

**SIGNATURE DOCUMENT FOR  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS000036000002  
UNDER THE  
TUBERCULOSIS PREVENTION AND CONTROL – FEDERAL (TB/PC-  
FEDERAL) GRANT PROGRAM**

**I. PURPOSE**

The Department of State Health Services (“System Agency”) and Corpus Christi-Nueces County Public Health District (City) (“Grantee”) (each a “Party” and collectively the “Parties”) enter into the following grant contract to provide funding for TB/PC-Federal (the "Contract").

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of Texas Government Code Chapter 771, Texas Health and Safety Code Chapters 12 and 1001, and Texas Government Code Chapters 531, subchapter D.

**III. DURATION**

The Contract is effective on January 1, 2018 and terminates on December 31, 2018, unless renewed or terminated pursuant to the terms and conditions of the Contract. The System Agency, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties.

**IV. BUDGET**

The amount of this Contract is to not exceed **FORTY-EIGHT THOUSAND THREE HUNDRED FORTY-FIVE DOLLARS (\$48,345.00)** in federal funding with the Grantee providing a total of **NINE THOUSAND SIX HUNDRED SIXTY-NINE DOLLARS (\$9,669.00)** in matching funds, for a combined total of **FIFTY-EIGHT THOUSAND FOURTEEN DOLLARS (\$58,014.00)**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET**.

**V. CONTRACT REPRESENTATIVES**

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

**System Agency**  
Department of State Health Services  
Attention: Kathy Sharp  
1100 W. 49<sup>th</sup> Street, MC 1911

Austin, Texas 78756

**Grantee**

Corpus Christi-Nueces County Public Health District (City)  
Attention: Annette Rodriguez  
1702 Home Road  
Corpus Christi, Texas 78416

**VI. ADDITIONAL GRANT INFORMATION**

Federal Award Identification Number (FAIN): U52PS004694  
Federal Award Date: December 20, 2016  
Name of Federal Awarding Agency: Centers for Disease and Control and Prevention  
CFDA Name and Number: 93.116 - Tuberculosis Surveillance, Preventions, &  
Control/Elimination Cooperative Agreement – Prevention & Control  
Awarding Official Contact Information: Mark Miner, 404-639-8120  
DUNS: 069457786

**VII. LEGAL NOTICES**

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

**System Agency**

Department of State Health Services  
Attention: General Counsel  
1100 W. 49<sup>th</sup> Street, MC 1911  
Austin, TX 78756

**Grantee**

Corpus Christi-Nueces County Public Health District (City)  
Attention: Annette Rodriguez  
1702 Home Road  
Corpus Christi, Texas 78416

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

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000036000002**

**DSHS**

\_\_\_\_\_

**CONTRACTOR**

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

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

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

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

**ATTACHMENT A - STATEMENT OF WORK  
ATTACHMENT B - BUDGET  
ATTACHMENT C - UNIFORM TERMS AND CONDITIONS  
ATTACHMENT D - SUPPLEMENTAL & SPECIAL CONDITIONS  
ATTACHMENT E - DATA USAGE AGREEMENT  
ATTACHMENT F - NON-EXCLUSIVE LIST OF APPLICABLE LAWS  
ATTACHMENT G - FFATA  
ATTACHMENT H - FEDERAL ASSURANCES AND CERTIFICATIONS**

**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 under this contract to support core TB control front-line activities including but not limited to:
  - 1. Directly observed therapy (DOT);
  - 2. Out-patient 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 match of no less than 20% of the total budget as reflected in the Contract.
- D.** Provide match at the required percentage or Department of State Health Services (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.
- E.** Ensure no DSHS funds or matching funds are used for:
  - 1. Medication purchases
  - 2. In-patient clinical care (hospitalization services)
  - 3. Entertainment
  - 4. Furniture
  - 5. Equipment
  - 6. Sectarian worship, instruction, or proselytizationHowever, food and incentives are allowed using DSHS funds, but are not allowed for matching funds.
- F.** Not lapse more than 1% of the total funded amount of the contract.
- G.** Maintain and adjust spending plan throughout the Contract term to avoid lapsing funds.
- H.** Maintain staffing levels to meet required activities of the Contract and to ensure all funds in personnel category are expended.
- I.** Use DSHS designed data systems available for local entry. All collected TB information shall be entered into designated state TB information system, including all data fields on the

## **ATTACHMENT A STATEMENT OF WORK**

RVCT, 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.

- J.** Comply with all applicable federal and state statutes and regulations, policies and guidelines as revised.

