

INTERAGENCY COOPERATION
CONTRACT

This Interagency Cooperation Contract ("Contract") is entered into by and between the State agencies shown below as Contracting Agencies, pursuant to authority granted in and in compliance with the *Interagency Cooperation Act*, Chapter 771, *Texas Government Code*.

I. CONTRACTING AGENCIES:

Receiving Agency: Department of State Health Services (DSHS), an agency of the State of Texas

Performing Agency: The University of Texas Health Science Center at Tyler (UTHSCT), an agency of the State of Texas

II. PURPOSE:

The purpose of this Contract is for DSHS to obtain the services of UTHSCT to care for individuals hospitalized in the psychiatric unit at the UTHSCT location (Facility).

III. STATEMENT OF SERVICES TO BE PERFORMED:

UTHSCT will perform the following services ("services"):

UTHSCT will serve up to thirty (30) individuals who are received from any Local Service Area (LSA) in Texas, many of which have been transferred from other state hospitals. UTHSCT will serve up to fourteen (14) individuals who are from the LSA served by the Andrews Center's Local Mental Health Authority. These beds are direct admissions from community and are included in the Andrews Center's State Hospital bed day allocation.

UTHSCT will receive and maintain Hospital Accreditation by the Joint Commission. UTHSCT will follow DSHS State Hospital Operating Procedures in the provision of services, found in the Texas Administrative Code, Title 25, Chapter 417, Subchapter A, entitled "Standard Operating Procedures for TDMHMR and Facilities". UTHSCT and/or its subcontractor, Integrated Psychiatric Solutions, LLC, shall:

- A. Provide a full array of services that comply with the following principles for care:
 1. Effective, responsive, individualized, and least restrictive care and treatment;
 2. Development and implementation of a comprehensive treatment and discharge plan, promotion of recovery, and self-sufficiency;
 3. Compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules, as amended from time to time;
 4. Comprehensive client/patient rules consistent with federal and state regulatory and Joint Commission requirements;
 5. Behavior management programs;
 6. Culturally competent care; and

- E. UTHSCT shall ensure proper screening of applicants, training and competency of employees, including reassignment/movement of employees off the unit until they are cleared for satisfactory performance or pending an investigation of abuse, neglect, and/or exploitation.
- F. UTHSCT shall hire a Clients Rights Advocate (CRA) to investigate allegations of abuse, neglect, and/or exploitation. Individuals on the unit will have access to a telephone to contact the CRA 24 hours/day, 7 days/week. Employees who suspect abuse, neglect, and/or exploitation of individuals shall report to the CRA immediately but no later than one hour of the suspected event. The CRA shall report events that contain positive findings to the Department of Family and Protective Services (DFPS) by telephone at (800) 647-7418.
- G. The terms and conditions attached hereto as Exhibit A (Performance Indicators) will be used to assess UTHSCT's effectiveness in providing the services described in this Contract.
 - 1. UTHSCT shall submit to DSHS the name of the designated point of contact who will be responsible for all communication, correspondence, and reporting to DSHS no later than fifteen (15) days after this Contract is executed.
 - 2. UTHSCT shall electronically submit to the DSHS Contract Manager the reports, data and other information identified in Exhibit A (Performance Indicators) in accordance with the schedule outlined in Exhibit A (Performance Indicators).

IV. WARRANTIES:

DSHS warrants that (1) it has the authority to contract for the services under authority granted in Chapters 531 and 1001, Texas Health and Safety Code, and Chapter 771, Texas Government Code; and (2) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

UTHSCT warrants that (1) it has authority to perform the services under authority granted in Title 3, Subtitle C, Chapter 74, Subchapter K, Texas Education Code and Chapter 771, Texas Government Code; and (2) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

V. CERTIFICATIONS:

DSHS & UTHSCT certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected State agencies, (2) the proposed arrangements serve the interest of efficient and economical administration of the State of Texas, and (3) the services, supplies or materials contracted for are not required by Section 21, Article 16 of the Texas Constitution to be supplied under contract given to the lowest responsible bidder.

IX. TERM OF CONTRACT:

This Contract will be effective on September 1, 2015, and will terminate on August 31, 2016. The Contracting Agencies may extend the term of this Contract by a written amendment signed by the Contracting Agencies. The Contract may be canceled by mutual consent of the Contracting Agencies or by either Contracting Agency as specified in this Contract.

X. NOTICES:

All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to DSHS: Department of State Health Services
 Mental Health and Substance Abuse Services Division,
 Attn: Peggy Perry, Director, State Hospital Section and
 Christopher Dickinson, Contract Manager
 MC 2053, PO Box 149357
 Austin, TX 78714-9347

If to UTHSCT: The University of Texas Health Science Center at Tyler
 11937 U.S. Highway 271
 Tyler, Texas 75708
 Attention: President

Or such other person or address as may be given in writing by either agency to the other in accordance with this Section.

