Department of Aging
and Disability Services

Form 3254
June 2015-E

Community Services Contract (Provider Agreement)

I.

Name of Legal Entity (Contractor) AC & C HCS, Inc.	
Doing Business As (d/b/a) Name, if applicable n/a	
Physical Address of Legal Entity (Street, City, State, ZIP Code) 2502 Scabbard Drive, Corpus Christi, Texas 78414	
Taxpayer ID. No. (EIN or SSN) 47-1909742	National Provider Identifier (NPI) or Atypical Provider Identifier (API) 1710389465
Contract Begin Date 12-1875	Contract End Date 6-18-18
Contract Type Home and Community-Based Services, (HCS)	
Contract No. 001021862	
Service Area(s) (Region, Catchment Area or Waiver Contract Area) 9	
Service Codes	
Component Code (HCS, TxHmL, CDS-HCS and CDS-TxHmL only) 7CJ	

II.

The Department of Aging and Disability Services (Department) and the legal entity (Contractor) named in Section I (Department and Contractor, collectively, the "parties," each a "party) hereby enter into this contract (provider agreement) ("the contract") for the provision of services under the contract type specified in Section I for the considerations set forth herein. The contract begin date specified in Section I is not valid until this contract is signed by both parties.

The Department represents the Health and Human Services Commission (HHSC), the Texas Medicaid agency, for any Medicaid services provided under this contract. The Department, as the representative for HHSC, administers community services programs under Title XIX, including Section 1915(c); Title XX of the Social Security Act; and Title 2, Chapter 32, Texas Human Resources Code.

III.

The Contractor agrees:

In General

A. To comply with all applicable federal and Texas state statutes and rules, including the following:
   1. Title 42, Code of Federal Regulations (CFR), Chapter IV;
   2. Title 45, CFR, Part 96;
   3. Title 40, Texas Administrative Code (TAC), Part 1;
   4. Texas Human Resources Code, Title 2, Chapter 32;
   5. Texas Human Resources Code, Title 6, Chapter 102;
   6. Texas Health and Safety Code, Title 4, Chapters 250 and 253; and
   7. Title 1, TAC, Part 15, Chapter 355.

B. To comply with the following documents promulgated by the Department:
   1. applicable provider manuals or handbooks;
   2. applicable billing guidelines; and
   3. applicable provider communications, including provider letters, information letters and policy clarifications.

C. To comply with applicable federal and Texas laws and rules regarding confidentiality of information regarding an individual. This provision shall not be construed as limiting the Department's access to an individual's records or other information relating to the individual.

Electronic Visit Verification (EVV)

A. To ensure:
   1. the EVV system is used to verify the provision of services governed under 40 TAC, Chapter 68;
   2. only authorized persons access the Contractor's EVV account;
   3. all data elements required by the Department are uploaded or entered into the EVV system completely and accurately and in a timely manner;
   4. that each time services governed by 40 TAC Chapter 68 are delivered to an individual, the Contractor's attendant uses the EVV system to verify when and where service delivery begins and when and where service delivery is completed in a manner prescribed by the Department;
   5. service delivery documentation is immediately available for review by the Department when requested; and
   6. equipment ("Equipment") provided to Contractor by the Department or by a third party, if applicable, is returned in good condition.

B. That if the Contractor determines an electronic record in the EVV system needs to be adjusted, the Contractor will make the adjustment in the EVV system using codes or other identifiers ("codes") prescribed by the Department that identify reasons for the adjustment. The required codes are designated by the Department as either preferred or non-preferred. Each time the Contractor adjusts an electronic record in the EVV system, the Contractor must enter the applicable codes.

C. That a preferred code represents a situation where the Contractor provided and documented the services as required by the Department. The Department will perform quarterly assessments of the Contractor's compliance with EVV requirements. Preferred codes will be used when determining the Contractor's compliance score. The Department will track the Contractor's use of preferred codes and if the Department, in its sole determination, identifies misuse of preferred codes, the Department may require the Contractor to use a Department-approved alternative service delivery verification method and the Contractor's compliance score may be negatively affected.

D. That a non-preferred code represents a situation where the Contractor did not provide or document the services as required by the Department. The Department will include the Contractor's use of non-preferred codes when determining the Contractor's compliance with EVV requirements. The use of non-preferred codes will lower the Contractor's compliance score and may subject the Contractor to an assessment of liquidated damages by the Department.

