



TEXAS
Health and Human
Services

Texas Department of State Health Services

John Hellerstedt, M.D.
Commissioner

The Honorable Richard F. Cortez
Hidalgo County Judge
Hidalgo County
3105 W. University
Edinburg, Texas 78539

Subject: Lactation Support Center Services Program
Contract Number: HHS000455900001
Contract Amount: \$200,000.00
Contract Term: September 1, 2019 – August 31, 2020

Dear Judge Cortez:

Enclosed is the Lactation Support Center Services Program contract between the Department of State Health Services and Hidalgo County.

The purpose of this contract is to develop and implement the Lactation Support Center Services – Strategic Expansion Program and provide a training center, lactation education, counseling and referral services to women not currently participating in the Texas Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

With all renewals exercised, the total contract amount is projected to be \$1,000,000.00.

Please let me know if you have any questions or need additional information.

Sincerely,

Kevin Ruiz, CTCM
Contract Manager
512-776-2192
Kevin.ruiz@dshs.texas.gov

**SIGNATURE DOCUMENT FOR
DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS000455900001
UNDER THE
LACTATION SUPPORT CENTER SERVICES PROGRAM**

I. PURPOSE

The DEPARTMENT OF STATE HEALTH SERVICES (“System Agency” or “DSHS”) and HIDALGO COUNTY (“Grantee”) (each a “Party” and collectively the “Parties”) enter into the following grant contract to provide funding for Lactation Support Center Services (the “Contract”).

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with Texas Government Code Chapter 791.

III. DURATION

The Contract is effective on September 1, 2019, and terminates on August 31, 2020, unless renewed or terminated pursuant to the terms and conditions of the Contract. The System Agency may renew this Contract for four (4) additional twelve-month periods if funds are available. The System Agency, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

IV. BUDGET

The total amount of this Contract will not exceed **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET**.

V. CONTRACT REPRESENTATIVES

The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

System Agency

Department of State Health Services
1100 West 49th Street, Mail Code 1990
Austin, Texas 78756
Attention: Kevin Ruiz
Kevin.ruiz@dshs.texas.gov

Grantee

Hidalgo County
3105 W. University
Edinburg, Texas 78539
Attention: Clarissa Ramirez
Clarissa.ramirez@wic.co.hidalgo.tx.us

VI. LEGAL NOTICES

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

System Agency

Department of State Health Services
Attention: General Counsel
1100 W. 49th Street, MC 1911
Austin, Texas 78756

Grantee

Hidalgo County
3105 W. University
Edinburg, Texas 78539
Attention: Honorable Richard F. Cortez
Countyjudge@co.hidalgo.tx.us

Notice given by Grantee will be deemed effective when received by the System Agency. Either Party may change its address for notice by written notice to the other Party.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR SYSTEM AGENCY
CONTRACT NO. HHS000455900001**

DEPARTMENT OF STATE HEALTH SERVICES GRANTEE

Date of execution: _____

Date of execution: _____

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO.
HHS000455900001 ARE HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A - STATEMENT OF WORK**
- ATTACHMENT B - BUDGET**
- ATTACHMENT C - UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D - CONTRACT AFFIRMATIONS**
- ATTACHMENT E - SUPPLEMENTAL & SPECIAL CONDITIONS**

**ATTACHMENT A
STATEMENT OF WORK
LACTATION SUPPORT CENTER SERVICES**

I. GRANTEE RESPONSIBILITIES

Grantee shall work with the Texas Department of State Health Services (DSHS), Community Health Improvement Division (CHI), Maternal and Child Health Unit (MCHU) to develop and implement the Lactation Support Center Services - Strategic Expansion Program (LSCS-SEP).

Grantee shall utilize the program to provide population-based public health services and implement strategies to increase accessibility, quality and coordination of breastfeeding support services in the Grantee's service delivery area.

The services provided under this Contract will complement and expand upon services provided by the Grantee under their current HHSC WIC Local Agency Lactation Center Contract by which the HHSC WIC Program pays Grantee to: (1) act as a lactation resource center for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) mothers with breastfeeding problems, (2) a training center for WIC local agency staff and other health providers to receive clinical experience working with breastfeeding mothers, and (3) a statewide Breastfeeding Resource Center for health providers to utilize for information and assistance when working with pregnant and breastfeeding women.

Activities and funding provided under this Contract shall not duplicate nor supplant services otherwise provided by the Grantee under any other payment source.

