

**SIGNATURE DOCUMENT**  
**HEALTH AND HUMAN SERVICES COMMISSION**  
**CONTRACT NO. HHS000874100022**  
**AREA AGENCIES ON AGING GRANT PROGRAM**

**I. PURPOSE**

The **Health and Human Services Commission** (“HHSC” or “System Agency”), a pass-through entity, and **Rio Grande Council of Government** (“Grantee” or “Contractor”) (each a “Party” and collectively the “Parties”) enter into the following grant agreement to fund services provided under the Older Americans Act of 1965 (“OAA”) (the “Contract”). HHSC has designated Grantee to act as an area agency on aging (“AAA”), thus authorizing Grantee to administer OAA funds.

**II. LEGAL AUTHORITY**

The Parties enter into this Contract under the authority of the OAA, Chapter 531 of the Texas Government Code, and Chapter 101A of the Texas Human Resources Code. The OAA provides grant funding to states for community programs that serve and support their aging residents. To qualify for these grants, a state must: (1) designate a governmental agency to develop and administer a state plan on aging; (2) divide the state into distinct planning and service areas; and (3) designate an AAA for each planning and service area (“PSA”). The Texas Legislature designated HHSC as the state’s agency for coordinating OAA programs in Section 101A.003 of the Texas Human Resources Code. In keeping with this designation, HHSC recognizes Grantee as an AAA and enters into this Contract for the purpose of distributing grant funds awarded under the OAA.

This Contract, and any resulting subcontracts, are governed by federal, state, and local regulations that include the following, as applicable:

- A.** Omnibus Budget Reconciliation Act of 1990 §4360;
- B.** Medicare Improvements for Patients and Providers Act of 2008 (“MIPPA”);
- C.** 2 CFR Part 300 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards);
- D.** 45 CFR Part 75 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards);
- E.** 45 CFR Part 1321 (Grants to States and Community Programs on Aging);
- F.** 45 CFR Part 1324, Subpart A (State Long-Term Care Ombudsman Program);
- G.** Texas Government Code, Chapter 531;
- H.** Texas Human Resources Code, Chapter 101A;
- I.** Texas Human Resources Code, Chapter 102;

- J.** Texas Human Resources Code, Chapter 161;
- K.** Texas Local Government Code, Section 394.902;
- L.** Texas Administrative Code, Title 40, Chapters 81, 83, and 85;
- M.** Texas Administrative Code, Title 26, Chapter 88; and
- N.** Texas Uniform Grant Management Standards (“UGMS”).

### **III. DURATION**

The Contract is effective on October 1, 2020 and terminates on September 30, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. HHSC, upon the agreement of both parties, may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed five (5) years. Notwithstanding the limitation in the preceding sentence, HHSC, upon agreement of both parties, also may extend the Contract beyond five (5) years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interest of the State. The extension or renewal must be in writing and subject to all terms and conditions of this Contract.

### **IV. FUNDING**

#### **A. TOTAL CONTRACT AMOUNT**

The total amount of this Contract is not to exceed **TOTAL CONTRACT AMOUNT \$14,743,272.00**. The funding allocated for each federal fiscal year (FFY) is not to exceed the following amounts:

1. **FFY 2021 – \$7,191,840.00** for October 1, 2020 through September 30, 2021; and
2. **FFY 2022 – \$7,551,432.00** for October 1, 2021 through September 30, 2022

The total Contract amount is subject to increases or decreases as funds are appropriated throughout the contractual term based on the federal government, Texas Legislature, or both. Throughout the contractual term, Grantee will be notified of the availability of funding through a Notice of Funds Available (NFA) document.

#### **B. INDIRECT COST RATE**

Grantee’s acknowledged or approved Indirect Cost Rate (ICR) is stated in **ATTACHMENT K, INDIRECT COST RATE LETTER**.<sup>1</sup>

1. If an ICR Letter is required but it is not issued by close of business on the effective date of the Contract, the Parties agree to amend the Contract to include the ICR Letter as **ATTACHMENT K** once the ICR Letter is issued.
2. If the HHSC, at its sole discretion, approves or acknowledges an updated ICR, the new rate, together with the revised ICR Letter, will be included in the revised **ATTACHMENT K**.

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<sup>1</sup> The ICR Letter may take the form of an ICR Acknowledgement Letter, an ICR Acknowledgement Letter – Ten Percent de Minimis, or an ICR Agreement Letter.

## **V. AREA PLAN REQUIREMENTS**

No later than the date specified by HHSC, Grantee shall complete and submit an Area Plan that describes in detail the specific services to be provided to older adults residing in a given planning and service area (PSA). Grantee's approved Area Plan is incorporated by reference.

## **VI. CONTRACT REPRESENTATIVES**

The following persons shall act as the representative authorized to administer activities under this Contract on behalf of their respective Party:

### **HHSC**

Jane Salazar, Contract Manager  
Financial and Contract Operations  
Access and Eligibility Services  
Health and Human Services Commission  
909 W 45th Street (MC 2098)  
Austin, TX 78751

### **Grantee Name**

Annette Gutierrez  
Rio Grande Council of Government  
8037 Lockheed Dr., Ste. 100  
El Paso, Texas 79925

## **VII. LEGAL NOTICES**

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

### **HHSC**

Health and Human Services Commission  
4900 N. Lamar Boulevard (MC 1100)  
Austin, TX 78751  
Attention: Office of the Chief Counsel

### **Grantee Name**

Rio Grande Council of Government  
8037 Lockheed Dr., Ste. 100  
El Paso, Texas 79925  
Attention: Annette Gutierrez

## **VIII. NOTICE REQUIREMENTS**

Notice given by Grantee shall be deemed effective when received by HHSC.

- A.** All communication related to Grantee's performance under this Contract must be submitted in writing to the HHSC AAA Help Desk email address. "Communication" includes, but is not limited to, questions about Statement of Work requirements and deliverables, as well as requests for information.
- B.** All communication and notices for which Grantee requests a response to HHSC must be in writing and shall:
  - 1.** Include the AAA identification number;
  - 2.** Be sent to the HHSC AAA Help Desk at [AAA.Help@hhsc.state.tx.us](mailto:AAA.Help@hhsc.state.tx.us); and
  - 3.** Comply with all terms and conditions of the Contract.

- C.** The HHSC AAA Help Desk will acknowledge receipt of each inquiry and respond to each one.
- D.** Any Party that changes the address it previously provided for receiving Notices must inform the other Party in writing.

**IX. ADDITIONAL GRANT INFORMATION**

- A.** Grantee Data Universal Numbering System (“DUNS”) Number: 621270552
- B.** Federal Award Identification Number (“FAIN”): 14AATXMAAA
- C.** Catalog of Federal Domestic Assistance (“CFDA”) Name and Number: Medicare Enrollment Assistance Program – 93.071
- D.** Name of Federal Awarding Agency: U.S. Department of Health and Human Services

**Signature Page to Follow**

**SIGNATURE PAGE**

**HHSC CONTRACT NO. HHS000874100022**

**HEALTH AND HUMAN SERVICES COMMISSION**

**RIO GRANDE COUNCIL OF GOVERNMENT**

By:

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Annette Gutierrez

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Executive Director

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

**THE FOLLOWING DOCUMENTS ARE ATTACHED TO THIS CONTRACT, AND THEIR TERMS ARE  
HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A – Statement of Work**
- ATTACHMENT B – Scope of Services Related to Housing Bond**
- ATTACHMENT C – HHSC Special Conditions**
- ATTACHMENT D – Modifications to HHS Uniform Terms and  
Conditions (Governmental Entity)**
- ATTACHMENT E – HHS Uniform Terms and Conditions  
(Governmental Entity)**
- ATTACHMENT F – Contract Affirmations**
- ATTACHMENT G – HHS Data Use Agreement (Local City and  
County)**
- ATTACHMENT H – Federal Funding Accountability and  
Transparency Act (FFATA) Certification**
- ATTACHMENT I – Federal Assurances (Non-construction  
Programs)**
- ATTACHMENT J – Federal Certification Regarding Lobbying**
- ATTACHMENT K – Indirect Cost Rate Letter**

**ATTACHMENT A**  
**STATEMENT OF WORK**  
**HHSC Contract No. HHS000874100022**

**GRANTEE: Rio Grande Council of Government**

**HHSC PROGRAM: Area Agencies on Aging**

**1. Overview**

The Area Agencies on Aging (AAA) system provides services to persons 60 years of age or older, their family members, and their caregivers, which enables them to receive the information and assistance they need in locating and accessing community services. At a minimum, AAA services must include:

- 1.1** Information, referral, and assistance;
- 1.2** Legal assistance;
- 1.3** Care coordination;
- 1.4** Caregiver support services;
- 1.5** In-home support services;
- 1.6** Legal awareness;
- 1.7** Nutrition services; and
- 1.8** Long-term Care Ombudsman Program

**2. Target Population**

Grantee must, in accordance with Section 306((a)(4)(B)(i) and (a)(6)(G)) of the Older Americans Act of 1965 (OAA) and its subsequent amendments, and as addressed in the approved Area Plan, assure HHSC that it will use outreach efforts to identify persons who are eligible for assistance under this Contract, with special emphasis on: (1) older persons residing in rural areas; (2) older persons with greatest economic need, with particular attention to low-income minority and older persons residing in rural areas; (3) older persons who have greatest social need with particular attention to low-income minority persons residing in rural areas; (4) older persons with severe disabilities; (5) older persons with limited English proficiency; (6) older persons with Alzheimer's disease and related disorders with neurological and organic brain dysfunction and the caretakers of such persons; (7) older persons at risk for institutional placement; and (8) older persons who are Native Americans located within the AAA's planning and service area.