E. Department will conduct quarterly EVV compliance reviews to determine if Contractor has provided and documented services described in 40 TAC Chapter 68 in accordance with the Department's requirements. The EVV requirements include those elements identified under 40 TAC §68. These reviews will be based on Contractor's performance for the period reviewed.

1. For provisional contracts with a contract begin date after June 1, 2015, the Contractor will be subject to EVV compliance reviews for services provided beginning with the first day of the fourth calendar month after the contract begin date.
2. For provisional contracts with a begin date on or before June 1, 2015, and for all standard contracts, the Contractor will be subject to EVV compliance reviews for services provided after August 31, 2015.
3. For contracts included in any future expansion of EVV requirements to cover additional services, the Contractor will be subject to EVV compliance reviews for the additional services beginning the first day of the fourth calendar month following the effective date of the expansion of EVV requirements to cover additional services.

F. That if the Contractor receives a quarterly compliance score of less than 90 percent the Contractor shall be in non-compliance with EVV requirements and subject to an assessment of liquidated damages. The Department may assess a liquidated damage against the Contractor based on the degree of non-compliance in an amount ranging from $10.00 to $500.00 for each calendar day the Department determines the Contractor is not in compliance with EVV requirements.

G. That a liquidated damage assessment against the Contractor by the Department constitutes a reasonable estimate of the Department's loss and damage due to the Contractor's failure to comply with EVV requirements and such an assessment is not a penalty.

H. That the Contractor may request an informal review if the Contractor can demonstrate that an assessment of liquidated damages resulted from a quarterly compliance score based on a failure of the EVV system. The informal review request must:

1. be sent in the form of a letter;
2. describe the specific EVV system failure(s) that prevented the Contractor from complying with the required performance standard;
3. include all documentation that supports the Contractor's position; and
4. be received by the Department within 10 calendar days after the Contractor's receipt of the Department's written quarterly compliance review findings.

A request for an informal review that does not meet the above requirements will not be granted. The use of the informal review process does not limit Contractor's ability to request a hearing, as provided for in Section IV of this contract.

I. That if Contractor must use Equipment provided by the Department or by a third party, the Equipment must be returned in good condition when the Equipment is no longer needed. Contractor must not place any marks or any other identifying information on the Equipment, and may not alter information on the Equipment including logos and serial numbers. If the Equipment is lost, stolen, marked, altered or damaged by Contractor, Contractor may be required to pay the replacement cost for each piece of Equipment that is lost, stolen, marked or damaged. Replacement costs for lost, stolen, marked or damaged Equipment may be assessed periodically for administrative convenience purposes.

J. If Contractor recovers previously lost or stolen Equipment for which Contractor paid the replacement cost in the prior 12 months, Contractor may return the Equipment and be reimbursed for the replacement costs, provided the Equipment is returned in good condition as specified in Paragraph I above.

K. The assessment of a liquidated damage against the Contractor does not limit the Department's ability to take other action based on the Contractor's non-compliance with EVV requirements, including the sanctions set forth in Section III of this contract.

Updating DADS

A. To disclose information on ownership and control, information related to business transactions and information on persons convicted of crimes in accordance with 42 CFR, Part 455, Subpart B, and to submit updated ownership and control disclosures within 10 business days of a change in ownership or control interest and at any time within 35 business days of a written request by the Department, HHSC or the U.S. Department of Health and Human Services (HHS).

B. To keep its application for participation in the contracted program current by informing the Department in writing of:

1. a change of ownership or a change in the Contract's legal entity that directly or indirectly changes the legal entity responsible for fulfilling this contract at least 60 calendar days prior to the date of the change;
2. a change in the name of the person authorized to negotiate, execute, amend or terminate this contract on behalf of the Contractor within 30 calendar days of the date of the change; and
3. a change in the name, telephone number, fax number or e-mail address of the Contractor's contact person or the name of the Contractor, if the change is not a change in the Contractor's legal entity, within 14 calendar days of the date of the change.

C. To keep its contractor certifications current by informing the Department in writing within three business days after the Contractor learns that any of the certifications were erroneous when submitted and within three business days after a change that causes the certifications to become erroneous by reason of changed circumstances.