Grantee will:

A. Perform professional, administrative and clerical services necessary to:

1. Act as a lactation resource center for, and provide lactation education, counseling, and referral services to, women (participants) with breastfeeding problems who do not currently participate in the Texas Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
 - a. Lactation counseling services provided by the Grantee under this Contract shall be performed by, or under the supervision of, an International Board Certified Lactation Consultant. An International Board Certified Lactation Consultant is defined as a health care professional who specializes in the clinical management of breastfeeding and who is certified by the International Board of Lactation Consultant Examiners, Inc. (IBLCE), under the direction of the U.S. National Commission for Certifying Agencies. Lactation counseling services shall be performed in a manner consistent with IBLCE Professional Standards and according to statutes and to DSHS and HHSC rules, policies, and directives.
 - b. Grantee shall determine participants' access to health care, medical care and other human services, and make appropriate referrals.

**ATTACHMENT A
STATEMENT OF WORK
LACTATION SUPPORT CENTER SERVICES**

2. Develop and implement activities to mobilize and engage key community partners in locally-appropriate planning activities to promote a shared vision for leveraging resources and to strategically assess, plan, develop, integrate, and improve coordinated systems of care for lactation support consistent with recommendations of the Surgeon General's Call to Action to Support Breastfeeding, the Centers for Disease Control Guide to Strategies to Support Breastfeeding Mothers and Babies, and/or other best practice resources as approved by DSHS.
3. Plan and implement outreach, training, and education programs to increase the competencies and skills of maternity service direct care staff, clinicians (e.g., midwives, obstetricians, family physicians, nurse practitioners, and pediatricians), and/or other health professionals who care for women and children. The purpose of these outreach, training, and education programs is to support:
 - a. Improvements in the Grantee's service delivery area in the quality of breastfeeding support consistent with recommendations of the WHO/UNICEF *Ten Steps to Successful Breastfeeding*, the American Academy of Pediatrics, the American Congress of Obstetricians and Gynecologists, the American Academy of Family Physicians, the Academy of Breastfeeding Medicine, and/or other best practice resources as approved by DSHS.
 - b. Increased continuity of care in the Grantee's service delivery area from pregnancy through the first six months postpartum and beyond consistent with the recommendations of the Surgeon General's Call to Action to Support Breastfeeding and/or other best practice resources as approved by DSHS.
 - c. Reduction of disparities in infant feeding outcomes in the Grantee's service delivery area.
4. Provide expanded services to mothers and families in Grantee's service delivery area including:
 - a. Information education, and referrals on key maternal, infant, and early childhood health topics supportive of optimal infant feeding health outcomes including, but not limited to, maternal-infant attachment; baby behavior; maternal health and safety; infant safe sleep; infant and early childhood development and care; appropriate introduction of complementary foods (e.g., avoidance of solids in bottles, delaying introduction of complementary foods to 6 months); importance of medical

**ATTACHMENT A
STATEMENT OF WORK
LACTATION SUPPORT CENTER SERVICES**

home; perinatal mental and behavioral health; or other topics as approved by System Agency; and/or

- b. Breastfeeding peer counselor or other recommended sources of mother-to-mother support in hospital or community settings; and/or
 - c. Enabling services (e.g., taxi vouchers or other transportation services; extended hours; mobile clinics; etc.) to address barriers as identified through needs assessment to increase access to family-centered, culturally relevant, timely lactation support.
- B.** In consultation with System Agency, develop and maintain an annual LSCS-SEP Work Plan and strategy for implementing the Program, including goals; objectives; milestones for progress; action steps; timelines; performance measures and data sources; and key partners, and other resources to carry out the plan.
- C.** Appoint and maintain staffing of an LSCS-SEP Coordinator.
- D.** Assist DSHS in evaluative activities including the collection of quantitative and qualitative data that will identify benefits of this LSCS-SEP and furnish financial, health, education and any other special reports in a timely manner as requested by, and in a format consistent with the written requests of, DSHS.
- E.** Conduct outreach to potential partners and participants of this Program.
- F.** Complete surveys and other assessment and monitoring activities as requested by DSHS.
- G.** Collect and maintain data on selected program indicators as outlined in approved annual LSCS-SEP Work Plan.
- H.** Assist with dissemination of project and program successes.
- I.** Participate in project planning and status phone calls and/or meetings with project officer on a regular basis and as needed.
- J.** Ensure adequate staff competence, skills and training, staff coverage and uninterrupted delivery of services provided under this Contract.
- K.** Submit to System Agency the following documents or reports in the formats requested by System Agency:
- 1. An annual LSCS-SEP Work Plan due within 45 days of Contract execution that outlines implementation of the Grantee's approach to comply with this Contract.

