

INTERLOCAL COOPERATION CONTRACT
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
CONTRACT NO. 24395930

THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (“System Agency”) and MENTAL HEALTH AND MENTAL RETARDATION OF TARRANT COUNTY DBA MHMR TARRANT (“Local Government”), each a “Party” and collectively the “Parties,” enter into the following contract for Healthy Outcomes Through Prevention and Early Intervention (HOPES III) services (the “Contract”) pursuant to the provisions of the “Interlocal Cooperation Act,” Chapter 791 of the Texas Government Code.

I. PARTIES

System Agency

Department of Family and Protective Services
Prevention & Early Intervention
2535 Ridgpoint Drive Ste. 100
Austin 78754
Contact Person: Sasha Rasco
Telephone: 512-840-7814
E-Mail Address: Sasha.Rasco@dfps.state.tx.us
Agency Number: 530

Local Government

Mental Health and Mental Retardation of Tarrant County dba. MHMR Tarrant
3840 Hulen Street, North Tower
Fort Worth, TX 76107
Contact Person: Susan C. Garnett
Telephone: 817-569-4512
Fax number: 817-569-4499
E-Mail Address: CEO@mhmtc.org

II. STATEMENT OF SERVICES TO BE PROVIDED

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract. Specific services provided are described in **Attachment A – Statement of Work.**

III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on the signature date of the latter of the Parties to sign this agreement and terminates on August 31, 2021, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

IV. AMENDMENT

The Parties to this Contract may modify this contract only through the execution of a written amendment signed by both parties.

V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract, including all Work Orders issued under it, shall not exceed **\$5,189,227.00**, as provided for in **Attachment B – Budget**. Contract is funded by the State of Texas in response to Family Code §265.002. The exact amount of funding is determined at the end of the fiscal year. System Agency will notify the Grantee in writing the exact amount of state monies used to fund the Contract bi-annually throughout the Contract term.

VI. GRANT INFORMATION AND RECIPIENT REQUIREMENTS

For the purpose of the Contract, Performing Agency is a grant recipient and must comply with all applicable state and federal law. To the extent allowed by law, Performing Agency is subject to **Attachment C– HHSC Uniform Terms and Conditions-Grantee** with the following exceptions.

1. Section 5.01, "General Affirmations," is not applicable to the Performing Agency under the Contract.
2. Section 9.02, "Insurance," is replaced in its entirety with the following language.

Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," each Party is self-insured, and therefore, is not required to purchase insurance.

3. Section 9.05, "Indemnity," is not applicable to the Parties under the Contract.

VII. LEGAL NOTICES

For Legal Notices under this Contract shall be deemed delivered when deposited 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
Texas Department of Family and Protective Services
Prevention and Early Intervention Division
2535 Ridgepoint Drive, Suite 100
Austin, Texas 78754
Attention: Sasha Rasco

Local Government

Mental Health and Mental Retardation of Tarrant County dba. MHMR Tarrant
3840 Hulen Street, North Tower
Fort Worth, TX 76107
Attention: Susan C. Garnett

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

VII. CERTIFICATIONS

The undersigned contracting parties certify that:

- (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- (2) Each Party executing this Contract on its behalf has full power and authority to enter into this Contract.
- (3) the proposed arrangements serve the interest of efficient and economical administration of state government; and
- (4) the services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.


The System Agency further certifies that it has statutory authority to contract for the services described in this contract under Chapter 531 of the Texas Government Code.

The Local Government further certifies that it has statutory authority to contract for the services described in this contract under Chapter 791 of the Texas Government Code.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. 24395930

DEPARTMENT OF FAMILY
AND PROTECTIVE SERVICES

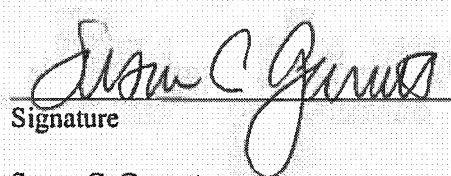

Signature

Charles Smith
Printed Name

Executive Commissioner
Title

2-7-2017
Date

MENTAL RETARDATION OF TARRANT
COUNTY DBA MHMR TARRANT


Signature

Susan C. Garnett
Printed Name

CEO
Title

1-31-2017
Date

THE FOLLOWING DOCUMENTS TO SYSTEM AGENCY CONTRACT NO. 24395930 ARE HEREBY
INCORPORATED BY REFERENCE:

1. PROJECT WORK PLAN (MAY BE REVISED AS DESCRIBED IN ATTACHMENT D)
2. HHSC REQUEST FOR PROPOSAL 530-17-0005
3. SECURITY AND PRIVACY INITIAL INQUIRY (SPI)

THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. 24395930 ARE HEREBY
INCORPORATED:

- ATTACHMENT A - STATEMENT OF WORK
- ATTACHMENT B - BUDGET (FORM 2030 PEI)
- ATTACHMENT C - HHSC UNIFORM TERMS AND CONDITIONS -GRANTEE
- ATTACHMENT D - DFPS SPECIAL ATTACHMENT
- ATTACHMENT E - DATA USE AGREEMENT

