

FILED  
AT 3:00 O'CLOCK P.M.

MAY 23 2016

ARTURO GUERRA, JR., COUNTY CLERK  
HIDALGO COUNTY, TEXAS  
BY  DEPUTY

**DATA USE AGREEMENT  
BETWEEN THE  
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE  
AND  
HIDALGO COUNTY ("CONTRACTOR")**

This Data Use Agreement ("DUA"), effective as of the date signed below ("Effective Date"), is entered into by and between the Texas Health and Human Services Enterprise agency DEPARTMENT OF STATE HEALTH SERVICES ("HHS") and HIDALGO COUNTY ("CONTRACTOR"), and incorporated into the terms of HHS Contract No. 2014-044214-001, in Travis County, Texas (the "Base Contract").

**ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR's rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. *45 CFR 164.508(2)(ii)(A)* This DUA also describes HHS's remedies in the event of CONTRACTOR's noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

**ARTICLE 2. DEFINITIONS**

For the purposes of this DUA, **capitalized, underlined terms have the meanings set forth in the following:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

**"Authorized Purpose"** means the specific purpose or purposes described in the Scope of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

**"Authorized User"** means a Person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

**“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) [Client Information](#);
- (2) [Protected Health Information](#) in any form including without limitation, [Electronic Protected Health Information](#) or [Unsecured Protected Health Information](#);
- (3) [Sensitive Personal Information](#) defined by Texas Business and Commerce Code Ch. 521;
- (4) [Federal Tax Information](#);
- (5) [Personally Identifiable Information](#);
- (6) [Social Security Administration Data, including, without limitation, Medicaid information](#);
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

**“Legally Authorized Representative”** of the [Individual](#), as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; Estates Code Ch. 752 and Texas Prob. Code § 3.

### ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

#### **Section 3.01** *Obligations of CONTRACTOR*

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the [Confidential Information](#) from being used in a manner that is not expressly an [Authorized Purpose](#) under this DUA or as [Required by Law](#). *45 CFR.504(e)(2)(i)*

(B) CONTRACTOR will not, without HHS’s prior written consent, disclose or allow access to any portion of the [Confidential Information](#) to any [Person](#) or other entity, other than [Authorized User's Workforce](#) or [Subcontractors](#) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any [Event](#) or [Breach](#) to CONTRACTOR's management, to carry out the [Authorized Purpose](#) or as [Required by Law](#).

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. *45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101*

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its [Workforce](#) or [Subcontractor](#) who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. *45 C.F.R. 164.308(a)(ii)(C), 164.530(e), 164.410(b)*

(D) CONTRACTOR will not, without prior written approval of HHS, disclose or provide access to any [Confidential Information](#) on the basis that such act is [Required by Law](#) without notifying HHS so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, CONTRACTOR will refrain from disclosing or

providing access to the Confidential Information until HHS has exhausted all alternatives for relief. **45 CFR 164.504(a),(c)(e) and (f)**

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. **45 CFR 164.502(d)(2)(i) and (ii)** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of CONTRACTOR without express written approval of HHS, in advance. HHS prior approval, at a minimum will require that Subcontractor and CONTRACTOR execute the Form Subcontractor Agreement, Attachment 1, which ensures the subcontract contains identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; **and 45 CFR 164.504(e)(2)(ii)(A), (B), (D) and (e)(5)**

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. **45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.**

(H) If CONTRACTOR maintains PHI in a Designated Record Set, CONTRACTOR will make PHI available to HHS in a Designated Record Set or, as directed by HHS, provide PHI to the Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

(I) CONTRACTOR will make PHI as required by HIPAA available to HHS for amendment and incorporate any amendments to this information that HHS directs or agrees to pursuant to the HIPAA. **45 CFR 164.504(e)(2)(ii)(E) and (F)**

(J) CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. **45 CFR 164.504(e)(2)(ii)(G) and 164.528**

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI by any Individual subject to this DUA, it will promptly forward the request to HHS; however, if it would violate HIPAA to forward the request, CONTRACTOR will promptly notify HHS of the request and of CONTRACTOR's response. Unless CONTRACTOR is prohibited by law from forwarding a request, HHS will respond to all such requests. **45 CFR 164.504(e)(2)**

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. **45 CFR 164.308; 164.530(c); 1 TAC 202**