**ATTACHMENT A
STATEMENT OF WORK
LACTATION SUPPORT CENTER SERVICES**

System Agency must provide written approval of the annual LSCS-SEP Work Plan prior to implementation.

2. All activities related to the LSCS-SEP, including time frames, budget, and any revisions shall be approved by DSHS.
3. Quarterly programmatic reports and implementation of strategies submitted to cdsb@dshs.texas.gov and titled@dshs.texas.gov by the following dates:
 - a. September 1 – November 30 Due December 31
 - b. December 1 – February 29 Due March 31
 - c. March 1 - May 31 Due June 30
 - d. June 1 – August 31 Due September 30
4. Quarterly Financial Status Reports (FSR) to be submitted to invoices@dshs.texas.gov and to cdsb@dshs.texas.gov by the below dates:
 - a. September 1 – November 30 Due December 31
 - b. December 1 – February 29 Due March 31
 - c. March 1 – May 31 Due June 30
 - d. June 1 – August 31 Due October 15

Grantee shall submit quarterly Financial Status Reports (FSR/Form 269A) for services provided with MCHU funds. Each FSR shall be clearly marked as “MCH Lactation Support Center Services-Strategic Expansion Program.” The original FSR shall be signed and emailed to the DSHS Claims Processing Unit at the address below.

5. Submit Annual Report to update System Agency on assessments, activities carried out, and intervention impact on a date to be determined by System Agency.

II. PERFORMANCE MEASURES

The System Agency will monitor the Grantee’s performance of the requirements in Attachment A and compliance with the Contract’s terms and conditions.

III. INVOICE AND PAYMENT

- A. Grantee will request monthly payments using the State of Texas Purchase Voucher (Form B-13) at <http://www.dshs.texas.gov/grants/forms.shtm>. Form B-13 (voucher) shall be marked as “MCH Lactation Support Center Services-Strategic Expansion Program” and any supporting documentation shall be mailed or submitted electronically to the address/number below.

Department of State Health Services
Claims Processing Unit, MC 1940
1100 West 49th Street
P.O. Box 149347

**ATTACHMENT A
STATEMENT OF WORK
LACTATION SUPPORT CENTER SERVICES**

Austin, TX 78714-9347

Email: invoices@dshs.texas.gov and CMSinvoices@dshs.texas.gov

- B. Form B-13 voucher shall be submitted each month even if there are zero expenditures. Form B-13 voucher shall be submitted each month for actual program expenditures even if the Contract limit has been reached.
- C. Grantee shall electronically submit a final close-out voucher not later than forty-five (45) days following the end of the applicable Contract term(s) for costs encumbered on or before the last day of the Contract term. Vouchers received more than forty-five (45) days following the end of the applicable Contract term will not be paid.
- D. Grantee will be paid on a cost reimbursement basis and in accordance with the Budget in **ATTACHMENT B** of this Contract.

ATTACHMENT B
BUDGET
CONTRACT NO. HHS000455900001

| Budget Categories | FY2020 Budget |
|---|----------------------|
| Personnel | \$ 117,580.00 |
| Fringe Benefits | \$ 39,965.00 |
| Travel | \$ 10,641.00 |
| Equipment | \$ 3,047.00 |
| Supplies | \$ 25,079.00 |
| Contractual | \$ 0.00 |
| Other | \$ 3,688.00 |
| Total Direct Costs | \$ 200,000.00 |
| Indirect Costs | \$ 0.00 |
| Total of Direct Costs and Indirect Costs | \$ 200,000.00 |

HHSC Uniform Terms and Conditions Version 2.16
Published and Effective: March 26, 2019
Responsible Office: Chief Counsel



TEXAS

Health and Human Services

Health and Human Services Commission
HHSC Uniform Terms and Conditions - Grant
Version 2.16.1

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“[Amendment](#)” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters.

“[Attachment](#)” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference, and made a part of this Contract.

“[Contract](#)” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference for all purposes.