Duly authorized representatives of the Contracting Agencies in their respective capacities as stated below, have executed and delivered this Contract, including the Department of State Health Services State Facilities Special Provisions attached hereto and incorporated herein for all purposes, to be effective as of the Effective Date.

SIGNATURE PAGE FOLLOWS

Attachment A

Department of State Health Services
State Facility Special Provisions

1. **Cooperation.** UTHSCT must interact with staff, other contractors or consultants of the Department of State Health Services (DSHS) in a cooperative manner and will consult with such persons, as necessary for UTHSCT to perform all duties and responsibilities required under this Contract.
2. **Disclosure.** UTHSCT must conduct a state of Texas criminal background check on all employees, officers and must disclose the identity of any employee, officer or volunteer of UTHSCT who is in direct contact with Facility consumers and who has been convicted, received a probated sentence, arrested (or for whom there exists an arrest warrant), or for whom there exists a wanted persons notice related to any crime relevant to that person's employment and/or duties. For purposes of this Contract, a crime relevant to a person's employment and/or duties shall be defined as any sexual offense, drug related offense, homicide, theft, assault, battery, or any other crime involving personal injury or threat to another person.
3. **Removal.** If any employee, officer, volunteer or director of UTHSCT who is in direct contact with Facility consumers has been convicted of a crime listed in Section 2 of this Contract, UTHSCT must remove the employee, officer, volunteer or director from direct contact with any Facility consumers unless otherwise agreed to by DSHS. UTHSCT must immediately notify DSHS of any such removals under this provision.
4. **Subcontracting.** UTHSCT (or its affiliate or related entity, specifically, East Texas Quality Care Network, UTHSCT's 501(a) nonprofit healthcare corporation) may enter into contracts with subcontractors for the provision of services or employment of staff to provide services under this Contract with prior, written approval by DSHS. UTHSCT shall monitor subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. UTHSCT shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors must be in writing and include the following:

- a. Name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
- b. A detailed description of the services to be provided;
- c. Measurable method and rate of payment and total not-to-exceed amount of the contract;
- d. Clearly defined and executable termination clause; and
- e. Beginning and ending dates that coincide with the dates of this Contract.

or directors of UTHSCT must cooperate fully with all investigations conducted as a result of an allegation of abuse, neglect or exploitation made against UTHSCT's employee, officer, volunteer, subcontractor or director of UTHSCT.

Notifying Appropriate Licensing Authorities. Allegations involving the clinical practice of a physician, dentist, registered nurse or licensed vocational nurse shall be referred to the UTHSCT's medical, dental or nursing director, as appropriate to the discipline involved, for review for possible peer review and reporting in disciplinary boards.

Compliance. In addition to other statutory and regulatory requirements specifically identified in this Contract, UTHSCT shall provide services in compliance with the following:

- a. UTHSCT agrees to comply with state and federal anti-discrimination laws, including without limitation:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
 - vii. DSHS administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- b. UTHSCT agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- c. UTHSCT agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 CFR Part 80 or 7 CFR Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. 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. UTHSCT 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. UTHSCT 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.

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9. **Texas Products.** UTHSCT must buy Texas products and materials when they are available at a comparable price and in a comparable period of time.
10. **Recycled, Remanufactured, and Environmentally Sensitive Products.** UTHSCT is encouraged to use recycled, remanufactured, and environmentally sensitive products in the delivery of services provided for under this Contract.
11. **Equivalents.** Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Offers on brands of a like nature and quality will be considered unless advertised under Gov. Code, Title 10, Subtitle D, Section 2155.067.
12. **Substitutions.** No substitutions or cancellations will be permitted without written approval of DSHS prior to substitution or cancellation.
13. **Delivery Requirement.** Goods and or Services shall be provided during the hours specified.
14. **Travel Reimbursement.** When the reimbursement of travel expenses is authorized by this Contract, all such expenses shall be reimbursed in accordance with the rates set by the State of Texas Travel Regulations (Appropriations Act, Article IX).
15. **Delays.** If delay is foreseen, UTHSCT shall give written notice to DSHS. DSHS has the right to extend the delivery date if reasons appear valid. UTHSCT must advise DSHS at all times of status of delivery. Default in promised delivery (without accepted reasons) or failure to meet contract requirements authorizes DSHS to purchase goods and/or services elsewhere and charge full increase in costs, if any, to the defaulting contractor.
16. **Meetings.** UTHSCT must ensure that appropriate representatives attend meetings relevant to this Contract, as required by DSHS. The cost of attending the meetings shall be UTHSCT's sole responsibility.
17. **Confidentiality.**
 - a. UTHSCT must maintain the confidentiality of information received during the performance of this Contract, including information which discloses confidential personal information or identifies any Facility consumer served by DSHS, in accordance with applicable federal and state laws and DSHS rules, including but not limited to Health and Safety Code, Chapters 595 and 611, Health and Safety Code, Section 85.115, and Title 25, Texas Administrative Code (TAC), Chapter 414, Subchapter A.
 - b. UTHSCT may only receive and disclose individually identifiable protected health information, as defined in 45 CFR §164.501, to carry out UTHSCT's duties relating to treatment, payment or health care operations, as defined in 45 CFR §164.501, and as required under this Contract. When using or disclosing protected health information or

