

**SIGNATURE DOCUMENT FOR  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS000686100020  
UNDER THE  
TUBERCULOSIS PREVENTION AND CONTROL – FEDERAL (TB/PC-FEDERAL)  
GRANT PROGRAM**

**I. PURPOSE**

The Department of State Health Services (“**DSHS**”) and Hidalgo County (“**Grantee**”), each a “**Party**” and collectively the “**Parties**,” enter into the following grant contract for the Tuberculosis Prevention and Control - Federal Grant Program (the “**Contract**”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of *Texas Government Code* Chapter 791, and *Texas Health and Safety Code* Chapters 12 and 1001.

**III. STATEMENT OF SERVICES TO BE PROVIDED**

Grantee shall perform services related to the Tuberculosis Prevention and Control - Federal (“**TB/PC-Federal**”) Program in accordance with the requirements stated in Attachment A, **Statement of Work**.

**IV. DURATION**

The Contract is effective on January 1, 2020, and terminates on December 31, 2020, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. DSHS, at its sole discretion, may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed two years.

**V. PAYMENT FOR SERVICES PERFORMED**

The total amount of DSHS’s share of this Contract shall not exceed \$437,771.00. Grantee’s required cash match for this Contract shall not exceed \$87,554.00. The total not to exceed amount of the Contract, therefore, is \$525,325.00. All expenditures under this Contract will be in accordance with **Attachment B**, Budget.

**VI. CONTRACT REPRESENTATIVES**

The following individuals will act as the designated Representative authorized to administer activities, communications, and non-legal notices under this Contract on behalf of their respective Party.

**DSHS**

**Samantha Lavoie, CTCM**  
**1100 West 49<sup>th</sup> Street, MC 1990**  
**Austin, Texas 78756**  
**(512) 776-2152**  
[samantha.lavoie@dshs.texas.gov](mailto:samantha.lavoie@dshs.texas.gov)

**Grantee**

**Richard F. Cortez**  
**Hidalgo County**  
**1304 S. 25<sup>th</sup> Avenue**  
**Edinburg, Texas 78539**  
**(956) 318-2600**  
[countyjudge@co.hidalgo.tx.us](mailto:countyjudge@co.hidalgo.tx.us)

Either Party may change its designated Contract Representative by providing written notice to the other Party.

**VII. ADDITIONAL GRANT INFORMATION**

Federal Award Identification Number (FAIN): U52PS004694  
Federal Award Date: December 31, 2018  
Name of Federal Awarding Agency: Centers for Disease Control and Prevention  
CFDA Name and Number: 93.116 – Tuberculosis Elimination and Laboratory Cooperative Agreement – Prevention & Control  
Awarding Official Contact Information: Shanica Alexander, (404) 718 - 3149  
DUNS: 807391511

**VIII. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by DSHS 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:

**If to DSHS:**

**Department of State Health Services**  
**Attention: Office of the General Counsel**  
**1100 West 49<sup>th</sup> Street, MC 1911**  
**Austin, Texas 78756**

**If to Grantee:**

**Hidalgo County**  
**Attention: Richard F. Cortez**  
**1304 S. 25<sup>th</sup> Avenue**  
**Edinburg, Texas 78539**

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

**IX. REPORTING REQUIREMENTS**

Grantee shall satisfy all reporting requirements stated within **Article IV** of Attachment A, Statement of Work.

**X. PRIVACY, SECURITY, AND BREACH NOTIFICATION**

Grantee certifies it is, and shall remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification in accordance with Attachment E, Data Use Agreement.

***SIGNATURE PAGE FOLLOWS***

**SIGNATURE PAGE FOR  
DSHS CONTRACT NO. HHS000686100020**

**Department of State Health Services**

**Hidalgo County**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**The following Attachments are hereby incorporated by reference into the Contract:**