“[Deliverable](#)” means the work product(s), including all reports and project documentation, required to be submitted by Grantee to the System Agency.

“[Effective Date](#)” means the date agreed to by the Parties as the date on which the Contract takes effect.

“[Federal Fiscal Year](#)” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“[GAAP](#)” means Generally Accepted Accounting Principles.

“[GASB](#)” means the Governmental Accounting Standards Board.

“[Grantee](#)” means the Party receiving funds under this Contract. May also be referred to as "Contractor" in certain attachments.

“[Health and Human Services Commission](#)” or “[HHSC](#)” means the administrative agency established under Chapter 531, Texas Government Code, or its designee.

“[HUB](#)” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“[Intellectual Property Rights](#)” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such right may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Grantee, collectively.

“Party” means either the System Agency or Grantee, individually.

“Program” means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

“Project” means specific activities of the Grantee that are supported by funds provided under this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation” or “Request for Applications (RFA)” means the document (including all amendments and attachments) issued by the System Agency under which applications for Program funds were requested, which is incorporated by reference for all purposes in its entirety.

“Solicitation Response” or “Application” means Grantee’s full and complete response (including any attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Statement of Work” means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

“System Agency” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, authorized representatives and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Grantee.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the deliverables, that are developed, produced, generated or provided by Grantee in connection with Grantee’s performance of its duties under the Contract or through use of any funding provided under this Contract.

“Uniform Grant Management Standards” or “UGMS” means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas

Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT METHODS AND RESTRICTIONS

2.1 PAYMENT METHODS

- A. Except as otherwise provided by this Contract, the payment method will be one or more of the following:
 - i. Cost Reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
 - ii. Unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
 - iii. Advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has

implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law, state and federal regulations, and at the sole discretion of the System Agency.

- B. Grantee shall bill the System Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.2 FINAL BILLING SUBMISSION

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.

2.3 FINANCIAL STATUS REPORTS (FSRs)

Except as otherwise provided, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to System Agency by the last business day of the month following the end of each quarter for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

2.4 USE OF FUNDS

Grantee shall expend funds under this Contract only for approved services and for reasonable and allowable expenses directly related to those services.

2.5 USE FOR MATCH PROHIBITED

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the System Agency.

2.6 PROGRAM INCOME

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use Program Income, as provided in UGMS Section III, Subpart C, .25(g)(2), to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Contract, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Contract term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Contract.

2.7 NONSUPPLANTING

Grant funds may be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds in place to support current programs and related activities.

2.8 ALLOWABLE COSTS

Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. The Parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

2.9 INDIRECT COST RATES

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable contracts. Grantee will provide the necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and Uniform Grant Management Standards (UGMS).

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

This Contract is subject to termination or cancellation, without penalty to System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Grantee's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Grantee for any damages, that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

3.2 NO DEBT AGAINST THE STATE

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBT AND DELINQUENCIES

Grantee agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

3.4 RECAPTURE OF FUNDS

A . At its sole discretion, the System Agency may i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s), or ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice -

any funds erroneously paid by System Agency which are not expressly authorized under the Contract.

- B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

- A. System Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee’s repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include, but are not limited to:

| Applicable Entity | Applicable Cost Principles | Audit Requirements | Administrative Requirements |
|--------------------------------------|----------------------------|------------------------------------|-----------------------------|
| State, Local, and Tribal Governments | 2 CFR Part 200 and UGMS | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |
| Educational Institutions | 2 CFR Part 200 and UGMS | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |
| Non-Profit Organizations | 2 CFR Part 200 and UGMS | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |

| | | | |
|---|--|---|--------------------------------|
| <p>For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.</p> | <p>48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency</p> | <p>2 CFR Part 200, Subpart F and UGMS</p> | <p>2 CFR Part 200 and UGMS</p> |
|---|--|---|--------------------------------|

B. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

- i. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee will be subject to the sanctions and remedies for non-compliance with this Contract.
- ii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.
- iii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS.
- iv. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits.
- v. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

B. Financial Statements

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically one copy of the single audit or program-specific audit to the System Agency via:

- i. HHS portal at: or,
<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>
- ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements

Due no later than nine months after the Grantee's fiscal year end, Grantees which are not required to submit an audit, shall submit electronically financial statements via:

- i. HHS portal at:
<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>; or,
- ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 GENERAL AFFIRMATIONS

Grantee certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the Grantee has reviewed the General Affirmations and that Grantee is in compliance with all requirements.