ATTACHMENT A

STATEMENT OF WORK

Healthy Outcomes through Prevention and Early Support (HOPES) Procurement # 530-17-0005

| CONTRACT INFORMATION | |
|--|---|
| Grantee Name: MHMR OF TARRANT COUNTY | Anticipated Contract Amount Per Fiscal Year: \$3,459,485.00 |
| Contract Number: 24395930 | Anticipated Total Contract Amount (Across All Fiscal Years): \$15,567,682.00 |
| Initial Contract Period: Date of execution- August 31, 2021 | Anticipated Full Contract Period: January 1, 2017-August 31, 2022 |
| This Statement of Work provides an executive level summary of the Grantee's proposed service delivery program, output and outcomes, anticipated yearly budget amounts, a list of primary and ancillary services, target population and the proposed service area where services are to be delivered. | |

| CONTACT INFORMATION | | | | |
|--|------------------|-------|--|--------------|
| <i>Please indicate the contract signatory- contact information</i> | | | | |
| | NAME | TITLE | EMAIL | PHONE NUMBER |
| Contract Signatory | SUSAN C. GARNETT | CEO | CEO@mhmrctc.org | 817 569 4512 |

| FY17 PRIMARY DIRECT SERVICES (Include only services funded by HOPES) | | |
|---|---|---|
| Briefly describe the primary services that will be provided and which subcontractors will be providing these services (if applicable). Primary services are those services that someone could specifically enroll to receive. | | |
| Agency Providing Service | Service Type (Ex: Home Visiting, Parent Education, Therapy) | Program Curriculum/Model to be used (if applicable) |
| All Church Home (ACH) | Home visits; parent education | TBRI; Parent Café |
| Center for Transforming Lives | Home visits; parent education; benefits; housing; workforce development | TBRI; Parent Café |
| Denton Community Health Clinic | Home visits; parent education; counseling; healthcare coordination | TBRI; Parent Café |
| Denton County MHMR | Counseling | |
| Easter Seals | Home visits; parent education; therapy; workforce development | Hanen; Triple P |
| Lakes Regional Community Center | Crisis Intervention | |
| Lena Pope | Counseling; crisis | |

| MHMR of Tarrant County | Central referral line; screening; assessment; evaluation; coaching; case management; skills training; therapy; counseling; home visits; parent education | Nurturing Parent Program; Incredible Years; Parent Café; Coaching; Primary Provider Approach to Teaming; natural environments practices |
|--|--|---|
| Pecan Valley Centers for Behavioral & Developmental Healthcare | Counseling | |
| The Parenting Center | Home visits; parent education; counseling | Nurturing Parent Program; Incredible Years; Incredible Years; Parent Café; TBRI |
| UNT Health Science Center (UNTHSC) | Home visits; parent education | TBRI; Parent Café |
| Total unduplicated Families to be served in home visiting services for this contract in FY17 (Include only unduplicated families funded by HOPES) | | 146 |
| Total unduplicated Families to be served in all other services for this contract in FY17 (Include only unduplicated families funded by HOPES) | | 0 |
| Total unduplicated Families to be served in home visiting services and all other services in FY17 | | 146 |
| FY18 PRIMARY DIRECT SERVICES (Include only services funded by HOPES) Briefly describe the primary services that will be provided and which subcontractors will be providing these services (if applicable). Primary services are those services that someone could specifically enroll to receive. | | |
| Agency Providing Service | Service Type (Ex: Home Visiting, Parent Education, Therapy) | Program Curriculum/Model to be used (if applicable) |
| All Church Home (ACH) | Home visits; parent education | TBRI; Parent Café |
| Center for Transforming Lives | Home visits; parent education; benefits; housing; workforce development | TBRI; Parent Café |
| Denton Community Health Clinic | Home visits; parent education; counseling; healthcare coordination | TBRI; Parent Café |
| Denton County MHMR | Counseling | |
| Easter Seals | Home visits; parent education; therapy; workforce development | Hanen; Triple P |
| Lakes Regional Community Center | Crisis Intervention | |
| Lena Pope | Counseling; crisis | |
| MHMR of Tarrant County | Central referral line; screening; assessment; | Nurturing Parent Program; Incredible |

| | | |
|---|--|--|
| | evaluation; coaching; case management; skills training; therapy; counseling; home visits; parent education | Years; Parent Café; Coaching; Primary Provider Approach to Teaming; natural environments practices |
| Pecan Valley Centers for Behavioral & Developmental Healthcare | Counseling | |
| The Parenting Center | Home visits; parent education; counseling | Nurturing Parent Program; Incredible Years; Incredible Years; Parent Café; TBRI |
| UNT Health Science Center (UNTHSC) | Home visits; parent education | TBRI; Parent Café |
| Total unduplicated Families to be served in home visiting services for this contract in FY18 (Include only unduplicated families funded by HOPES) | | 662 |
| Total unduplicated Families to be served in all other services for this contract in FY18 (Include only unduplicated families funded by HOPES) | | 0 |
| Total unduplicated Families to be served in home visiting services and all other services in FY18. | | 662 |

OTHER CONTRACTED WORK

Describe other contracted work to be completed for this contract (Ex: Public Awareness, Coalition Work, Community Events)

Goal 1

Early Childhood Wellness Council

Goal 1: To establish and develop the collaborative framework of a high-quality, innovative, and sustainable family support system, with each element informed by the unmet needs and challenges of at-risk families with children, 0-5, in Tarrant, Denton, Johnson and Ellis Counties.