- i. Provide an opportunity for UTHSCT to cure the breach or end the violation and terminate this Contract if UTHSCT does not cure the breach or end the violation within the time specified by DSHS;
 - ii. Immediately terminate this Contract if UTHSCT has breached a material term of this Contract and cure is not possible; or
 - iii. If neither termination nor cure is feasible, DSHS shall report the violation to the U.S. Secretary of the Department of Health and Human Services or her or his designee.
- l. The rights and obligations of UTHSCT under this Section shall survive the termination of this Contract.

18. Requests for Information. UTHSCT shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than DSHS and its authorized agents except as otherwise provided by this Contract or after obtaining written permission of DSHS.

19. Public Information. This Contract, all data, and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act.

20. Gender and Number. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Contract clearly requires otherwise.

21. Record Retention. UTHSCT must retain all invoices, records and other documents pertinent to this Contract until four (4) years following the expiration or termination of this Contract, until any audits in progress at the end of the four (4) year period are completed, or until any lawsuits relating to this Contract are resolved, whichever date is later.

22. Access. UTHSCT must permit representatives and agents of DSHS, or authorized state and federal agencies, to have unrestricted access to all facilities, records, data and other information under the control of UTHSCT as necessary to enable DSHS to audit, monitor and review all financial activities and services associated with DSHS funds. UTHSCT understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. UTHSCT further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. UTHSCT will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through UTHSCT and the requirement to cooperate is included in any subcontractor awards.

23. Indemnification and Hold Harmless. To the extent authorized by the Constitution and the laws of the State of Texas, UTHSCT will indemnify and hold harmless, the State of Texas, all of its officers, its agents and employees and DSHS, its employees and agents from all suits, actions, demands, proceedings costs, damages, and claims, costs or liability of any character, type or description, including attorneys' fees and legal expenses, brought, made for or on account of any death, injury or damage received or sustained by any person or property arising out of or occasioned by the acts or omissions, including the negligence, of UTHSCT

- vii. Failing to repay or make and follow through with arrangements satisfactory to DSHS to repay identified overpayment or other erroneous payments; and
- viii. Failing to perform or comply with any covenant, term or condition of this Contract.

27. Remedies and Sanctions. DSHS may impose remedies and sanctions as described in this section for UTHSCT's default under this Contract. DSHS, at its own discretion, may impose as many remedies and sanctions as appropriate on an individual case basis.

- a. Informal Remedies:
 - i. Requesting UTHSCT to respond in writing to identified problems;
 - ii. Conducting more frequent or more extensive monitoring of UTHSCT than that described in Section 18;
 - iii. Requiring UTHSCT to obtain additional training or technical assistance; or
 - iv. Requiring UTHSCT to submit additional or more detailed financial; and/or programmatic reports.
- b. Sanctions:
 - i. Termination of Contract;
 - ii. Withholding of Contract payments;
 - iii. Recouping Contract payments from UTHSCT; or
 - iv. Reducing the Contract not-to-exceed amount.

28. Sanction Notification and Review. DSHS will formally notify UTHSCT in writing when a sanction is imposed, stating the nature of the sanction, the reasons for proposing or imposing the sanction, any corrective action that must be taken before the sanction will be removed and the time allowed for completing the corrective action. If UTHSCT believes DSHS' imposition of the sanction is in error, it may submit to DSHS a written request for a review of the imposition of the sanction within ten (10) days from the date of notification. UTHSCT's request shall contain the following:

- a. A copy of the letter from DSHS notifying UTHSCT of the sanction;
- b. A description of each act that is the basis for the sanction;
- c. The basis for UTHSCT's belief that DSHS' imposition of the sanction is in error;
- d. Any documentation in support of UTHSCT's position; and
- e. A statement and authorities in support of UTHSCT's position.

On or before ten (10) days following receipt of UTHSCT's request for review, DSHS will appoint a reviewer(s), who will review UTHSCT's request, who may permit or require additional information and who may uphold or overturn the imposition of the sanction. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all Contracting Agencies by any verifiable means. The decision of the reviewer(s) is final.

29. Termination.

- a. Without Cause. This Contract may be terminated by DSHS upon thirty (30) days written notice to UTHSCT of its intent to terminate this Contract.
- b. Notice of Termination. UTHSCT must notify DSHS at least thirty (30) days in advance of its intent to terminate this Contract, with or without cause.
- c. By Mutual Agreement. DSHS and UTHSCT may mutually agree to termination of

Resolution process under Chapter 2260.