5.2 FEDERAL ASSURANCES

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Grantee has reviewed the Federal Assurances and that Grantee is in compliance with all requirements.

5.3 FEDERAL CERTIFICATIONS

Grantee further certifies that, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, the Grantee has reviewed the Federal Certifications and that Grantee is in compliance with all requirements. In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Grantee and Grantee's employees will have no rights in or ownership of the Work Product or any other property of System Agency. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Grantee hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated

therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Grantee agrees to execute all papers and to perform such other property rights as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.

6.2 GRANTEE'S PRE-EXISTING WORKS

To the extent that Grantee incorporates into the Work Product any works of Grantee that were created by Grantee or that Grantee acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Grantee retains ownership of such Incorporated Pre-existing Works, and Grantee hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product. Grantee represents, warrants, and covenants to System Agency that Grantee has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Grantee shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Grantee's compliance with Grantee's obligations under this **Article VI**.

6.4 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency's request, Grantee shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Grantee's failure to timely deliver such Work Product is a material breach of the Contract. Grantee will not retain any copies of the Work Product or any documentation or other products or results of Grantee's activities under the Contract without the prior written consent of System Agency.

6.5 SURVIVAL

The provisions and obligations of this **Article VI** survive any termination or expiration of the Contract.

ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE

7.1 BOOKS AND RECORDS

Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee shall maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the Contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

7.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Grantee must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the services and Deliverables provided. Any such correction will be at Grantee's or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Grantee must provide to HHSC upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Contract.

7.4 SAO AUDIT

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. Grantee shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

7.5 CONFIDENTIALITY

Grantee shall maintain as confidential, and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract.

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

To ensure Grantee's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Grantee accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Grantee to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Grantee found to be in error;
- iv. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
- v. imposing any other remedies, sanctions or penalties authorized under this Contract or permitted by federal or state statute, law, regulation or rule.

8.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination. The System Agency's right to terminate the Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

8.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

i. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Grantee has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Grantee's duties under the Contract. Grantee's misrepresentation in any aspect of Grantee's Solicitation Response, if any, or Grantee's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

ii. **Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Grantee no longer maintains the financial viability required to complete the services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

9.2 INSURANCE

A. Unless otherwise specified in this Contract, Grantee shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage.

B. These and all other insurance requirements under the Contract apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

9.3 LEGAL OBLIGATIONS

Grantee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Grantee shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

9.4 PERMITTING AND LICENSURE

At Grantee's sole expense, Grantee shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Contract. Grantee shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

9.5 INDEMNITY

- A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENCE ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**
- C. For the avoidance of doubt, System Agency shall not indemnify Grantee or any other entity under the Contract.**

9.6 ASSIGNMENTS

- A. Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Grantee from its obligations under the Contract.
- B. Grantee understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

9.7 INDEPENDENT CONTRACTOR

Grantee and Grantee's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Should Grantee subcontract any of the services required in the Contract, Grantee expressly understands and acknowledges that in entering such subcontract(s), System Agency is in no manner liable to any Subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

9.8 TECHNICAL GUIDANCE LETTERS

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during work performance in the form of a Technical Guidance Letter (TGL). A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference for all purposes when it is issued.

9.9 DISPUTE RESOLUTION

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.
- B. If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

9.10 GOVERNING LAW AND VENUE

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

9.11 SEVERABILITY

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-

enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

9.12 SURVIVABILITY

Expiration or termination of the Contract for any reason does not release Grantee from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

9.13 FORCE MAJEURE

Neither Grantee nor System Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

9.14 NO WAIVER OF PROVISIONS

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Grantee which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

9.15 PUBLICITY

- A. Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.
- B. Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the System Agency’s prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.
- C. Contractor is prohibited from using the Work for any Contractor or third party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor’s or a third party’s products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

9.16 PROHIBITION ON NON-COMPETE RESTRICTIONS

Grantee shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

9.17 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in the Contract will be construed as a waiver of the System Agency’s or the State’s sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

9.18 ENTIRE CONTRACT AND MODIFICATION

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

9.19 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

9.20 PROPER AUTHORITY

Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract.

9.21 E-VERIFY PROGRAM

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- i. all persons employed to perform duties within Texas during the term of the Contract; and
- ii. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Contract within the United States of America.