### **II. PERFORMANCE MEASURES**

System Agency 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**

- 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.state.tx.us](mailto:invoices@dshs.state.tx.us)

- 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)
- C.** Grantee will be paid on a cost reimbursement basis and in accordance with the Budget in Attachment B of this Contract.

## ATTACHMENT B BUDGET SUMMARY

**Organization Name:** Corpus Christi-Nueces County Public Health District (City)

**Program ID:** TB/PC-Federal

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<b>Budget Categories</b>	<b>Federal Funds Requested</b>	<b>Contractor Cash Match</b>	<b>Category Total</b>
<b>Personnel</b>	\$24,725.00	\$9,669.00	\$34,394.00
<b>Fringe Benefits</b>	\$14,637.00	\$0.00	\$14,637.00
<b>Travel</b>	\$2,065.00	\$0.00	\$2,065.00
<b>Equipment</b>	\$0.00	\$0.00	\$0.00
<b>Supplies</b>	\$3,868.00	\$0.00	\$3,868.00
<b>Contractual</b>	\$0.00	\$0.00	\$0.00
<b>Other</b>	\$3,050.00	\$0.00	\$3,050.00
<b>Total Direct Costs</b>	\$48,345.00	\$9,669.00	\$58,014.00
<b>Indirect Costs</b>	\$0.00	\$0.00	\$0.00
<b>Totals</b>	\$48,345.00	\$9,669.00	\$58,014.00

HHSC Uniform Terms and Conditions Version 2.14  
Published and Effective: March 1, 2017  
Responsible Office: Chief Counsel



# TEXAS

## Health and Human Services

**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions - Grant**  
**Version 2.14**

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.01 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 hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“[Attachment](#)” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body 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 herein for all purposes if issued.

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

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

“[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, and designees of those agencies. These agencies include: the Department of Aging and Disability Services, the Department of Family and Protective Services, and the Department of State Health Services.

“[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, if any. 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](#)” means inventions and business processes, whether or not patentable; works of authorship; trade secrets; trademarks; service marks; industrial designs; and creations

that are subject to potential legal protection incorporated in any Deliverable and first created or developed by Grantee, Grantee's contractor or a subcontractor in performing the Project.

“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.

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

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

“Solicitation or "RFA"” means the document issued by the System Agency under which applications for Program funds were requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

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

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

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

“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.

## **1.02 Interpretive Provisions**

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- 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 thereto, 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 within this Contract, 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**

### **2.01 Payment Methods**

Except as otherwise provided by the provisions of the Contract, the payment method will be one or more of the following:

- a. 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;
- b. 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
- c. 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 and at the sole discretion of the System Agency.

Grantees 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.

### **2.02 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 in the System Agency's offices more than forty-five (45) calendar days following the termination of the Contract may not be paid.

### **2.03 Financial Status Reports (FSRs)**

Except as otherwise provided in these General Provisions or in the terms of any Program Attachment(s) that is incorporated into the Contract, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term 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.

### **2.04 Debt to State and Corporate Status**

Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Grantee if Grantee is indebted to the State for any reason, including a tax delinquency. Grantee, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). If tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Grantee's delinquent tax is paid in full.

### **2.05 Application of Payment Due**

Grantee agrees that any payments due under this Contract will be applied towards any debt of Grantee, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

### **2.06 Use of Funds**

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

### **2.07 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.

### **2.08 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 the addition alternative, as provided in UGMS § \_\_.25(g)(2), for the use of Project income to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report this income in accordance with the Contract, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Contract term 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 it for the purposes and under the conditions specified in this Contract.

## **2.09 Nonsupplanting**

Grantee shall not use funds from this Contract to replace or substitute for existing funding from other but shall use funds from this Contract to supplement existing state or local funds currently available. Grantee shall make a good faith effort to maintain its current level of support. Grantee may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.01 Funding**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Grantee will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

### **3.02 No debt Against the State**

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

### **3.03 Debt to State**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Grantee acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

### **3.04 Recapture of Funds**

The System Agency may withhold all or part of any payments to Grantee to offset overpayments made to the Grantee. 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 will 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

### 4.01 Allowable Costs.

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. The System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. If the System Agency has paid funds to Grantee for unallowable or ineligible costs, the System Agency will notify Grantee in writing, and Grantee shall return the funds to the System Agency within thirty (30) calendar days of the date of this written notice. The System Agency may withhold all or part of any payments to Grantee to offset reimbursement for any unallowable or ineligible expenditure that Grantee has not refunded to the System Agency, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). 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-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	2 CFR, Part 225	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Educational Institutions	2 CFR, Part 220	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Non-Profit Organizations	2 CFR, Part 230	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
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.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS

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.