D. To notify the Department in writing:

1. if the Contractor files for bankruptcy within 14 calendar days after filing;
2. if a controlling person, as that term is defined in 40 TAC §49.102, is convicted of an offense listed in 40 TAC §49.206 within three business days after the contractor or controlling person becomes aware of the conviction;
3. if the Contractor or a controlling person is excluded from participation in Medicare, Medicaid or any federal or state health care program in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act, within three business days after the Contractor or controlling person becomes aware of the exclusion; and
4. if the Contractor is notified by HHSC that its enrollment application has been denied or abated within three business days after the notification date.

Claims

A. To accept the Department's reimbursement rates as payment in full for the services specified in this contract to the persons for whom a payment is received, and to make no additional charge to the individual, any member of his or her family or to any other source for any supplementation for such services, unless specifically allowed by Department rules.

B. To submit claims for payment in accordance with Department and HHSC Claims Administrator billing guidelines applicable to the services under the contract.

C. That except as may be specifically authorized by the Department in writing, if Contractor is required to use a Department-approved EVV system, Contractor must ensure that claims for services are supported by service delivery records that have been verified by the Contractor and fully documented in a Department-approved EVV system before being submitted for payment.

D. That the Department may make proper adjustments to the Contractor's payments from month to month to compensate for prior overpayments, underpayments or payments not made in accordance with the requirements of this contract. The Contractor further agrees the Department may withhold Contractor's payments, in whole or in part, because of differences from whatever cause until such differences are resolved.

E. That the Contractor is responsible for payment of any valid audit exceptions found by the Department, HHSC, HHS or the Texas Attorney General's Medicaid Fraud Control Unit (AG-MFCU).

F. That in accordance with §403.0551, Texas Government Code, and unless otherwise prohibited by any other law, any payments due to the Contractor under this contract will be first applied toward any debt or back taxes the Contractor owes the state of Texas. Payments will be so applied until such debts and back taxes are paid in full.

Provisions governing staff and subcontractors

A. To require any subcontractor to execute documents that binds the subcontractor to comply with the provisions of this contract. Subcontractor means an individual or entity to which the Contractor has contracted with or delegated some of its management functions or responsibilities of providing all or a part of the services required of the Contractor under this contract.

B. That it is responsible for the behavior of its staff and subcontractors to ensure a violence-free contractual relationship. The Contractor understands that any remarks, gestures or actions toward Department employees, volunteers or clients that carry an implied threat of any kind, even if intended to be in jest, will be taken seriously and may lead to corrective action, up to and including terminating this contractor.

C. To comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for an individual hired on or after November 6, 1986, who will perform any labor or services under this contract.

D. That representatives of the Department, HHSC, AG-MFCU and HHS may conduct interviews of Contractor personnel, subcontractors and their personnel, witnesses, and clients without a Contractor's representative present unless the person interviewed voluntarily requests that the representative be present. The Contractor must not coerce its personnel, subcontractors and their personnel, witnesses, or clients to accept representation by the Contractor, and the Contractor agrees that no retaliation will occur to a person who denies the Contractor's offer of representation. Nothing in the contract limits a person's right to counsel of his or her choice. Requests for interviews are to be complied with in the form and the manner requested. The Contractor must ensure by contract or other means that its personnel and subcontractors cooperate fully in any investigation conducted by representatives of the Department, HHSC, AG-MFCU and HHS.

E. That if it is a Home and Community Support Services agency (HCSSA), the Contractor will hire Personal Assistance Services and Community Support Services providers chosen by the client or the client's legally authorized representative, if requested, and provided the individual who will provide the services:

1. meets minimum qualifications for the service;
2. is willing to be employed as an attendant by the Contractor; and
3. is willing, and determined competent by the Contractor, to deliver the service(s) according to the client's individual service plan.

Recordkeeping

A. To maintain its accounting records in accordance with generally accepted accounting principles (GAAP). GAAP are established by the Financial Accounting Standards Board (FASB).

B. To keep financial records and supporting documents, client files, service delivery records and any other records pertinent to the services for which a claim for payment is submitted to the Department or its agent. These records must be accurate and sufficiently detailed to document the extent of services provided under this contract and to support claims for payment submitted to the Department or its agent. Unless the Contractor is required to retain records for a longer period by rules governing the services under this contract, the Contractor must retain records in the form in which they were created until the latest of the following occurs:

1. six years elapse from the date the records were created;
2. all litigation, claims and audit findings involving the records are resolved; or
3. the individual for whom the records relate becomes 21 years of age.

C. That if this contract is terminated or the Contractor terminates business operations, the Contractor must provide DADS the following information :

1. the location of the records related to this contract; and
2. the name, address, telephone number and email address of a person DADS may contact to arrange access to the records.