Objective 1 –A: The Early Childhood Wellness Council(ECWC)will provide guidance and direction to the HOPES program.

Objective 1-B: To maintain active membership on the ECWC from partner agencies, as well as representation from families, schools, healthcare, social services, and faith-based communities:

Objective 1-C: To provide clear, timely, and strategic leadership to the HOPES Project and assure that activities of the project lead to successful outcomes

Goal 2

Awareness & Prevention

Goal 2: To increase awareness and prevention activities among the general public and targeted population to assist with enhancing general knowledge of risk factors for abuse and neglect and prevention through early identification and referral

Objective 2-A - To develop and operate a coordinated 4-county system through which community members, including parents of young children, 0-5, can access information and make referrals via MHMR's toll-free, publicly branded 1-844-NTX-KIDS line or its companion website: www.EarlyIsBestNorthTexas.org

Objective 2-B: To target the increased role of pediatricians in identifying parental risk factors for abuse, neglect, and maltreatment by engaging primary care pediatricians in 6 Cook Children's Neighborhood Clinics and individual primary care pediatricians throughout the 4-county area.

Objective 2-C: To develop screenings that will be an enhancement of current screening practices in child care centers by providing initial training to child care staff on the ASQ and ASQ:SE-2.

Objective 2-D: Increase the knowledge, skills, and core competencies of child care providers/practitioners who work directly with at-risk families through high-quality professional development.

Objective 2-E: To increase awareness among the general public of the scope and impact of child abuse, neglect, maltreatment, and the importance of the protective factors by piloting a sustained primary messaging campaign and targeted messaging to parents

Objective 2-F: To realize the potential role of the faith-based community in supporting at-risk families by providing 2 respite care trainings.

Goal 3

Direct Support and Intervention

Goal 3: To strengthen at risk families with target child/children, 0-5, by building protective factors through high-quality direct services customized to the family and through the expansion of existing parent education, the initiation of supportive parent interventions, and the introduction of home visiting programs for families otherwise unable to access existing programs

Objective 3-A: Referral and Screening

Objective 3-B: Level 1 Priority Population

Objective 3-C: Level 2 Priority Population

Objective 3-D: Level 3 Priority Population

TARGET POPULATION

Identify the target population for this contract

Level 1 Priority Population:

Family has two or more risk factors as defined by HOPES, has a child under the age of 5, and struggles with needing assistance in obtaining accurate knowledge about child development and clear expectations, as well as beliefs about the ability to be empowered as a parent

Level 2 Priority Population:

Family has two or more risk factors, as defined by HOPES and is expressing stress due to issues affecting their child who is under the age of 5, such as illness and/or delayed development, but child does not qualify for IDEA Part B or Part C.

Level 3 Priority Population:

Families having a child under the age of 5, family has 2 risk factors as defined by HOPES, and family resides in a specified geographic area, or is living in homelessness, or is a member of a refugee community

SERVICE AREA

List all counties that will be served in this contract

1. Tarrant County
2. Denton County
3. Johnson County
4. Ellis County

| FY17 CONTRACTOR OUTPUTS AND OUTCOMES | TARGET |
|---|---------------|
| OUTPUT 1: Services are provided to the designated number of families by the end of the fiscal year. | 146 |
| OUTPUT 2: Pre-Service and Post-Service Protective Factors Survey Questionnaires are completed by the Primary Caregivers served. | 60% |
| OUTPUT 3: Completed Satisfaction Survey Questionnaires are obtained from eligible Primary Caregivers. | 50% |
| OUTCOME 1: An absolute increase in the score for a minimum of one protective factor is reported by unduplicated families served. | 75% |
| OUTCOME 2: Primary caregivers are satisfied with HOPES Program services received. | 80% |
| OUTCOME 3: Children remain safe. | 100% |

| FY18 CONTRACTOR OUTPUTS AND OUTCOMES | TARGET |
|---|---------------|
|---|---------------|

HOPES PROGRAM - DFPS/PEI
RFP #: 530-17-0005

| | |
|---|-------------|
| OUTPUT 1: Services are provided to the designated number of families by the end of the fiscal year. | 662 |
| OUTPUT 2: Pre-Service and Post-Service Protective Factors Survey Questionnaires are completed by the Primary Caregivers served. | 60% |
| OUTPUT 3: Completed Satisfaction Survey Questionnaires are obtained from eligible Primary Caregivers. | 50% |
| OUTCOME 1: An absolute increase in the score for a minimum of one protective factor is reported by unduplicated families served. | 75% |
| OUTCOME 2: Primary caregivers are satisfied with HOPES Program services received. | 80% |
| OUTCOME 3: Children remain safe. | 100% |

ATTACHMENT C

HHSC Uniform Terms and Conditions Version 2.12
Published and Effective: November 30, 2015
Responsible Office: Chief Counsel



Health and Human Services Commission
HHSC Uniform Terms and Conditions - Grant
Version 2.12

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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 a work product prepared, developed, or procured by Grantee as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“[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 Assistive and Rehabilitative 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.