**Attachment A - Statement of Work**

**Attachment B - Budget**

**Attachment C - HHSC Uniform Terms and Conditions-Grant, Version 2.16.1**

**Attachment D - HHSC TB/PC Supplemental and Special Conditions**

**Attachment E - HHS Data Use Agreement**

**Attachment F - Non-Exclusive List of Applicable Laws**

**Attachment G - Federal Funding Accountability Transparency Act (FFATA) Form**

**Attachment H - Federal Assurances and Certification**

**Attachment I - Contract Affirmations**

**ATTACHMENTS FOLLOW**

## Attachment A

### Statement of Work

#### I. GRANTEE RESPONSIBILITIES

*Grantee will:*

- A. Comply with the most current version of the Tuberculosis Work Plan located at: <http://www.dshs.texas.gov/idcu/disease/tb/policies/>.
- B. Use federal funds provided by DSHS under this Contract to support core TB control front-line activities including but not limited to:
  - 1. Directly Observed Therapy (“DOT”);
  - 2. Outpatient services (tuberculin skin testing, chest radiography, medical evaluation, treatment);
  - 3. Contact Investigation;
  - 4. Cohort Review;
  - 5. Surveillance;
  - 6. Reporting;
  - 7. Data analyses;
  - 8. Cluster investigations; and
  - 9. Provider education.
- C. Provide a cash match of no less than 20% of DSHS’ share of actual expenditures up to the budgeted match amount, as reflected in Article V of the Contract Signature Document (relating to Payment for Services Provided). If the required cash match is not provided, DSHS may withhold payments, use administrative offsets, or request a refund from Grantee until such time as the required match ratio is met. No federal or other grant funds can be used as part of meeting the match requirement.
- D. Ensure no DSHS funds or matching funds are used for:
  - 1. Medication purchases;
  - 2. Inpatient clinical care (hospitalization services);
  - 3. Entertainment;
  - 4. Furniture;
  - 5. Equipment; and
  - 6. Sectarian worship, instruction, or proselytization.Food and incentives are allowed using DSHS funds but are not allowed for matching funds.
- E. Not lapse more than 1% of the total funded amount of the Contract.
- F. Maintain and adjust spending plan throughout the Contract term to avoid lapsing funds. During the term of this Contract, DSHS reserves the right to decrease funding amounts because of the Grantee’s budgetary shortfalls or due to the Grantee lapsing more than 1% of total funds, or both.

- G. Maintain staffing levels to meet required activities of the Contract and to ensure all funds in the personnel category are expended.
- H. Use DSHS-designated data systems available for local entry. All collected TB information shall be entered into a designated state TB information system, including all data fields on the Report of Verified Case of Tuberculosis, TB340, any laboratory results received locally, and any additional clinical information, according to documented timelines and specifications. Data entered into DSHS data systems will be considered submitted to DSHS.
- I. Comply with all applicable federal and state statutes and regulations, policies and guidelines as revised.

## II. PERFORMANCE MEASURES

DSHS will monitor the Grantee's performance of the requirements in Attachment A and compliance with the Contract's terms and conditions.

If Grantee fails to meet any of the performance measures, Grantee will respond to any finding in a written narrative explaining the barriers and the plan to address those barriers. This requirement does not excuse any violation of this Contract, nor does it limit DSHS as to any options available under the Contract regarding breach.

## III. INVOICE AND PAYMENT

Grantee will request payment by preparing an invoice and submitting acceptable supporting documentation for reimbursement of the required services/deliverables. Invoices and supporting documentation shall be submitted to DSHS no later than 30 days after the last day of each month.

- A. Grantee will request payments using the State of Texas Purchase Voucher (Form B-13) at <http://www.dshs.state.tx.us/grants/forms/b13form.doc>. Voucher and any supporting documentation will be mailed or submitted by fax or electronic mail to the address/number below.

Department of State Health Services  
Claims Processing Unit, MC 1940  
1100 West 49<sup>th</sup> Street  
P.O. Box 149347  
Austin, TX 78714-9347  
FAX: (512) 458-7442  
EMAIL: [invoices@dshs.texas.gov](mailto:invoices@dshs.texas.gov) & [CMSinvoices@dshs.texas.gov](mailto:CMSinvoices@dshs.texas.gov)

- B. Grantee will email the Financial Status Report (FSR-269A) and the Match Certification Form (B-13A) to the following: [Invoices@dshs.texas.gov](mailto:Invoices@dshs.texas.gov) and [TBContractReporting@dshs.texas.gov](mailto:TBContractReporting@dshs.texas.gov). Grantee must submit final FSR and a reimbursement or final payment request no later than 45 calendar days following the end of the Contract term.
- C. Grantee will be paid on a cost reimbursement basis and in accordance with the Budget in Attachment B of this Contract.