9.22 CIVIL RIGHTS

- A. Grantee agrees to comply with state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);

- v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.
- B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

9.23 SYSTEM AGENCY DATA

As between the Parties, all data and information acquired, accessed, or made available to Contractor by or through System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder, (the "**System Agency Data**"), is owned solely by System Agency. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.

Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent acknowledges that its Solicitation Response and subsequent documents submitted are subject to the Texas Public Information Act.
4. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
5. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.
6. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation are rejected unless expressly accepted by HHSC.
7. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
8. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
9. Respondent acknowledges all addenda and amendments to the Solicitation.
10. Respondent represents and warrants that if a Texas address is shown as the address of Respondent, Respondent qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
11. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code §20.38 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
 - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas
 - Agricultural products offered by a Texas bidder

- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
 - Texas Vegetation Native to the Region
 - USA produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - Energy Efficient Products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or Reused Computer Equipment of Other Manufacturers
 - Foods of Higher Nutritional Value
 - Commercial production company or advertising agency located in Texas
12. Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.
13. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
14. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
15. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
16. Pursuant to Section 231.006(c), Texas Family Code (relating to delinquent child support), identify below the name and social security number (SSN) of each individual, sole proprietor, partner, shareholder, and owner with an ownership interest of at least 25 percent (25%) of the business entity submitting this Solicitation Response:
- Name: _____ SSN: _____
- Name: _____ SSN: _____

Name: _____ SSN: _____
Name: _____ SSN: _____

FEDERAL PRIVACY ACT NOTICE: Disclosure of requested Social Security Numbers (SSNs) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law. Failure by a Respondent to provide the required SSNs may result in disqualification of the Respondent's Solicitation Response.

17. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
18. Respondent certifies that: (a) the entity executing this Solicitation Response; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Solicitation are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
19. Respondent certifies that it, its principals, its subcontractors, and any personnel designated to perform services related to any contract resulting from this Solicitation are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
20. Respondent certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Solicitation Response; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Solicitation are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Respondent may review in making this certification.
21. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Respondent certifies that it (1) is not the executive head any HHS Agency; (2) was not at any time during the past four years the executive head of any HHS Agency; and (3) does not employ a current or former executive head of any HHS Agency.
22. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
23. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
24. Respondent represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.

25. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Respondent will not allow any former employee of an HHS Agency to perform services under any contract resulting from this Solicitation during the twelve (12) month period immediately following the employee's last date of employment an HHS Agency.
26. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of an HHS Agency who during the period of state service or employment participated on behalf of an HHS Agency in a procurement or contract negotiation involving Respondent may not accept employment from respondent before the second anniversary of the date the officer's or employee's service or employment with an HHS Agency ceased.
27. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting contract would not reasonably create an appearance of impropriety
28. Respondent understands that HHSC does not tolerate any type of fraud. The agencies' policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
29. Respondent represents and warrants that it has not violated state or federal antitrust laws and has not communicated its Solicitation response directly or indirectly to any competitor or any other person engaged in such line of business. Respondent hereby assigns to HHSC any claims for overcharges associated with any contract resulting from this Solicitation under 15 U.S.C. § 1, *et seq.*, and Texas Business and Commerce Code § 15.01, *et seq.*
30. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSCs consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to the HHSCs consideration of entering into a contract. In addition, Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely

update HHSC shall constitute breach of contract and may result in immediate contract termination.

- 31. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.
- 32. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.
- 33. Respondent represents and warrants that the individual signing this Solicitation response is authorized to sign on behalf of Respondent and to bind Respondent.

Authorized representative on behalf of Respondent must complete and sign the following:

Legal Name of Respondent: _____

Signature of Authorized Representative

Date Signed

Printed Name and Title of Authorized Representative

Phone Number

Federal Employer Identification Number

Fax Number

DUNS Number

Email Address

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

SUPPLEMENTAL CONDITIONS

THERE ARE NO SUPPLEMENTAL CONDITIONS FOR THIS CONTRACT THAT MODIFY THE HHS UNIFORM TERMS AND CONDITIONS

SPECIAL CONDITIONS

SECTION 1.01 NOTICE OF CONTRACT ACTION

Grantee shall notify their assigned contract manager if Grantee has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

SECTION 1.02 NOTICE OF BANKRUPTCY

Grantee shall notify in writing its assigned contract manager of its plan to seek bankruptcy protection within five days of such action by Grantee.