Civil Rights

A. To comply with state and federal anti-discrimination laws, including:

1. Title VI of the Civil Rights Act of 1964 (42 USC §2000d et seq.);
2. Section 504 of the Rehabilitation Act of 1973 (29 USC §794);
3. Americans with Disabilities Act of 1990 (42 USC §12101 et seq.);
4. Age Discrimination Act of 1975 (42 USC §§6101-6107); and
5. Department administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.

The Contractor also agrees to comply with all amendments to the above-referenced laws and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the U.S. may, on the grounds of race, color, national origin, sex, age, disability, political beliefs or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.

The Contractor further agrees to:

1. comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 CFR, Part 80, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits and activities on the basis of national origin. The Contractor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities;
2. comply with Executive Order 13279, and its implementing regulations at 45 CFR, Part 87. These provide in part that any organization that participates in programs funded by direct financial assistance from the U.S. Department of Agriculture (USDA) or HHS shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief;
3. upon request, provide HHSC's Civil Rights Office with copies of all of the Contractor's civil rights policies and procedures, and
4. notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under the Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

   Civil Rights Office
   Health and Human Services Commission
   701 W. 51st Street Mail Code W206
   Austin, TX 78751
   Telephone Toll Free: 1-888-388-6332
   Telephone: 512-438-4313
   TTY Toll Free: 877-432-7232
   Fax: 512-438-5885

B. To comply with Executive Order 111126, entitled Equal Employment Opportunity, as amended by Executive Order 11375 and supplemented by U.S. Department of Labor regulations at 41 CFR Part 60.

C. That if the Contractor is a charitable or faith-based Contractor under this contract, it must apprise all residents of the following: "Neither the Department's selection of a charitable or faith-based contractor nor the expenditure of funds under this contract is an endorsement of the Contractor's charitable or religious character, practices or expressions. No contractor may discriminate against you on the basis of religion, a religious belief or your refusal to actively participate in a religious practice. If you object to a particular Contractor because of its religious character, you may request a different contractor. If you believe that you have been discriminated against, please discuss the complaint with your contractor or notify your appropriate case manager."

D. To provide, upon request, HHSC Civil Rights Office with copies of all its civil rights policies and procedures.

Fraud Prevention

A. To screen its employees and contractors to determine if they have been excluded from Medicare, Medicaid or any federal or state health care program. The Contractor agrees to search monthly the HHS-Office of Inspector General (OIG) and HHSC-OIG List of Excluded Individuals/Entities (LEIE) websites to capture exclusions and reinstatements that have occurred since the last search and to immediately report to HHSC-OIG any exclusion information the Contractor discovers. Exclusionary searches for prospective employees and contractors shall be performed prior to employment or contracting.

B. That no Medicaid payments can be made for any items or services directed or prescribed by a physician or other authorized person who is excluded from Medicare, Medicaid or any federal or state health care program when the individual or entity furnishing the items or services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another contractor, practitioner or supplier who is not excluded.

C. That this contract is subject to all state and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program. As required by 42 CFR §431.107, the Contractor agrees to keep any and all records necessary to disclose the extent of services the Contractor furnishes to individuals in the Medicaid program and any information relating to payments claimed by the Contractor for furnishing Medicaid services. On request, the Contractor also agrees to furnish the Department, HHSC, AG-MFCU or HHS any information maintained under 42 CFR §431.107(b). The Contractor will furnish copies of this information free of charge.

Sanctions

A. That the Department may apply, at its discretion, sanctions if the Contractor fails to comply with any provision of the contract, including:
   1. recouping overpayments;
   2. suspending the Contractor's payments; and
   3. initiating termination of the contract.

B. That payments to the Contractor under this contract may be withheld during the pendency of a hearing on the termination of this contract until a final decision is issued and all appeals are exhausted. The Department shall pay the withheld payments and resume contract payments if the final decision is favorable to the Contractor.

C. That in accordance with 42 CFR §455.23, the Department shall suspend all Medicaid payments to the Contractor upon notification by HHSC-OIG that a credible allegation of fraud under the Medicaid program is pending against the Contractor, unless the Department has good cause not to suspend the payments or to suspend the payments only in part.