#### **4.02 Independent Single or Program-Specific Audit**

If Grantee, within Grantee's fiscal year, expends a total amount of 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 \$750,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Grantee, within Grantee's fiscal year, expends a total amount of at least \$750,000 in state funds awarded, Grantee must 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. 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. HHSC Single Audit Services will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by HHSC Single Audit Services to do so, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract. 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.

#### **4.03 Submission of Audit**

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 as directed in this Contract and another copy to: [single\\_audit\\_report@hhsc.state.tx.us](mailto:single_audit_report@hhsc.state.tx.us)

### **ARTICLE V AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

#### **5.01 General Affirmations**

Grantee certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

#### **5.02 Federal Assurances**

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

#### **5.03 Federal Certifications**

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



## **ARTICLE VI OWNERSHIP AND INTELLECTUAL PROPERTY**

### **6.01 Ownership**

The System Agency will own, and Grantee hereby assigns to the System Agency, all right, title, and interest in all Deliverables.

### **6.02 Intellectual Property**

- a. The System Agency and Grantee will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property. A license to either Party's pre-existing Intellectual Property must be agreed to under this or another contract.
- b. Grantee grants to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by Grantee, Grantee's contractor, or a subcontractor in the performance of the Project. Grantee will require its contractors to grant such a license under its contracts.

## **ARTICLE VII RECORDS, AUDIT, AND DISCLOSURE**

### **7.01 Books and Records**

Grantee will 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 will 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.

### **7.02 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 will 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 will 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 will 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 Texas Attorney General's Office, 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 will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee will include this provision concerning

the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

### **7.03 Response/compliance with audit or inspection findings**

- a. Grantee must act to ensure its and its Subcontractor's 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 goods or services provided hereunder. Any such correction will be at Grantee or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance will 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.

### **7.04 SAO Audit**

Grantee understands that 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's Office (SAO), or any successor agency, 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 SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Grantee agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Grantee and the requirement to cooperate is included in any Subcontract it awards.

### **7.05 Confidentiality**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Grantee agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Grantee. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

### **7.06 Public Information Act**

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Grantee must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

## **ARTICLE VIII CONTRACT MANAGEMENT AND EARLY TERMINATION**

### **8.01 Contract Management**

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;

- b. Requiring the Grantee to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Grantee found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of the Project;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

#### **8.02 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.

#### **8.03 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:

##### **a. Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at 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.

##### **b. 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.

#### **8.04 Equitable Settlement**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

### **ARTICLE IX MISCELLANEOUS PROVISIONS**

#### **9.01 Amendment**

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

#### **9.02 Insurance**

Unless otherwise specified in this Contract, Grantee will 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 will 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 will 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.

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.

### **9.03 Legal Obligations**

Grantee will 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 will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

### **9.04 Permitting and Licensure**

At Grantee's sole expense, Grantee will 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 will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee agrees to be responsible for payment of any such government obligations not paid by its contractors or subcontractors during performance of this Contract.

### **9.05 Indemnity**

**TO THE EXTENT ALLOWED BY LAW, GRANTEE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- a. GRANTEE'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF GRANTEE, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY GRANTEE, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- c. EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST GRANTEE, ITS OFFICERS, OR ITS AGENTS; OR**

**d. WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**GRANTEE WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

#### **9.06 Assignments**

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.

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.

#### **9.07 Relationship of the Parties**

Grantee is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Grantee or any other Party.

Grantee will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Grantee's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

#### **9.08 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. 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 herein for all purposes when it is issued.

#### **9.09 Governing Law and Venue**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Grantee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

#### **9.10 Severability**

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

#### **9.11 Survivability**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

#### **9.12 Force Majeure**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

#### **9.13 No Waiver of Provisions**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

#### **9.14 Publicity**

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.

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.

#### **9.15 Prohibition on Non-compete Restrictions**

Grantee will 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.

#### **9.16 No Waiver of Sovereign Immunity**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

#### **9.17 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 by the System Agency.

#### **9.18 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.

#### **9.19 Proper Authority**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Grantee before this Contract is effective or after it ceases to be effective are performed at the sole risk of Grantee with respect to compensation.

#### **9.20 Employment Verification**

Grantee will confirm the eligibility of all persons employed during the contract term to perform duties within Texas and all persons, including subcontractors, assigned by the contractor to perform work pursuant to the Contract.

#### **9.21 Civil Rights**

- a. Grantee agrees to comply with state and federal anti-discrimination laws, including:
  1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  2. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  3. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  4. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and

7. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

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.

- b. 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.
- c. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- d. 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.
- e. Upon request, Grantee will provide HHSC Civil Rights Office with copies of all of the Grantee's civil rights policies and procedures.
- f. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. 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.