33. **Renegotiation.** In the event UTHSCT is required to comply with an addition to or a change in any law, rule, regulation, directive, standard, settlement, or resolution pursuant to this Contract, and the addition or change results in a material change in UTHSCT's rights or obligations under this Contract or places a significant financial burden on UTHSCT, UTHSCT and DSHS may renegotiate the terms of this Contract.
34. **Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.
35. **Antitrust.** UTHSCT hereby assigns to DSHS any and all claims for overcharges associated with this Contract arising under the anti-trust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the anti-trust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec 15.01, et. Seq. (1967).
36. **Assignability.** This Contract may be assigned to DSHS' successor state agency or agencies. No assignment of this Contract or the rights and obligations hereunder by Performing Agency will be valid without the written consent of DSHS.
37. **Loss of Funding.** Performance by a Contracting Agency of its duties and obligations under this Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by that Contracting Agency's governing board or administration. If the Legislature fails to appropriate or allot the necessary funds to a Contracting Agency, or a Contracting Agency's governing board or administration fails to allocate the necessary funds, then the Contracting Agency that loses funding may terminate this Contract without further duty or obligation under this Contract.
38. **Entire Agreement.** This Contract constitutes the entire agreement of the Contracting Agencies and supersedes any prior understandings or oral or written agreements between DSHS and UTHSCT on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by the Contracting Agencies hereto.
39. **Waiver.** In no event shall any payment by DSHS to UTHSCT or any act or omission of DSHS constitute or be construed in any way to be a waiver by DSHS of any breach or default of this Contract which may then or subsequently be committed by UTHSCT. Neither shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to DSHS to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of DSHS may waive the effect of this provision.
40. **Governing Law.** This Contract is being executed and delivered in the State of Texas.

- e. UTHSCT has not retained or promised to retain an entity that has participated in the development of the services proposal or that participated in the selection of the contractor.
- f. UTHSCT agrees to provide DSHS with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue code, its rules and regulations, and a statement of entity status in a form satisfactory to DSHS prior to Contract execution.
- g. UTHSCT owes no funds to DSHS, HHSC, or the State of Texas for unresolved audit exceptions. An unresolved audit exception is an exception for which UTHSCT has exhausted all administrative and/or judicial remedies and has failed to comply with any resulting demand for payment.
- h. UTHSCT certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal or state department or agency. UTHSCT shall notify DSHS immediately in the event that UTHSCT or its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal or state department or agency.
- i. UTHSCT certifies that its license, permit, or certificate has not been revoked by any Health and Human Services agency or Public Safety and Criminal Justice agency.
- j. UTHSCT certifies that none of the funds paid under this Contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a member, officer or employee of Congress or the state legislature or for obtaining any federal or state contract.
- k. All confidential materials made available to UTHSCT, including copies thereof, shall be returned to DSHS upon termination of this Contract or request by DSHS.
- l. UTHSCT certifies that no employee, officer, or director of UTHSCT has been convicted of any crime related to any state or federally funded program.
- m. Former Employment. In accordance with Texas Government Code, Section 2252.901, UTHSCT certifies that it has not been an employee or officer of DSHS within one year of the execution of this Contract.
- n. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense. In accordance with Texas Government Code, Section 572.054, the following former DSHS employees may not represent UTHSCT or receive compensation for services rendered on behalf of UTHSCT regarding a particular matter in which the employee participated during his/her period of DSHS employment, either through personal involvement or because the matter was within the employee's official responsibilities: Employees who ceased employment with DSHS on or after January 1, 1992, who were compensated as of the last date of DSHS employment at or above the amount prescribed by the General Appropriations Act for salary group 17, Schedule A or salary group 9, Schedule B, of the position classification salary schedule. UTHSCT certifies that it is not ineligible to be awarded this Contract under this Section.

**Fiscal Year 2016
Department of State Health Services
Contract General Provisions**

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to Contractor, Contractor shall comply with the following:

- a. Statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion:
 1. Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
 2. Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
 3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
 4. Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
 5. Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
 6. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91;
 7. U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
 8. Tex. Labor Code Chapter 21;
 9. Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
 10. Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
 11. Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
 12. Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
 13. Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
 14. DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b. Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., as amended by Public Law 113-4 (March 7, 2013), regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
- c. Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
- d. National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), regarding human subjects involved in research;
- e. Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-26, which limits the political activity of employees whose employment is funded with federal funds;
- f. Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
- g. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;
- h. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
- i. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code Chapter 96 regarding safety standards for handling blood borne pathogens;
- k. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l. Environmental standards pursuant to the following:
 1. Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;"

5. Application of Payment Due, Section 4.02; and
6. Article XVI Claims against the Department.

b. The following additional provisions shall apply to Interlocal Cooperation Contracts:

1. Payments made by DSHS to Contractor shall be from current revenues available to DSHS; and
2. Each Party represents that it has been authorized to enter into this Contract.