“[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 patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of

such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“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” 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” 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 the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>. Grantee shall expend Program Income during the Program Attachment term and may not carry forward to any succeeding term. Grantee shall refund program income not expended in the term in which it is earned to the System Agency. 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 |

A chart of applicable Federal awarding agency common rules is located through a web link on the System Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. 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 the 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 \$500,000 in state funds awarded, Grantee must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. 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. The HHSC Office of Inspector General (OIG) will notify Grantee to complete the Single Audit Status Registration Form. If Grantee fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the System Agency website at <http://www.dshs.state.tx.us/contracts/links.shtm>. 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

Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Grantee shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347
Health and Human Services Commission
Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

Electronic submission to the System Agency should be addressed as follows:
COSContractAdministration@dshs.state.tx.us

Electronic submission to HHSC should be addressed as follows:
Dani.fielding@hhsc.state.tx.us

If Grantee fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Grantee of an audit report, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract.

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.
- c. As used herein, "Intellectual Property" shall mean: inventions and business processes, whether or not patentable; works of authorship; trade secrets; trademarks; service marks; industrial designs; and other intellectual property incorporated in any Deliverable and first created or developed by Grantee, Grantee's contractor or a subcontractor in performing the Project.

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. Wnsuring 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. 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.

9.10 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.

9.11 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.

9.12 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.

9.13 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.

9.14 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.

9.15 No Waiver of Sovereign Immunity

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

9.16 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.

9.17 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.

9.18 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.

9.19 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.

9.20 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://www.hhsc.state.tx.us/about_hhsc/civil-rights/brochures-posters.shtml
- 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. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

ATTACHMENT D**DFPS Special Conditions**

- I. Payments.** Grantee must seek payment or adjustment to payments in accordance with the time limit specified in 45 CFR 95.1 (Code of Federal Regulations). This subpart establishes a two-year (eight quarter) time limit for a State to claim Federal financial participation in expenditures under State plans approved under Title IV-E and Temporary Assistance for Needy Families (TANF). Any bill or amended bill, which is submitted to DFPS later than seven quarters after the end of the quarter of the expense, will not be processed unless DFPS determines that submission for payment of the bill to the federal government can be executed in a proper and timely fashion.
- II. Reporting Abuse, Neglect, or Exploitation.** Grantee will promptly report any suspected case of abuse, neglect, or exploitation to the appropriate authority as required by the Texas Family Code, Chapter 261.
- III. Testimony in Proceedings.** Grantee will require its employees to testify in judicial and administrative proceedings at the request of DFPS. To the extent possible, Grantee will also assist the Department in locating past employees, agents, volunteers, consultants, or subcontractors when DFPS requires past employees, agents, volunteers, consultants, or subcontractors to appear and testify in accordance with this subsection.
- IV. Removal of Access.** Grantee will immediately remove access capabilities to any DFPS automated/internet-based application(s) or immediately notify DFPS that access to such applications needs to be terminated for an employee, subcontractor, or volunteer whose employment, subcontract, or volunteer term with Grantee has ended for any reason.
- V. Cultural Competence.** Grantee will make reasonable efforts to provide services that meet the individual needs of the client. Grantee will develop and maintain a cultural competence plan that effectively provides services to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes and affirms their worth, protects and preserves their dignity, and ensures equity of service delivery. Grantee will take into consideration the intellectual functioning, literacy, level of education, and comprehension ability of each client in order to ensure that all information is presented in a way that meets the individual needs of each client. Grantee will provide services in the client's primary language, whether provided directly by Grantee or through a translator.
- VI. Subcontracting.** In addition to the subcontracting requirements listed in the Solicitation Document and HHSC Uniform Terms and Conditions, Grantee must

also comply with the requirements of this Section. Grantee will be responsible to DFPS for any subcontractor's performance under this Contract. Subcontractors providing services under the Contract will meet the same requirements and level of experience as required of Grantee. No subcontract under the Contract will relieve Grantee of responsibility for ensuring the requested services are provided. If Grantee uses a subcontractor for any or all of the work required, the following conditions will apply:

- (A) Grantee planning to subcontract all or a portion of the work to be performed will identify the proposed subcontractors.
- (B) Subcontracting will be solely at Grantee's expense.
- (C) DFPS retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
- (D) Grantee will be the sole contact for DFPS and Grantee will list a designated point of contact for all Department inquiries.
- (E) **Subcontracts.** Grantee will include a term in all proposed subcontracts that incorporates this Contract by reference and binds subcontractor to all the requirements, terms, and conditions of this Contract related to the service being provided by the subcontractor, as well as explicitly hold that this Contract controls in the event of any conflict with subcontract. DFPS approval of Grantee's use of any subcontractor is conditioned upon the extent that any subcontract does not conflict with any requirements of the Contract between DFPS and Grantee.
- (F) **Payment to Subcontractors.** Pursuant to Chapter 2251 of the Texas Government Code, Grantee will make any payments owed to subcontractors within ten (10) calendar days of Grantee's receipt of funds from DFPS.

VII. DFPS Background Check Policy. Grantee will submit criminal abuse and neglect history information for background checks electronically through the DFPS Automated Background Check System (ABCS) according to the instructions in the user guide located at:

<http://www.dfps.state.tx.us/documents/PCS/ABCSUserGuideFY09.pdf>.