**3. AAA Infrastructure**

**3.1 AAA Administrative Requirements**

Grantee must comply with Texas Administrative Code (TAC), Title 40, Section 85.201 to ensure that it maintains an organized and efficient system of administration that

demonstrates accountability and compliance with state and federal law and with all terms and conditions of this Contract.

### **3.2 Data System**

Grantee shall:

- 3.2.1** Adequately track, maintain, and protect client referral and services information;
- 3.2.2** Have the capacity to produce the program performance and financial information to reflect the operation and status of the organization and assist the AAA in conducting regular data assessment and analysis to determine if the AAA is meeting performance benchmarks and to complete required performance reports; and
- 3.2.3** Have adequate electronic back-up systems, schedules, and procedures, as well as virus protection software that is continually updated to prevent the loss or corruption of system data.

### **3.3 Fiscal Management**

Grantee must have accounting and internal control systems to ensure proper management of federal and state funds, maximize non-federal resources, and maintain solvency. Grantee's accounting and internal control systems must meet the following requirements:

- 3.3.1** The systems must be appropriate to the size of the organization;
- 3.3.2** The accounting system must consist of source documents, a chart of accounts, journals, ledgers, and routine financial reports;
- 3.3.3** The accounting system must be capable of producing expenditure reports, cost center analyses, budget formats, and automated reports as required by, and without additional support from, HHSC;
- 3.3.4** The accounting and internal control system must safeguard Grantee's assets, produce accurate accounting data, promote efficient operations, and encourage adherence to prescribed accounting policies and procedures; and
- 3.3.5** The accounting and internal control systems must involve a division of responsibility among different employees for a sequence of related functions, clear establishment of each employee's responsibilities and duties, and use of standards such as procurement policies, proofs, checks, and other security measures.

### **3.4 HHSC Statewide Information Management System**

Grantee must use the statewide information management system (IMS) provided by HHSC to support the maintenance and reporting of State Unit on Aging (SUA) consumer data, service delivery information, and service activities that satisfies all applicable state and federal requirements, including reporting for the State Performance Report/Older Americans Act Performance System (SPR/OAAPS), the National Ombudsman Reporting System (NORS) or any successor system, and the State Health Insurance Assistance Program (SHIP).

- 3.4.1 Grantee must be authorized to use the statewide IMS;
- 3.4.2 Grantee must use this system for state and federal reporting as required by HHSC;
- 3.4.3 Grantee acknowledges all data entered into the statewide IMS system is the property of the State of Texas (State); and
- 3.4.4 Grantee must notify HHSC of any changes to its staff or its provider staff with access to the statewide IMS.

#### **4. Provision of Services**

##### **4.1 AAA Services**

- 4.1.1 Grantee must provide all AAA services and activities necessary to comply with the most current approved Area Plan and with applicable federal and state laws, rules, and regulations and the current Office of Area Agencies on Aging (OAAA) service definitions, and HHS policy;
- 4.1.2 Grantee must provide services using a person-centered approach that promotes individual choice and self-determination;
- 4.1.3 Grantee must provide all services in a culturally, linguistically, and developmentally appropriate manner for persons, family members, and caregivers; and
- 4.1.4 Grantee must establish relationships with key stakeholders that can partner in the provision of AAA services or provide services that are not within the scope of the AAA services.

##### **4.2 State Health Insurance Assistance Program (SHIP) and Medicare Improvements for Patients and Providers Act for Beneficiary Outreach and Assistance (MIPPA)**

###### **4.2.1 State Health Insurance Assistance Program (SHIP)**

- 4.2.1.1 Grantee must provide services to persons eligible for the SHIP. Grantee must provide education and assistance to empower Medicare-eligible persons, their families, and caregivers to make informed healthcare decisions.
- 4.2.1.2 Grantees must submit all SHIP required documents and reports on the templates provided and in accordance to the instructions and dates established by HHSC.

###### **4.2.2 Medicare Improvements for Patients and Providers Act for Beneficiary Outreach and Assistance (MIPPA)**

- 4.2.2.1 Grantee must provide services to persons eligible for MIPPA services. Grantee will provide outreach and assistance to all eligible older adults, persons with disabilities, and their caregivers in applying for special assistance through Medicare.
- 4.2.2.2 Grantees must submit all MIPPA required documents and reports on the templates provided and in accordance to the instructions and dates established by HHSC.



### **4.3 The State Long-Term Care Ombudsman Program**

**4.3.1** Grantee must comply with 26 TAC Chapter 88 regarding the State Long-Term Care Ombudsman Program and ensure that a local ombudsman entity implements the State Long-Term Care Ombudsman Program in Grantee's ombudsman service area in accordance with:

**4.3.1.1** the OAA, §711 and §712 (United States Code, Title 42, §3058f and §3058g);

**4.3.1.2** 45 CFR Part 1324;

**4.3.1.3** Texas Human Resources Code, Title 6, Chapter 101A, Subchapter F;

**4.3.1.4** State Long-Term Care Ombudsman Program, Ombudsman Policies and Procedures Manual; and

**4.3.1.5** 26 TAC Chapter 88.

**4.3.2** The local ombudsman entity must:

**4.3.2.1** be an identifiable unit of:

**4.3.2.1.1** Grantee; or

**4.3.2.1.2** an identifiable unit of a government entity or nonprofit organization that contracts with Grantee and is approved by the State Ombudsman; and

**4.3.2.2** meet the criteria in the definition of "local ombudsman entity" set forth in 26 TAC §88.2 (relating to Definitions).

**4.3.3** Grantee is designated by the State Long-Term Care Ombudsman as the local ombudsman entity in the Grantee's ombudsman service area in accordance with 26 TAC §88.104 (relating to Designation of a Local Ombudsman Entity) except as provided in section 4.3.4.

**4.3.4** Grantee may contract with a governmental entity or nonprofit organization to be the local ombudsman entity in the Grantee's ombudsman service area if the State Long-Term Care Ombudsman designates, in writing, the entity or organization as the local ombudsman entity in accordance with 26 TAC §88.104.

## **5. Staffing Requirements**

### **5.1 Criminal Background Check Requirement**

Grantee must have a written policy and procedures in place to ensure criminal background checks are performed on all potential staff and volunteers. The policy must cover the kinds of conduct that will disqualify a person from volunteering or being employed to provide AAA services, and the procedures must include the steps Grantee will take to conduct the background check. The policy and procedures applicable to staff and volunteers providing services for the SHIP must comply with the Volunteer Risk and Program Management Policies adopted by the Administration for Community Living.

## **5.2 Training and Staff Development**

- 5.2.1** Grantee must provide staff and volunteers the in-service training needed to perform under the terms and conditions of this Contract. All training must be documented, and the documentation must be maintained on file and available for review by HHSC upon request.
- 5.2.2** Grantee must secure appropriate specialized training and certification for all staff delegated duties that require the specialized training or certification. All training and certifications must be documented, and the documentation must be maintained on file and available for review by HHSC upon request.
- 5.2.3** Grantee must ensure that staff meets the necessary qualifications to conduct specific AAA functions and to provide ongoing training, which will develop and enhance staff capacity.
- 5.2.4** Grantee must maintain adequate personnel documentation in accordance with standard human resources best practices. All employee and volunteer training and certifications must be documented, and the documentation must be maintained on file and available for review by HHSC upon request.

## **5.3 Alzheimer Disease and Dementia Training**

- 5.3.1** Grantee's employees and volunteers must complete Alzheimer disease and dementia training in accordance with the guidance provided in the Area Agency on Aging (AAA) Bulletin 20-01.
- 5.3.2** Grantee must submit an annual training notice of compliance and certification, which attests that all employees and volunteers have completed the pertinent training by the date designated by HHSC. The training notice of compliance and certification must include the following information:
  - 5.3.2.1** The names of each trainee who successfully completed the training during the annual period being reported;
  - 5.3.2.2** The name of the training completed;
  - 5.3.2.3** The date on which the trainee successfully completed the training; and
  - 5.3.2.4** A statement certifying that all trainees have completed or will complete their training within 30 calendar days of their respective start date.