## **ATTACHMENT D SUPPLEMENTAL AND SPECIAL CONDITIONS**

### **SUPPLEMENTAL CONDITIONS**

There are no supplemental conditions applicable to this Contract.

### **SPECIAL CONDITIONS**

#### **SECTION 1.01 NOTICE OF CONTRACT ACTION**

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

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

#### **SECTION 1.02 NOTICE OF BANKRUPTCY**

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

#### **SECTION 1.03 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS**

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

## **ATTACHMENT D SUPPLEMENTAL AND SPECIAL CONDITIONS**

### **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 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 1.06 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 1.07 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

## **ATTACHMENT D SUPPLEMENTAL AND SPECIAL CONDITIONS**

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 1.08 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 1.09 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 & Safety Code §§ 85.112-114.

### **SECTION 1.10 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.

## **ATTACHMENT D SUPPLEMENTAL AND SPECIAL CONDITIONS**

### **SECTION 1.11 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 1.12 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 1.13 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.

## **ATTACHMENT D SUPPLEMENTAL AND SPECIAL CONDITIONS**

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

**ATTACHMENT D  
SUPPLEMENTAL AND SPECIAL CONDITIONS**

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 1.14 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.

**ATTACHMENT D  
SUPPLEMENTAL AND SPECIAL CONDITIONS**

- b. Grantee shall develop, implement and enforce a written policy that includes at a minimum the System Agency's Child Abuse Screening, Documenting, and Reporting Policy for Grantees/Providers and train all staff on reporting requirements.
- c. Grantee shall use the System Agency's Child Abuse Reporting Form located at [www.System\\_Agency.state.tx.us/childabusereporting](http://www.System_Agency.state.tx.us/childabusereporting) as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

**SECTION 1.15 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.



**DATA USE AGREEMENT  
BETWEEN THE  
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE  
AND  
\_\_\_\_\_ (“CONTRACTOR”)**

This Data Use Agreement (“DUA”), effective as of the date signed below (“Effective Date”), is entered into by and between the Texas Health and Human Services Enterprise agency \_\_\_\_\_ (“HHS”) and \_\_\_\_\_ (“CONTRACTOR”), and incorporated into the terms of HHS Contract No. \_\_\_\_\_, in Travis County, Texas (the “Base Contract”).

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

**ATTACHMENT 1.** The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. 45 CFR 164.504(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 Scope of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

**“Authorized User”** means a Person:

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

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

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

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

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

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

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

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

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

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

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

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relief. If HHS objects to such disclosure or access, CONTRACTOR will refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief. **45 CFR 164.504(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, on behalf of CONTRACTOR without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and **45 CFR 164.502(e)(1)(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, CONTRACTOR will make PHI available to HHS in a Designated Record Set or, as directed by HHS, provide PHI to the Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

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

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

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

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

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and

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administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if: **45 CFR 164.504(e)(ii)(I)(A)**

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

(2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, return to HHS or Destroy, at HHS's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or returned to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such return or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(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 2. 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**

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

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

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

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

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. **45 CFR 164.308; 164.316; 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 on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45 CFR 164.308; 164.514(d)**

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. **45 CFR 164.504(e)(2)(i)(I)**

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information *in motion* includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance

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investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d)**

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

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

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

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

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

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

(C) Breach Notice:

1. Initial Notice.

a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after

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

a. The date the Event or Breach occurred;

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

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

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

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

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

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

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

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

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

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

l. A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as

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otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

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

**Section 4.02** *Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 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 expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.

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

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

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

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

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

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

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

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

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

**ARTICLE 5. SCOPE OF WORK**



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

## ARTICLE 6. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Section 6.06    *Injunctive Relief***

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

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

#### **Section 6.07    *Indemnification***

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

#### **Section 6.08    *Insurance***

(A) CONTRACTOR represents and warrants that it maintains either self-insurance or commercial insurance with policy limits sufficient to cover any liability arising from any acts or omissions

HHS Contract No. \_\_\_\_\_

by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce under this DUA. CONTRACTOR warrants that HHS will be a loss payee and beneficiary for any such claims. .