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if: **45 CFR 164.504(e)(ii)(1)(A)**

- (1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D);
- (2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:
- (a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;
- (b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and
- (c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**
- (N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**
- (O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, return to HHS or Destroy, at HHS's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or returned to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such return or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(J)**
- (P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**
- (Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information on non-HHS systems or networks, CONTRACTOR completed the HHS initial security inquiry provided to CONTRACTOR with this DUA to identify and mitigate identified risks prior to execution of this DUA. CONTRACTOR's initial security inquiry will document security controls within CONTRACTOR's system that protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306**
- (R) CONTRACTOR will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the

confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. *45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards)*

(S) CONTRACTOR will designate and identify, subject to HHS approval, a Person or Persons, as Privacy Official *45 CFR 164.530(a)(1)* and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. *45 CFR 164.308(a)(2)*

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. *45 CFR 164.502; 164.514(d)*

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. *45 CFR 164.308; 164.514(d)*

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. *45 CFR 164.308; 164.514(d)*

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. *45 CFR 164.504(E)(1)(I)*

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. *45 CFR 164.312; 164.530(d)*

(Z) CONTRACTOR will comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, [Part 10](#), Chapter 202, [Subchapter B](#), Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The [Federal Information Security Management Act of 2002](#) (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 ([HIPAA](#)) as defined in the DUA;
- Internal Revenue [Publication 1075](#) – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) [Special Publication 800-66 Revision 1](#) – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST [Special Publications 800-53 and 800-53A](#) – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST [Special Publication 800-47](#) – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, [Guidelines for Media Sanitization](#);
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

#### **ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

##### **Section 4.01. *Breach or Event Notification to HHS. 45 CFR 164.400-414***

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's satisfaction (the "incident response period"). *45 CFR 164.404*

(C) Breach Notice:

1. Initial Notice.

a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*, initially report to HHS's Privacy and Security Officers via email at: [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us); and *IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.*

b. Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. *45 CFR 164.410*

c. Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

2. 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by CONTRACTOR of an Event or Breach of Confidential Information, **provide** formal notification to the State, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: *For (a) - (m) below: 45 CFR 164.400-414*

a. The date the Event or Breach occurred;

b. The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

c. A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

d. A brief description of CONTRACTOR's investigation and the status of the investigation;

e. A description of the types and amount of Confidential Information involved;

f. Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

g. CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

h. CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

i. The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

j. The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

k. Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

l. A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

m. Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

**Section 4.02** *Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312*

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

**Section 4.03** *Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)*

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR must obtain HHS's prior written approval of the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

**ARTICLE 5. SCOPE OF WORK**

Scope of Work means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Scope of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

## ARTICLE 6. GENERAL PROVISIONS

### **Section 6.01 Ownership of Confidential Information**

CONTRACTOR acknowledges and agrees that the [Confidential Information](#) is and will remain the property of HHS. CONTRACTOR agrees it acquires no title or rights to the [Confidential Information](#).

### **Section 6.02 HHS Commitment and Obligations**

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose [PHI](#) in any manner that would not be permissible under [applicable law](#) if done by HHS.

### **Section 6.03 HHS Right to Inspection**

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

### **Section 6.04 Term; Termination of DUA; Survival**

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or [Destroy](#) the [Confidential Information](#) as set forth in this DUA and to continue to safeguard the [Confidential Information](#) until such time as determined by HHS.

(D) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

1. Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
2. Require CONTRACTOR to submit to a corrective action plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
3. Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
4. Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation and the action it intends to take.

(E) If neither termination nor cure is feasible, HHS shall report the violation to the [Secretary](#).

(F) The duties of CONTRACTOR or its [Subcontractor](#) under this DUA survive the expiration or termination of this DUA until all the [Confidential Information](#) is [Destroyed](#) or returned to HHS, as required by this DUA.

**Section 6.05 *Governing Law, Venue and Litigation***

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

**Section 6.06 *Injunctive Relief***

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

**Section 6.07 *Indemnification***

To the extent permitted by law, CONTRACTOR will indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of its Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure and continues to apply even in the event insurance coverage required, if any, in the DUA or Base Contract is denied, or coverage rights are reserved by any insurance carrier. Upon demand, CONTRACTOR will reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party to the extent caused by and which results from the CONTRACTOR's failure to meet any of its obligations under this DUA. To the extent permitted by law, CONTRACTOR's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

**Section 6.08 *Insurance***

(A) CONTRACTOR represents and warrants that it maintains either self-insurance or commercial insurance with policy limits sufficient to cover any liability arising from any acts or omissions by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce under this DUA. CONTRACTOR warrants that HHS will be a loss payee and beneficiary for any such claims. .

