

Birmingham Green



Pharmacy Service Provider Request for Proposal

October 1, 2026

REQUEST FOR PROPOSALS

**Issue Date: September 25, 2026,
RFP #2026 -MS-2**

Title: Pharmacy Services

Issuing Agency: Northern Virginia Health Center Commission

Using Agency and/or Location: Northern Virginia Health Center Commission

Where Work Will be Performed: 8605 Centreville Road
Manassas, VA 20110-8426

Initial Period of contract: from January 1, 2027, through December 31, 2029, with an option to renew for two one-year periods.

All Sealed Proposals for furnishing the Services described herein must be received by the Northern Virginia Health Center Commission **by October 30, 2026, at 5:00 p.m. EST.**

Proposals may be submitted electronically online via eVA using the Offeror's established eVA Supplier Account. The entire proposal response including any / all attachments and any / all addenda must be submitted electronically in eVA no later than the closing date and time stated on the electronic solicitation posting.

To learn how to submit an online proposal in eVA please refer to the online supplier training page at: <https://eva.virginia.gov/supplier-training-materials.html>

The link to the video "Viewing and Responding to Solicitations" can be found on the Supplier Training Materials page at: <https://www.youtube.com/watch?v=KSxcAkOekW0>

It is the responsibility of the Offeror to ensure the bid and all required attachments are properly completed, readable and uploaded to eVA by the date and time deadline stated on the electronic solicitation posting. Offerors should allow sufficient time to account for any technical difficulties they may encounter during online submission or uploading of documents. In the event of technical difficulties, suppliers should contact eVA Customer Care at 1-866-289-7367 or via email at eVACustomerCare@DGS.Virginia.gov.
Supplier Training Materials - eVA

All Inquiries for Information Should Be Directed to Michael Sharifi, msharifi@birminghamgreen.org

Email Inquiries only. No inquiries concerning this RFP shall be responded to if received after 12:00 p.m. EST on October 20, 2026.

IF PROPOSALS ARE MAILED, SEND THEM DIRECTLY TO THE NORTHERN VIRGINIA HEALTH CENTER COMMISSION AT THE ADDRESS SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO:

Michael Sharifi, Director of Supply Chain Management, 8605 Centreville Road, Manassas, VA 20110.

Please note it is the offeror's responsibility to ensure their proposal is delivered and received before the due date and time. If hand delivering, make sure to allow time for security check-in and proper delivery to the Procurement Department.

In compliance with this Request For Proposals (RFP) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all goods and services in accordance with the attached signed proposal and as mutually agreed upon by subsequent negotiation, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

* Virginia Contractor License No. _____ * DSBSD-certified Small Business No. _____
Class: _____ Specialty Codes: _____

Name And Address Of Firm:

_____ Date: _____
 _____ By: _____
 _____ (Signature In Ink)
 _____ Zip Code: _____ Name: _____
 eVA Vendor ID or DUNS #: _____ (Please Print)
 Fax Number: () _____ Title: _____
 E-mail Address: _____ Telephone Number: () _____

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Conditions C. Such a request shall be in writing and explain why an exception should be made.

Introduction

Northern Virginia Health Center Commission, Birmingham Green Adult Care Residence, Birmingham Green Adult Disability Services Inc., and District Home Assisted Living at Birmingham Green, collectively referred to as Birmingham Green, are in Manassas, Virginia. Birmingham Green is issuing this RFP to forge a partnership with Pharmacy Services. Birmingham Green seeks a Pharmacy service that will allow Birmingham Green to focus on the mission and vision of the organization, achieve operational efficiencies, and further establish a sustainable business model in which Birmingham Green serves its community, employees, residents, and others every day.

- I. **PURPOSE:** Birmingham Green is responsible for providing pharmacy products to its residents; therefore, the purpose of this request is to solicit proposal to establish one or more contracts through competitive negotiations for the purchase of pharmacy services for Birmingham Green. Contract for pharmacy services may be with individual providers or companies, provided the provider or company complies with the full specifications of this request for proposal.