Handling Sensitive Personal Information and Breach Notification

A. As part of its contract with the Department, Contractor may receive or create sensitive personal information, as section 521.002 of the Business and Commerce Code defines that phrase. Contractor must use appropriate safeguards to protect this sensitive personal information. These safeguards must include maintaining the sensitive personal information in a form that is unusable, unreadable, or indecipherable to unauthorized persons. Contractor may consult the "Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals" issued by the U.S. Department of Health and Human Services to determine ways to meet this standard.

B. Contractor must notify the Department of any confirmed or suspected unauthorized acquisition, access, use or disclosure of sensitive personal information related to this contract, including any breach of system security, as section 521.053 of the Business and Commerce Code defines that phrase. Contractor must submit a written report to the Department as soon as possible but no later than 10 business days after discovering the unauthorized acquisition, access, use or disclosure. The written report must identify each individual whose sensitive personal information has been or is reasonably believed to have been compromised.

C. Contractor must either disclose the unauthorized acquisition, access, use or disclosure to each individual whose sensitive personal information has been or is reasonably believed to have been compromised or pay the expenses associated with the Department doing the disclosure if:
   1. Contractor experiences a breach of system security involving information owned by the Department for which disclosure or notification is required under section 521.053 of the Business and Commerce Code; or
   2. Contractor experiences a breach of unsecured protected health information, as 45 CFR §164.402 defines that phrase, and the Department becomes responsible for doing the notification required by 45 CFR §164.404.

The Department may, at its discretion, waive Contractor's payment of expenses associated with the Department doing the disclosure.

Miscellaneous Requirements

A. To comply with Texas Health and Safety Code, §85.113 and §85.115 concerning workplace and confidentiality guidelines for persons with AIDS or HIV.

B. To comply with applicable provisions of the Clean Air Act (42 USC §7401-7671q) and the Federal Water Pollution Control Act (33 USC §1251-1387), if funding for the contract exceeds $100,000.

C. That in accordance with §2155.4441, Texas Government Code, the Contractor shall, in performing any service under this contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside of Texas.

D. To make a good faith effort to utilize historically underutilized businesses (HUBs) when subcontracting. Some methods for locating HUBs include using searchable HUB databases at the Texas Comptroller of Public Accounts' website, using websites or other minority/women directory listings maintained by local chambers of commerce, advertising subcontract work in local minority publications or contacting the Department for assistance in locating available HUBs.

E. That except as provided in the paragraphs below, the Contractor must not use the Department's name, the State of Texas or refer to the Department or the State directly or indirectly in any media release, public announcement, or public disclosure relating to this contract or its subject matter, including, but not limited to, in any promotional or marketing materials, customer lists or business presentations (other than those submitted to the Department, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the Federal Government).

The Contractor may publish, at its sole expense, results of Contractor performance under this contract with the Department's prior review and approval, which the Department may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the Department and any Federal agency, as appropriate. The Contractor will provide the Department at least three copies of such publication prior to public release. The Contractor will provide additional copies at the request of the Department.

The Contractor may include information concerning this contract's terms, subject matter, and estimated value in any report to a governmental body to which the Contractor is required by law to report such information. The Contractor must not use the Department's logo under any circumstances.

IV.

The Department agrees:

A. To pay the Contractor for services provided under the contract type specified in Section I of this contract in amounts and under conditions determined by the Department as defined in this contract, the applicable Contractor manual, handbook, policy letter or program rules and standards and in accordance with applicable laws and regulations for all eligible persons receiving such services under Title XIX and or Title XX.

B. To pay the Contractor within time limits set by the Department and in accordance with applicable laws and regulations after a proper claim for payment is submitted and approved for payment in accordance with Department and HHSC Claims Administrator billing guidelines.

C. To adjust payments to the Contractor to compensate for prior overpayment or underpayment.

D. To give the Contractor reasonable notice of any impending change in its status as a participating Contractor, except that nothing in this section shall be construed to deny the Department the right, for failure to comply with this contract or regulations published in the *Texas Register*, to terminate this contract, suspend payments or take any other legal remedy available to the Department.

E. To provide a hearing, in accordance with TAC, Title 1, Part 15, Chapter 357, Subchapter I, to the Contractor in the event the Department imposes an adverse action on the Contractor under this contract.

F. To make available to the Contractor the applicable Contractor manual and any changes to that manual that change the requirements for participation.

G. That a religious organization that contracts with the Department does not by contracting with the Department lose the exemption provided under Section 702 of the Civil Rights Act [42 USC §2000E-1(a)] regarding employment practices.

