

## Non-Disclosure Agreement(NDA)

Fairfax County Water Authority

**All bidders must complete this page and return it to:**

**Donnie Legg**

**Procurement Manager**

**Fairfax County Water Authority**

**Email: [Dlegg@fairfaxwater.org](mailto:Dlegg@fairfaxwater.org)**

**Date** \_\_\_\_\_ **Name** \_\_\_\_\_  
**Job Title** \_\_\_\_\_  
**Company Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_

**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** is between Fairfax County Water Authority, on behalf of itself and its health plans ("Fairfax Water"), and (Humana) on behalf of itself and all of its subsidiaries and affiliates, ("Bidder") and is executed in connection with various bids, proposals or other replies (each a "Bid") that Bidder intends to submit to Fairfax Water in response to various Request For Proposals/Requests for Information (each an "RFP") issued by Fairfax Water.

**WHEREAS**, in order to prepare its Bid, Bidder needs to receive certain plan information and data, which may include individually identifiable health information pertaining to Fairfax Water health plan participants and beneficiaries, ("Fairfax Water Health Plan Information") and certain other confidential information related to Fairfax Water (together with the Fairfax Water Health Plan Information, such information is referred to herein as "Fairfax Water Confidential Information"). For the avoidance of doubt, the term "individually identifiable health information" refers to any health information, including demographic information, that is not "de-identified," as set forth in 45 C.F.R. Section 164.514(a) and (b), and may include "protected health information" as defined in 45 C.F.R. Section 160.103;

**WHEREAS**, in order to evaluate Bidder's Bid, Fairfax Water may need to receive certain proprietary information from Bidder which may include, but not be limited to, provider-specific network allowances and reimbursement arrangements and other information designated by Bidder in writing as confidential and proprietary information of Bidder ("Bidder's Proprietary Information"); and

**WHEREAS**, Fairfax Water Confidential Information and Bidder's Proprietary Information are collectively referred to herein as "Proprietary Information."

**NOW THEREFORE**, in order to exchange Proprietary Information in connection with the RFP, the parties agree as follows:

1. Bidder will use Fairfax Water Confidential Information only for the purpose of preparing its Bid and as otherwise permitted by paragraph 5 of this Agreement. Fairfax Water will use Bidder's Proprietary Information only for the purpose of evaluating Bidder's Bid and as otherwise permitted by paragraph 5 of this Agreement.
2. Bidder and Fairfax Water agree that only those individuals employed by them who have a need to know Proprietary Information to prepare or evaluate the Bid and have been made aware of the terms of this Agreement and agreed in writing to abide by its terms will have access to Proprietary Information of the other party ("Bidder Representatives" and "Fairfax Water Representatives").
3. Neither Bidder nor any Bidder Representatives will disclose Fairfax Water Confidential Information to any person or entity outside of Bidder, unless such a disclosure is: (a) necessary to prepare the Bid and the recipient first executes a confidentiality agreement with provisions no less stringent than this one; or (b) required by law. Neither Fairfax Water nor any Fairfax Water Representatives will disclose Bidder's Proprietary Information to any person or entity outside of Fairfax Water, unless such a disclosure is: (a) necessary to evaluate the Bid and the recipient first executes a confidentiality agreement with provisions equivalent to this one; or (b) required by law.
4. Bidder and Fairfax Water agree to use commercially reasonable best efforts to maintain the security of the Proprietary Information of the other party and shall promptly notify the other party of any breach of the security of such Proprietary Information as required under applicable law.
5. Each party will return the other party's Proprietary Information to the other party or destroy it, in either case in accordance with applicable legal requirements, upon completion of the RFP process if such return or destruction is feasible, except that Fairfax Water may retain an archival copy of Bidder's Proprietary Information for its file. If Bidder determines that return or destruction of some or all of Fairfax Water Confidential Information is not feasible, Bidder agrees to: (a) inform Fairfax Water, in writing, of the specific reason(s) that make return or destruction not feasible; (b) extend the protections of this Agreement to any retained information for as long as Bidder retains it; and (c) limit further uses or disclosures to those that make the return or destruction infeasible.
6. Bidder will report to Fairfax Water, in writing, any use and/or disclosure of individually identifiable health information that is not permitted by this Agreement and shall take steps to mitigate such use and/or disclosure.
7. Each party shall regard and preserve as confidential all of the other party's Proprietary Information that has been or may be obtained by such party during the course of the RFP, whether Bidder or Fairfax Water has such information in memory, or in writing or in other physical form. Neither party shall, without written authority from the other party, use for such party's benefit or purposes, either during the RFP process or thereafter, any Proprietary Information of the other party, except as necessary to respond to the RFP or evaluate the RFP response. Bidder agrees to comply with all applicable requirements of the Health Information Portability and Accountability Act (HIPAA) and the regulations thereunder with respect to any Fairfax Water Health Plan Information that Bidder receives.
8. With respect to the RFP and the Proprietary Information exchanged in connection therewith, the obligations assumed by the parties in this Agreement shall continue beyond completion of the RFP process.

9. Bidder shall and does hereby agree to indemnify, defend and hold harmless Fairfax Water and its respective members, officers, directors, employees and shareholders from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that the other may incur or suffer and that result from, or are related to, any breach or failure of Bidder or any Bidder Representative to perform any of the representations, warranties and agreements contained in this Agreement that pertain to individually identifiable health information.
10. Each party recognizes that any breach of the covenants contained in this Agreement would irreparably injure the other party. Accordingly, the non-breaching party may, in addition to pursuing its other remedies, obtain an injunction from any court having jurisdiction of the matter restraining any further violation and no bond or other security shall be required in connection with such injunction.
11. If any of the provisions herein become invalid or are declared invalid, such determination of invalidity as to the clause(s) shall not affect the other provisions of this Agreement. If any provision of this Agreement should be held invalid or unenforceable, the remaining provisions shall be unaffected by such a holding. If any provision is found inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.
12. This Agreement shall be binding upon Fairfax Water and Bidder and their respective successors, assigns, heirs, executors and administrators.
13. This Agreement contains the entire understanding of the parties hereto and supersedes all previous communications, representations, or agreements, oral or written, with respect to the subject matter hereof. No failure to exercise nor any delays in exercising any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. Neither this Agreement nor any of its provisions may be amended, supplemented, changed, waived or rescinded except by a written instrument signed by the party against whom enforcement thereof is sought. No waiver of any right or remedy hereunder on any one occasion shall extend to any subsequent or other matter.
14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts made on and performed within the Commonwealth of Virginia. Any dispute arising hereunder that is not otherwise resolved by the parties will be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The parties to this Agreement hereby waive any right they may have to a trial by jury in connection with such dispute.
15. The written notices required by paragraphs 4, 5 and 6 of this Agreement shall be sent by certified mail, return receipt requested, postage prepaid or by overnight air express mail service to Fairfax Water at 8570 Executive Park Avenue, Fairfax, VA 22030.

Intending to be legally bound, the parties have caused their duly authorized representatives to execute this Agreement effective as of the date first set forth above.

**FAIRFAX COUNTY WATER AUTHORITY**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BIDDER**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_