BACKGROUND: Northern Virginia Health Center Commission and its affiliated companies provide services under the trade name Birmingham Green.

Northern Virginia Health Center Commission, NVHCC, is a 180-bed nursing facility. Birmingham Green Adult Care Residence, Inc., BGACR, a not-for-profit Assisted living operates two assisted living facilities totaling 156 beds.

CENSUS: The census for residents may change daily due to new admissions, and discharges. The projected average daily census for the fiscal year (FY) 2026 is 294 residents. The ages of the residents may range from 30 to 97+ with the average being about 75 years old.

II. STATEMENT OF NEEDS (SCOPE OF WORK):

Company Information

- Name and address of pharmacy. Include the name and telephone number of the contact person for this proposal.
- Organizational structure. Include an organizational chart if needed. If owned by another corporation, please describe that relationship. Identify any potential conflicts of interest that may exist between the parties.
- Define your organization's philosophy and commitment to providing pharmacy services in general and in Assisted Living and in a life care Community consisting of independent, skilled, and assisted living residents. Include your organization's mission, vision, and values.

Clinical Programs and Structures

- Describe your approach to providing on-site and off-site pharmacy consulting services to Life plan communities. Explain your approach to providing support across the continuum

of care and throughout the life cycle of a contract.

- Describe any specialty/patient programs your organization currently provides (i.e., GDRs, overall med reduction initiatives, therapeutic interchange, etc.).
- Explain and provide examples of your CQI/QA processes both in your pharmacy as well as in the communities where you provide services.
- Identify your pharmacy compliance mechanisms. Explain your resolution process for assistance with pharmacy-related issues and/or concerns.
- Explain details on the specific service issues such as routine and STAT delivery, Contingency medication boxes, stocking nursing carts, and narcotics policy. Include your ability to deliver STAT medications.
- Do you plan to provide an emergency-type medication storage device on-site at (Facility name here)? If yes, are there any additional costs (acquisition or ongoing) to each community for that equipment?
- If not already operating a Virginia-based pharmacy, please describe your willingness to commit to a timeframe for a fully operational pharmacy based in Virginia.
- Describe your packaging and dispensing options.
- Provide a detailed schedule of pricing and reimbursement for Medicaid, Managed Medicaid, and Dual Eligible (Medicare/Medicaid) insurance plans. Clearly identify the reimbursement methodology, dispensing fees, ingredient costs, and any other applicable charges or carve-outs for each coverage type.
- Describe any discount programs, patient assistance programs, financial assistance programs, or other cost-reduction options available to residents who do not have prescription drug coverage or who are unable to afford required medication copayments. Include eligibility requirements, applicable medications, enrollment procedures, and any costs or administrative responsibilities to the facility or resident.
- Medication Cart Checks: Describe whether the pharmacy provides routine medication cart checks as part of its standard pharmacy services at no additional cost. Specify whether cart checks are available monthly, quarterly, or at another frequency. Clearly identify any associated fees for cart checks, including fees for additional or unscheduled inspections.
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Customer Relations and Outcomes

- Detail communication flow and response expectations for (Facility name here) communities and calls to the pharmacy staff.
- Do you plan to assign a “key” account representative to communities under the prospective pharmacy customer (Facility Name Here) accounts?

- Do you provide Consultant Pharmacy services? Please describe in detail the services provided and the associated costs.
- Explain how you measure customer satisfaction with pharmacy services.
- Define your problem resolution policies and procedures between the facility and provider. Include time frames, methodologies, and documentation (action plan process).

Education and Training

- Detail any educational and training opportunities your company has available for: facility staff, patients, and residents of Independent, ALF, and SNF.
- Describe all specialized training and educational programs that your company could provide and those that may have CEU opportunities for facility staff and associated physicians, and other alliances.