A religious or charitable organization is eligible to be a Contractor on the same basis as any other private organization. The Contractor retains its independence from state and local governments, including the Contractor's control over the definition, development, practice and expression of its charitable or religious beliefs. Except as provided by federal law, the Department shall not interpret this contract to require a charitable or religious organization to alter its form of internal governance or remove religious art, icons, scripture or other symbols. Furthermore, if a religious or charitable organization segregates the government funds provided under this contract, then only the financial assistance provided by these funds will be subject to audit. However, neither the Department's selection of a charitable or faith-based Contractor nor the expenditure of funds under this contract is an endorsement of the Contractor's charitable or religious character, practices or expression. The purpose of this contract is the provision of community services; no state expenditures have as their objective the funding of sectarian worship, instruction or proselytization, and no state funds shall be expended for these purposes.

V.

The Department and Contractor agree:

A. That in the event any provision of this contract becomes unenforceable or void all other provisions of this contract will remain in effect.

B. That the Contractor may not transfer or assign this contract without the express prior written approval of the Department.

C. That this contract may be assigned to a state agency or agencies.

D. That the Department may amend this contract by written notice to the Contractor. The Department reserves the right to amend this contract through execution of a unilateral amendment signed by a Department person with delegated signature authority and provided to the Contractor under the following circumstances:

1. to correct an obvious clerical error in the contract;
2. to incorporate new or revised federal or state statutes, rules or policies;
3. to comply with a court order or judgment; and
4. to change the name of the Contractor in order to reflect the Contractor's name as recorded by the Texas Secretary of State.

E. That nothing in this contract or any conduct by a representative of the Department relating to this contract shall be construed as a waiver of the state's sovereign immunity to suit.

F. That neither party to this contract waives its right to enforce a right under this contract by failing to enforce or delaying the enforcement of any other right under this contract.

G. That the Contractor is an independent contractor and not an employee of the Department for any purpose. The Contractor and the Department agree that:

1. the Department will not withhold or pay on behalf of the Contractor any sums for income tax, unemployment insurance, Social Security or any other withholding, or make available to the Contractor any of the benefits, including workers' compensation insurance coverage and health and retirement benefits, afforded to Department employees; and
2. the Contractor must indemnify the Department from any liability, including attorneys' fees and legal expenses, incurred by the Department with respect to claims that the Department should have been withholding or making payments on behalf of the Contractor or providing benefits to the Contractor's employees.

H. That nothing in this contract is intended to create a joint venture, a partnership or a principal-agent relationship.

I. That the Contractor assigns to the Department all claims for overcharges associated with this contract arising under the anti-trust laws of the United States, 15 U.S.C. §§ 1-38, or the anti-trust laws of the state of Texas, Tex. Bus. & Com. Code, §§ 15.01-.40.

J. That the Department has authority to monitor and conduct fiscal and program compliance reviews of the Contractor and its subcontractor (s) to the extent of services provided under the terms of this contract. The Contractor will grant on-site access at reasonable times to all records relating to services provided and payments received under the terms of this contract to state and federal auditing agencies and personnel and representatives of the Department, HHSC and HHS when it is deemed necessary by such agencies for purposes of inspection, monitoring, auditing or evaluating Contractor's performance under this contract and compliance with applicable state and federal laws, rules and regulations; the applicable Department provider handbook or manual; and this contract.

That for Title XX programs, the Department shall, by Form 2029, Information Worksheet, Purchase of Service Contract, set the rate or maximum amount of funds or both available to be paid to Contractor by the Department. Form 2029 is incorporated into and made a part of this contract and is effective for the time period stated on the form. Form 2029 may be amended by the Department as necessary to comply with state and federal laws and regulations or renewed by the Department by a new Form 2029 and incorporated into and made part of this contract.

K. That in compliance with §2262.003, Texas Government Code:

1. 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;
2. 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; and
3. 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.

L. That this contract shall continue subject to the availability of appropriated funds or until the federal or state governments or both cease to participate in the program.

M. That any breach or violation of any of the provisions of this contract or state or federal regulations shall make this entire contract, at the Department's option, subject to termination.

N. That if the Department does not renew the Contractor's contract due to the Contractor's noncompliance with applicable federal or Texas statutes or rules, the Contractor cannot enter into another contract for a Community Services program until the application denial period established by the Department expires.