- (A) **Disclosure and Release.** Grantee will disclose and release, or cause its employees, subcontractors, and volunteers with direct client contact and/or access to client records to disclose and release, any allegation made against that employee, subcontractor, or volunteer alleging the commission of:
 - 1) an act of abuse, neglect, or exploitation of children, the elderly, or persons with disabilities;
 - 2) criminal history or any current criminal indictment (for felonies) or information (for misdemeanors) involving an offense under the Texas Penal Code against:

- a) the person;
 - b) the family;
 - c) public order or decency;
 - d) public health, safety, or morals; or
 - e) property;
- 3) an offense under Chapter 481 of the Texas Health and Safety Code (Texas Controlled Substances Act); or
 - 4) any act or offense that can reasonably be associated with potential risk of harm or loss to the Department and/or its clients based on the job duties or contractual role(s) of the person in question at any time during the contract period.

(B) **Method of Disclosure and Release.** This disclosure and release is required of all individuals who have, or will have, direct contact with clients and/or access to client records, prior to such contact or access and will be accomplished through the use of:

- 1) a criminal history background check;
- 2) a DFPS abuse and neglect history check; and
- 3) a signed disclosure and release by each person attesting to this information, which will be maintained by Grantee, available for review by the Department, and renewed at intervals not to exceed 24 months while the Contract is in effect.

(C) **Direct Contact with Clients.** Grantee will prevent or promptly remove any employee, subcontractor, or volunteer from direct client contact and/or from access to client records who is alleged to have committed any act listed in this Contract. If it is determined with certainty that the person in question has not committed the acts or offenses alleged, that person may again be assigned to direct client contact and/or access to client records. However, the Grantee or subcontractor will notify the Department of its intent to do so no later than ten (10) business days and receive Department approval prior to the reassignment. Grantee or subcontractor must provide the Department with further information concerning the reasons for the reassignment upon the request of the Department. If the person in question is found to have committed any of the acts or offenses listed in this Contract, that person will not be reassigned to duties involving any direct contact with clients and/or access to client records.

VIII. Limitation on Use of DFPS Seal and Name. Grantee may not use the DFPS seal in any form or manner without the prior written approval of the Department. Grantee also may not use the name of DFPS to imply any endorsement, approval, or sponsorship of Grantee's goods or services by DFPS.

IX. DFPS Confidential Information. Grantee will not release confidential DFPS information to any party without the prior written approval of DFPS, including, but not limited to, records received or created by the Grantee that are identifiable to children or clients referred by the Department. Grantee will not use any information supplied by DFPS except for the purposes that the Department intends the information to be used. If Grantee stores, collects, or maintains any data, Grantee will only use such data internally for implementing this Contract.

- (A) Grantee will establish a method to ensure the confidentiality of records and other information relating to clients according to applicable federal and state laws, rules, and regulations.
- (B) Grantee will immediately notify DFPS of any unauthorized disclosure or use of any confidential information.
- (C) This section does not limit the Department's right of access to client case records or other information relating to clients served under this Contract. The Department will have an absolute right to access to and copies of such information, upon request.
- (D) If Grantee receives any request or demand for disclosure of confidential information by oral questions, documents, subpoenas, civil investigative demand, interrogatories, requests for information, or other similar legal process, Grantee will provide DFPS with prompt notice of such request (no later than two (2) business days) so that the Department may determine whether to seek an appropriate protective order and/or consent to Grantee's disclosure of the requested records. This subsection does not preclude the Grantee from asserting its own privileges or objections against release of confidential information to a third-party based on applicable law.
- (E) The provisions of this section remain in full force and effect following termination of cessation of the services performed under this Contract.

X. Notifications. Grantee will notify the Department immediately of any significant change affecting Grantee or this Contract, including, but not limited to, change of Grantee's name or identity, ownership, control, governing board membership, key personnel, any problem or potential problem associated with performance or services, or payee identification number. Grantee will also provide DFPS with any documentation or information related to a notification provided for under this section. Grantee will also notify DFPS of any lawsuit brought against Grantee related to the services provided for in this Contract. Unless otherwise noted in this Contract, Grantee will provide all notices in writing to the Department within ten (10) working days.

XI. Authority of Department Staff. DFPS staff are not authorized to sign non-DFPS forms unless those forms have received prior approval by the Department. DFPS is not bound by unauthorized staff actions in signing such forms.

XII. Complaint Reporting. Unless otherwise noted in this Contract, DFPS will contact Grantee when a complaint is received, and advise the Grantee whether DFPS will conduct an investigation or will coordinate with the Grantee for an investigation and a response. When DFPS requires the Grantee to conduct any part of the complaint investigation, Grantee must respond in writing to DFPS with all information and according to DFPS requirements and specified time frames. If Grantee is unwilling or unable to provide any information within the time required, Grantee will provide a written explanation for any information that Grantee does not submit, any applicable date by which Grantee will provide the information, and the detailed reasons why Grantee is unwilling or unable to provide such information.