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

**Section 6.09 Fees and Costs**

Except as otherwise specified in this DUA or the Base Contract, including but not limited to requirements to insure and/or indemnify HHS, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

**Section 6.10 Entirety of the Contract**

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**Section 6.11 Automatic Amendment and Interpretation**

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any other law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

**ARTICLE 7. AUTHORITY TO EXECUTE**

The Parties have executed this DUA in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

**IN WITNESS HEREOF**, HHS and CONTRACTOR have each caused this DUA to be signed and delivered by its duly authorized representative:

TEXAS HEALTH AND HUMAN SERVICES

CONTRACTOR

BY: [Signature]  
NAME: Ed House

BY: [Signature]  
NAME: RAMON GARCIA

TITLE: Chief Operating Officer

TITLE: HIDALGO COUNTY JUDGE

DATE: June 13, 2016.

DATE: May 25, 2016.

APPROVED BY  
COMMISSIONERS' COURT  
ON: 5/10/16 [Signature]

**APPROVED AS TO FORM:**

Atlas, Hall & Rodriguez, LLP

BY: 

NAME: STEPHEN L. CRAIN

TITLE: ATTORNEY AT LAW

DATE: 5-16, 2016.

ATTEST: 

BY: ARTURO GUAJARDO, JR.

TITLE: HIDALGO COUNTY CLERK

DATE: \_\_\_\_\_, 2016.



**ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**  
**HHS CONTRACT NUMBER 2014-044214-001**

The DUA between HHS and CONTRACTOR establishes the permitted and required uses and disclosures of Confidential Information by CONTRACTOR.

CONTRACTOR has subcontracted with \_\_\_\_\_ (SUBCONTRACTOR) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBCONTRACTOR acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to CONTRACTOR under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. CONTRACTOR and SUBCONTRACTOR agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

CONTRACTOR and SUBCONTRACTOR assure HHS that any Breach or Event as defined by the DUA that SUBCONTRACTOR Discovers will be reported to HHS by CONTRACTOR in the time, manner and content required by the DUA.

If CONTRACTOR knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBCONTRACTOR that constitutes a material breach or violation of the DUA or the SUBCONTRACTOR's obligations CONTRACTOR will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBCONTRACTOR, if feasible;
3. Notify HHS immediately upon reasonably discovery of the pattern of activity or practice of SUBCONTRACTOR that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps CONTRACTOR is taking to cure or end the violation or terminate SUBCONTRACTOR's contract or arrangement.

**This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.**

**CONTRACTOR**

**SUBCONTRACTOR**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE** \_\_\_\_\_, 2016.

**DATE** \_\_\_\_\_, 2016.



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

JOHN HELLERSTEDT, M.D.  
COMMISSIONER

P.O. Box 149347  
Austin, Texas 78714-9347  
1-888-963-7111  
TTY: 1-800-735-2989  
[www.dshs.state.tx.us](http://www.dshs.state.tx.us)

June 16, 2016

Priscilla Torres  
Office of Arturo Guajardo, Jr.  
Hidalgo County Clerk  
100 N. Closner  
Edinburg, TX 78539

Subject: Executed Data Use Agreement

Dear Ms. Torres,

Enclosed is the executed Data Use Agreement between the Texas Health and Human Services Enterprise agency, Department of State Health Services ("HHS"), and Hidalgo County Clerk's Office.

Please let me know if you have any questions or need additional information. Princess Lindsay, Contract Manager, serves as the lead staff on this matter and can be reached by telephone at (512) 776-3713 or by email at [Princess.Lindsay@dshs.state.tx.us](mailto:Princess.Lindsay@dshs.state.tx.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Carol Haynes-Buchanan", with a long horizontal flourish extending to the right.