O. That the venue for any lawsuit between the Department and the Contractor shall be Travis County, Texas.

P. That this contract may be terminated by:

1. mutual agreement of the Department and the Contractor;
2. either party to this contract by giving 60 calendar days written notice to the other;
3. the Department for reasons set forth in federal or state laws or rules, the terms of this contract, or the applicable Contractor manual, handbook, or program standards
4. the Department if a certification made by the Contractor in this contract is inaccurate or becomes inaccurate; or
5. the Department for good cause.

Incorporation by Reference

The following documents are incorporated into this contract and are on file with the Department.

Form 3254-C, Contractor Certifications

Form 3681, Community Services Contract Application

Form 4732, Nongovernmental Contractor Certification (not applicable to governmental entities)

Form 5871/5871-S, Disclosure of Ownership and Control Statement, whichever is applicable to this contract (not applicable to governmental entities)

If marked, the following documents are incorporated into this contract and are on file with the Department.

- ☐ HHS Data Use Agreement
- ☐ HHS Information Security and Privacy Initial Inquiry
- ☑ Form 2031, Governing Authority Resolution – Business Organization
- ☐ Form 2192, Certification Regarding Licensure Requirements
- ☐ Form 3681-A, Community Services Contract Application, Addendum A
- ☐ Form 3681-B, Community Services Contract Application, Addendum B
- ☐ Form 3681-C, Community Services Contract Application, Addendum C
- ☐ Form 3681-D, Community Services Contract Application, Addendum D
- ☑ Form 3691, Service Area Designation
- ☐ Form 3691-A, Service Area Designation (TxHmL, HCS, CDS and TAS)
- ☐ Form 4732-A, Nongovernmental Contractor Certification (Part II)
- ☐ _____
- ☐ _____

For the faithful performance of the terms of this contract, the parties hereto in their capacities stated, affix their signatures and bind themselves.

Department of Aging and Disability Services

Elisa J. Garza
Signature

12/18/15
Date

Elisa J. Garza
Name

Assistant Commissioner, Access and Intake
Title

AC & C HCS, Inc,

Signature – Contractor Representative

11/6/15
Date

Catherine Jalomo
Name of Contractor Representative (print or type)

Director of Operations
Title of Contractor Representative (print or type)

Texas Department of Aging
and Disability Services

Form 2031
December 2008-E

Governing Authority Resolution
Business Organization

COUNTRY, TERRITORY or NATION OF United States

STATE or PROVINCE OF Texas

COUNTY OF Dallas

On the 23 day of September, year 2014, the Governing Authority of AC&C HCS Inc., a Business Organization, at a meeting held in the City of Dallas, Dallas County or Parish, and in the State or Province of Texas, with a quorum of the Governing Authority present, it was duly moved and seconded that the following resolution be adopted:

BE IT RESOLVED that the Governing Authority of the above Business Organization does hereby authorize **Catherine Jalomo, Director of Operations** and his/her/their successors to negotiate, on terms and conditions that he/she/they may deem advisable, a contract or contracts with the Texas Department of Aging and Disability Services (DADS), and to execute the contract or contracts on behalf of the Business Organization, and further we do hereby give him/her the power and authority to do all things necessary to implement, maintain, amend, renew or request closure of the contract. Although the authority of the successors is binding on this Organization, it is acknowledged that this Organization must specifically authorize another party by name in a resolution within 30 days of the change in authorization, or when specifically required by DADS, whichever is sooner.

The above resolution was passed in accordance with the Governing Documents of this Organization and the laws of the jurisdiction in which this Organization was formed. The terms "Governing Authority," "Business Organization" and "Governing Documents" are used as defined in the Texas Business Organizations Code.

This Organization is a (check one)

- ☐ General Partnership
- ☐ Limited Partnership
- ☐ Other (specify) _____
- ☑ Corporation
- ☐ Limited Liability Partnership
- ☐ Limited Liability Company
- ☐ Association

I certify that the above and foregoing constitute a true and correct copy of a part of the minutes of a meeting of the Governing Authority of AC&C HCS Inc. held on the 23 day of September, year 2014.

Signature

Arnulfo Gonzalez, Secretary
Printed Name and Title

Subscribed and sworn to (or affirmed) before me on this 23 day of September, year 2014.

Signature – Notary Public

Erika Loyola, Dallas county
Printed Name of Notary and Jurisdiction

ERIKA LOYOLA
Notary Public, State of Texas
My Commission Expires
March 10, 2018

My commission expires March 10, 2018