## **5.4 Cultural Competence**

- 5.4.1** Grantee must develop and maintain current policies and procedures that are designed to ensure that service delivery and information gathering are conducted in a respectful, non-threatening, and culturally competent manner.
- 5.4.2** Grantee must provide cultural competency training to all staff and volunteers to ensure that service delivery and information gathering are conducted in a respectful, non-threatening, and culturally competent manner. All employee and volunteer training must be documented, and the documentation must be maintained on file and available for review by HHSC upon request.
- 5.4.3** Grantee must provide all services in a culturally-, linguistically-, and developmentally-appropriate manner for persons, family, and caregivers.

## **5.5 Additional Trainings**

Grantee's staff must participate in additional trainings as deemed necessary by HHSC. Content may be related to new projects, initiatives, performance measures, or additional quality improvement activities.

## **6. Funding Obligations**

- 6.1** Grantee acknowledges that HHSC's obligation for payment, in consideration of full and satisfactory performance of activities described in this Contract, is limited to monies received from the Administration on Aging ("AoA"), the State, and any other funding source.
- 6.2** HHSC will not be liable to Grantee for costs incurred or performance rendered unless such costs and performances are strictly in accordance with the terms and conditions of this Contract, including the terms governing Grantee's promised performance and unit rates or reimbursement capitations specified.
- 6.3** HHSC will not be liable to Grantee for any expenditures, which are not allowable costs under 2 CFR Part 200 and 45 CFR Part 75 or for which expenditures have not been made in accordance with the fiscal guidelines and requirements outlined by HHSC.
- 6.4** HHSC will not be liable to Grantee for expenditures made in violation of regulations promulgated under the OAA or in violation of HHSC's rules, federal and state laws, or this Contract.
- 6.5** Grantee agrees to the de-obligation statement in State Health Insurance Assistance Program (SHIP) Basic Grant Plan, which provides that de-obligation of awards may occur based on year-to-date expenses at the following points:
  - 6.5.1** At six months, 50% of the projected expenses identified in the Budget Expenditure timeline must have been incurred and reported on the Quarterly Performance Report; and
  - 6.5.2** At nine months, 75% of the projected expenses identified in the Budget Expenditures timeline must have been incurred and reported on the Quarterly Performance Report.
- 6.6** If the required amount of expenses has not been incurred at any of the points identified above, the amount of unexpended funds may be de-obligated and made available to AAAs that have met their expenditure projections.

## **7. Compensation**

- 7.1** HHSC agrees to make payment to Grantee in the amounts and under the provisions set forth in Grantee's budget and pursuant to the terms and conditions of this Contract. Grantee agrees to accept such payments as full compensation for services performed under this Contract. All payments will be based on the performance information reported in the approved budget, reimbursement requests, and quarterly fiscal and programmatic reports.

- 7.2** For all services provided to program participants, HHSC will pay Grantee on a reimbursement basis for services rendered whether services are provided directly by Grantee or through a subcontractor or vendor. Grantee may subcontract or purchase services under an “at risk” unit rate or reimbursement methodology, in accordance with HHSC rules and program instructions. Reimbursement for services provided by Grantee, whether directly or through a subcontractor, must not exceed neither the approved budget nor the available OAA and State funds that HHSC awarded.

## **8. Payment Methodology**

- 8.1** Under the terms of this Contract, HHSC has no duty to remit funds for services provided on a reimbursement basis, as shown above in Section 7 (Compensation), until Grantee has provided the services (or secured delivery thereof) and reported that service-delivery in a request for reimbursement. In the absence of a written agreement to the contrary, HHSC will remit funds to Grantee subject to the appropriate administrative procedures and contingent upon receipt of funds by the Department from the Administration for Community Living, from the State, or from any other funding sources.
- 8.2** Grantee must report eligible units of service and actual allowable expenses to HHSC in the frequency and manner prescribed by HHSC, using the forms provided by HHSC’s.
- 8.3** Final payment shall be based on the information contained in the reimbursement system 60 business days following termination of the Contract. This payment provision will apply to final payment whether at completion of the contractual term or in the event of early contract termination.

## **9. Match Requirements**

Grantee must provide a minimum match for administrative activities, as required by the OAA, and must assure the total match for services is enough to meet the requirements of the OAA and HHSC rules.

- 9.1** Match must be in accordance with 40 TAC §85.202(i). All match contributions must be expended for goods and services necessary for and specifically identifiable in the approved Area Plan; Planning Budget; Working Budget, and the Quarterly Performance Reports (QPRs).
- 9.2** Match must conform to the regulations in 45 CFR Part 75 and the HHSC rules regarding match requirements.

## **10. Program Income**

- 10.1** Grantee must earn and expend program income in accordance with UGMS Subpart C \_ .25, 45 CFR Part 75, 45 CFR §1321.73, 40 TAC 85.202 (j), and all applicable HHSC rules. Grantee must use all program income and participant contributions collected under the approved Area Plan to promote eligible program outcomes. All program

income and participant contributions collected and expended must be documented and managed according to HHSC rules.

- 10.2** Grantee must account for and deposit program income received as contributions in accordance with the written policies and procedures established by Grantee in accordance with HHSC rules.
- 10.3** Grantee must handle program income collected by service providers in accordance with the HHSC rules.
- 10.4** Program income collected by service providers must consist only of those funds specifically provided by or on behalf of a program participant and directly attributable to the service provided.

## **11. Contribution Policy**

Grantee must provide a voluntary opportunity for each eligible program participant to contribute to the cost of services while protecting the person's privacy. Grantee must safeguard and account for such contributions and use such contributions to expand or enhance program outcomes.

## **12. Invoicing**

- 12.1** Within the timeframes and standards established in the Contract and HHSC policy, Grantee must submit a Request for Payment (RfP) or Request for Adjustment Journal (RfAJ), via email to [AES.Invoices@hhsc.state.tx.us](mailto:AES.Invoices@hhsc.state.tx.us).
- 12.2** Grantee must submit invoices to HHSC in accordance with the templates provided by HHSC. Unless otherwise specified in the Contract, Grantee may submit an RfP or RfAJ twice monthly on the second and fourth Monday of each month. However, Grantee must submit one RfP per month, at minimum, and may request only one RfP and one RfAJ per HHSC's established billing schedule. If Grantee has *no* billable activity during a particular month, Grantee must submit an email to the invoice mailbox notifying HHSC that no invoice will be submitted for that month.
- 12.3** At the completion of the contractual term, Grantee shall submit its final request(s) for payment in accordance to the instructions provided to Grantee within the timeframe established by HHSC.

## **13. Home Delivered Meals**

Grantee's "Common Providers" who contract with AAAs to provide meals paid for with Older Americans Act Title III-C2 funds, and who also contract with HHSC to provide meals funded by Title XX, as authorized under the 2020-21 General Appropriations Act, H.B. 1, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 99) must use the rates set by the Texas Legislature at the time that the meals were delivered.

## **14. Housing Bond Funds**

Grantees that accept and receive housing bond funds must comply with the programmatic, financial, and reporting requirements as specified in the Contract as shown in Attachment B – Scope of Services Related to Housing Bonds.

## **15. Capital Equipment and Controlled Assets**

**15.1** Grantee must ensure that all controlled assets and capital equipment purchases made using grant funds shall comply with applicable laws and regulations, and applicable HHSC instructions.

**15.1.1** Grantee shall establish and maintain, and make available to HHSC upon request, a detailed inventory of capital assets and equipment purchased with HHSC funding.

**15.2** The following requirements also shall apply to each controlled asset and capital equipment purchase of \$5,000.00 or more:

**15.2.1** When purchasing and disposing of controlled assets and capital equipment, Grantee must follow, and ensure that its subcontractors follow, the provisions of CFR Title 2, Chapter 200. The provisions to which Grantee must adhere include, but are not limited to:

**15.2.1.1** Section 200.2 Acquisition cost;

**15.2.1.2** Section 200.12 Capital assets;

**15.2.1.3** Section 200.13 Capital expenditures;

**15.2.1.4** Section 200.48 General purpose equipment;

**15.2.1.5** Section 200.89 Special purpose equipment;

**15.2.1.6** Section 200.313 Equipment; and

**15.2.1.7** Section 200.439 Equipment and other capital expenditures.

**15.2.2** All purchases approved by HHSC shall be funded only in the amount shown in quotes or bids.

**15.2.3** The disposition of all capital assets and equipment shall require a written agreement from HHSC, which affirms that HHSC will receive its rightful portion of the sale proceeds according to state and federal rules of disposition, to the extent that they apply.

**15.2.4** The following requirements pertain specifically to vehicle purchases:

**15.2.4.1** Grantee shall conduct a cost/benefit analysis of the costs associated with leasing versus purchasing; and

**15.2.4.2** Grantee shall obtain three quotes or bids for each vehicle purchase.

## **16. Closeout Reconciliation**

Grantee must complete and submit a closeout packet and requested documentation in accordance with the instructions and on the date established by HHSC. Grantee must complete and submit all requests for funds on the forms provided by HHSC and by the date designated by HHSC. A final program report shall be submitted to HHSC on or before the date designated by HHSC, with no fewer than 45 business days advance notice to Grantee. The total of all program reports, including the final program report, must be reconciled to all funds received during the Contract period.