XIII. Information Security Requirements. Grantee must comply with the following:

(A) The DFPS IT Security Policy located at:

http://www.dfps.state.tx.us/documents/PCS/Contractor_Information_Security.pdf

(B) Health and Human Services Enterprise Information Security Standards and Guidelines

(C) Title 1, Texas Administrative Code, Sections 202.1 and 202.3-.28

(D) Texas Human Resources Code, Section 40.005

(E) Texas Business and Commerce Code, Subchapter B, Sections 521.051-.053

(F) Texas Family Code, Section 162.018

(G) Texas Family Code, Subchapter C, Sections 261.201-.203

(H) Texas Family Code, Section 264.408

(I) Texas Family Code, Section 264.511

(J) Texas Health and Safety Code, Section 85.115 and 40 TAC Section 1404

(K) Title 40, Texas Administrative Code, Subchapter B, Sections 700.201-.209

(L) Texas Health and Safety Code, Chapter 181 and 1 TAC Sections 391.1-.2

(M) The Federal Information Security Management Act of 2002 (FISMA);

(N) Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;

(O) NIST Special Publication 800-53 Revision 3 – Recommended Security Controls for Federal Information Systems and Organizations; and

(P) NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems.

(Q) In addition to the requirements expressly stated in this Section, Grantee must comply with any other State or Federal law, regulation, or administrative rule relating to the specific DFPS program area that Grantee supports.

(R) Upon reasonable notice, Grantee must provide, and cause its subcontractors and agents to provide, DFPS or its designee, prompt,

reasonable, and adequate access to any information security records, books, documents, and papers that are directly pertinent to the performance of the Contract including, but not limited to:

- 1) Grantee information security policies;
 - 2) Grantee information security procedures;
 - 3) Grantee information security standards;
 - 4) Grantee information security guidelines;
 - 5) Grantee security plan in compliance with NIST Special Publication 800-53 Revision 3;
 - 6) Grantee security violation reports;
 - 7) Grantee employee security acknowledgement agreements; and
 - 8) Lists of Grantee's employees, subcontractors, and agents with authorized access to DFPS confidential information.
- (S) Items XIV(R)(1)-(8) above are subject to DFPS' review and approval. Neither DFPS' review or approval, nor its failure to review or approve, will relieve, waive, or satisfy any of Grantee's obligations under this Agreement.
- (T) Grantee will provide, and will cause its subcontractors and agents to provide, to DFPS, upon reasonable notice, written certifications of compliance with controls and provisions relating to information security, including but not limited, those related to confidential data transfers and the handling and disposal of Personally Identifiable Information (PII). Acceptable forms of written compliance may be, but are not limited to:
- 1) Statement on Auditing Standards No.70, Service Organizations (SAS-70) Report;
 - 2) General Security Controls Audit;
 - 3) Application Controls Audit;
 - 4) Vulnerability Assessment; and
 - 5) Network/Systems Penetration Test.

XIV. Unilateral Amendments. The Department reserves the right to amend the Contract through execution of a unilateral amendment signed by the DFPS Contract Manager and provided to the Grantee with ten (10) days notice prior to execution of the amendment under the following circumstances:

- (A) to correct an obvious clerical error in this Contract;
- (B) to change the Contract number;
- (C) to incorporate new or revised federal or state laws, regulations, rules, or policies;
- (D) to comply with a court order or judgment;
- (E) to update service level descriptions or daily rates;
- (F) to change the name of the Grantee in order to reflect the Grantee's name as recorded by the Texas Secretary of State or as required by law;
- (G) to change the designated DFPS mailing address for this Contract;

- (H) to change the designated Grantee mailing address for this Contract; or
- (I) to change the recorded license number of any license needed under this Contract in order to reflect the current number as issued by the licensing authority.

XV. Additional Remedy. In addition to the contract management remedies reserved in the HHSC Uniform Terms and Conditions, DFPS, based on information from monitoring or other verifiable sources, expressly reserves the right to remove any subcontractor or employee of the Grantee from the provision of services under this contract.

XVI. Transition after Termination. At the end of the contract term or other contract termination or cancellation, Grantee will in good faith and in reasonable cooperation with the Department, aid in the transition to any new arrangement or provider of services. The respective accrued interests or obligations incurred to date of termination must also be equitably settled. Upon termination or expiration of this Contract, DFPS will work with Grantee to transfer all services as efficiently as possible with the goal to have all necessary services transferred by the effective date of the expiration or termination of the Contract. However, in the event that a transfer of all necessary services is not possible, Grantee will continue to provide necessary services in accordance with all terms and conditions of this Contract until all necessary client services are completely transferred.

XVII. DFPS Required Certifications. The certifications enumerated below represent material facts upon which DFPS relies when accepting a bid for this solicitation. If the Department later determines that Potential Grantee knowingly rendered an erroneous certification, DFPS may pursue all available remedies in accordance with Texas and U.S. law. Grantee further agrees that it will provide immediate written notice to DFPS if at any time Grantee 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 Grantee cannot certify the accuracy of all the statements contained in this section, Grantee must provide written notice to DFPS detailing which of the below statements it cannot certify and why. Grantee acknowledges its continuing obligation to comply with the requirements of the following certifications contained in its Proposal, and will immediately notify DFPS of any changes in circumstances affecting these certifications:

(A) **Federal Certification Regarding Lobbying.** Federal law places restrictions on the use of federal funds in regard to lobbying. The Grantee certifies, to the best of its knowledge and belief, that:

- 1) In accordance with 31 U.S.C. §1352, no federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, 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 federal 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 will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- 3) The Grantee will require that the language of this certification be included in the award documents for subcontracts and that all subcontractors will certify and disclose accordingly.

