NARA - RECORDS MANAGEMENT OBLIGATIONS

A. *Applicability*

This clause applies to all Contractors whose employees create, work with, or otherwise handle Federal records, as defined in Section B, regardless of the medium in which the record exists.

B. *Definitions*

"Federal record" as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

The term Federal record:

1. includes VHA records.
2. does not include personal materials.
3. applies to records created, received, or maintained by Contractors pursuant to their VHA contract.
4. may include deliverables and documentation associated with deliverables.

C. *Requirements*

1. Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), NARA regulations at 36 CFR Chapter XII Subchapter B, and those policies associated with the safeguarding of records covered by the Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.
2. In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended and must be managed and scheduled for disposition only as permitted by statute or regulation.
3. In accordance with 36 CFR 1222.32, the Contractor shall maintain all records created for Government use or created in the course of performing the contract and/or

delivered to, or under the legal control of the Government and must be managed in accordance with Federal law. Electronic records and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the records and data.

4. VHA and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from the legal custody of VHA or destroyed in accordance with the provisions of the agency records schedules and with the written concurrence of the Head of the Contracting Activity. Willful and unlawful destruction, damage, or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the Contractor must report to VHA. The agency must report promptly to NARA in accordance with 36 CFR 1230.
5. The Contractor shall immediately notify the appropriate Contracting Officer upon discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records, or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the [***contract vehicle***]. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, documentary material, records, and/or equipment is properly protected. The Contractor shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the Head of the Contracting Activity. When information, data, documentary material, records, and/or equipment is no longer required, it shall be returned to VHA control, or the Contractor must hold it until otherwise directed. Items returned to the Government shall be hand-carried, mailed, emailed, or securely electronically transmitted to the Contracting Officer or address prescribed in the [***contract vehicle***]. Destruction of records is EXPRESSLY PROHIBITED unless in accordance with Paragraph (4).
6. The Contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material, and/or records generated under, or relating to, contracts. The Contractor (and any sub-contractor) is required to abide by Government and VHA guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.
7. The Contractor shall not create or maintain any records containing any non-public VHA information that is not specifically tied to or authorized by the contract.
8. The Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected from public disclosure by an exemption to the Freedom of Information Act.

9. The VHA owns the rights to all data and records produced as part of this contract. All deliverables under the contract are the property of the U.S. Government for which VHA shall have unlimited rights to use, dispose of, or disclose such data contained therein as it determines to be in the public interest. Any Contractor rights in the data or deliverables must be identified as required by FAR 52.227-11 through FAR 52.227-20.
10. **Training**. All Contractor employees assigned to this contract who create, work with, or otherwise handle records are required to take VHA-provided records management training. The Contractor is responsible for confirming training has been completed according to agency policies, including **initial** training and **annual/refresher** training.

D. Privacy/HIPAA Rights Language Requirements

1. The contractor shall be subject to the Federal laws, regulations, standards, and VA Directives and Handbooks regarding information and information system security as delineated in this contract.
2. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, Personnel Suitability and Security Program. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.
3. The contractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations, and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations, and policies in this contract. Veterans will be afforded all privacy rights provided by VHA Handbook 1605.01 with regard to VA data under the vendor's custody or control.
4. Prior to termination or completion of this contract, contractor/subcontractor must not destroy information received from VA, or gathered/created by the contractor in the course of performing this contract without prior written approval by the VA.
5. Notwithstanding the provision above, the contractor/subcontractor shall not release VA records protected by Title 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or Title 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus. If the contractor/subcontractor is in receipt of a court order or other requests for the above-mentioned information, that contractor or subcontractor shall immediately refer such court orders or other requests to the VA contracting officer for response.
6. Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally

protected by the Freedom of Information Act.

7. The contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules, the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies: the System of Records (SOR), and the design, development, or operation work that the contractor is to perform.