Financial and Information Systems

- Provide a detailed schedule of pricing for Medicare A and Medicare Managed Care. Explain services and support provided within each of the options. Are there any specific “carve-outs” to the pricing submitted?
- Does the proposed pricing above require the utilization of a formulary? If so, please provide a copy of the formulary.
- Describe how your company assists with monthly billing discrepancies.
- Include a sample service contract(s) with your response to this RFP.
- Describe your organization’s use of information management systems and technology offerings. Identify any special software or custom applications and their functionalities (such as invoice review, bill pay, admission preview, electronic refills, physician prescribing portals, etc.).
- Describe your company’s ability to interface for billing, census extraction, and bi-directional and electronic medical records functions with Point-Click-Care.
- Describe refund policies and credits related to Medicare Part A and Medicare Managed Care patients.

Other Services

- Describe any specialized services and/or reporting/data you will make available to communities directly and corporately.
- Give details of any other pharmacy services and products, and associated costs, you may

offer.

III. PROPOSAL PREPARATIONS & SUBMISSIONS

A. General Requirements:

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to the RFP.
2. Proposal Preparation:
 - a) Proposal shall be signed by an authorized representative of the offeror. All information requested may result in Birmingham Green requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by Birmingham Green at its discretion.
 - b) Proposals should be prepared simply and economically providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

B. Specific Requirements:

Proposals should be as thorough and detailed as possible so that Birmingham Green may properly evaluate the capabilities to provide the required services. Offerors are required to submit the following items as a complete Proposal:

1. The return of this complete RFP, One USB, one original, and Three copies signed and completed as required
2. Complete Data Sheet for each Pharmacy to be considered.

IV. EVALUATION

A. Evaluation of Proposals shall be based on the following criteria:

1. Knowledge, training, and experience in the pharmacy.
2. Experience in working with multi-disciplinary mental health teams.
3. Compliance with the department of health licensing standard.
4. Willingness and capability to provide quality service.

B. The NVHCC reserves the right to accept or reject any Proposal in part or in whole.

C. Nothing in any resulting contract shall obligate Birmingham Green to purchase any or all services herein listed or prevent the NVHCC from entering into similar agreements with or purchasing similar services from other providers.

REQUIRED GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted, or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parentheses. For service contract clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T. For goods and services contracts, a written determination must be made in order to omit subparagraph 1. e of clause C (“ANTI-DISCRIMINATION”) see 3.13.c.

A. <i>VENDORS MANUAL</i>	B-2
B. APPLICABLE LAWS AND COURTS	B-2
C. ANTI-DISCRIMINATION	B-2
D. ETHICS IN PUBLIC CONTRACTING	B-3
E. IMMIGRATION REFORM AND CONTROL ACT OF 1986	B-3
F. DEBARMENT STATUS	B-3
G. ANTITRUST	B-3
H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS	B-3
I. CLARIFICATION OF TERMS	B-4
J. PAYMENT	B-4
K. PRECEDENCE OF TERMS	B-5
L. QUALIFICATIONS OF BIDDERS OR OFFERORS	B-5
M. TESTING AND INSPECTION	B-5
N. ASSIGNMENT OF CONTRACT	B-5
O. CHANGES TO THE CONTRACT	B-5
P. DEFAULT	B-6
Q. TAXES	B-6
R. USE OF BRAND NAMES	B-6
S. TRANSPORTATION AND PACKAGING	B-6
T. INSURANCE	B-6
U. ANNOUNCEMENT OF AWARD	B-7
V. DRUG-FREE WORKPLACE	B-7
W. NONDISCRIMINATION OF CONTRACTORS	B-8
X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION	B-8
Y. AVAILABILITY OF FUNDS	B-8
Z. SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY	B-8
AA. BID PRICE CURRENCY	B-9
BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH	B-9
CC. CIVILITY IN STATE WORKPLACES	B-9
DD. BUSINESS ASSOCIATE AGREEMENT	B-9

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “I Sell To Virginia”.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the

Vendors Manual. The contractor shall comply with all applicable federal, state, and local laws, rules, and regulations.

