



## **BEI RATER SERVICES CONTRACT**

### **I. PARTIES**

This contract is entered into between the Department of Assistive and Rehabilitative Services, or any authorized successor agency (hereinafter "DARS"), 4800 North Lamar Blvd, Austin, Texas 78756, and:

Legal Name of Contractor: Jan Castleberry

[REDACTED]

Street Address (if different):

City and Zip: Austin, TX, 78704-1418

Telephone: 512-217-3922

FAX number:

Contact Person: Jan Castleberry

[REDACTED]

hereafter referred to as the "Contractor."

### **II. LEGAL AUTHORITY AND PURPOSE**

The Legal authority for DARS to enter into this contract is Texas Human Resources Code, Title 4, §81.007(k). The purpose of this contract is for qualified contractors to evaluate interpreter candidates for the Board for Evaluation of Interpreters (BEI) certification program, in addition to providing other specialized services on an as needed basis.

### **III. TERMINOLOGY:**

ASL - American Sign Language

BEI - Board for Evaluation of Interpreters

DHHS-Office for Deaf and Hard of Hearing Services

OC:B - Oral Certificate:Basic

OC:C - Oral Certificate:Comprehensive

OC:V – Oral Certificate: Visible

MSS - Morphemic Sign System

SEE - Signing Exact English

Level III-V "I" – Level III - V Intermediary

#### IV. CONTRACT PERIOD

- A. This Contract is effective the latter of 09/01/2016 or on the signature of both parties, through 08/31/2018.
- B. This Contract may be renewed upon mutual agreement under the same terms and conditions for two (2) additional two-year renewal periods.

#### V. CONTRACTOR REQUIREMENTS

The Contractor must meet the following requirements to provide services under this contract:

- A. Hold a valid Advanced, Master, SEE, MSS, OC:C, OC:V, Court, Trilingual Advanced, Trilingual Master, Level III, Level IV, or Level V, BEI interpreter certificate for a period of five years or more or hold a valid CDI, Level V Intermediary, or Medical BEI interpreter certificate;
- B. Possess a knowledge of linguistics, sign language theory, and interpreting for the specified level of certification for which rating services are to be provided;
- C. Be a Texas resident;
- D. Be trained by DHHS prior to participating in scoring sessions;
- E. Work effectively in teams; and
- F. Possess a knowledge of the English language, paraphrasing, mirror writing, and oral interpreting support techniques to provide Oral rating services.

#### VI. SCOPE OF SERVICES

The Contractor shall, as needed and upon request of DHHS, and as contractor availability allows, provide the following services:

- A. **Rater:** evaluates the skills of interpreter candidates at varying levels in accordance with the prescribed scoring methodology based on level and type of certification as established by the BEI Board, and must rate within an acceptable standard deviation range to ensure a high level of inter-rater reliability. The rater scoring process involves providing effective dialogue and working harmoniously with team members while reviewing and scoring each candidate's performance to assess their proficiency in one or more of the following areas as appropriate to the test taken:
  - 1. Spoken English-to-American Sign Language (ASL);
  - 2. Spoken English-to-Signed English;
  - 3. ASL-to-Spoken English;
  - 4. Signed English-to-Spoken English; and
  - 5. Sight Translation;
  - 6. ASL-to-Spoken English-to-Spoken Spanish (Trilingual interpreting);
  - 7. English-to-Spanish Sight Translation and Spanish-to-English Sight Translation;

8. Spoken English-to-SEE;
  9. SEE-to-Spoken English;
  10. Spoken English-to-MSS;
  11. MSS-to-Spoken English;
  12. Visible-to-Spoken English (Oral transliterating/paraphrasing);
  13. Spoken English-to-Visible.
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- B. Trainer:** function as a trainer during the morning of the first day of the rater scoring session to provide presentations to raters on scoring procedures prescribed by DHHS and function as a team leader beginning with the afternoon of the first day of the rater scoring session and subsequent days of the session;
  - C. Team Leader:** function as a team leader in accordance with the prescribed scoring methodology during scheduled rater scoring sessions to ensure prescribed scoring methodology outlined in the BEI Rater Manual is adhered. This includes, but not limited to, double checking objective and subjective ratings to ensure candidate is a clear pass or clear fail and taking necessary steps to guide team in discussion when results are in the critical range to ensure a valid end results; documenting and reporting to DHHS issues that arise during training or rating sessions that are disruptive and impedes rating teams ability to function in a productive and harmonious manner, and shall attend the specialized team leader training and regular rater training session;
  - D. Proctor:** provide proctoring services to administer a 2-hour Test of English Proficiency (TEP) or Test of Spanish Proficiency (TSP) to prospective interpreter candidates, which may be held at various sites around the state;
  - E. Data Analyst:** function as a data analyst for entering, analyzing and reporting rater consensus scoring for TX BEI and other states licensed to use BEI exams. The report shall include the standard deviation per candidate, per rater, and must identify outliers, and shall be submitted to DHHS within 15-days from the last day of the scoring session. Contractor shall provide all working documents, electronic and paper form, within 5 business days, upon request by DHHS.
  - F. Lead Trainer:** prepares training materials and provides at least two days of instruction pertaining to the BEI scoring methodology to newly contracted raters or a rater needing additional training;
  - G. TEP Site Monitor:** function as a TEP test taker by taking the TEP at a location established by DHHS, noting performance of test proctors, and any environmental distractions. Monitor must complete and submit to the DHHS Contract Administrator, within two business days, an evaluation of test proctor services on a form approved by DHHS. TEP Site Monitor requires the monitor to stay on site for at least 45 minutes.