Carol Haynes-Buchanan, MAHS, CTCM, PMP  
Director of Contract Oversight and Support  
Department of State Health Services

Enclosure

**DATA USE AGREEMENT  
BETWEEN THE  
TEXAS HEALTH AND HUMAN SERVICE ENTERPRISE agency  
DEPARTMENT OF STATE HEALTH SERVICES (“HHS”)  
AND  
HIDALGO COUNTY (“Contractor”)**

“Attachment A”

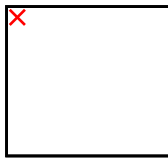
Contract Number 537-16-0127-00001 (Remote Birth Access Contract) serves as “Attachment A” to the Data Use Agreement (DUA).

**SPECIAL MEETING - May 10, 2016**

**BE IT REMEMBERED**, that on this 10th day of May A.D., 2016, there was begun and held a **SPECIAL MEETING** of the Honorable Commissioners' Court of Hidalgo County, Texas, wherein the following members thereof were present, to-wit:

<b>HONORABLE RAMON GARCIA</b>	<b>HIDALGO COUNTY JUDGE</b>
<b>HONORABLE A.C. CUELLAR, JR.</b>	<b>COMMISSIONER, PRECINCT NO. 1</b>
<b>HONORABLE EDUARDO "EDDIE" CANTU</b>	<b>COMMISSIONER, PRECINCT NO. 2</b>
<b>HONORABLE JOE M. FLORES</b>	<b>COMMISSIONER, PRECINCT NO. 3</b>
<b>HONORABLE JOSEPH PALACIOS</b>	<b>COMMISSIONER, PRECINCT NO. 4</b>

and **ARTURO GUAJARDO, JR.**, COUNTY CLERK & EX-OFFICIO CLERK OF THE COMMISSIONERS' COURT of Hidalgo County, Texas, wherein the following proceedings were had, to-wit:



**AGENDA  
CC REGULAR  
HIDALGO COUNTY  
COMMISSIONERS COURT  
MEETING  
May 10, 2016  
9:30 A.M.**

NOTICE is hereby given in accordance with Chapter 551, Texas Government Code, that a SPECIAL MEETING of the Commissioners' Court will be held at the Edinburg Council Chambers 415 W. University Drive, Edinburg, Hidalgo County, Texas. Discussion and possible action relating to the following business will be transacted:

1. **Roll Call**  
All members of the court were in attendance.
2. **Pledge of Allegiance**  
Judge Garcia led the courtroom in reciting the Pledge of Allegiance.
3. **Prayer**  
Mr. Domingo Villarreal led the courtroom in Prayer.
4. **Approval of Consent Agenda**  
The court move to approved the consent agenda for the exception of Items.2.X.,2.CC., 10.B., 10.O., & 10.DD. to be pulled for discussion.
5. **County Judge's Office:**
  - A. AI-54514 Recognizing the heroic actions of Abel and Robert Perez. The father and son team rescued two teenagers from drowning at South Padre Island on Saturday, April 30, 2016.
  - B. AI-54238 Proclamation declaring May 2016 as Mental Health Month in Hidalgo County.
  - C. AI-54510 Proclamation in honor of National Hospital Week, May 8 through May 14, 2016
  - D. AI-54513 Proclamation recognizing the week of May 8, 2016 as Economic Development Week in Hidalgo County.
6. **County Treasurer - Norma Garcia:**
  - A. AI-54491 Presentation & update of County's retirement system by Texas County & District Retirement System (TCDRS).
7. **Constables:**
  - A. AI-54356 Constable Precinct No. 1:  
Discussion, consideration, and approval to appoint John Paul Saucedo as Deputy Constable (Sergeant grade) by Constable Celestino Avila Jr, Constable Precinct 1 in accordance with Texas Local Government Code Section 86.011.
  - B. AI-54331 Constable Pct. 3 (1220):  
1. Approval of certification of revenues as certified by the County Auditor for the 2016 LEOSE Funds for Constable Pct. 3  
2. Approval of the appropriation of the 2016 LEOSE funds for the Constable Pct. 3 Department in the amount of \$1,900.33.
  - C. AI-54348 Constable Precinct 4:  
Discussion, consideration, and approval for Hidalgo County Constable Precinct 4 to enter into an Interlocal Cooperation Agreement with Hall County for the purposes of TLETS/NLETS access on their COPSync message switch.
8. **Tax Office - Paul Villarreal:**