(B) **Drug-Free Workplace Certification.** Grantee certifies that it will or will continue to provide a drug-free workplace by:

- 1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 2) Establishing an ongoing drug-free awareness program to inform employees about—
 - a) The dangers of drug abuse in the workplace;
 - b) The grantee's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- 3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement;
- 4) Notifying the employee in the statement that, as a condition of employment under the grant, the employee will—
 - a) Abide by the terms of the statement; and
 - b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

- 5) Notifying the agency in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice will include the identification number(s) of each affected grant;
- 6) Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted—
 - a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
- 7) Making a good faith effort to continue to maintain a drug-free workplace.



Prevention and Early Intervention (PEI) Special Conditions

- 1. Statement of Work vs. Project Work Plan.** The Statement of Work is the formal document incorporated into the contract. The Project Work Plan documents how the Grantee will achieve the performance measures outlined in the contract. *Changes to the Statement of Work require an amendment and Project Work Plans may be changed with written approval from PEI and the grantee.*
- 2. Statement of Work Changes.** A Grantee cannot make any changes to the Statement of Work without a formal contract amendment.

An amendment is required to change any terms outlined in the contract including but not limited to:

- Points of contact listed in the contract
- Performance measures (outputs/outcomes)
- Service areas outlined in the contract
- Target populations
- Addition or deletion of Primary Services required by the contract
- Addition or deletion of Ancillary services required by the contract
- Subcontractors identified in the contract
- Budget transfers that exceed the 20% threshold
- Any increase or decrease of the total budget
- Any extension of the contract end date

- 3. Project Work Plan Changes.** *Any post-award contract changes to the Project Work Plan must not alter the Statement of the contract from that for which the contract was originally procured. The RFP and contract documents serve as the primary guide in establishing whether or not a change to the Project Work Plan is allowable.*

PEI may allow or make limited modifications to the Project Work Plan to meet unanticipated needs at any point during the life of the contract. Either the Grantee or PEI may identify the need for such a change.

A Post-award Project Work Plan change requires a documented request **15 days prior** to the anticipated change and prior written approval.

A change to the Project Work Plan may include:

- Point of contacts listed only in the Project Work Plan
- Service Delivery locations or hours
- Service areas as long as the change is consistent with the original Statement of the procurement and resulting contract, e.g. add or subtract zip codes within a county (when applicable)
- Policies or procedures used to provide services including:
 - a. Intake process
 - b. Determining client eligibility
 - c. Plan or process for retaining clients in the program
 - d. Case documentation
 - e. Linking participants with other social service providers when necessary
 - f. Case closure or termination of services to clients
 - g. Referrals to subcontractors
- Policies, procedures and strategies used to ensure services are not denied or delayed when respondent's agency is at maximum capacity
- Staffing plan (provided change meets minimum RFP requirements)
- Staff training plan
- Processes concerning contract administration
- Processes concerning subcontract administration
- Budget transfers under the 20% threshold
- Addition of a budget line item that does not change the overall amount of the budget
- Cost per client

4. Supplemental Bills. A supplemental bill will be accepted monthly for costs not included on the main monthly bill during previous months or if additional costs exceed \$2500. Only one supplemental bill will be accepted monthly, so all additional costs must be included.

5. Performance Measures Reporting. Grantee is required to review performance measure reports from the Prevention and Early Intervention System Database on a monthly basis. Grantee is required to submit the downloaded database reports that reflect all performance measures and a corrective action plan to DFPS no later than 15 days after the end of the first, second, and third quarters for each performance measure that is off track.

A corrective action plan must include: (1) a statement of the problem, (2) the proposed steps to be taken, (3) a timeline for each step, (4) the person(s) responsible for implementing each step, and (5) the person responsible for oversight of the plan to ensure it is implemented correctly. The corrective action plan must be submitted on the required template and must outline the measures that will be taken by contractor to address each performance measure that is off track.

- 6. Program Forms and Social Security Numbers.** Grantee is required to complete all fields of program forms in their entirety, including any social security number fields. If a client refuses to provide their social security number, Grantee must document refusal in the case file. The expectation is that Grantees make a good faith effort to obtain social security numbers and other information listed on the program form. Items with an asterisk on program forms are required fields in the database; however, the expectation is that the form is completed thoroughly. Primary caregivers must sign program forms giving consent for services **prior** to the provision of services.
- 7. Contractual Obligations.** A grantee's acceptance of funds directly under the contract or indirectly through a subcontract acts as acceptance of the authority of the state, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. In accordance with the legislative audit committee, DFPS can request any documentation, at any time, to be sent to DFPS to a location DFPS chooses. Examples of documentation that may be requested includes, but is not limited to, client files in their entirety (progress notes, action plans, registration forms, protective factor surveys, sign in sheets, monthly tracking forms, referral information, etc.), invoices that support monthly billings, a contractor's full general ledger, etc.