## VII. Confidentiality

- A.** The Contractor shall keep the BEI testing, rater training materials, and candidate information confidential (hereinafter Materials), and shall not copy, retain, sell, deliver, disseminate, show or discuss the Materials or any portion of these Materials to any person except as specifically authorized in

this Contract. This includes, but is not limited to, topics, content, vocabulary and identity of talent or candidates. Contractor shall not divulge any confidential information including candidates' test tapes and language proficiency tests and testing and rater procedures, and shall not allow individuals or organizations to see or use the Materials except those who are officially and directly related to conducting tests in Texas or rating test candidates as authorized by DHHS.

- B.** Contractors having any involvement in conducting or rating the tests shall not be allowed to become certified through the use of the Materials except that Contractors can become certified through use of the Materials before having seen or becoming involved in conducting the tests or rating the tests. If a new release of the Materials becomes available, Contractors involved in conducting or rating the tests may be allowed to take the new release if they have not been involved with or seen the new version prior to taking the test.

## **VIII. PAYMENT RATES**

- A.** DARS determines when raters are requested to provide services and determines which performance test candidates, raters may provide rater services.
- B.** The Contractor shall be compensated as follows:
  - 1. \$30 for each candidate evaluated for OC:B, SEE or MSS certification
  - 2. \$35 for each candidate evaluated for Basic certification
  - 3. \$40 for each candidate evaluated for Level III-Intermediary, Level V-Intermediary, OC:V or OC:C
  - 4. \$45 for each candidate evaluated for Advanced, Master, or Trilingual Advanced or Trilingual Master certification
  - 5. \$47.50 for functioning as team leader for each candidate evaluated for certification
  - 6. \$25 stipend per hour of training to be paid in 30 minute increments for raters and team leaders for attending the mandatory pre-rater training session prior to participating in scoring interpreter candidates
  - 7. \$25 per hour for functioning as proctor services
  - 8. \$150 per rater scoring session or pre-rater training for functioning as trainer;
  - 9. \$150 per TX BEI rater scoring session for functioning as data analyst; \$25 per BEI rater scoring session for functioning as data analyst for other states authorized to use TX BEI exam per licensing agreements with DARS;
  - 10. \$600 per day for functioning as lead trainer;
  - 11. \$18.75 stipend per hour of training to be paid in 30 minute increments for attending any DHHS-mandated training, not to include the pre-rater training session, either annually or as needed. Reimbursement for travel in accordance with VIII. B and C;
  - 12. Raters and team leaders attending any DHHS-mandated training, not to include the pre-rater training session may in lieu of the stipend in accordance with VIII B.11 choose to accept approved continuing education units (CEUs) for the BEI