Grantees shall submit funding requests to HHSC no later than November 30th for the previous fiscal year, or after the final program report is submitted, unless indicated otherwise by a funding source.

## **17. Reviews**

### **17.1 Provider Reviews**

Grantee must conduct monitoring of the programmatic and fiscal activities performed by subcontracted providers on a regular and systematic basis to ensure compliance with established policies, state and federal rules, and contractual requirements. All monitoring activities must be documented and maintained on file available for HHSC review upon request.

### **17.2 HHSC Reviews**

In the event that HHSC's monitoring or evaluation activities (or those of its agents) reveal deficiencies in Grantee's performance or the performance of its subcontractors or vendors, HHSC will take steps to remedy that non-compliance. HHSC may require Grantee produce a corrective action plan, provide training, or take other actions based on the identified risk(s). Ongoing non-compliance by Grantee, or HHSC's identification of unallowable or disallowable activities or actions or processes, will result in sanctions or penalties or both in accordance with 40 TAC §81.13.

### **17.3 Contract Monitoring Questionnaire**

Grantee must comply with all applicable cost principles, audit requirements, and administrative requirements listed under the terms and conditions of the Contract. To ensure compliance with these requirements, HHSC utilizes a risk-based contract monitoring system. Grantee is required to complete a Contract Monitoring Questionnaire as requested and by the dates designated by HHSC.

## **18. Performance Measures**

**18.1** Grantee must meet the performance measures projections, including any amendments approved by HHSC. Approval of Grantee's performance measures will be in accordance with the requirements defined in the Establishing Performance Measures Projections Manual developed by HHSC.

**18.2** Grantee must meet all Long-Term Care Ombudsman Program performance measures, including any amendments approved by HHSC's State Long-Term Care Ombudsman. Approval of Grantee's performance measures will be in accordance with the requirements in the Ombudsman Policies and Procedures Manual.

## **19. Disaster and Emergency Management**

**19.1** In the event of a disaster, whether man-made, natural, or of a civil defense nature, Grantee may provide and coordinate appropriate resources to federal disaster relief agencies and may provide equipment and resources for temporary shelter, nutrition services, food preparation, transportation, and volunteers.

**19.2** Grantee's coordination of disaster and emergency efforts and continuity of services to program participants must be aligned with the disaster plan information provided in the approved Area Plan. Grantee must abide by its approved Area Plan, including plans for continuity of services to program participants and coordination with the Council of Government (COG) or parent agency, and designated emergency management coordinator as specified under Texas Government Code, Section 418.1015.

## **20. Reporting Requirements**

**20.1** Grantee shall submit all required fiscal and programmatic reports in accordance with the instructions, report due dates, and templates established by HHSC. All Required Reports and Deliverables must be submitted to the HHSC AAA Help Desk at [AAA.Help@hhsc.state.tx.us](mailto:AAA.Help@hhsc.state.tx.us).

**20.2** The fiscal records that Grantee maintains in support of its reimbursement claims must conform to the procedures established by HHSC. Grantee must continue to submit all fiscal and programmatic reports throughout the entire contractual term, even if no additional services may be reimbursable under this Contract.

**20.3** Grantee must meet the performance measures and projections set forth not only in approved Area Plans but also in approved amendments to the Area Plan. Additionally, Grantee must complete and submit all reports and data elements by the due dates designated by HHSC.

### **20.4 Required Reports and Documents:**

**20.4.1** Submissions to the HHSC AAA Help Mailbox must be emailed to [AAA.Help@hhsc.state.tx.us](mailto:AAA.Help@hhsc.state.tx.us).

**20.4.2** Submissions to the AES Invoice Mailbox must be emailed to [AES.Invoices@hhsc.state.tx.us](mailto:AES.Invoices@hhsc.state.tx.us).



<b>AAA REQUIRED REPORTS AND DOCUMENTS</b>						
<b>Deliverable ID</b>	<b>Deliverable Type</b>	<b>Report/Document</b>	<b>Report Requirement Details</b>	<b>Frequency</b>	<b>Form Location</b>	<b>Submission</b>
<b>AAA D-01</b>	Financial	Fiscal Year Area Plan Planning Budget	Grantee must submit the Fiscal Year Area Plan Planning Budget in accordance to the instructions and templates provided by the due date established by HHSC.	Once Per Budget Cycle	AAA FTP	HHSC AAA Help Desk Mailbox
<b>AAA D-02</b>	Performance	SPR Agency Report	Grantee must complete and submit the AAA SPR Agency Report in accordance to the instructions and templates provided by the due date established by HHSC.	Annually	SRT Website	HHSC AAA Help Desk Mailbox
<b>AAA D-03</b>	Performance	2-Year Comparison Report & Explanation of Variances	Grantee must complete and submit the Two-Year Comparison Report with explanations of variance in accordance to the instructions and templates provided by the due date established by HHSC.	Annually	SRT Website	HHSC AAA Help Desk Mailbox
<b>AAA D-04</b>	Performance	Housing Bond Report	Grantees that receive housing bond funds must complete and submit an annual Housing Bond Report in accordance to the instructions and template provided by the due date established by HHSC.	Annually	AAA FTP Site	HHSC AAA Help Desk Mailbox
<b>AAA D-05</b>	Closeout	Closeout Reconciliation	Grantee must complete and submit a closeout packet with all requested documentation in accordance to the instructions and	Annually	AAA FTP Site	HHSC AAA Help Desk Mailbox

<b>Deliverable ID</b>	<b>Deliverable Type</b>	<b>Report/Document</b>	<b>Report Requirement Details</b>	<b>Frequency</b>	<b>Form Location</b>	<b>Submission</b>
			templates provided by the due date established by HHSC.			
<b>AAA D-06</b>	Performance	Quarterly Performance Reports	Grantee must complete and submit Quarterly Performance Reports (QPRs) in accordance with the instructions and QPR template provided by the due date established by HHSC.	Quarterly in December, March, June, and September	AAA FTP Site	HHSC AAA Help Desk Mailbox
<b>AAA D-07</b>	Planning	MIPPA Planning Documents	Grantee must complete and submit the MIPPA Semi-Annual Planning Documents in accordance to the instructions and templates provided by the due date established by HHSC.	Annually	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-08</b>	Performance	MIPPA Semi-Annual Report	Grantee must complete and submit the MIPPA Semi-Annual Report in accordance to the instructions and template provided by the due date established by HHSC.	Semi-Annually	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-09</b>	Performance	MIPPA Final Report	Grantee must complete and submit the MIPPA Final Report, at the end of the grant period. The MIPPA Final Report must be completed in accordance to the instructions and templates provided by the due date established by HHSC.	At the End of the Grant Cycle	Release Via Email	HHSC AAA Help Desk Mailbox

<b>Deliverable ID</b>	<b>Deliverable Type</b>	<b>Report/Document</b>	<b>Report Requirement Details</b>	<b>Frequency</b>	<b>Form Location</b>	<b>Submission</b>
<b>AAA D-10</b>	Planning	Area Plan	Grantee must submit the Area Plan in accordance to the instructions and template provided by the due date established by HHSC.	Once Per Planning Cycle	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-11</b>	Planning	SHIP Planning Documents	Grantee must complete and submit the SHIP Semi-Annual Planning Documents in accordance to the instructions and templates provided by the due date established by HHSC.	Annually	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-12</b>	Performance	SHIP Semi-Annual Report	Grantee must complete and submit the SHIP Semi-Annual Report in accordance to the instructions and template provided by the due date established HHSC.	Semi-Annually	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-13</b>	Performance	SHIP Final Report	Grantee must complete and submit the SHIP Final Report, at the end of the grant period. The SHIP Final Report must be completed in accordance to the instructions and templates provided by the due date established HHSC.	Annually	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-14</b>	Financial	Working Budget preparation following NSOP meal certification and receipt of NOA	Grantee must submit the Fiscal Year Working Budget in accordance to the instructions and template provided by the due date established by HHSC.	Once Per Planning Cycle	AAA FTP Site	HHSC AAA Help Desk Mailbox

<b>Deliverable ID</b>	<b>Deliverable Type</b>	<b>Report/Document</b>	<b>Report Requirement Details</b>	<b>Frequency</b>	<b>Form Location</b>	<b>Submission</b>
<b>AAA D-15</b>	Financial	Budget Amendment for Categorical Transfers	Grantee must submit the Budget Amendment for Categorical Transfers in accordance to the instructions and templates provided by the due date established by HHSC.	Once Per Planning Cycle	Release Via Email	HHSC AAA Help Desk Mailbox
<b>AAA D-16</b>	Ombudsman Performance	Ombudsman: Contract & Legislative Budget Board Performance Reports	Grantee must submit quarterly Ombudsman Contract & Legislative Budget Board Performance Reports. The Contract & Legislative Budget Board Report must be completed on the templates provided and in accordance to the instructions and due dates established by HHSC.  (December; March; June; and September)	Quarterly in December, March, June, and September	N/A	AgingNetwork.com: Ombudsman Manager
<b>AAA D-17</b>	Financial	Request for Payment & Request for Adjustment Journal	Grantee must submit the Request for Payment and Request for Adjustment Journal in accordance to the instructions and due dates established by HHSC.  (10:00 A.M. every 2 <sup>nd</sup> and 4 <sup>th</sup> Monday of each Month)	Semi-Monthly	AAA FTP Site	AES Invoices Mailbox
<b>AAA D-18</b>	Programmatic	Alzheimer Disease and Dementia Training Notice of Compliance and Certification	Grantee must submit an annual notice of compliance and certification certifying that all required employees have completed the training in accordance to the guidance in	Annually	N/A	HHSC AAA Help Desk Mailbox