- C. **ANTI-DISCRIMINATION**: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. 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. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, a deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:

By entering a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. The vendor further certifies that they are not debarred from filing any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time as the debarred vendor.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title, and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:**

1. **(For Request for Proposals):** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, Birmingham Green reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by the addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

a. Invoices for items ordered, delivered, and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that is to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness concerning all invoiced charges. Charges which appear to be unreasonable will be resolved by the *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.. The provisions of this section do not relieve an agency of its prompt payment obligations concerning those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be paid to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before the request for final payment, evidence, and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed instead of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC

CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF offerors:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
 - 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or another contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify Birmingham Green of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim

for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the dispute's provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation, or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, including the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products, and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. The contractor must assure that the required coverage is maintained by the Contractor (or third-party owner of a such motor vehicle.)

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's 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 violations of 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 over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal in the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - a) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - b) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
 - c) Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set aside for award priority to DSBSD-certified micro-businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro-businesses or small businesses also include DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of the award, offerors shall be deemed micro-businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state bid/offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 of Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 of Title 50, to be revoked or canceled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- CC. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if the contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a state workplace if the Contract Worker reasonably should know that the phone number, email, or another method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

Birmingham Green Pharmacy Services

INDIVIDUAL CONTRACTOR DATASHEET

CONTRACTOR NAME: _____

STREET

CITY

ZIP CODE

TELEPHONE NUMBER(s) _____ / _____ PAGER NUMBER _____

VA LICENSE NUMBER _____ NUMBER OF YEARS LICENSED _____

BOARD CERTIFICATION ____ YES ____ NO/SPECIALTY AREA _____

DAY(s) AND HOURS AVAILABLE: _____

THE CONTRACTOR WILL PROVIDE COPIES OF THE FOLLOWING:

- ☐ VA LICENSE ☐ PHARMACY LICENSE ☐ PHARMACIST LICENSE
- ☐ FEDERAL DEA NUMBER ☐ VA BOARD OF PHARMACY CERTIFICATION
- ☐ INSURANCE PROVIDER STATUS ☐ REFERENCE (2) ☐ MALPRACTICE INSURANCE
- ☐ RESUME/VITAE ☐ ORIGINAL AND TWO COPIES OF PROPOSAL

SIGNATURE PHARMACIST

DATE

INSTRUCTION FOR GROUP PROVIDERS:

**1) AN INDIVIDUAL CONTRACTOR DATA SHEET WILL BE REQUIRED
FOR EACH PHARMACIST TO BE UTILIZED AS A SERVICE PROVIDER**

2) AN APPOINTED REPRESENTATIVE OF THE GROUP MUST SIGN PAGE 1 OF THE RFP

DD – Business Associate Agreement

The following Business Associate Agreement will be incorporated into any final agreement or contract entered into between Birmingham Green and any offeror submitting a proposal in response to this RFP. Submitting a proposal in response to this RFP shall be considered acceptance of this Business Associate Agreement.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is effective as of the Effective Date of the agreement to which it is attached (the “Agreement Effective Date”) by and between Northern Virginia Health Center Commission d/b/a Northern Virginia Health Care Center, Birmingham Green Adult Care Residence – Willow Oaks (operated under the legal names of Birmingham Green Adult Care Residence and Birmingham Green Adult Disability Services Inc. d/b/a Willow Oaks Place), and District Home Assisted Living at Birmingham Green (operated under the legal name of Birmingham Green Assisted Living, Inc.) (collectively referred to in this Agreement as “Covered Entity”) and **VENDOR** (“Business Associate”) collectively, the “Parties.”

RECITALS

WHEREAS Covered Entity possesses Individually Identifiable Health Information (as hereinafter defined) that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined), and the HIPAA Breach Notification Regulations (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations.