#### IV. PROGRAMMATIC REPORTING REQUIREMENTS

Report Name	Frequency	Period Begin	Period End	Due Date
FY20 Annual Narrative Report	Annually	January 1, 2020	December 31, 2020	April 1, 2021
FY21 Annual Narrative Report	Annually	January 1, 2021	December 31, 2021	April 1, 2022
FSR & Match Reimbursement/Certification Form (Form B-13A)	Quarterly	January 1, 2020	March 31, 2020	April 30, 2020
FSR & Form B-13A	Quarterly	April 1, 2020	June 30, 2020	July 31, 2020
FSR & Form B-13A	Quarterly	July 1, 2020	September 30, 2020	October 31, 2020
FSR & Form B-13A	Quarterly	October 1, 2020	December 31, 2020	February 15, 2021

#### **Annual Report Submission Instructions:**

Submit program reports to the TB Reporting Mailbox at [TBContractReporting@dshs.texas.gov](mailto:TBContractReporting@dshs.texas.gov). The DSHS TB Program will provide the form and format for the Annual Narrative Report. The Annual Narrative Report will be a separate report for the Grantee and must not be included with reports for the Region.

#### Financial Status Reports:

Department of State Health Services  
 Claims Processing Unit, MC 1940  
 1100 West 49<sup>th</sup> Street  
 P.O. Box 149347  
 Austin, Texas 78714-9347  
 Fax: (512) 458-7442  
 Email: [invoices@dshs.texas.gov](mailto:invoices@dshs.texas.gov) and [CMSinvoices@dshs.texas.gov](mailto:CMSinvoices@dshs.texas.gov)

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## Attachment B

### Budget

Grantee: Hidalgo County

Program ID: TB/PC-Federal

Contract Number: HHS000686100020

#### I. Budget

Budget Categories	DSHS Funds	Cash Match	Category Total
Personnel	\$289,467.00	\$61,092.00	\$350,559.00
Fringe Benefits	\$123,602.00	\$26,086.00	\$149,688.00
Travel	\$17,702.00	\$0.00	\$17,702.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$6,000.00	\$376.00	\$6,376.00
Contractual	\$0.00	\$0.00	\$0.00
Other	\$1,000.00	\$0.00	\$1,000.00
Total Direct Costs	\$437,771.00	\$87,554.00	\$525,325.00
Indirect Costs	\$0.00	\$0.00	\$0.00
<b>Totals:</b>	<b>\$437,771.00</b>	<b>\$87,554.00</b>	<b>\$525,325.00</b>

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## Attachment C

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 Taxtravel" 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>
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- 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](mailto: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](mailto: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 NEGLIGENT 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://hhsx.hhs.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. 51<sup>st</sup> 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.

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## **Attachment D**

### **HHSC TB/PC Supplemental and Special Conditions**

#### **Supplemental Conditions**

**Attachment C (the “HHSC Uniform Terms and Conditions - Grants”), is hereby revised as follows:**

1. **Section 9.17, No Waiver of Sovereign Immunity**, is deleted in its entirety and replaced with the following:

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency. Similarly, nothing in the Contract will be construed as a waiver of any rights or affirmative defenses available to Grantee.

#### **Special Conditions**

**The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions – Grants (Version 2.16).**

#### **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 Disaster Services**

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Grantee may be called upon to assist the System Agency in providing the following services:

- a. Community evacuation;
- b. Health and medical assistance;
- c. Assessment of health and medical needs;
- d. Health surveillance;
- e. Medical care personnel;
- f. Health and medical equipment and supplies;
- g. Patient evacuation;
- h. In-hospital care and hospital facility status;
- i. Food, drug and medical device safety;
- j. Worker health and safety;
- k. Mental health and substance abuse;
- l. Public health information;
- m. Vector control and veterinary services; and
- n. Victim identification and mortuary services.

#### **Section 1.06 Consent by Non-Parent or Other State Law to Medical Care of a Minor**

Unless a federal law applies, before a Grantee or its contractor can provide medical, dental, psychological or surgical treatment to a minor without parental consent, informed consent must be obtained as required by Texas Family Code Chapter 32.

