HHS Access: Make available to the Secretary of Health and Human Services ("HHS") BUSINESS ASSOCIATE'S internal practices, books and records relating to the use and disclosure of PHI for purposes of determining The HARRIS CENTER's compliance with the Privacy Rule, subject to any applicable legal privileges.

2.07 Accounting of Disclosures: Upon notice by The HARRIS CENTER that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, but not for information created prior to April 14, 2003, BUSINESS ASSOCIATE shall make available to The HARRIS CENTER such information then currently in BUSINESS ASSOCIATE'S possession, custody or control (including such information, if any, in the possession, custody or control of BUSINESS ASSOCIATE’S subcontractors) that is required for The HARRIS CENTER to make the accounting required by 45 C.F.R. Section 164.528. The HARRIS CENTER shall reimburse BUSINESS ASSOCIATE for all time and costs incurred to comply with any such requests made under this section.

2.08 Designated Record Set: To the extent that The HARRIS CENTER does not already have in its possession the Consumer's PHI in a Designated Record Set, BUSINESS ASSOCIATE shall provide copies to The HARRIS CENTER of all or a portion of the PHI in the Designated Record Set then currently in BUSINESS ASSOCIATE’S possession within a reasonable time after The HARRIS CENTER's request in order for The HARRIS CENTER to:

(a) make the PHI in the Designated Record Set available in accordance with 45 C.F.R. Part 164.524; and

(b) amend the PHI in the Designated Record Set in accordance with 45 C.F.R. Part 164.526. In the event an individual requests access to, or an amendment of, the PHI in a Designated Record Set, and any covered entity informs The HARRIS CENTER of an amendment, The HARRIS CENTER shall inform BUSINESS ASSOCIATE of the amendment. Upon receipt of such amendment, BUSINESS ASSOCIATE shall be responsible for making any changes in the Designated Record Set maintained by BUSINESS ASSOCIATE to reflect the amendment. The HARRIS CENTER shall reimburse BUSINESS ASSOCIATE for all time and costs incurred to comply with any request made under this section.
2.09 Compliance With Security Regulations: BUSINESS ASSOCIATE shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains or transmits on behalf of The HARRIS CENTER as required to comply with the HIPAA Security Regulation. Upon written request from The HARRIS CENTER, BUSINESS ASSOCIATE shall make available during normal business hours at BUSINESS ASSOCIATE’S offices, all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to The HARRIS CENTER within three (3) business days for purposes of enabling The HARRIS CENTER to determine BUSINESS ASSOCIATE’S compliance with the terms of this BAA.

2.10 Compliance with Security Audit: In compliance with HIPAA’S Security Audit Regulations, BUSINESS ASSOCIATE shall allow The HARRIS CENTER the ability to audit and review the security controls and policies that BUSINESS ASSOCIATE has in place for the locations housing The HARRIS CENTER’s electronic protected health information, including providing The HARRIS CENTER copies of the reports for any standard security audits that BUSINESS ASSOCIATE performs annually such as 3rd party HIPAA Security Audit reports etc.

SECTION 3
OBLIGATIONS OF THE HARRIS CENTER

The HARRIS CENTER agrees that it will comply with the following standards:

3.01 Notice of Privacy Practices: To inform BUSINESS ASSOCIATE of any changes in the form of notice of privacy practices that is forwarded by a Covered Entity to The HARRIS CENTER.

3.02 Restrictions on PHI: Will promptly notify BUSINESS ASSOCIATE in writing of any restrictions on the use and disclosure of PHI about Individuals that The HARRIS CENTER is required under the terms of its BAA with any Covered Entity to implement that may affect BUSINESS ASSOCIATE’S ability to perform its obligations under the Underlying Contract or this BAA.

3.03 Notice of Revocation: Will promptly notify BUSINESS ASSOCIATE in writing of any changes any changes in, or revocation of, permission by an Individual to use or disclose PHI which is received by The HARRIS CENTER from any Covered Entity, if such changes or revocation may affect BUSINESS ASSOCIATE’S ability to perform its obligations under the Underlying Contract or this BAA.

SECTION 4
TERM AND TERMINATION

4.01 Terms: This Contract is effective from and after the date of its execution until terminated as detailed in this Section 4 of the BAA.

4.02 Termination for Breach: In the event that BUSINESS ASSOCIATE materially breach a material term of this BAA, The HARRIS CENTER must provide BUSINESS ASSOCIATE with notice of the existence of the alleged material breach and afford BUSINESS ASSOCIATE an opportunity to cure the alleged material breach. In the event BUSINESS ASSOCIATE fails to cure the breach in a reasonable period of time to the satisfaction of The HARRIS CENTER, The HARRIS CENTER may terminate this BAA.

4.03 Automatic Termination: This BAA will automatically terminate upon the termination or expiration of the Underlying Contract, except where otherwise agreed.
4.04 **Effect of Termination:**

(a) Termination of this BAA will result in termination of the Contract;

(b) Upon termination of this BAA or the underlying Contract, BUSINESS ASSOCIATE will return or destroy all PHI received from The HARRIS CENTER or created or received by BUSINESS ASSOCIATE on behalf of The HARRIS CENTER that BUSINESS ASSOCIATE still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible as determined solely by The HARRIS CENTER, BUSINESS ASSOCIATE will continue to protect the PHI pursuant to the terms of this BAA and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(c) BUSINESS ASSOCIATE shall be responsible for all time and costs incurred as a result of identifying and destroying PHI as may be required under this section.

**SECTION 5**

**GENERAL TERMS AND CONDITIONS**

5.01 **Amendment:** BUSINESS ASSOCIATE and The HARRIS CENTER agree to amend this BAA from time to time as is necessary for The HARRIS CENTER to comply with the requirements of the Privacy Rule and its BAA(s) with Covered Entities.

5.02 **Survival:** The respective rights and obligations of the Parties under this Business Associate Contract shall survive the termination of this BAA.

5.03 **No Third Party Beneficiaries:** Nothing expressed or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.04 **Indemnification Provision:** Each party will indemnify and hold harmless the other party to this BAA from and against any and all losses, liabilities, costs and other expenses incurred as a result, or arising directly or indirectly out of, or in connection with, any breach of any obligation on the part of the responsible party under this BAA.

5.05 **Entire Contract:** This Contract contains the entire Contract between the Parties with respect to the subject matter hereof and supersedes any previous or contemporaneous proposals, understandings, commitments or representations whatsoever oral or written. The Parties may only modify or change the terms of this Contract by a written document signed by duly authorized representatives of both Parties.

5.06 **Governing Law; Jurisdiction:** This Contract shall be governed by and construed in accordance with the laws of the state of Texas without regard to Texas's conflict of law principles. The Parties agree that Harris County, Texas shall be the sole proper venue regarding any dispute relating to or arising out of this Contract.

5.07 **Term:** The Term of this Contract shall commence on and this Contract shall be effective as
of the date of the Contract. This Contract shall terminate in accordance with the terminations provisions of this Contract.

In witness whereof, each Party has caused this BAA to be executed and delivered by its duly authorized representative as of the date first listed above.

**The HARRIS CENTER**

By: _________________________

Name: Wayne Young, MBA, LPC & FACHE

Title: Chief Executive Officer

Date: _________________________

**BUSINESS ASSOCIATE**

By: __________________________

Name: _________________________

Title: _________________________

Date: _________________________

This Addendum #1 is hereby incorporated in the Proposal document and shall supersede any previous specification or provision in conflict with the Addendum #1. All Vendors are directed to propose accordingly. Vendors are required to add this Addendum #1 to the original Proposal document.