WHEREAS Business Associate may receive such information from Covered Entity or create and receive such information on behalf of Covered Entity, in connection with Services (as hereinafter defined) it will provide to the Covered Entity; and

WHEREAS Covered Entity wishes to ensure that Business Associate will appropriately safeguard the privacy, confidentiality, integrity, and availability of Individually Identifiable Health Information.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. The Parties agree that the following terms, when used in the Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.
 - a. “*Breach*” shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) that comprises the security or privacy of the PHI. “Breach” shall not include:
 - i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or

- ii. Any inadvertent disclosure by a person who is authorized to access PHI at the Covered Entity or Business Associate to another person authorized to access PHI at the Covered Entity or Business Associate, respectively, or Organized Health Care Arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
 - iii. A disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. *"Electronic Protected Health Information" or "Electronic PHI"* means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- c. *"HIPAA"* means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Title XXIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and as otherwise may be amended from time to time.
- d. *"HIPAA Breach Notification Regulations"* means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to require notification of breaches of unsecured PHI, including, but not limited to 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart D, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.
- e. *"HIPAA Omnibus Rule"* means the promulgated final rule entitled, "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to HIPAA Rules."
- f. *"HIPAA Privacy Regulations"* means the regulations promulgated under HIPAA by the United States Department of Health and Human Services ("HHS") to protect the privacy of PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 Subpart A and Subpart E, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.
- g. *"HIPAA Security Regulations"* means the regulations promulgated under HIPAA by HHS to protect the security of Electronic PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.
- h. *"Individually Identifiable Health Information"* means the information that is a subset of the health information, including demographic information collected from an individual, that is;
 - i. created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ii. relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - 1. that identifies the individual; or
 - 2. with respect to which there is a reasonable basis to believe the information could be used to identify the individual.

- i. *“Protected Health Information or PHI”* means individually identifiable Health Information transmitted or maintained in any form or medium, including electronically, that (i) is received by Business Associate from Covered Entity, (ii) is created by Business Associate for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted, or maintained by Business Associate on behalf of Covered Entity. PHI excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described in 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
 - j. *“Security Incident”* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
 - k. *“Services”* means the services described in the Management Agreement between the Parties to which this Business Associate Agreement is attached.
 - l. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations, as applicable, and shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulation, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations, as applicable.
2. Obligations and Activities of Business Associate Ownership of PHI. Business Associate acknowledges that all right, title, and interest in and to any PHI furnished to Business Associate vests solely and exclusively with the Covered Entity or the individual to whom such PHI relates. Covered Entity acknowledges that Business Associate may process health information that it receives from or on behalf of Covered Entity so that it meets the de-identification standard under the HIPAA Rules and agrees that, so processed, it shall cease to be PHI for all purposes of this Agreement including, without limitation, Section 1(i). Notwithstanding anything to the contrary herein, Covered Entity agrees that Business Associate shall be the owner of all right, title, and interest in such de-identified information.
3. Other Obligations and Activities of Business Associate.
- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement, any underlying agreement between the Parties, or as required by law.
 - b. Business Associate will make reasonable efforts, to the extent practicable, to limit requests for the use and disclosure of PHI to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by Business Associate, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement, any underlying agreement, or as required by law.
 - c. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.

- d. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall comply with the applicable requirements of the Security Rule in the same manner that such provisions apply to the Covered Entity.
- e. 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 Agreement.
- f. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware. To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to report as soon as practicable to Covered Entity any Security Incident, as determined by Business Associate, involving PHI of which Business Associate becomes aware. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such unsuccessful Security Incidents is required. However, to the extent that Business Associate becomes aware of an unusually high number of such unsuccessful Security Incidents due to the repeated acts of a single party, Business Associate shall notify Covered Entity of these attempts and provide the names, if available, of said party. At the request of the Covered Entity, the Business Associate shall identify the date(s) of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known.
- g. Following Business Associate's discovery of a breach of unsecured PHI, Business Associate shall notify Covered Entity of the Breach without unreasonable delay, and in no event later than three (3) business days after Business Associate or any of its employees or agents, discovered the Breach. Such notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach and any other information available to Business Associate about the Breach which is required to be included in the notification of the Breach provided to the individual in accordance with 45 C.F.R. § 164.404(c). A Breach of unsecured PHI shall be treated as discovered as of the first day on which such Breach is known to Business Associate or should have been known to Business Associate by exercising reasonable diligence. If the Business Associate (or one of its subcontractors, vendors or agents) is responsible for a Breach of unsecured PHI, the Covered Entity may, at its option, require Business Associate to provide any of the notifications required by 45 C.F.R. § 264.404 at Business Associate's expense.
- h. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate agrees to ensure any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's Electronic PHI.
- i. Business Associate shall provide access, at the request of Covered Entity, and in a time and manner mutually acceptable to Business Associate and Covered Entity, to PHI in a Designated Record Set to Covered Entity, or, as directed by Covered Entity, to an individual or another person properly designated by the individual, in order to meet the requirements under 45 C.F.R. § 164.524.