- rater training event in accordance with DHHS Services Manual Chapter 3.
13. \$75 plus TEP proctor fee for functioning as a TEP site monitor;
  14. \$50 for each candidate evaluated for Court or Medical certification;
  15. \$52.50 for functioning as team leader for each candidate evaluated for Court or Medical certification.
  16. \$55 for each candidate evaluated for BEI CDI;
  17. \$57.50 for functioning as team leader for each candidate evaluated for BEI CDI.
- C.** Reimbursement for travel for services in accordance with the State of Texas Travel Allowance Guide and DARS Policy.
- D.** Overnight travel must be pre-approved in writing by DHHS. The amount of reimbursement for commercial airline fares shall not exceed the cost of the lowest available airfare between the contractor's location and the DARS location that the work will be performed. The contractor must make a good faith effort to obtain the lowest available airfare.
- E.** Contractor shall only be compensated as follows for services rendered during a Pilot Rater Scoring session: Reimbursement for travel in accordance with VII. B and C
- F.** In accordance with the Prompt Payment Act, Texas Government Code §2251, DARS will make payment on a properly prepared and submitted invoice within 30 days of receipt. Invoices are to be submitted via email, fax or mail and are to be submitted at the end of the service event to the BEI Program Administrator in compliance with the following procedure:
1. invoice shall reflect the State of Texas Vendor identification number or federal tax identification number, and correct "Remit to:" address;
  2. invoice shall reflect the DARS PO Number and/or contract number if applicable and include a description of the services performed, and the period covered by the invoice;
  3. The invoice shall reflect the number of candidate videotapes evaluated during a scoring session or number of hours worked for proctoring the TEP or TSP, the rate and total amount requested;
  4. The invoice shall comply with all applicable state requirements or may be rejected for payment until Contractor provides conforming invoices. Payment to Contractor shall be as specified in the contract for services provided, which will be compared to the contract requirements and other documentation submitted and shall be subject to DARS approval. All services shall be performed to DARS satisfaction, and DARS shall not be liable for any payment pursuant to the resulting contract for services which are unsatisfactory and which have not been approved by DARS.
- G.** Invoices are to be mailed to: Department of Assistive and Rehabilitative Services, 4900 N. Lamar Blvd. Suite 2169, Attention: DHHS, BEI Program Administrator, Austin, Texas 78751; faxed to: 512-407-3299; or emailed to: [bei@dars.state.tx.us](mailto:bei@dars.state.tx.us).

- H. For purposes of the Contract, rater scoring sessions typically last 2 to 3 days and , consist of the following activities:
1. The morning of the first day begins with a mandatory rater training session. The afternoon begins the rater scoring session and will continue through subsequent days. The following shall be followed:
  2. Raters will be paid for the training session as stipulated in Section VIII. B. 6.
  3. Raters will be paid for the rater scoring session as stipulated in Section VIII. B.1 through B.4.
  4. Trainers will be paid as a trainer for that first day as stipulated in Section VIII. B.8 and will be paid as a team leader for the subsequent days as stipulated in Section VIII. B.5.

## IX. STANDARD TERMS AND CONDITIONS

**A. Order of Precedence.** In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: the signed Contract (or notice of award), attachments to the Contract (or notice of award), the request for proposals, and respondent's response to a request for proposals.

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

**C. Severability.** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**D. Survival of Terms.** Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or that by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice, and fees verification.

**E. Funds Availability.** This Contract is subject to the availability of state and/or federal funds appropriated for the purposes of this Contract. If funds are not appropriated or made unavailable or if available funding is reduced, DARS will provide the Contractor with written notice of termination or any necessary

payment suspension, or funding reduction. The Contractor will have no right of action against the State of Texas or DARS in the event that DARS is unable to fulfill its obligations under this Contract as a result of a lack of sufficient funding.

**F. Amendments.** This Contract represents the entire agreement of the parties. Any changes, deletions, extensions or amendments to this Contract shall be in writing and signed by both parties, except for Unilateral Amendments issued by DARS. A Unilateral Amendment may be provided in writing from the DARS assigned contract manager to the Contractor under the following circumstances including, but not limited to:

1. to correct an obvious clerical error in this Contract;
2. to incorporate new or revised federal or state laws, regulations, rules, or policies;
3. to change the name of the Contractor to reflect the Contractor's name, as recorded by the Texas Secretary of State; or
4. to amend the contact name and address.

**G. Contractor Notification.** The Contractor will notify DARS:

1. within 2 business days if at any time the Contractor is not in compliance with the provisions of this Contract. A false statement regarding the Contractor's compliance with the terms of this Contract may be treated as a material breach of this Contract and may be grounds for DARS to terminate the Contract; and
2. at least 60 calendar days before the intended effective date of any change in legal entity status, such as a change in ownership or control, name, legal status with the Texas Secretary of State, or Texas Identification Number issued by the Texas Comptroller of Public Accounts.
- 3.

**H. Participation of Historically Underutilized Businesses (HUBs).** The Contractor shall comply with the HUB requirements identified in the solicitation under which the Contractor applied, if applicable.

**I. Assignments.** The Contractor may not assign a DARS contract in whole or in part, or any right or duty required under the Contract, without first obtaining written approval from DARS. Unless otherwise approved in writing by DARS, assignment will not release the Contractor who is the assignor from the contractual obligations.

Because of sunset legislation passed by the 84th Texas Legislature, R.S., (2015), this Contract may be assigned to the Health and Human Services Commission (HHSC).