Section 2.09 Civil Rights Policy and Complaints. Upon request, Contractor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten calendar days after Contractor's receipt of the claim. Notice must be directed to:

Civil Rights Office
Health and Human Services Commission
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
(888) 388-6332 or 512-438-4313
TTY Toll-free (877) 432-7232
HHSCivilRightsOffice@hhsc.state.tx.us

Section 2.10 Licenses, Certifications, Permits, Registrations and Approvals. Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

Section 2.11 Funding Obligation. This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment of the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce or terminate funding under this Contract. Notice of any restriction or reduction shall include instructions and detailed information on how DSHS shall fund the services and/or goods to be procured with the restricted or reduced funds.

Section 2.12 Whistleblower Act Protection. This Contract is required to include the Whistleblower Protection Acts (See Section 2.07(v)) protections to grantees, their subgrantees and subcontractors, and contractor must inform their employees of whistleblowers' rights and remedies. The requirement is in effect for all grants, contracts, subgrants, and subcontractors issued beginning July 1, 2013 through January 1, 2017.

ARTICLE III SERVICES

Section 3.01 Education to Persons in Residential Facilities. If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and are 22 years of age or younger, have access to educational services as required by Texas Education Code § 29.012.

- i. Management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites. Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under 25 TAC Rule § 448.911.

Section 3.05 Services and Information for Persons with Limited English Proficiency.

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

ARTICLE IV FUNDING

Section 4.01 Debt to State and Corporate Status.

- a. Pursuant to Texas Government Code § 403.055, the Department shall not approve and Texas Comptroller of Public Accounts shall not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency.
- b. Contractor, if a corporation, certifies by execution of this Contract that it is current and shall remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Texas Tax Code §§ 171.001 et seq.). As a corporation, this Contractor further certifies that it is and shall remain in good standing with the Secretary of State's office.
- c. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 4.02 Application of Payment Due. Contractor agrees that any payments due under this Contract shall be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

ARTICLE V PAYMENT METHODS AND RESTRICTIONS

Section 5.01 Payment Methods. Except as otherwise provided by the provisions of this Contract, the payment method is based on a unit rate (fixed price or a specified) or fee for service (delivery of a specified unit of service) as stated in the Contract.

Section 5.02 Invoice/Billing Submission.

Section 6.03 Withholding Payments. Department may withhold all or part of any payments to Contractor to offset overpayments that Contractor has not refunded to Department. Department may take repayment from funds due to the Contractor for services performed or goods delivered in amounts necessary to fulfill Contractor's repayment obligations.

ARTICLE VII CONFIDENTIALITY

Section 7.01 Maintenance of Confidentiality. Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI) and any other information that discloses confidential personal information or identifies any client served by DSHS in accordance with any applicable federal and state law, rules and regulations, including but not limited to:

- a. 7 Code of Federal Regulations (CFR) Part 246; 42 CFR Part 2, 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]);
- b. Texas Health and Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611 and 773;
- c. Texas Occupations Code, Chapters 56 and 159; and
- d. Any other applicable federal and state laws, rules or regulations.

The HHS Data Use Agreement (Version 8.3) at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf is incorporated as part of the Contract and describes Contractor's rights and obligations with respect to the Confidential Information and the limited purposes, for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. For the purpose of this Contract, the:

Contractor does not access Confidential Information and does not have to comply with HHS Data Use Agreement (Version 8.3); or

Contractor accesses Confidential Information as defined in and agrees to comply with the HHS Data Use Agreement (Version 8.3).

Section 7.02 Department Access to PHI and Other Confidential Information.

Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 Exchange of Client-Identifying Information.

Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Texas Health and Safety Code § 533.009 and 25 TAC Chapter 414, Subchapter A or any other applicable federal or state laws, rules or regulations.

Contractor shall disclose information described in Texas Health and Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Texas Health and Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 Security of Patient or Client Records.

Contractor shall ensure that patient and client records are managed in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Contract to

Section 10.01 Access and Inspection. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, the Office of the Inspector General at HHSC (OIG) and the State Auditor's Office (SAO) or any of their successor agencies, unrestricted access to and the right to examine any site where business is conducted or client 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 deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.

Contractor 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.

Section 10.02 State Auditor's Office. Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds shall apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 10.03 Responding to Deficiencies. Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site shall be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to document and resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance (See Article XV).

ARTICLE XI REPORTING REQUIREMENTS

Section 11.01 Child Abuse Reporting Requirement. This section applies to mental health and substance abuse contractors and contractors for the following public health programs:

- a. Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD);
- b. Family Planning;
- c. Primary Health Care;
- d. Maternal and Child Health; and
- e. Women, Infants and Children (WIC) Nutrition Services.

All Contractors shall comply with child abuse reporting guidelines and requirements in Texas Family Code Chapter 261 relating to investigations of reports of child abuse and neglect.

Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements.

knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act (31 U.S.C. §§3729-3733) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the SAO at <http://sao.fraud.state.tx.us>, and to the HHS Office of Inspector General at <http://www.oig.hhs.gov/fraud/hotline/> no later than three working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 11.07 Criminal Activity and Disciplinary Action.