If Business Associate maintains PHI electronically in a designated Record Set and if the individual requests an electronic copy of such information, Business Associate must provide Covered Entity access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the individual. Any fee that Business Associate may charge for a such electronic copy shall not be greater than Business Associate's labor and supply costs in responding to the request.

- j. Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R § 164.526 at the request of Covered Entity or an individual, and in a time and manner mutually acceptable to Business Associate and Covered Entity.
- k. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. As of the compliance date set forth in the regulations promulgated under HITECH or as otherwise determined by HHS, in addition to the accounting of disclosure obligations required under 45 C.F.R. § 164.528, the Business Associate shall account for all disclosures of PHI made through an Electronic Health Record in accordance with the HITECH Standards and any future regulations promulgated thereunder.
- l. Within ten (10) business days (or such other date that Business Associate and Covered Entity may reasonably agree upon) of receiving written notice from Covered Entity that Covered Entity has received a request for an accounting of disclosures of PHI, Business Associate agrees to provide to Covered Entity information collected to permit Covered Entity to make the accounting required in accordance with 45 C.F.R. § 164.528.
- m. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to HHS for purposes of determining Covered Entity's or Business Associate's compliance with HIPAA Privacy Regulations.
- n. To the extent Business Associate is to carry out Covered Entity's obligations under the HIPAA Privacy Regulations, Business Associate shall comply with the requirements of the HIPAA Privacy Regulations that apply to Covered Entity in the performance of a such delegated obligation.

4. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement:

- a. Business Associate reserves the right to use PHI as permitted by law for the proper management and administration of Business Associate, to carry out the legal responsibilities of Business Associate, and to provide data aggregation services to Covered Entity.
- b. Business Associate may use or disclose PHI as permitted by law to perform functions, activities, or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the HIPAA Privacy Regulations if done by Covered Entity.
- c. Business Associate may disclose PHI in its possession for the proper management and administration of the Services under the Service Agreement, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Term and Termination

- a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall continue until the earliest of: (1) termination in accordance with the provisions of Sections 5b (“Termination for Cause”) or (2) termination in accordance with the provisions of Section 6b (“Amendment”) or (3) termination of the Services Agreement.
- b. *Termination for Cause.* Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity may (1) provide Business Associate with notice of and an opportunity to cure the such breach and then terminate this Agreement if Business Associate does not cure the breach within the time period specified by Covered Entity, or (2) terminate this Agreement immediately. In the event that termination of the Agreement is not feasible, the Business Associate acknowledges and agrees that the Covered Entity has the right to report the breach to the Secretary of HHS.
- c. *Effect of Termination.*
 - i. Upon termination of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from Covered Entity, or create or received by Business Associate (including, without limitation, by its employees and other members of its workforce) on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors, representatives, or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, the Business Associate shall extend the protections of the Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous

- a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HIPAA Breach Notification Regulations means the section as in effect or as amended from time to time, and for which compliance is required.
- b. *Amendment.* This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of Covered Entity and Business Associate. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding the foregoing, (i) in accordance with Section 1 above, certain defined terms in this Agreement shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations, as applicable and (ii) Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification regulations. Business Associate agrees that Covered Entity may amend this Agreement, in its sole discretion, upon thirty (30) days of written notice in order to ensure that Covered Entity will be able to comply with such laws and regulations.