- B. AI-54465 Approval of BlueCross BlueShield Benefit Program Application to apply a \$250 penalty for employees who fail to compare costs of MRI and CT scans on the new BlueCross BlueShield benefit, Benefit Value Advisor (BVA), approved by Commissioner's Court on 9/29/15 AI-51266 which took effect 1/1/16. Penalty, if approved by Commissioners Court, will be applied effective July 1, 2016.
- C. AI-54454 Various Departments (1285/1284/1100):  
Approval of the revised salary schedule, effective 04/04/16.
- D. AI-54434 Approval to submit request for funds (unclaimed capital credits) from Texas Comptroller of Public Accounts as authorized under Section 74.602 of the Texas Property Code, with authority for County Judge to sign the letter request.
- E. **Budget Appropriations:**
  - 1. AI-54445 Supplemental Court Guardianship (1250):  
Approval of 2016 appropriation of funds in the amount of \$50,000.00 to fund legal services.
  - 2. AI-54388 Pct 4 Russell - M17 1/2(Canal-Ware) (1200):  
Approval of 2016 appropriation of funds from the R&B unreserved fund balance in the amount of \$345,881.00 to fund Pct 4 Russell Road Project.
- F. **Interfund transfers:**
  - 1. AI-54481 COPS Retention (1284):  
Approval of 2016 interfund transfer from Sheriff's Office (1100) to COPS Retention (1284) in the amount of \$1,284.56 to fund a deficit in salary and fringe benefits.

21.

**Purchasing Department:**

**Notes:**

**A. FOR ANY CONTRACT(S) AWARDED AND APPROVED UNDER THIS AGENDA, EXECUTED COPIES OF THE CONTRACT(S) WILL BE AVAILABLE ON THE COUNTY INTRA-NET WEBSITE AND WILL BE FOWARDED VIA E-MAIL, FAX OR HAND DELIVERED TO HIDALGO COUNTY AUDITOR'S OFFICE.**

**B. ANY AND ALL REQUESTS FOR PAYMENT(S) APPROVED WILL BE SUBJECT TO COUNTY AUDITORS PROCESSING PROCEDURES INCLUDING AUTHORITY FOR COUNTY TREASURER TO ISSUE PAYMENT(S)/CHECK(S).**

**A. Hidalgo County**

- 1. AI-54459 Presentation of sole lowest responsible bid received [meeting all specifications and/or requirements] for the purpose of award and approval of contract document for project titled: Hidalgo County- "Maintenance & Repairs for Elevators Located in County Owned Buildings:" through RFB No.: 2016-074-05-10-SMA.
- 2. AI-54477 A. Requesting acceptance and approval of an "Amendment" to Sole Source Declaration for COPsync, Inc. to clarify and reflect the provision of "Turnkey Solutions" (i.e. any/all equipment, parts, incidentals, accessories and installation of same) through the life term of the declaration (all funding sources);  
B. Acceptance and approval to process of Requisition #294062 into a Purchase Order as it qualifies under the Amended Sole Source Declaration for COPsync.
- 3. AI-54162 Acceptance and approval of Sole Response received and meeting all specifications and / or requirements (as detailed in the documentation contained herein) for the purpose of award and approval of contract for Request for Bid titled: Hidalgo County - "Extraction Of Water Services (DeWatering)" through project No.: 2016-134-03-30-FAZ.

**B. Pct. 1**

- 1. AI-54475 Approval to exercise the option to renew/extend for a one (1) year extension (as permitted in contract) with Southern Star Transport, LTD, under the same terms and conditions for "Hauling Services for Millings" - Precinct #1.

**C. Pct. 2**

- 1. AI-54543 A. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional service;

B. Presentation of scoring grid (for the purposes of ranking by CC) of the firms graded and evaluated through the County's approved "pool" of professional surveying services for Pct No. 2 Projects (on as needed basis).