<b>Deliverable ID</b>	<b>Deliverable Type</b>	<b>Report/Document</b>	<b>Report Requirement Details</b>	<b>Frequency</b>	<b>Form Location</b>	<b>Submission</b>
			Area Agency on Aging (AAA) Bulletin 20-01 by the due date established by HHSC.			
<b>AAA D-19</b>	Monitoring	Contract Monitoring Questionnaire (CMQ)	Grantee must submit the initial CMQ on the template provided by HHSC	Within 30 calendar days after Contract execution; and annually thereafter within 60 calendar days before the end of each state fiscal year.	Release Via Email	HHSC AAA Help Desk Mailbox
AAA D-20	Staffing	Annual Staff & Activity Allocation List	Grantee must submit the Annual Staff & Activity Allocation List in accordance to the instructions and template provided and due dates established by HHSC.	Within 15 calendar days after the execution of the Contract.	Release Via Email	HHSC AAA Help Desk Mailbox
AAA D-21	AAA Inventory	AAA Inventory List	Grantee must submit an Inventory in accordance to the instructions and template provided and due dates established by HHSC.	Annually	Release Via Email	HHSC AAA Help Desk Mailbox

**ATTACHMENT B**  
**SCOPE OF SERVICES RELATED TO HOUSING BONDS**  
**HHSC Contract No. HHS000874100022**

**GRANTEE: Rio Grande Council of Government**

**HHSC PROGRAM: Area Agencies on Aging**

**1. BACKGROUND**

Chapter 394 of the Texas Local Government Code, commonly referred to as the Texas Housing Finance Corporation Act (the “Act”), provides “. . . a means to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of local governments.” See Section 394.002 of the Act.

Housing finance corporations are created under the Act and are public, nonprofit corporations. Under Section 394.902(b), housing finance corporations may collect a fee equal to one-tenth percent of the total principal amount of a loan made for multi-housing developments to pay to the Texas Health and Human Services Commission (“HHSC”). The fee is paid in lieu of a five percent housing unit set-aside for elderly persons of low to moderate income, including veterans, homeless, and heads of households. The Government Code directs the funds to be used to assist in obtaining housing for an elderly person or families in which an elderly person is the head of a household. Section 394.003(4) defines “elderly person” as a person who is 60 years of age or older. For the purpose of this Contract, the terms “elderly person” and “older person” will be used interchangeably.

**2. GOAL**

The goal of this Attachment is to provide certain housing bond funds to be utilized by Grantee to expand service capacity, which will help eligible individuals to obtain not only housing but also assistance with residential repair and renovation projects designed to ensure the health, safety, security, and independence of elderly persons.

**3. TARGET POPULATION**

Grantee must use housing bond funds to obtain housing for elderly persons or families of low or moderate income in which an elderly person is the head of the household. An elderly person who receives assistance must be:

- 3.1** homeless;
- 3.2** a veteran;
- 3.3** a head of household;
- 3.4** an individual with limited English proficiency;

- 3.5** an individual with the greatest economic or social need, with particular attention to low-income minority individuals and older individuals residing in rural areas;
- 3.6** an individual at risk for institutional placement or transitioning from a long-term care facility back to the community;
- 3.7** an individual deemed to be at high risk, or is a suspected victim, of elder abuse; or
- 3.8** an individual receiving services from Adult Protective Services.

An individual who meets the criteria for the target population may be referred to in this Attachment as an “eligible individual.”

#### **4. GRANTEE RESPONSIBILITIES**

- 4.1** Grantee must use housing bond funds to assist eligible individuals with obtaining housing. No more than \$2,500 may be awarded to an eligible individual’s household during a 12-month period.
  - 4.1.1** Housing bond funds utilized for the purpose of assisting eligible individuals may be used to:
    - 4.1.1.1** Provide temporary shelter for an eligible individual in emergency situations, such as natural disasters;
    - 4.1.1.2** Relocate an eligible individual to permanent housing within the community for emergency, safety, or security reason *or* to allow an eligible individual to transition to more affordable housing or from long-term care to the community; or
    - 4.1.1.3** Make housing repairs, which allow eligible individuals to remain in their current residences. Home repairs or modifications may not be made for cosmetic reasons or on rental properties.
  - 4.1.2** To serve the purposes listed in Section 4 Grantee Responsibilities (4.1)(4.1.1) above, Grantee may use housing bond funds to pay for the following expenses:
    - 4.1.2.1** Costs associated with moving the eligible individual’s belongings;
    - 4.1.2.2** Two months’ rent or basic utility costs, or both, necessary to prevent eviction, to relocate within the community, to relocate from a long-term care setting to a community setting, or to avoid uninhabitable housing conditions, such as lacking water, electricity, or heat;
    - 4.1.2.3** Purchase of furnishings, including refrigerator and stove, if not supplied by the landlord;
    - 4.1.2.4** Purchase of essential equipment and supplies necessary to sustain a healthy environment and independent living; and

**4.1.2.5** Repairs and modifications to, or supplies for, an eligible individual's home, excluding rental properties, for the following purposes:

- 4.1.2.5.1** Accessibility: To make structural adaptations to a dwelling that give eligible individuals, who have disabling conditions, free movement within their residence;
- 4.1.2.5.2** Safety and Security: To modify, treat, or remove safety hazards; prevent accidents and fires to or intrusion into a dwelling;
- 4.1.2.5.3** Structural Repairs: To renovate or remediate the structure of a dwelling, as needed to ensure health and safety;
- 4.1.2.5.4** Weatherization: To conserve energy, provide alternative energy sources to cool and heat a dwelling, and protect the eligible individual from exposure to weather;
- 4.1.2.5.5** Electrical Repairs: To replace, repair, or install essential electrical wiring or fixtures in a dwelling, including that which is needed for communications; or
- 4.1.2.5.6** Plumbing Repairs: To replace, repair, or install essential plumbing lines or fixtures in a dwelling.

**4.2** Grantee may request approval for housing bond funds to be used in a manner not included in Section 4 (4.1). To request approval for alternate allowable use of funds, Grantee must submit a written request to the HHSC AAA Help Desk at [AAA.Help@hhsc.state.tx.us](mailto:AAA.Help@hhsc.state.tx.us). The written request must demonstrate how the alternate use is essential toward obtaining housing for the eligible individual. HHSC must give Grantee written approval in response before Grantee may spend the funds as it has requested. HHSC will not approve awarding more than \$2,500 to an eligible individual's household during a 12-month period.

**4.3** Grantee may also enter into subrecipient agreements with applicable housing or home repair providers to deliver the services within the scope outlined above in Section 4 (4.1).

**4.4** Grantees that receive housing bond funds must complete and submit an annual Housing Bond Report to HHSC. The annual Housing Bond Report must be completed as instructed on the form provided by HHSC and submitted by HHSC's designated deadline.



**ATTACHMENT C**



**TEXAS**  
**Health and Human Services**

**Health and Human Services Commission**

**Special Conditions**

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## **HHSC SPECIAL CONDITIONS**

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

### **Article I. Special Definitions**

**"Conflict of Interest"** means a set of facts or circumstances, a relationship, or other situation under which Grantee, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Grantee's, or Subcontractor's ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Grantee or Subcontractor an unfair competitive advantage in future HHSC procurements.

**"Grantee Agents"** means Grantee's representatives, employees, officers, as well as any contractor or subgrantee's employees, contractors, officers, principals and agents.

**"Data Use Agreement"** means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

**"Item of Noncompliance"** means Grantee's acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Project; (3) represent a failure of Grantee to be responsive to a request of HHSC relating to the Project under the Contract.

**"Minor Administrative Change"** refers to a change to the Contract that does not increase the fees or term and done in accordance with Section **Error! Reference source not found.** of these Special Conditions.

**"Confidential System Information"** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Grantee; or that Grantee may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Project, which is not designated as Confidential Information in a Data Use Agreement.

**"State"** means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

**"Software"** means all operating system and applications software used or created by Grantee to perform the work under the Contract.

**"Third Party Software"** refers to software programs or plug-ins developed by companies or individuals other than Grantee which are used in performance of the Project. It does not include items which are ancillary to the performance of the Project, such as internal systems of Grantee which were deployed by Grantee prior to the Contract and not procured to perform the Project.