In the event Business Associate has not objected in writing to such amendment within such thirty (30) day notice period, the amendment shall be deemed to have been accepted by Business Associate.

c. Survival. The respective rights and obligations of the Parties under Section 5c ("Effect of Termination"), 6e ("Injunctions"), and 6f ("Indemnification") of this Agreement shall survive the termination of this Agreement.

d. State Law. Nothing in this Agreement shall be construed to require a Business Associate to use or disclose PHI without written authorization from an individual who is subject to the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

e. Injunctions. Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to the Covered Entity at law, in equity, or under this Agreement, the Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

f. Indemnification. Notwithstanding any agreement by the Parties to the contrary, Business Associate shall indemnify and hold harmless Covered Entity and its directors, officers, affiliates, agents, volunteers, trustees or employees from and against any claim, cause of action, liability, damage, cost or expense, including reasonable fees and court or proceeding costs, arising out of or in connection with Business Associate's material breach its obligations under this Agreement, as well as any violation of or failure of Business Associate to fulfill its obligation under HIPAA, including the unauthorized use or disclosure of PHI, or any failure in security measures affecting PHI by the Business Associate, its subcontractors, vendors or agents, or any person or entity under Business Associate's control; provided, however, Business Associate shall not be required to provide any indemnification with respect to such matters to the extent they arise out of or in connection with a violation by Covered Entity of this Agreement or any HIPAA Rule, which violation is not otherwise attributable to Business Associate. The Business Associate's obligation to indemnify the Covered Entity in accordance with this Section 6. f will survive the expiration or termination of this Agreement. Covered Entity may, at its option, conduct its defense or settlement of any such action arising as described herein using counsel of its choice (subject to the approval of Business Associate, not to be unreasonably withheld), and Business Associate shall cooperate with such defense and settlement. Neither Party may compromise or enter into any settlement agreement with respect to a matter for which indemnification is sought hereunder without the prior written consent of the other Party, not to be unreasonably withheld, conditioned, or delayed. For the avoidance of doubt, nothing in this Section 6.f shall affect any rights that Business Associate may have with respect to actions or omissions of Covered Entity pursuant to any other written agreement between them or their affiliates.

g. No Third-Party Beneficiaries; Assignment. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns any rights, obligations, remedies, or liabilities. This Agreement may not be assigned by Business Associate without the prior written consent of the Covered Entity.

h. Entity Agreement; Conflicts. This Agreement constitutes the entire agreement between Covered Entity and Business Associate pertaining to the subject matter hereof and supersedes any previous agreements between Covered Entity and Business Associate relating to the same subject matter. To the extent that any provisions of this Agreement conflict with the provisions of the Services Agreement, any existing business associate agreement, or any other agreement or understanding

between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.

i. Independent Contractors. No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency, or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the Parties or any of their respective representatives shall be construed to be the agent, employer, or representative of the other. The Parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency, and it is not the intention of either Covered Entity or Business Associate that the Business Associate constitutes an "Agent" under such common law.

j. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without application of principles of conflicts of laws.

k. Headings. The headings contained in this Agreement are included for purposes of convenience only and shall not affect in any way the meaning or interpretation of any of the terms of this Agreement.

l. Notices. Any notices to be given under this Agreement to a Party shall be delivered personally or made via national overnight courier service to such Party's address set forth below, and/or via facsimile to the facsimile telephone numbers listed below. Any such notice shall be deemed given or made (i) on the date of delivery if delivered in person (ii) upon transmission by facsimile if receipt is confirmed, or (iii) on the first (1st) business day following delivery to a national overnight courier service.

If to Covered Entity to:
Birmingham Green
8605 Centreville Road
Manassas, Virginia 20110
Attention: Director of Purchasing

If to Business Associate to:

[INSERT]

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above in Section 6.l.

m. Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies hereof shall be deemed to be originals.

[Signatures on the page following.]

COVERED ENTITY

Northern Virginia Health Center Commission d/b/a Northern Virginia Health Care Center
And
Birmingham Green Adult Care Residence
And
District Home Assisted Living at Birmingham Green

Signature of Authorized Representative: _____

Name: _____ Title: _____ Date: _____

BUSINESS ASSOCIATE

[INSERT]

Signature of Authorized Representative: _____

Name: _____ Title: _____ Date: _____