#### **Section 1.07 Telemedicine/Telepsychiatry Medical Services**

If Grantee or its Contractor uses telemedicine/telepsychiatry, these services shall be in accordance with the Grantee's written procedures. Grantee must use a protocol approved by Grantee's medical director and equipment that complies with the System Agency equipment

standards, if applicable. Grantee's procedures for providing telemedicine service must include the following requirements:

- a. Clinical oversight by Grantee's medical director or designated physician responsible for medical leadership;
- b. Contraindication considerations for telemedicine use;
- c. Qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d. Safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e. Use by credentialed licensed providers providing clinical care within the scope of their licenses;
- f. Demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g. Priority in scheduling the system for clinical care of individuals;
- h. Quality oversight and monitoring of satisfaction of the individuals served; and
- i. Management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites. Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under 25 Texas Administrative Code Rule § 448.911.

### **Section 1.08 Services and Information for Persons with Limited English Proficiency**

- a. Grantee shall take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities.
- b. Grantee shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
- c. Grantee shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

### **Section 1.09 Third Party Payors**

Except as provided in this Contract, Grantee shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.

As applicable, the Grantee shall:

- a. Enroll as a provider in Children's Health Insurance Program and Medicaid if providing

- approved services authorized under this Contract that may be covered by those programs and bill those programs for the covered services;
- b. Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
  - c. Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the System Agency for the deductible;
  - d. Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
  - e. Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
  - f. Bill all third party payors for services provided under this Contract before submitting any request for reimbursement to System Agency; and
  - g. Provide third party billing functions at no cost to the client.

### **Section 1.10 HIV/AIDS Model Workplace Guidelines**

Grantee shall implement System Agency's policies based on the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome ("HIV/AIDS"), AIDS Model Workplace Guidelines for Businesses at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>, State Agencies and State Grantees Policy No. 090.021.

Grantee shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas Health and Safety Code §§ 85.112-114.

### **Section 1.11 Medical Records Retention**

Grantee shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

### **Section 1.12 Notice of a License Action**

Grantee shall notify their contract manager of any action impacting its license to provide services under this Contract 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 license action; and
- d. License or case reference number.

### **Section 1.13 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 1.14 Electronic and Information Resources Accessibility and Security Standards**

a. Applicability:

The following Electronic and Information Resources (“**EIR**”) requirements apply to the Contract because the Grantee performs services that include EIR that the System Agency's employees are required or permitted to access or members of the public are required or permitted to access.

This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by HHSC’s clients or recipients after completion of the Agreement.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

b. Definitions:

“**Accessibility Standards**” means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 TAC Chapter 206 and/or Chapter 213.

“**Electronic and Information Resources**” means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

“**Electronic and Information Resources Accessibility Standards**” means the accessibility standards for electronic and information resources contained in 1 Texas Administrative Code Chapter 213.

“**Product**” means information resources technology that is, or is related to EIR.

“**Web Site Accessibility Standards/ Specifications**” means standards contained in Volume 1 Tex. Admin. Code Chapter 206(c) Accessibility Requirements.

Under Tex. Gov't Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, the System Agency must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Grantee must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

c. Evaluation, Testing, and Monitoring

1. The System Agency may review, test, evaluate and monitor Grantee's Products and services, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Grantee's assertion of compliance with the Accessibility Standards.
2. Grantee agrees to cooperate fully and provide the System Agency and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

d. Representations and Warranties

1. Grantee represents and warrants that:
  - i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and
  - ii. If the Products will be in the custody of the state or a System Agency's client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless the System Agency or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.
2. In the event Grantee becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Grantee represents and warrants that it will, in a timely manner and at no cost to the System Agency, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
3. Grantee acknowledges and agrees that these representations and warranties are essential inducements on which the System Agency relies in awarding this Contract.

4. Grantee's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

e. Remedies

1. Under Tex. Gov't Code § 2054.465, neither the Grantee nor any other person has cause of action against the System Agency for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Grantee's representations and warranties, Grantee will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which the System Agency may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which the System Agency may be entitled under this Contract and other applicable law.