SECTION 1.03 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- a. Grantee shall immediately report in writing to their contract manager when Grantee has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, contractor or volunteer that is providing services under this Contract has:
 1. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
 2. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- b. Grantee shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

SECTION 1.04 GRANTEE’S NOTIFICATION OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL

The Grantee shall notify in writing their contract manager assigned within ten days of any change to the Grantee’s Contact Person or Key Personnel.

SECTION 1.05 INTERIM EXTENSION AMENDMENT

- a. Prior to or on the expiration date of this Contract, the Parties agree that this Contract can be extended as provided under this Section.
- b. The System Agency shall provide written notice of interim extension amendment to the Grantee under one of the following circumstances:
 1. Continue provision of services in response to a disaster declared by the governor; or
 2. To ensure that services are provided to clients without interruption.
- c. The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- d. Grantee will provide and invoice for services in the same manner that is stated in the Contract.
- e. An interim extension under Section (b)(1) above shall extend the term of the contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
- f. An interim extension under Section (b)(2) above shall be a one-time extension for a period of time determined by the System Agency.

SECTION 1.06 CHILD ABUSE REPORTING REQUIREMENT

- a. Grantees shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Grantee to report child abuse.
- b. Grantee shall develop, implement and enforce a written policy that includes at a minimum the System Agency’s Child Abuse Screening, Documenting, and Reporting Policy for Grantees/Providers and train all staff on reporting requirements.
- c. Grantee shall use the System Agency's Child Abuse Reporting Form located at www.System_Agency.state.tx.us/childabusereporting as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

SECTION 1.07 PROGRAM EQUIPMENT, PROGRAM SUPPLIES, PROPERTY MANAGEMENT AND REPORTING

- a. Grantee shall initiate the purchase of all Equipment approved in writing by the System Agency in the first quarter of the Contract term, as applicable. Failure to timely initiate the purchase of Equipment may result in the loss of availability of funds for the purchase of Equipment. Requests to purchase previously approved Equipment after the first quarter in the Contract must be submitted to the assigned System Agency contract manager.
- b. Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of \$500 or more, but less than \$5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency

management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Controlled Assets are considered Supplies.

- c. Grantee shall maintain an inventory of Equipment, supplies defined as Controlled Assets, and real property and submit an annual cumulative report of the equipment and other property on HHS System Agency Grantee's Property Inventory Report to the assigned System Agency contract manager by e-mail not later than October 15 of each year.
- d. System Agency funds must not be used to purchase buildings or real property without prior written approval from the System Agency. Any costs related to the initial acquisition of the buildings or real property are not allowable without written pre-approval.
- e. At the expiration or termination of this Contact for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to System Agency. Title may be transferred to any other party designated by System Agency. The System Agency may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Grantee.

SECTION 1.08 GRANTEE'S CERTIFICATION OF MEETING OR EXCEEDING TOBACCO-FREE WORKPLACE POLICY MINIMUM STANDARDS.

Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:

- a) Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
- b) Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Contract are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
- c) Applying to all employees and visitors in this designated area; and
- d) Providing for or referring its employees to tobacco use cessation services.

If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

Certificate Of Completion

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Status: Sent

Subject: New \$1,000,000; HHS000455900001; Hidalgo County; DSHS/CMS

Source Envelope:

Document Pages: 57

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

Texas Health and Human Services Commission

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1100 W. 49th St.

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Austin, TX 78756

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Commission

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Signer Events

Signature

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Greta Rymal

Completed

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Greta.Rymal@hhsc.state.tx.us

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Texas Health and Human Services Commission

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Richard Cortez

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countyjudge@co.hidalgo.tx.us

Hidalgo County Judge

Security Level: Email, Account Authentication
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Electronic Record and Signature Disclosure:

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Andy Marker

Edward.Marker@hhsc.state.tx.us

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

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Karen Ray

Karen.Ray@hhsc.state.tx.us

Security Level: Email, Account Authentication
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Electronic Record and Signature Disclosure:

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Cecile Young

cecile.young@hhsc.state.tx.us

Security Level: Email, Account Authentication
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Editor Delivery Events

Status

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| Agent Delivery Events | Status | Timestamp |
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cmucontracts@dshs.texas.gov
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Kevin Ruiz
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Program Specialist and Contract Manager
Texas Health and Human Services Commission
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Clarissa Ramirez
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