**J. Subcontracting.** The Contractor accepts liability and retains responsibility for the performance of subcontractors providing services under the terms of this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract will relieve the Contractor of the responsibility for ensuring that the requested services are provided. The Contractor accepts responsibility for compensating any party with whom the Contractor enters into a subcontract to provide services under the terms of this Contract. If the Contractor

uses a subcontractor for any or all of the work required, the following conditions will apply:

1. contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors;
2. subcontracting shall be conducted solely at the Contractor's expense;
3. DARS retains the right to check a subcontractor's background and approve or reject the use of submitted subcontractors;
4. The Contractor shall be the sole contact for DARS; and
5. The Contractor shall list a designated point of contact for all DARS inquiries.

**K. Independent Contractor.** The Contractor, Contractor's employees, representatives, agents, and any subcontractors shall serve as independent contractors with respect to DARS in providing services under this Contract, and as such the Contractor's employees are not employees of DARS, are not eligible for DARS employee benefits, and shall not represent themselves as DARS employees. Contractor is responsible for providing all legally required unemployment and workers' compensation insurance for the Contractor's employees.

**L. Insurance.** The Contractor represents and warrants that it will, within five business days of the execution of the Contract, provide DARS with current certificates of insurance or other proof acceptable to DARS of the insurance required by this Contract. As applicable to the Contract requirements, the Contractor's insurance coverage must be in effect for the complete term of the Contract. If the required insurance coverage policies expire during the term of the Contract, to include any subsequent contract extensions, the Contractor must provide DARS' contract manager with a new insurance certificate at least 10 business days prior to the expiration of the existing insurance coverage. The certificate must show that the terms and financial amounts of the insurance coverage comply with the Contract requirements and will become effective as of the expiration date and time for the existing coverage. The Contractor is responsible for notifying the DARS' contract manager within five business days about any cancellation, non-renewal, or material change in insurance terms that affects required insurance coverage. In the event that the Contractor fails to keep in effect at all times the required insurance coverage, DARS may, in addition to any other remedies it may have, terminate the Contract, subject to the provisions of the Contract. The Contractor is responsible for any deductible or self-insured retention requirements in the required insurance coverage.

**M. Disclosures under the Act.** The Contractor's records related to this Contract are subject to the requirements of Texas Government Code, [Chapter 552, Public Information \(the Public Information Act\)](#). Pursuant to Texas Government Code, [Section 2252.907](#), the Contractor agrees to make information not otherwise exempted from disclosure under [Chapter 552](#) available in a format specified by DARS and accessible by the public.



**N. HOLD HARMLESS AND INDEMNIFICATION. CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, DARS, AND ITS OFFICERS AND EMPLOYEES FROM ANY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS CONNECTED WITH ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY DARS. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS DARS OR THE STATE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF DARS OR ITS EMPLOYEES ACTING IN THEIR CAPACITY AS AN EMPLOYEE OF DARS. IF CONTRACTOR IS A PHYSICIAN OR PSYCHIATRIST, THE STATE OF TEXAS SHALL INDEMNIFY CONTRACTOR IN ACCORDANCE WITH TEX. CIV. PRACT. & REM. CODE, CHAPTER 104; AND CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS DARS, ITS EMPLOYEES AND AGENTS, ONLY WHEN ACTUAL DAMAGES, AND/OR COURT COSTS AND ATTORNEYS' FEES ARE ADJUDGED AGAINST DARS DUE TO CONTRACTOR'S WILLFUL OR WRONGFUL ACT OR ACTS OF GROSS NEGLIGENCE OR WHEN THE COURT IN ITS JUDGMENT OR A JURY IN ITS VERDICT FINDS THAT CONTRACTOR ACTED IN BAD FAITH, WITH CONSCIOUS INDIFFERENCE OR RECKLESS DISREGARD.**

**O. Conflict of Interest.** The Contractor warrants that it has no interest and will acquire no direct or indirect interest that would conflict in any manner with its performance under this Contract.

**P. Renewal.** If the procurement leading to this Contract allows non-competitive renewal, such renewal will be based on DARS' determination that the Contractor is in compliance with all terms of the Contract, DARS' continuing need for the services, and available funding.

**Q. Information Security and Confidentiality.** The Contractor and any of its subcontractors associated with this Contract will maintain reasonable and appropriate administrative, physical, and technical safeguards to ensure the integrity and confidentiality of DARS-related information and to protect against any reasonably anticipated threats or hazards to the security or integrity of the information and unauthorized use or disclosure of the information in accordance with applicable federal and state laws, rules, and regulations and DARS policies and procedures.