- a. Contractor affirms that Contract nor any no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime.
- b. Contractor shall report in writing the contract manager assigned to the Contract, no later than three working days from the date that Contractor has knowledge or reason to believe such activity has taken place, if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that:
 1. Would constitute a criminal offense equal to or greater than a Class A misdemeanor;
 2. Reasonably would constitute grounds for disciplinary action by a state or federal regulatory authority;
- c. Has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by DSHS.

Section 11.08 Retaliation Prohibited. Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 11.09 Documentation. Contractor shall maintain appropriate documentation of all notices and reporting to DSHS as required under these General Provisions or this Contract.

ARTICLE XII ASSURANCES AND CERTIFICATIONS

Section 12.01 Certification. Contractor certifies by execution of this Contract to the following and will include such in all of its subcontracts:

- a. It is not disqualified under 2 CFR § 376.935 or ineligible for participation in federal or state assistance programs;
- b. Neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

- a. Pursuant to Texas Government Code § 2155.004 and federal law, Contractor is ineligible to enter into this Contract with the Department if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor nor its employees nor anyone acting for Contractor has received compensation from DSHS for participation in the developing, drafting or preparation of specifications, requirements or statements of work for this Contract or in the Solicitation Document associated with this Contract.
- b. Pursuant to Texas Government Code §§ 2155.006 and 2261.053, Contractor is ineligible to enter into this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005.
- c. Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Texas Government Code §§ 2155.004, 2155.006 or 2261.053 and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 12.06 Antitrust. Pursuant to 15 USC Sec. 1, et seq., and Texas Business & Commerce Code § 15.01, et seq. Contractor certifies that neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws nor communicated directly or indirectly regarding a bid made to any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

ARTICLE XIII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 13.01 Program Site. Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire and safety standards.

Section 13.02 Historically Underutilized Businesses (HUBs). If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Contract, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Texas Government Code Chapter 2161 and 34 TAC § 20.14 et seq. Contractors may obtain a list of HUBs at <http://www.window.state.tx.us/procurement/prog/hub>. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval of the revised plan from the Department's HUB Coordinator before proposed changes shall be effective under this Contract.

Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity in accordance with 34 TAC § 20.16(c).

Section 13.03 Buy Texas. Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Texas Government Code § 2155.4441.

Section 13.04 Status of Subcontractors. Contractor shall require that all subcontractors certify that they

Contract without the prior written consent of the Department.

Section 14.02 Lobbying.

- a. Contractor shall comply with Texas Government Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state 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 contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352).
- b. If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the contract manager assigned to the Contract a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or shall be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement.
- c. Contractor shall file the declaration, certification, and disclosure:
 1. At the time of application for this Contract;
 2. Upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and
 3. At the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed.
Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Contract.
Contractor shall include this provision in any subcontracts.

Section 14.03 Conflict of Interest. Contractor represents to the Department that it and its subcontractors, if any, do not have, nor shall Contractor or its subcontractors knowingly acquire or retain any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family) or any affiliate or subcontractor and Department or HHSC, their commissioners, officers or employees, or any other entity or person involved in any way in any project that is the subject of this Contract.

Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Contract within 10 days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within 10 days of when the subcontractor becomes aware of the actual or potential conflict of interest.

- e. If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Contract.

Section 14.06 Other Intangible Property. At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs or software licenses with a value of \$500 or more. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision shall survive the termination or expiration of this Contract.

Section 14.07 Severability and Ambiguity. If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions shall continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 14.08 Legal Notice. Except as otherwise provided in this Contract or General Provisions, any notice required or permitted to be given by the provisions of this Contract or General Provisions shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 14.09 Successors. This Contract shall be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 14.10 Survivability of Terms. Termination or expiration of this Contract or a Contract for any reason shall not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed shall survive any such termination or expiration or remain to be performed, including but not limited to maintaining confidentiality of information and records retention.

Section 14.11 Customer Service Information. If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Texas Government Code Chapter 2114 regarding Customer Service surveys.

Section 14.12 Amendment. All amendments to this Contract must be in writing and agreed to by both Parties. If a Contractor requests an amendment, it must be submitted in writing and include a justification for the request, to the contract manager assigned to the Contract.

Section 14.13 Contractor's Notification of Change of Contact Person or Key Personnel. Within ten calendar days shall notify in writing the contract manager assigned to the Contract of any change enumerated in the Contractor's Contact Personnel or Key Personnel, if included in their response to a solicitation document.

Section 14.14 Unilateral Amendment. The Department 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. Correct an obvious clerical error in this Contract;
- b. Incorporate new or revised federal or state laws, regulations, rules or policies; and

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

b. Definitions.

For purposes of this Section:

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

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

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

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

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

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

c. Evaluation, Testing, and Monitoring.

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

d. Representations and Warranties.

1. Contractor represents and warrants that:
 - i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and

secure such additional policies or coverage as DSHS may reasonably request or that are required by law or regulation.