	CDS MUERY	QUINTANILLA, HEADLEY & ASSOC	R.O.W. SURVEYING SERVICES
SCORE	96	94	95
RANKING			

- 4. AI-54423 A. Recommendation by project architect Mata & Garcia Architects, LLC, to award the Base Bid to the responsible vendor submitting the lowest and best bid meeting all specifications, Gomez Paving, LLC, dba, South Texas Paving of Mission, TX, in the total amount of \$150,900.00 for project -Hidalgo County Precinct No. 4 -"Construction of Parking Lot at San Carlos CRC and Sunflower Park -RFB No. 2016-115-03-30-MSS." subject to compliance with HB23 and/or HB1295 [when and/or if applicable];  
B. Pursuant to TXLGC 262.031 and in the interest of expediting a project's progress, requesting authority/approval for the Precinct Commissioner or designee: Jesus "Jesse" Ozuna, to execute change orders that involve...'an increase or decrease in cost of \$50,000.00 or LESS and in no event to exceed the Change Order's statutory limits...'. The original contract price may not be decreased by 18 % or more without the consent of the contractor".
- 5. AI-54418 A. Recommendation by project engineer, Raul E. Sesein, PE, to award the Base Bid and Alternates #1, #2, #3, #4, #5 and #6 to the responsible vendor submitting the lowest and best bid meeting all specifications, **Texas Cordia Construction, LLC** of Edinburg, TX, in the total amount of **\$345,880.39** for project (base bid and alternates 1 thru 6) - "**Hidalgo County Precinct No. 4 - Mile 17 1/2 Road Paving & Drainage Improvements: - RFB 2016-120-04-27-MSS/YZV**" subject to compliance with HB23 and/or HB1295 [when and/or if applicable];  
  
B. Pursuant to TXLCG 262.031 and in the interest of expediting a project's progress, requesting authority/approval for the Precinct Commissioner or designee: Jesse Ozuna, [ unless otherwise voiced/announced by Commissioner Palacios] to execute change orders that involve 'an increase or decrease in cost of \$50,000.00 or LESS and in no event to exceed the Change Order's statutory limits. The original contract price may not be decreased by 18% or more without the consent of the contractor.
- 6. AI-54424 Approval to exercise the option to renew/extend for a one (1) year extension (as permitted in contract) with Roy's Hauling Service, Inc., under the same terms and conditions for; "Hauling Services for Hot Mix" - Precinct 4.

E. **Health & Human Services Dept.**

- 1. AI-54441 A. Requesting exemptions from competitive procurement requirements under Tx Local Government Code, Chapter/Section, 262.024 (a)(2)&(4), to protect the health and safety of the residents of the county and a professional service;  
  
B. Acceptance and approval of a short term 120 days contract with **Ivan G. Melendez, M.D.**, for the provision of Physician Services (TB Clients) for the Hidalgo County's Department of Health and Human Services and subject to HB-1295 and/or HB23 when and/if applicable.
- 2. AI-54371 A. Presentation and action in connection with the sole response received for RFP No. 2016-076-04-13-YZV - "Registered Pharmacist Services" for the purpose of Hidalgo County Commissioners' Court ranking as "qualified" [meeting the criteria] in order to continue to the next phase (i.e. negotiation) of the proposal process;  
  
B. Requesting authority for Purchasing department to negotiate with the sole "qualified" proposer \_\_\_\_\_ in order to finalize a contract for consideration and award including compliance with HB23 and/or HB1295 if and when applicable.

F. **Tax Office**

- 1. AI-54374 Presentation of Sole Bid received (as detailed in tabulation sheet contained herein) for the purpose of award and approval of contract document, meeting all specifications and/or requirements for project titled: Hidalgo County Tax Assessor/Collector-"Printing and Mailing of 2016 & 2017 Tax Statements and Envelopes" through RFB No.: 2016-059-04-20-SGS

G. **Sheriff's Office**

- 1. AI-54450 Requesting authority to purchase through our membership/participation with (DIR) Department of Information Resources contract DIR-SDD-1951 the following; (60) Dell Latitude E5550/5550 CTO (77) OptiPlex 9020M (77) Dell 22" Monitors (77) Dell OptiPlex Vertical Stand System Desk (35) Dell OptiPlex Micro Console Enclosure In the total amount of \$116,860.00 subject to compliance with HB23 and/or HB1295 when and or if applicable.

H. **County Clerk**

- 1. AI-54486 Requesting approval of **Data Use Agreement (DUA)** between the **Texas Health and Human Services Enterprises and Hidalgo County commencing with County Clerk** to: facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

22. **Open Forum**

23. **Closed Session:**

Commissioners' Court may go into Closed Session pursuant to Chapter 551, Texas Government Code, Sections 551.071 & 551.072 to discuss the following:

A. **Real Estate Acquisition**