**"UTC"** means HHSC's Uniform Terms and Conditions --Grantee Version.

## **Article II. Grantees Personnel and Subcontractors**

### **Section 2.01 Contracts with Subcontractors**

Grantee shall:

- a. Grantee may enter into contracts with subcontractors unless restricted or otherwise prohibited in the Contract.
- b. Grantees are prohibited from subcontracting with for-profit organizations under this Contract.
- c. Prior to entering into a subcontract agreement equaling or exceeding \$100,000, Grantee will obtain written approval from the System Agency.
- d. Obtain written approval before modifying any subcontract agreement to cause the agreement to exceed \$100,000.
- e. Establish written policies and procedures for competitive procurement and monitoring of subcontracts and will produce a subcontracting monitoring plan.
- f. Monitor subcontractors for both financial and programmatic performance and will maintain pertinent records.
- g. Submit quarterly monitoring reports to the System Agency in a format determined by the System Agency.
- h. Ensure that subcontracts are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.
- i. Ensure all subcontracts, must be in writing and include the following:
  1. Name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
  2. Detailed description of the services to be provided;
  3. Measurable method and rate of payment and total not-to-exceed amount of the contract;

4. Clearly defined and executable termination clause; and
  5. Beginning and ending dates that coincide with the dates of the Contract.
- j. Ensure and be responsible for the performance of the subcontractor(s).
- k. Not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs or if the subcontractor would be otherwise ineligible to abide by the terms of this Contract.

## **Section 2.02 Status of Subcontractors**

Grantees shall require that all subcontractors certify that they are/have:

- a. In good standing with all state and federal funding and regulatory agencies;
- b. Not currently debarred, suspended or otherwise excluded from participation in federal grant programs;
- c. Not delinquent on any repayment agreements;
- d. Not had a required license or certification revoked;
- e. Not ineligible under the terms of the Contract; and
- f. Not had a contract terminated by the Department.
- g. Not voluntarily surrendered within the past three years any license issued by HHSC.

## **Section 2.03 Incorporation of Terms in Subcontracts**

- a. Grantee shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontract):
  1. Statement of Work
  2. Uniform Terms and Conditions
  3. Supplemental and Special Conditions
  4. Federal Assurances and Certifications
  5. Non-Exclusive List of Applicable Laws
  6. A provision granting to the System Agency, State Auditor's Office (SAO), Office of Inspector General (OIG), and the Comptroller General of the United States, and any of their representatives, the right of access to inspect the work and the premises on which any work is performed, and the right to audit the subcontractor.
- b. Grantee will ensure that all written agreements with subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties

and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor.

- c. No provision of this Contract creates privity of contract between the System Agency and any subcontractor of Grantee.

#### **Section 2.04 Unilateral Amendment**

The System Agency reserves the right to amend this Contract through execution of a unilateral amendment signed by the contract manager for this Contract and provided to the Contractor with ten days notice prior to execution of the amendment under the following circumstances to:

- a. To comply with a court order or judgment
- b. Incorporate new or revised federal or state laws, regulations, rules or policies
- c. Correct an obvious clerical error in this Contract;
- d. Change the name of the Contractor in order to reflect the Contractor's name as recorded by the Texas Secretary of State.
- e. To correct the name, mailing address, or contact information for persons named in the Contract;
- f. To update service descriptions or rates (if applicable);
- g. To revise budget category or service type funding amounts without increasing or decreasing the contract funding amount or
- h. To change the state fiscal year funding amount, based on utilization of funds or availability of funds.

### **Article III Confidentiality**

#### **Section 3.01 Confidential System Information**

- a. HHSC prohibits the unauthorized disclosure of Other Confidential Information. Grantee and all Grantee Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Project or the proper discharge of obligations and securing of rights under the Contract. Grantee will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Grantee, including information requested to do so by HHSC, will be in accordance with the Contract. If Grantee receives a request for Other Confidential Information, Grantee will immediately

notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

- b. Grantee will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Grantee. Grantee will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.
- c. HHSC will have the right to recover from Grantee all damages and liabilities caused by or arising from Grantee or Grantee Agents' failure to protect HHSC's Confidential Information as required by this section.
- d. IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, GRANTEE WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM GRANTEE OR GRANTEE AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. GRANTEE WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

## **Article IV. Miscellaneous Provisions**

### **Section 4.01 Minor Administrative Changes**

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Project or the Contract that do not increase the fees or term.

Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in the UTC. Upon approval of a Minor Administrative Change, HHSC and Grantee will maintain written notice that the change has been accepted in their Contract files.

### **Section 4.02 Conflicts of Interest**

Grantee warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Grantee or Grantee Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their

performance under the Contract. Grantee will, and require Grantee Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Grantee and Grantee Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Grantee agrees that, if after Grantee's execution of the Contract, Grantee discovers or is made aware of a Conflict of Interest, Grantee will immediately and fully disclose such interest in writing to HHSC. In addition, Grantee will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Grantee or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Grantee agrees to abide by HHSC's decision.

If HHSC determines that Grantee was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

#### **Section 4.03 Flow Down Provisions**

Grantee must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

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**ATTACHMENT D**  
**MODIFICATIONS TO HHS UNIFORM TERMS AND CONDITIONS**  
**(GOVERNMENTAL ENTITY)**

**HHSC Contract No. HHS000874100023**

1. Article III, Section 3.4, relating to “Refunds and Overpayments,” is hereby deleted.
2. Article VII, relating to “Record Retention, Audit, and Confidentiality,” is hereby deleted
3. Article VIII, relating to “Contract Remedies and Early Termination,” is hereby deleted.
4. Article IX, Section 9.2, relating to “Insurance,” is hereby deleted.
5. Article IX, Section 9.3(C)(iii), relating to “Limitation on Authority,” is hereby deleted.
6. Article IX, Section 9.8, relating to “Subcontractors,” is hereby amended and restated as follows:

Subcontracts, if any, entered into by the Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

7. Article IX, Section 9.14, relating to “Dispute Resolution,” is hereby deleted.
8. Article IX, Section 9.16, relating to “Media Releases,” is hereby deleted.
9. Article IX, Section 9.17, relating to “No Marketing Activities,” is hereby deleted.
- 1.

## **ATTACHMENT E**



# **TEXAS**

## **Health and Human Services**

**Health and Human Services (HHS)**

**Uniform Terms and Conditions -  
Governmental Entity**

**Version 3.2**

Published and Effective - May 2020

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

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

“[Amendment](#)” means a written agreement, signed by the Parties, which documents changes to the Contract.

“[Contract](#)” means the Signature Document, these Uniform Terms and Conditions, along with any attachments, and any Amendments, purchase orders, and Work Orders that may be issued by the System Agency.

“[Deliverables](#)” means the goods, services, Work, and Work Product to be provided to System Agency under the Contract.

“[DSHS](#)” means the Department of State Health Services.

“[Effective Date](#)” means the date on which the Contract takes effect.

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

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

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

“[HHSC](#)” means the Health and Human Services Commission.

“[Health and Human Services](#)” or “[HHS](#)” includes HHSC and DSHS.

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

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

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

“[Local Government](#)” means a Texas governmental unit defined under and authorized to enter this contract by Texas Government Code, Chapter 791.

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

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

“Performing Agency” means the State Agency or Local Government providing the goods or services defined in this Contract.

“Receiving Agency” means HHSC or DSHS, as applicable, Agency receiving the benefit of the goods or services provided under this Contract.

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

“Solicitation” means the document, if any, issued by the System Agency (including any published addenda, exhibits, and attachments) under which the goods or services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

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

“State Agency” means a Texas “Agency” as defined under Texas Government Code, Chapter 771.

“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 the Texas Comptroller of Public Accounts’ state travel laws, rules, and policies.

“System Agency” means HHSC or DSHS, as applicable.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a subcontractor.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

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

## **1.2 INTERPRETIVE PROVISIONS**

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a

whole and not to any particular provision, section, attachment, or schedule of this Contract unless otherwise specified.

- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute, rule, or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, or supplementing the statute or regulation.
- D. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- E. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- F. 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.
- G. 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.”
- H. Time is of the essence in this Contract.

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PAYMENT**

Payment shall be made in accordance with Government Code, Chapter 771, Government Code, Chapter 791, or Government Code, Chapter 2251.051, as applicable.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Performing Agency in connection with its provision of the services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts’ *Texttravel* accessible at the Texas Comptroller of Public Accounts website.

### **2.3 NO QUANTITY GUARANTEES**

The System Agency makes no guarantee of volume or usage of Work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

### **2.4 TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Performing Agency represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Performing Agency or its employees. System Agency shall not be liable for any taxes resulting from the contract.