ARTICLE XV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 15.01 Actions Constituting Breach of Contract. Actions or inactions that constitute breach of contract include, but are not limited to, the following:

- a. Failure to properly provide the services and/or goods purchased under this Contract;
- b. Failure to comply with any provision of this Contract including failure to comply with all applicable statutes, rules or regulations;
- c. Failure to pay refunds or penalties owed to the Department;
- d. Failure to comply with a repayment agreement with Department or agreed order issued by the Department;
- e. Discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
- f. Any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
- g. Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 15.02 General Remedies and Sanctions. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods.

Additionally, HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract.

The Department may impose one or more remedies or sanctions for each item of noncompliance and shall determine remedies or sanctions on a case-by-case basis if Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

- a. Terminate this Contract by one of means provided in Article XVII. If applicable, notify Contractor of the opportunity to request a hearing on the termination pursuant to Texas Government Code Chapter 2105 regarding administration of Block Grants;
- b. Suspend all or part of this Contract by notifying that the Contractor that DSHS is temporarily discontinue performance of all or a part of the Contract as provided for in Article XVII; as of the effective date of the suspension pending DSHS's determination to terminate, amend the Contract or permit the Contractor to resume performance. Contractor shall not bill DSHS for services performed during suspension, unless expressly authorized by the notice of suspension;
- c. Use as a basis to deny additional or enter into future contracts with Contractor;
- d. Temporarily withhold cash payments to Contractor for proper charges or pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
- e. Permanently withhold cash payments by retaining funds billed by Contractor;
- f. Request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
- g. Declare this Contract void upon the Department's determination that this Contract was obtained fraudulently, or was illegal or invalid from this Contract's inception and demand repayment of any funds under this Contract;

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XVI CLAIMS AGAINST THE DEPARTMENT-NOTICE OF DISPUTE

Section 16.01 Breach of Contract Claim. The process for a breach of contract claim against the DSHS provided for in Texas Government Code Chapter 2260 and implemented in the rules at 25 TAC §§4.11-4.24 or as amended by DSHS, shall be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 16.02 Notice. Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Chapter 2260 and 25 TAC or as amended. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to DSHS Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260 are being invoked and comply with all the requirements in this Chapter and TAC. A copy of the notice must also be given to all other representatives of DSHS and Contractor.

Section 16.03 Performance Not Suspended. Neither the occurrence of an event nor the pendency of a notice of claim filed by the Contractor constitutes grounds for the suspension in whole or part of performance by Contractor.

ARTICLE XVII TERMINATION AND TEMPORARY SUSPENSION

Section 17.01 Expiration of Contract or Program Attachments.

- a. Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Contract or Program Attachment shall end upon the expiration date of that Contract or Program Attachment unless extended or renewed by written amendment.
- b. Prior to completion of the term of all Contracts or Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article and in the Contract.
- c. A Program Attachment's term cannot extend past the Contract term in its associated Contract.

Section 17.02 Effect of Termination or Expiration.

- a. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable to DSHS or another entity designated by DSHS.
- b. Upon termination of all or part of this Contract, Department and Contractor shall be discharged from any further obligation created under the applicable terms of this Contract or Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS and, except as provided in the Survivability of Terms section of the General Terms Article.
- c. Termination does not, however, constitute a waiver of any remedies for breach of this Contract.

Section 17.03 Termination or Temporary Suspension Without Cause.

Contractor shall not bill DSHS for services performed or goods delivered after termination or expiration of Contract or Program Attachment.

Upon termination or expiration of this Contract or Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 19.02 Administrative Offset. The Department has the right to administratively offset amounts owed by Contractor against any invoice submitted for payment.

Section 19.03 Deadline for Closeout. Contractor shall submit all performance, and other Closeout reports required under this Contract within 45 calendar days after the Contract or Program Attachment, if applicable, has terminated.

Section 19.04 Payment of Refunds. Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and shall result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 19.05 Disallowances and Adjustments. The Closeout of this Contract or Program Attachment does not affect the Department's right to recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections or other transactions.

ARTICLE XX DSHS GENERAL PROVISIONS

In addition to the terms and conditions in the Department of State Health Services (DSHS or Department) FY 2016 General Provisions (General Provisions), Contractor agrees to comply with these 2016 Federal Grant Subrecipient Additional Provisions.

ARTICLE XXI PROGRAM OPERATIONS

Section 21.01 Client Financial Eligibility.

Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 21.02 Contracts with Subrecipient and Vendor Subcontractors.

- a. Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in the Contract or Program Attachment(s).
- b. Prior to entering into a subrecipient agreement equaling or exceeding \$100,000, Contractor shall obtain written approval from DSHS.
- c. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan.
- d. Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS.
- e. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.
- f. Contracts with all subcontractors, whether vendor or subrecipient, 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.
- g. Contractor is responsible to DSHS for the performance of any subcontractor.
- h. Contractor shall 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 ineligible under the Sections 12.05, 14.03 and 14.04 of the General Provisions.