DFPS Cost Reimbursement Supplement

1. Cost Reimbursement Contract.

- 1.1. **Basis for Payment.** DFPS is not obligated to pay unauthorized costs or to pay more than Contractor's allowable and actually incurred costs consistent with federal and state regulations. Contractor is responsible for submitting bills in an accurate and timely manner for each service period and for notifying the Department of a need to expedite payment. DFPS will make reasonable efforts to process all bills received in an accurate and timely manner, but does not warrant immediate payment.
- 1.2. **Regulation Compliance.** Contractor will remain in compliance with 45 CFR Part 74 as applicable, Office of Management and Budget (OMB) Circulars A-133, A-110, A-21, A-87, and A-122 as applicable, the Uniform Grant Management Standards (UGMS) as applicable, and 40 Texas Administrative Code (TAC) §§732.240–256 as applicable. The reimbursement made to Contractor will not exceed Contractor's actual costs to provide the services under this Contract and Contractor's actual costs, both direct and indirect, must be allowable, reasonable, and allocable.
- 1.3. **Physical Property.** Contractor will assume responsibility for the protection of all physical property and equipment purchased under this Contract. Contractor must furnish DFPS with a written, factual report of the theft of, or damage to, any equipment purchased under this contract, including circumstances concerning the loss. In addition, in the event of any theft, vandalism, or other offense against the properties, Contractor will notify appropriate local law enforcement authorities.
- 1.4. **Equipment.** Equipment is any article of tangible nonexpendable personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of: the capitalization level established by the contractor for financial statement purposes or \$5,000. Contractor will follow the provisions of Title 45 Code of Federal Regulations (CFR) Part 74 regarding disposition of any equipment purchased under this Contract with funds allocated to Contractor or its subcontractor. Contractor will not give any security interest, lien, or otherwise encumber any item of equipment purchased with contract funds. Contractor will permanently identify all equipment purchased under this contract by appropriate tags or labels affixed to the equipment. Contractor will maintain a current inventory of equipment that is available to the Department at all times upon request. Cost reimbursement contractors must also follow the following guidelines when contracting with DFPS.
 - 1.4.1. Cost reimbursement contractors must add certain types of equipment items that are classified as "controlled assets" as

designated in the Comptroller's State Property Accounting (SPA) Process User's Guide, available on the Internet, to their inventory. Contractors should review the SPA guide periodically for the most current list.

- 1.4.2. All cost reimbursement contractors must follow the American Hospital Association's (AHA) "Estimated Useful Lives of Depreciable Hospital Assets" for equipment disposition purposes, except when federal or statutory requirements supersede.
- 1.4.3. Contractors must request DFPS approval before disposing of equipment or controlled assets prior to the end of the useful life for that item.
- 1.4.4. Any change to the equipment category in a cost reimbursement budget will require prior approval from the Department.

2. Minimum Insurance Standards.

- 2.1. Contractor will provide insurance for direct delivery of services 48 hours prior to contract signing. Contractor will obtain and furnish proof of the following bonding and insurance coverage within forty-eight (48) hours of the award of the Contract or at such other time as specified by DFPS. The required coverages are:
 - 2.1.1. Dishonesty bonding under a commercial crime policy or business services bonding, at a ten thousand dollar (\$10,000.00) minimum; and
 - 2.1.2. Commercial General Liability Coverage at a three hundred thousand dollar (\$300,000) minimum for each occurrence limit, and six hundred thousand dollar (\$600,000) minimum aggregate limit. The Department will be provided with ample written notice of policy or bond cancellation or material change in the policy or bond.
 - 2.1.3. **[Add the following if professional liability insurance is required.]** Contractor must provide and furnish evidence of professional liability insurance with the minimum limits of \$300,000.00 per occurrence and \$600,000.00 aggregate.
- 2.2. The Contractor will purchase coverage with insurance companies or carriers rated for financial purposes "B" or higher whose policies cover risks located in the State of Texas. All bonds, policies, and coverage will be maintained during the entire term of contract.
- 2.3. All required insurance policies will include an endorsement stating that the Department will be given thirty (30) calendar days written notice of policy or bond cancellation or a material change in the policy or bond.

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

This Data Use Agreement ("DUA"), effective as of the Base Contract ("Effective Date"), is entered into by and between the Texas Health and Human Services Enterprise agency ("HHS") and MHMR of Tarrant County ("CONTRACTOR"), and incorporated into the terms of HHS Contract No. 24395930, 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 07-16; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

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

"Authorized User" means a Person:

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

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

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

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

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 *Obligations of CONTRACTOR*

CONTRACTOR agrees that:

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

(B) CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors 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 disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)(ii)(A)**

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

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, 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 upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

(I) 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 from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)**

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

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

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

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

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

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

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

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

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

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us 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**

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

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

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

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

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

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

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

(C) Breach Notice:

1. Initial Notice.

a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, ***or in a timeframe otherwise approved by HHS in writing***, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us 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 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

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 *Oversight of Confidential Information*

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

SECTION 6.02 **HHS COMMITMENT AND OBLIGATIONS**

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

Section 6.03 *HHS Right to Inspection*

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

Section 6.04 *Term; Termination of DUA; Survival*

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

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

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

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

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

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

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

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

Section 6.05 *Governing Law, Venue and Litigation*

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

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

Section 6.06 *Injunctive Relief*

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

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

Section 6.07 *Limitation of Liability*

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR will defend and hold harmless HHS and its Workforce against all actual and direct losses suffered by HHS and its Workforce 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, including, but not limited to, the costs of required notices and mitigation of a breach and any fines or penalties imposed on HHS by any regulatory authority.

Section 6.08 *Insurance*

(A) As a governmental entity, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA and under which policy HHS is as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

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

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.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM
HHS CONTRACT NUMBER 24395930

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 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: _____