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

### **3.1 EXCESS OBLIGATIONS PROHIBITED**

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

### **3.2 NO DEBT AGAINST THE STATE**

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

### **3.3 DEBT AND DELINQUENCIES**

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

### **3.4 REFUNDS AND OVERPAYMENTS**

- A. At its sole discretion, the System Agency may:
  - i. withhold all or part of any payments to Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Performing Agency to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
  - i. made by the System Agency that exceed the maximum allowable rates;
  - ii. that are not allowed under applicable laws, rules, or regulations; or,
  - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Performing Agency 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. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS**

### **4.1 WARRANTY**

Performing Agency warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Performing Agency has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Performing Agency, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Performing Agency received from System Agency for all defective or damaged Work and, in conjunction therewith, require Performing Agency to accept the return of such Work; and,
- iii. Take necessary action to ensure that Performing Agency's future performance and Work conform to the Contract requirements.

### **4.2 CONTRACT AFFIRMATIONS**

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

### **4.3 FEDERAL ASSURANCES**

Performing Agency certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal assurances and that Performing Agency is in compliance with all requirements.

### **4.4 FEDERAL CERTIFICATIONS**

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

## **ARTICLE V. INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP OF WORK PRODUCT**

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

transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

- C. Performing Agency agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Performing Agency has any rights in and to the Work Product that cannot be assigned to System Agency, Performing Agency hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Performing Agency. Performing Agency shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

## 5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

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

## 5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Performing Agency, Performing Agency hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
  - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
  - ii. to authorize others to do any or all of the foregoing.
- B. Performing Agency shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Performing Agency shall

notify System Agency on delivery of the Work Product if such materials include any Third Party IP.

- C. Performing Agency shall provide System Agency all supporting documentation demonstrating Performing Agency's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Performing Agency to use any Third Party IP that may be incorporated in the Work Product.

#### **5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

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

#### **5.5 DELIVERY UPON TERMINATION OR EXPIRATION**

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

#### **5.6 SURVIVAL**

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

#### **5.7 SYSTEM AGENCY DATA**

- A. As between the Parties, all data and information acquired, accessed, or made available to Performing Agency by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Performing Agency in the course of providing data processing services in connection with Performing Agency's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Performing Agency has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Performing Agency to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Performing Agency is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Performing Agency shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Performing Agency's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Performing Agency's performance of its obligations hereunder.

## **ARTICLE VI. PROPERTY**

### **6.1 USE OF STATE PROPERTY**

- A. Performing Agency is prohibited from using State Property for any purpose other than performing services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Performing Agency shall not remove State Property from the continental United States. In addition, Performing Agency may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Performing Agency shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services.
- E. During the time that State Property is in the possession of Performing Agency, Performing Agency shall be responsible for:
  - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
  - ii. all charges attributable to Performing Agency's use of State Property that exceeds the Contract scope. Performing Agency shall fully reimburse such charges to System Agency within ten (10) calendar days of Performing Agency's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

### **6.2 DAMAGE TO GOVERNMENT PROPERTY**

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Performing Agency or Performing Agency's employees, agents, Subcontractors, and suppliers, Performing Agency shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Performing Agency shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Performing Agency's receipt of System Agency's notice of amount due.

### **6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT**

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

## **ARTICLE VII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

### **7.1 RECORD MAINTENANCE AND RETENTION**

- A. Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- B. Performing Agency shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Performing Agency for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

### **7.2 AGENCY'S RIGHT TO AUDIT**

- A. Performing Agency shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Performing Agency pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Performing Agency and any of Performing Agency's affiliate or subsidiary organizations, or subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Performing Agency shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Performing Agency shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.



### **7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

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

### **7.4 STATE AUDITOR'S RIGHT TO AUDIT**

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

### **7.5 CONFIDENTIALITY**

Performing Agency shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Performing Agency under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Performing Agency.

## **ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION**

### **8.1 CONTRACT REMEDIES**

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

- i. suspending all or part of the Contract;
- ii. requiring the Performing Agency to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Performing Agency found to be in error;

- iv. suspending, limiting, or placing conditions on the Performing Agency's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

## **8.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract, in whole or in part, 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 the System Agency's notice of termination.

## **8.3 TERMINATION FOR CAUSE**

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

### **i. Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Performing Agency 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 Performing Agency's duties under the Contract. Performing Agency's misrepresentation in any aspect of Performing Agency's Solicitation Response, if any, or Performing Agency's addition to the System for Award Management (SAM) exclusion list will also constitute a material breach of the Contract.

### **ii. Failure to Maintain Financial Viability**

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

## **8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

If the System Agency terminates the Contract for cause, the Performing Agency shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Performing Agency. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Performing Agency's failure to perform any Work in accordance with the terms of the Contract.

# **ARTICLE IX. GENERAL PROVISIONS**

## **9.1 AMENDMENT**

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

## **9.2 INSURANCE**

- A. Unless otherwise specified in this Contract, Performing Agency shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper



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

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

### **9.3 LIMITATION ON AUTHORITY**

- A. The authority granted to Performing Agency by the System Agency is limited to the terms of the Contract.
- B. Performing Agency shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Performing Agency may not rely upon implied authority and is not granted authority under the Contract to:
  - i. Make public policy on behalf of the System Agency;
  - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
  - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Performing Agency, the Performing Agency shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### **9.4 LEGAL OBLIGATIONS**

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

### **9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended

throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

#### **9.6 E-VERIFY PROGRAM**

Performing Agency certifies that for contracts for services, Performing Agency shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Performing Agency to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Performing Agency to perform Work pursuant to the Contract within the United States of America.

#### **9.7 PERMITTING AND LICENSURE**

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

#### **9.8 SUBCONTRACTORS**

Performing Agency may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

#### **9.9 INDEPENDENT PERFORMING AGENCY**

Performing Agency and Performing Agency's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Performing Agency nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Performing Agency shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Performing Agency and System Agency.

## **9.10 GOVERNING LAW AND VENUE**

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

## **9.11 SEVERABILITY**

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

## **9.12 SURVIVABILITY**

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

## **9.13 FORCE MAJEURE**

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

## **9.14 DISPUTE RESOLUTION**

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Performing Agency's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Performing Agency shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Performing Agency with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Performing Agency's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Performing Agency shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Performing Agency may suspend performance during the pendency of such claim or dispute if the Performing Agency has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **9.15 NO IMPLIED WAIVER OF PROVISIONS**

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

#### **9.16 MEDIA RELEASES**

- A. Performing Agency shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Performing Agency may publish, at its sole expense, results of Performing Agency 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.

#### **9.17 NO MARKETING ACTIVITIES**

Performing Agency is prohibited from using the Work for any Performing Agency or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Performing Agency's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Performing Agency as part of the Work.

#### **9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

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

## 9.19 SOVEREIGN IMMUNITY

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

## 9.20 ENTIRE CONTRACT AND MODIFICATION

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

## 9.21 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.

## 9.22 CIVIL RIGHTS

- A. Performing Agency shall comply with all applicable state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
  - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Performing Agency shall comply with all amendments to these 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 service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Performing Agency shall 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 Performing Agency 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. Civil rights laws require Performing Agency to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Performing Agency shall take

reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- D. Performing Agency shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Performing Agency shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring Performing Agency to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Performing Agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- F. Performing Agency shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Performing Agency shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- G. Upon request, Performing Agency shall provide the HHSC Civil Rights Office with copies of the Performing Agency's civil rights policies and procedures.
- H. Performing Agency must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

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

### **9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Performing Agency shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

### **9.24 DISCLOSURE OF LITIGATION**

- A. The Performing Agency must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Performing Agency. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Performing Agency must also disclose any material litigation threatened or pending



involving subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Performing Agency’s financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

#### **9.25 NO THIRD-PARTY BENEFICIARIES**

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

#### **9.26 BINDING EFFECT**

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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# ATTACHMENT F

## HEALTH AND HUMAN SERVICES

### CONTRACT AFFIRMATIONS

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

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. **Complete and Accurate Information**

Contractor represents and warrants that all statements and information provided to System Agency are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. **Public Information Act**

Contractor understands that System Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. **Contracting Information Requirements**

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.



**5. Assignment**

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor 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. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity

**6. Terms and Conditions Attached to Response**

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from System Agency's terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

**7. System Agency Right to Use**

Contractor agrees that System Agency has the right to use, produce, and distribute copies of and to disclose to System Agency employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as System Agency deems necessary to complete the procurement process or comply with state or federal laws.

**8. Release from Liability**

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

**9. Dealings with Public Servants**

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**12. Child Support Obligation**

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

**13. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

**14. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

**15. Foreign Terrorists Organizations**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**16. Executive Head of a State Agency**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

**17. Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**18. Franchise Tax Status**

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

**19. Debts and Delinquencies**

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**20. Lobbying Prohibition**

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

**21. Buy Texas**

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

**22. Disaster Recovery Plan**

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

**23. Technology Access**

- A. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to System Agency that the technology provided to System Agency for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - i. providing equivalent access for effective use by both visual and non-visual means;
  - ii. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - iii. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- B. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as

assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

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

**24. Computer Equipment Recycling Program**

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

**25. Television Equipment Recycling**

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**26. Cybersecurity Training**

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

**27. Restricted Employment for Certain State Personnel**

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

**28. Disclosure of Prior State Employment**

If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related

Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following:

- i. the nature of the previous employment with System Agency or the other agency;
- ii. the date the employment was terminated; and
- iii. the annual rate of compensation at the time of the employment was terminated.