Section 21.03 Incorporation of Terms in Subrecipient Subcontracts.

- a. Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor):
 1. Assurances and Certifications in Article XII of the General Provisions;
 2. Sections 14.03 and 14.04 of the General Provisions; and

self-evaluation and Department's monitoring processes. Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff.

- c. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Texas Government Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors.

Section 21.07 Direct Operation.

At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

ARTICLE XXII PROGRAM EQUIPMENT AND SUPPLIES

Section 22.01 Equipment.

Equipment means tangible personal property having a useful lifetime of more than one year and a per-unit acquisition cost that exceeds the lesser of the capitalization level established by the of \$5,000 or more. Contractors shall inventory all equipment, and report the inventory on the Contractors Property Inventory Form.

Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter in the Program Attachment must be submitted to the contract manager assigned to this Contract.

Section 22.02 Equipment List.

- a. All items of equipment to be purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. The equipment list must include:
 1. Description of the property;
 2. Serial number or other identification number;
 3. Source of funding for the property (including the Federal Assistance Identification Number);
 4. Who holds title,
 5. Acquisition date and cost of the property;
 6. Percentage of Federal participation in the project costs for the Federal award under which the property was acquired;
 7. Location use and condition of the property; and
 8. Any ultimate disposition data including the date of disposal and sale price of property. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment.
- b. Contractor shall submit to the contract manager assigned to this Contact, a written description including complete product specifications and need justification prior to purchasing any item of

Section 23.03 Program Income.

- a. Gross income directly generated from Department funds through a project or activity performed under a Contract and/or earned only as a result of this Contract during its term is considered program income.
- b. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in the Uniform Grant Management Standards, for the use of program income to further the program objectives of the state or federal statute that provided the authority of this Contract or its Program Attachment, and Contractor shall spend the program income on the same Project Attachment or Statement of Work project under which it was generated.
- c. Contractor shall identify and report this income in accordance with Article IX of these General Provisions and the provisions in the Contract or its Program Attachment(s).
- d. Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS.
- e. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 23.04 Nonsupplanting.

Contractor shall not use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity.

Contractor shall make a good faith effort to maintain its current level of support.

Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

Section 23.05 Payment Methods.

Section 5.01 of the General Provisions is replaced with the following:
Except as otherwise provided by the provisions of this Contract or its Program Attachment(s), the payment method for it will be cost reimbursement. This payment method is based on an approved budget in this Contract or its Program Attachment(s) and acceptable submission of a request for reimbursement.

Section 23.06 Financial Status Reports (FSRs). Except as otherwise provided in these General Provisions or in the terms of Contracts, if a contract has a categorical budget, Contractor shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Contract term for Department review and financial assessment. Contractor shall submit the final FSR no later than 45 calendar days following the end of the Contract term.

Section 23.07 Working Capital Advance.

If necessary, if allowed by law, and if permitted at DSHS sole discretion, Contractor's requests for an advance of funds shall be limited to the minimum amount needed for effective accomplishment of the Project under this Contract, and shall be timed as closely as possible to actual cash requirements. Contractor

- d. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within 30 calendar days of the date of this written notice.
- e. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Applicable Cost principles, Audit requirements and Administrative Requirements

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220)	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	OMB Circular A-133 and UGMS	UGMS and applicable Federal awarding agency common rule

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict. The Contract will specify appropriate grant guidance.

Section 24.02 Property Acquisitions.

Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

- f. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtml>.
- g. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every six years.

Section 24.06 Submission of Audit.

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

Department of State Health Services
 Contract Oversight and Support, Mail Code 1326
 P.O. Box 149347
 Austin, Texas 78714-9347

Health and Human Services Commission
 Office of Inspector General
 Compliance/Audit, Mail Code 1326
 P.O. Box 85200
 Austin, Texas 78708-5200

Electronic submission to DSHS should be addressed as follows:
COContractAdministration@dshs.state.tx.us

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

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

ARTICLE XXV INSURANCE AND BONDS

Section 25.01 Insurance.

In addition to the Insurance provision in Section 14.22 of the General Provisions, Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds.

Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to this Contract within 5 business days of learning of the loss, to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 26.03 Title to Property.

At the expiration or termination of this Contract for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 26.04 Disposition of Property.

- a. Contractor shall follow the procedures in the American Hospital Association's (AHA) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than \$5,000.
- b. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than \$5,000) will be controlled by the requirements of UGMS.
- c. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than \$5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to this Contract.
- d. After an item reaches the end of its useful life, Contractor shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 26.05 Closeout of Equipment.

At the end of the term of a Contract that has no additional renewals or that will not be renewed (Closeout), or when a Contract is otherwise terminated, Contractor shall submit to the contract manager assigned to this, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment.

All equipment purchased with Department funds must be secured by Contractor at the time of Closeout, or termination of this Contract, and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

ARTICLE XXVII NON-EXCLUSIVE LIST OF APPLICABLE LAWS

Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2 of the Code of Federal Regulations), the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>.