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

**Section 6.09    *Fees and Costs***

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

**Section 6.10    *Entirety of the Contract***

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

**Section 6.11    *Automatic Amendment and Interpretation***

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

HHS Contract No. \_\_\_\_\_

**ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**  
**HHS CONTRACT NUMBER \_\_\_\_\_**

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

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

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

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

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

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

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

**CONTRACTOR****SUBCONTRACTOR****BY:** \_\_\_\_\_**BY:** \_\_\_\_\_**NAME:** \_\_\_\_\_**NAME:** \_\_\_\_\_**TITLE:** \_\_\_\_\_**TITLE:** \_\_\_\_\_**DATE** \_\_\_\_\_, **201** .**DATE:** \_\_\_\_\_

HHS Contract No. \_\_\_\_\_

**DSHS NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

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

- a. 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:
  1. Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
  2. Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
  3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
  4. Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
  5. Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
  6. 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;
  7. U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
  8. Tex. Labor Code Chapter 21;
  9. Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
  10. Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
  11. Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
  12. 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;
  13. Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
  14. DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b. 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;
- c. 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;
- d. 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;
- e. 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;
- f. 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;
- g. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;
- h. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
- i. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j. 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;
- k. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l. Environmental standards pursuant to the following:
  1. 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;"

**DSHS NON-EXCLUSIVE LIST OF APPLICABLE LAWS**

2. 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;"
3. Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961;
4. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);
5. Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.;
6. Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.;
7. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j;
8. Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.;
9. Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§ 7401 et seq.;
10. Wild and Scenic Rivers Act of 1968, 16 USC §§ 1271 et seq., related to protecting certain river systems; and
- m. Lead-Based Paint Poisoning Prevention Act, 42 USC §§ 4821 et seq., prohibiting the use of lead-based paint in residential construction or rehabilitation;
- n. 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.;
- o. 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;
- p. Davis-Bacon Act, 40 USC §§ 3141-3148;
- q. Copeland Act, 40 USC §§ 276c and 18 USC § 874;
- r. Contract Work Hours and Safety Standards Act, 40 USC § 3702 et seq., regarding labor standards for federally-assisted construction subagreements;
- s. 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;
- t. Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- u. 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;
- v. Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)) and Texas Whistleblower Act (Tex. Gov. Code Chapter 554); and
- w. Requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

## 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.**

Legal Name of Contractor:	FFATA Contact # 1 Name, Email and Phone Number:
Primary Address of Contractor:	FFATA Contact #2 Name, Email and Phone Number:
ZIP Code: 9-digits Required <a href="http://www.usps.com">www.usps.com</a> <div style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; margin-top: 5px;"></div>	DUNS Number: 9-digits Required <a href="http://www.sam.gov">www.sam.gov</a> <div style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; margin-top: 5px;"></div>
State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits <div style="border: 1px solid black; display: inline-block; width: 300px; height: 20px; margin-top: 5px;"></div>	

Printed Name of Authorized Representative	Signature of Authorized Representative
Title of Authorized Representative	Date



## **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".

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**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.

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**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?**

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**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:**

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**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.

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 
APPLICANT ORGANIZATION 	DATE SUBMITTED 

## 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.

#### \* APPLICANT'S ORGANIZATION

#### \* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix:  \* First Name:  Middle Name:

\* Last Name:  Suffix:

\* Title:

#### \* SIGNATURE:

#### \* DATE:

## Certificate Of Completion

Envelope Id: 974F211668354CC686413066EF0CE1AE

Status: Sent

Subject: \$58,014; HHS000036000001; Corpus Christi-Nueces Co. Public Health District; DSHS; CMS

Source Envelope:

Document Pages: 58

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

William Potthoff

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1860 Michael Faraday Dr

Envelopeld Stamping: Enabled

Reston, VA 20190

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william.potthoff@hhsc.state.tx.us

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## Record Tracking

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Holder: William Potthoff

Location: DocuSign

11/2/2017 | 11:26 AM

william.potthoff@hhsc.state.tx.us

## Signer Events

### Signature

### Timestamp

Annette Rodriguez

Sent: 11/2/2017 | 11:32 AM

annetter@cctexas.com

Health Director

City of Corpus Christi

Security Level: Email, Account Authentication  
(None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Janna Zumbrun

Janna.Zumbrun@dshs.texas.gov

Security Level: Email, Account Authentication  
(None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

## In Person Signer Events

### Signature

### Timestamp

## Editor Delivery Events

### Status

### Timestamp

## Agent Delivery Events

### Status

### Timestamp

## Intermediary Delivery Events

### Status

### Timestamp

## Certified Delivery Events

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Stefanie Jackson

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Stefanie.Jackson@hhsc.state.tx.us

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Ebony White

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Ebony.White@dshs.texas.gov

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Carbon Copy Events	Status	Timestamp
William Uhlarik williamu2@cctexas.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  CMU Mailbox CMUContracts@dshs.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 11/2/2017   11:32 AM Viewed: 11/2/2017   11:51 AM

Notary Events	Signature	Timestamp
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	11/2/2017   11:32 AM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>