## **29. No Conflicts of Interest**

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

## **30. Fraud, Waste, and Abuse**

Contractor understands that System Agency does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.

## **31. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

**32. Legal and Regulatory Actions**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

**33. No Felony Criminal Convictions**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

**34. Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**35. Entities that Boycott Israel**

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either:

- i. it meets an exemption criteria under Section 2271.002; or
- ii. it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Contractor refuses to make that certification,

Contractor shall state here any facts that make it exempt from the boycott certification:

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**36. E-Verify Program**

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**37. Professional or Consulting Contract**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

**38. Former Agency Employees**

Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

**39. Disclosure of Prior State Employment**

If this Contract is for consulting services,

- A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:
  - i. Name of individual(s) (Respondent or employee(s));
  - ii. Status;
  - iii. The nature of the previous employment with HHSC or the other State of Texas agency;

- iv. The date the employment was terminated and the reason for the termination; and
  - v. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

#### **40. Abortion Funding Limitation**

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- i. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- ii. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- iii. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

#### **41. Funding Eligibility**

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

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#### **42. False Representation**

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

#### **43. False Statements**

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material



misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**44. Permits and License**

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

**45. Drug-Free Workplace**

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

**46. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**47. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**48. Signature Authority**

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

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

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**Legal Name of Contractor**

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**Assumed Business Name of Contractor, if applicable (D.B.A. or 'doing business as')**

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**Texas County(s) for Assumed Business Name (D.B.A. or 'doing business as')**

**Attach Assumed Name Certificate(s) for each County**

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**Signature of Authorized Representative**

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**Date Signed**

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**Printed Name of Authorized Representative  
First, Middle Name or Initial, and Last Name**

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**Title of Authorized Representative**

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**Physical Street Address**

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**City, State, Zip Code**

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**Mailing Address, if different**

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**City, State, Zip Code**

---

**Phone Number**

---

**Fax Number**

annetteg@riocog.org

---

**Email Address**

---

**DUNS Number**

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**Federal Employer Identification Number**

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**Texas Payee ID No. – 11 digits**

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**Texas Franchise Tax Number**

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**Texas Secretary of State Filing  
Number**

## HHS DATA USE AGREEMENT

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

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

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information. **45 CFR 164.504(e)(1)-(3)**. This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

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

### ARTICLE 2. DEFINITIONS

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

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

“**Authorized User**” means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

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

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

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

### **ARTICLE 3.**

#### **CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION**

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

CONTRACTOR agrees that:

- (A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in

HHS Data Use Agreement

TACCHO VERSION (Local City and County Entities) October 23, 2019

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

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in **45 C.F.R. 160.103**) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

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

All of CONTRACTOR's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources or offered under Texas Government Code Sec. 2054.519(f).

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

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

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

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply

with all applicable laws, rules and regulations. **45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).**

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

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

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

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

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

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

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

legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: **45 CFR 164.504(e)(4)(A).**

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

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

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

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

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

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

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

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

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306.**

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

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. **45 CFR 164.308(a)(2).**

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



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

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).**

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

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

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d).**

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;

- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

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

#### **ARTICLE 4.**

#### **BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

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

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

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

(C) Breach Notice:

(1) Initial Notice.

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

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

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

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: **For (a) - (m) below: 45 CFR 164.400-414.**

(a) The date the Event or Breach occurred;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

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

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

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

## **ARTICLE 5. STATEMENT OF WORK**

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

## **ARTICLE 6. GENERAL PROVISIONS**

### **6.01 Oversight of Confidential Information**

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

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

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

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

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

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

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

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

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

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

(1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or

(2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or

(3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or

(4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

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

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

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

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

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

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

## **6.06 Injunctive Relief**

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

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

#### **6.07 Responsibility.**

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

#### **6.08 Insurance**

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

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

#### **6.08 Fees and Costs**

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

#### **6.09 Entirety of the Contract**

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



enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

#### **6.10 Automatic Amendment and Interpretation**

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

# ATTACHMENT H

## FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

### CERTIFICATION

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

<b>Legal Name of Contractor:</b>   	<b>FFATA Contact # 1 Name, Email and Phone Number:</b>   
<b>Primary Address of Contractor:</b>   	<b>FFATA Contact #2 Name, Email and Phone Number:</b>   
<b>ZIP Code: 9-digits Required <a href="http://www.usps.com">www.usps.com</a></b> <div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; margin-top: 5px;"></div>	<b>Primary DUNS Number: 9-digits Required <a href="http://www.dnb.com/us/">http://www.dnb.com/us/</a></b> <div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; margin-top: 5px;"></div>
<b>State of Texas Comptroller Vendor Identification Number (VIN) 14 Digits</b> <div style="border: 1px solid black; display: inline-block; width: 300px; height: 20px; margin-top: 5px;"></div>	

<b>Printed Name of Authorized Representative</b>  Annette Gutierrez	<b>Signature of Authorized Representative</b>   
<b>Title of Authorized Representative</b>  Executive Director	<b>Date</b>   

## FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) CERTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

**Provide compensation information here:**

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**ATTACHMENT I**[View Burden Statement](#)

OMB Number: 4040-0007

Expiration Date: 02/28/2022

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

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

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

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

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

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

**ATTACHMENT I**

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

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL <div style="border: 1px solid black; height: 60px; width: 100%; background-color: yellow;"></div>	TITLE <div style="border: 1px solid black; padding: 2px;">Executive Director</div>
APPLICANT ORGANIZATION <div style="border: 1px solid black; height: 30px; width: 100%; background-color: yellow;"></div>	DATE SUBMITTED <div style="border: 1px solid black; height: 30px; width: 100%; background-color: yellow;"></div>

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**ATTACHMENT J**

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**CERTIFICATION REGARDING LOBBYING****Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

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

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

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

**Statement for Loan Guarantees and Loan Insurance**

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

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

**\* APPLICANT'S ORGANIZATION**

[Redacted]

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

Prefix: [Redacted] \* First Name: [Redacted] Middle Name: [Redacted]

\* Last Name: [Redacted] Suffix: [Redacted]

\* Title: [Redacted]

\* SIGNATURE: [Redacted] \* DATE: [Redacted]

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# **ATTACHMENT K**

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## **INDIRECT COST RATE LETTER**

## Certificate Of Completion

Envelope Id: DAEAB5040F24A73AA60FB274072BBC2	Status: Sent
Subject: NEW \$39,739,457.00; HHS000874100022; Rio Grande Council of Government; HHSC/AES/FCO	
Source Envelope:	
Document Pages: 93	Signatures: 0
Certificate Pages: 2	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Texas Health and Human Services Commission
Time Zone: (UTC-06:00) Central Time (US & Canada)	1100 W. 49th St.
	Austin, TX 78756
	PCS_DocuSign@hhsc.state.tx.us
	IP Address: 167.137.1.15

## Record Tracking

Status: Original	Holder: Texas Health and Human Services	Location: DocuSign
8/29/2020 7:35:30 PM	Commission	
	PCS_DocuSign@hhsc.state.tx.us	

## Signer Events

Signature	Timestamp
Trey Wood	Sent: 8/29/2020 7:42:51 PM
trey.wood@hhsc.state.tx.us	Viewed: 8/30/2020 10:08:46 PM
Chief Financial Officer	Signed: 8/30/2020 10:08:50 PM
Texas Health and Human Services	
Security Level: Email, Account Authentication (None)	

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Annette Gutierrez	Sent: 8/30/2020 10:08:54 PM
annetteg@riocog.org	Viewed: 8/31/2020 12:34:40 PM

Executive Director  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Andy Marker  
Edward.Marker@hhsc.state.tx.us  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Karen Ray  
Karen.Ray@hhsc.state.tx.us  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Chad Riley  
Chad.Riley@hhsc.state.tx.us  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Michelle Alletto  
Michelle.Alletto@hhsc.state.tx.us  
Security Level: Email, Account Authentication (None)



Signer Events	Signature	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
AEC Contracts AES_Contracts@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/29/2020 7:42:51 PM Viewed: 8/31/2020 7:42:45 AM
AES Contract Operations Routing AES_Contract_Operations_Routing@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/29/2020 7:42:51 PM
HHSC FS Budget Contracts FS_BudgetContracts@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/29/2020 7:42:52 PM Viewed: 8/30/2020 8:33:59 AM
Jane Salazar Jane.Salazar@hhsc.state.tx.us Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/29/2020 7:42:52 PM Viewed: 8/31/2020 7:29:09 AM
Yvette Lugo yvettel@riocog.org Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/30/2020 10:08:54 PM Viewed: 8/31/2020 11:39:57 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/30/2020 10:08:54 PM
Payment Events	Status	Timestamps