**Section 1.15 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.SystemAgency.state.tx.us/childabusereporting](http://www.SystemAgency.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 1.16 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.

**Section 1.17 Contractor's Property Inventory Report.**

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's Contractor's Property Inventory Report to the assigned DSHS Contract Manager and DSHS Contract Oversight and Support (email address: [COSequip@dshs.texas.gov](mailto:COSequip@dshs.texas.gov)) by electronic mail no later than October 15 of each year. The Grantee's Property Inventory Report may be found at: <http://www.dshs.texas.gov/contracts/forms.shtm>.

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## Attachment E

### HHS DATA USE AGREEMENT

This Data Use Agreement (“DUA”), effective as of the date the Base Contract into which it is incorporated is signed (“Effective Date”), is entered into by and between a Texas Health and Human Services Enterprise agency (“HHS”), and the Contractor identified in the Base Contract, a political subdivision of the State of Texas (“CONTRACTOR).

#### 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. *45 CFR 164.504(e)(1)-(3)*. 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 Statement 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, for an Authorized Purpose, create, receive, maintain, use, disclose or have access to, 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 (herein “PHI”);
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;
- (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; and Estates Code Ch. 752.

### ARTICLE 3.

#### CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

##### 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

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a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) Except as Required by Law, CONTRACTOR will not 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 (as defined in **45 C.F.R. 160.103**) 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 CONTRACTOR's obligations in connection with the Authorized Purpose.

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)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

(D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)(ii)(A)**

(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 to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply with all applicable laws, rules and regulations. **45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).**

(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 which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. 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. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524 and 164.504(e)(2)(ii)(E).*

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. *45 CFR 164.504(e)(2)(ii)(E) and (F).*

(J) If PHI is subject to this Agreement, 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 from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. *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 PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: *45 CFR 164.504(e)(4)(A).*

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D); or

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity 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 required by law and requested by HHS, use commercially reasonable efforts to 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, send 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 sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHS and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery 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 delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(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, CONTRACTOR will complete and return to HHS at [infosecurity@hhsc.state.tx.us](mailto:infosecurity@hhsc.state.tx.us) the HHS information security and privacy initial inquiry (SPI) at Attachment 1. The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to 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 reasonable 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, 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. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. *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 Statement of Work. *45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).*

(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 for an Authorized Purpose 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 of the U.S. Department of Health and Human Services, or other federal or state law. *45 CFR 164.504(e)(2)(i)(I).*

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. 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) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- 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.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).

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

**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 reasonable 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 to the HHS division responsible for this DUA; 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) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us) and to the HHS division responsible for this DUA, 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;

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(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 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 during normal business hours 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.

**4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530**

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to

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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 reasonable 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.

**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 shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. 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, if required by applicable law, rule, or regulation, 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 reasonable 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.

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**ARTICLE 5.  
STATEMENT OF WORK**

“Statement 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 Statement 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**

**6.01 Oversight of Confidential Information**

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

**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.

**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.

**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 shall be extended or amended 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.

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

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- (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 Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violation is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(E) 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.

#### **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 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.

#### **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.

**6.07 Responsibility.**

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

**6.08 Insurance**

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

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

**6.08 Fees and Costs**

Except as otherwise specified in this DUA or the Base Contract, 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.

**6.09 Entirety of the Contract**

This DUA is incorporated by reference into the Base Contract as an amendment thereto 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. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

**6.10 Automatic Amendment and Interpretation**

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. 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.

## Attachment F

### Non-Exclusive List of Applicable Laws

Grantee is responsible for reviewing and complying with any applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Grantee, Grantee shall comply with the following:

1. Statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion:
  - a) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
  - b) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
  - c) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
  - d) Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
  - e) Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
  - f) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91;
  - g) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
  - h) Tex. Labor Code Chapter 21;
  - i) Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
  - j) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
  - k) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
  - l) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
  - m) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
  - n) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
2. Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., as amended by Public Law 113-4 (March 7, 2013), regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
3. Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
4. National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), regarding human subjects involved in research;
5. Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-26, which limits the political activity of employees whose employment is funded with federal funds;
6. Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
7. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;

8. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
9. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
10. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code Chapter 96 regarding safety standards for handling blood borne pathogens;
11. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
12. Environmental standards pursuant to the following:
  - a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;"
  - b) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;"
  - c) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961;
  - d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg.
  - e) 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);
  - f) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.;
  - g) Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.;
  - h) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j;
  - i) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.;
  - j) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§ 7401 et seq.;
  - k) Wild and Scenic Rivers Act of 1968, 16 USC §§ 1271 et seq., related to protecting certain river systems; and
13. Lead-Based Paint Poisoning Prevention Act, 42 USC §§ 4821 et seq., prohibiting the use of lead-based paint in residential construction or rehabilitation;
14. Intergovernmental Personnel Act of 1970, 42 USC §§ 4278-4763, regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration, 5 CFR Part 1200 et seq.;
15. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of, 42 USC §§4601 et seq (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
16. Davis-Bacon Act, 40 USC §§ 3141-3148;
17. Copeland Act, 40 USC §§ 276c and 18 USC § 874;
18. Contract Work Hours and Safety Standards Act, 40 USC § 3702 et seq., regarding labor standards for federally-assisted construction subagreements;
19. National Historic Preservation Act of 1966, § 106, 16 USC § 470; Executive Order 11593; and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;

20. Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
21. Executive Order 13513 (Oct. 1, 2009), Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of this Contract;
22. Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)) and Texas Whistleblower Act (Tex.Gov. Code Chapter 554); and
23. Requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

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## Attachment G

### Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. ***If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.***

<b>Legal Name of Contractor:</b>  	<b>FFATA Contact # 1 Name, Email and Phone Number:</b>  
<b>Primary Address of Contractor:</b>  	<b>FFATA Contact #2 Name, Email and Phone Number:</b>  
<b>ZIP Code: 9-digits Required <a href="http://www.usps.com">www.usps.com</a></b> <div style="border: 1px solid black; width: 100%; height: 15px; margin-top: 5px;"></div>	<b>DUNS Number: 9-digits Required <a href="http://www.sam.gov">www.sam.gov</a></b> <div style="border: 1px solid black; width: 100%; height: 15px; margin-top: 5px;"></div>
<b>State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits</b> <div style="border: 1px solid black; width: 100%; height: 15px; margin-top: 5px;"></div>	

<b>Printed Name of Authorized Representative</b>  	<b>Signature of Authorized Representative</b>  
<b>Title of Authorized Representative</b>  	<b>Date</b>  

**Fiscal Federal Funding Accountability and Transparency Act  
(FFATA) CERTIFICATION**

**As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.**

Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year?  Yes  No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification.  
If your answer is "No", answer questions "A" and "B".

**A. Certification Regarding % of Annual Gross from Federal Awards.**

Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year?  Yes  No

**B. Certification Regarding Amount of Annual Gross from Federal Awards.**

Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year?  Yes  No

If your answer is "Yes" to both question "A" and "B", you must answer question "C".  
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

**C. Certification Regarding Public Access to Compensation Information.**

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?  Yes  No

**If your answer is "Yes" to this question, where can this information be accessed?**

\_\_\_\_\_

**If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.**

**Provide compensation information here:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHEMENT H

### FEDERAL ASSURANCES AND CERTIFICATION

View Burden Statement

OMB Number: 4040-0007  
Expiration Date: 01/31/2019

#### ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>	<div style="border: 1px solid black; height: 30px; width: 100%;"></div>
APPLICANT ORGANIZATION	DATE SUBMITTED
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>	<div style="border: 1px solid black; height: 30px; width: 100%;"></div>

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### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

<b>* APPLICANT'S ORGANIZATION</b> <input type="text"/>	
<b>* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE</b>	
Prefix: <input type="text"/>	* First Name: <input type="text"/> Middle Name: <input type="text"/>
* Last Name: <input type="text"/>	Suffix: <input type="text"/>
* Title: <input type="text"/>	
* SIGNATURE: <input type="text"/>	* DATE: <input type="text"/>

## **ATTACHMENT I CONTRACT AFFIRMATIONS**

By entering into this Contract, Grantee affirms, without exception, as follows:

1. Grantee represents and warrants that these Contract Affirmations apply to Grantee and all of Grantee'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 Contract and any related Solicitation.
2. Grantee represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Grantee understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Grantee is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Grantee represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Grantee agrees that the Contract can be terminated if the Grantee knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Grantee shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
6. Grantee accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Grantee agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Grantee that differ in any manner from HHSC's terms and conditions, if any, are rejected unless expressly accepted by HHSC in writing.
7. Grantee 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 this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
8. Grantee generally releases from liability and waives all claims against any party providing information about the Grantee at the request of HHSC.
9. Grantee 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 Contract or any related Solicitation, or related Solicitation Response.
10. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
  11. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
  12. Under Section 231.006(d) of the Texas Family Code regarding child support, Grantee certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
  13. Grantee certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. 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 Grantee's subcontracts, if any, if payment in whole or in part is from federal funds.
  14. Grantee certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,*" published by the United States Department of the Treasury, Office of Foreign Assets Control.
  15. Grantee represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
  16. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Grantee certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
  17. Under Section 2155.0061 of the Texas Government Code, Grantee certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
  18. Grantee 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.

19. Grantee agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
20. Grantee represents and warrants that payments to Grantee and Grantee's receipt of appropriated or other funds under this Contract or any related 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).
21. Grantee agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
22. Grantee agrees that upon request of HHSC, Grantee shall provide copies of its most recent business continuity and disaster recovery plans.
23. Grantee expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Grantee represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - providing equivalent access for effective use by both visual and non-visual means;
  - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

24. If this Contract is for the purchase or lease of computer equipment, then Grantee certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
25. If this Contract is for the purchase or lease of covered television equipment, then Grantee certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

26. Grantee represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
27. Grantee acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Grantee may not accept employment from Grantee before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
28. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Grantee certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Grantee has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
29. Grantee represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Grantee's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
30. Grantee understands that HHSC does not tolerate any type of fraud. The agency's 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 Grantees 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. Grantee agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
31. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Grantee has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Grantee has violated any federal antitrust law; and (c) neither I nor any representative of the Grantee has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Grantee or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Grantee.

32. Grantee 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 Grantee or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Grantee is unable to make the preceding representation and warranty, then Grantee 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 Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Grantee acknowledges this is a continuing disclosure requirement. Grantee represents and warrants that Grantee 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.
33. Grantee certifies that for contracts for services, Grantee shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
- (a) all persons employed by Grantee to perform duties within Texas; and
  - (b) all persons, including subcontractors, assigned by Grantee to perform work pursuant to this Contract within the United States of America.
34. If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Grantee represents and warrants that neither Grantee nor any of Grantee's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.
35. Grantee represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Grantee will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.
36. If this Contract is for consulting services,
- (A). In accordance with Section 2254.033 of the Texas Government Code, a Grantee providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Grantee's offer to provide services must disclose the following information in its offer to provide services. Grantee hereby certifies that this information was provided and remains true, correct, and complete:
    - (1) Name of individual(s) (Respondent or employee(s));

- (2) Status;
- (3) The nature of the previous employment with HHSC or the other State of Texas agency;
- (4) The date the employment was terminated and the reason for the termination; and
- (5) The annual rate of compensation for the employment at the time of its termination.

(B). If no information was provided in response to Section A above, Grantee certifies that neither Grantee nor any individual employed by Grantee was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Grantee's offer to provide services.

37. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

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38. Grantee understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Grantee represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

39. Grantee understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Grantee certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Grantee refuses to make that certification, Grantee shall state here any facts that make it exempt from the certification:

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40. Grantee represents and warrants that if Grantee or Subcontractors, officers, or employees of Grantee have access to any state computer system or database, the Grantee, Subcontractors, officers, and employees of Grantee shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

- 41. Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 42. Grantee 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 this Contract.
- 43. Grantee represents and warrants that all statements and information prepared and submitted by Grantee in this Contract and any related Solicitation Response are current, complete, true, and accurate. Grantee acknowledges any false statement or material misrepresentation made by Grantee during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 44. Grantee represents and warrants that the individual signing this Contract is authorized to sign on behalf of Grantee and to bind the Grantee.

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

**Legal Name of Grantee:** \_\_\_\_\_

\_\_\_\_\_  
**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**