1. Different requirements apply to different types of contractors. Requirements that may apply include, but are not limited to:
  - i. State Vocational Rehabilitation Services Program at [34 C.F.R. Part 361](#);
  - ii. Federal Early Intervention Program for Infants and Toddlers with Disabilities at [34 C.F.R. Part 303](#);

- iii. Texas Health and Safety Code Sections [85.113](#) Workplace Guidelines for State Contractors and 85.115 Confidentiality Guidelines;
- iv. HIPAA privacy and security rules, [45 C.F.R. parts 160](#), [162](#) and [164](#);
- v. [American Recovery and Reinvestment Act of 2009, Sections 13400–13411](#) (42 U.S.C § 17921), Improved Privacy Provisions and Security Provisions;
- vi. Title 1 Texas Administrative Code, [Sections 202.1](#) Applicable Terms and Technologies for Information Security and [202.3](#) Security Standards for State Agencies through 202.28;
- vii. [Federal Information Security Management Act of 2002](#) (FISMA);
- viii. [Publication 1075—Tax Information Security Guidelines for Federal, State and Local Agencies](#);
- ix. [NIST Special Publication 800-53 Revision 3](#)—Recommended Security Controls for Federal Information Systems and Organizations;
- x. [NIST Special Publication 800-47](#)—Security Guide for Interconnecting Information Technology Systems; and
- xi. [Health and Human Services Enterprise Information Security Standards and Guidelines](#).

2. Upon reasonable notice, the Contractor must provide and cause its subcontractors and agents to provide DARS or its designee with prompt, reasonable, and adequate access to any information security records, books, documents, and papers that are directly pertinent to the performance of the scope of work including, but not limited to the Contractor's:

- i. information security policies;
- ii. information security procedures;
- iii. information security standards;
- iv. information security guidelines; security plan in compliance with Special Publication 800-53 and [Revision 4](#), published by the National Institute of Standards and Technology (NIST) and reports on security violations;
- v. security acknowledgement agreements, signed by the Contractor's employees; and
- vi. list of employees who have authorized access to DARS confidential information.

Items (i.) through (vi.) above are subject to DARS review and approval. Neither DARS review or approval, nor its failure to review or approve will relieve, waive, or satisfy any of the Contractor's obligations under this Contract.

3. The Contractor will provide and will require its subcontractors and agents to provide DARS with periodic written certification of compliance with controls and provisions relating to information security, including but not limited to those related to confidential data transfers and the handling and disposal of protected health information (PHI), electronic protected health information (EPHI), and personally identifiable information (PII).

Acceptable forms of written compliance may be, but are not limited to:

- i. Statement on Standards for Attestation Engagements (SSAE) No.16, Service Organization Control (SOC) Report;
- ii. General Security Controls Audit;
- iii. Application Controls Audit;
- iv. Vulnerability Assessment; and
- v. Network/Systems Penetration Test.

4. Data Use Agreement (DUA). Unless the exception referenced in Q.5. (below) applies, the requirements of the [HHS-DARS Data Use Agreement \(Governmental\)](#) or the [HHS-DARS Data Use Agreement \(Non-Governmental\)](#) are incorporated into this Contract. The agreement describes the contractor's rights and obligations with regard to confidential information and describes the limited purposes for which the Contractor may create, receive, maintain, use, disclose, or obtain confidential information. The term confidential information is defined in the agreement. Both the governmental and non-governmental versions are published on the DARS Contracts and Procurement page at <http://www.dars.state.tx.us/business/index.shtml>.

5. Exception to requiring the DUA: The DUA is not required for the Contract because: **(NOT APPLICABLE)**

The Contractor does not access confidential information or the Contractor has an approved exemption from use of the DUA.

**R. Record Retention.** The Contractor and any of its subcontractors associated with this Contract will retain financial and supporting documents, statistical records, and any other records pertinent to the services provided under this Contract for which a claim or report was submitted to DARS. The records and documents must be kept for three years after the date of submission of the final bill or until all billing-related questions are resolved, whichever is later.

**S. Authority to Audit.** Acceptance of funds under this Contract acts as acceptance of the authority of DARS, the State Auditor's Office (SAO), federal funding agency or any successor agency, to conduct an audit or investigation of the Contractor or any subcontractors in connection with those funds during the term of the Contract and thereafter, as provided by law. Upon request, the Contractor and any of its subcontractors associated with this Contract will provide DARS, the State Auditor's Office, the federal funding agency, their successor agencies, or any of their duly authorized representatives with any books, documents, papers and records that are directly pertinent to this Contract for the purpose of conducting audits, examinations, investigations, or matching funds validations, or for the purpose of making excerpts and transcriptions. The Contractor and subcontractors associated with this Contract will cooperate fully with the above parties in the conduct of an audit, examination, investigation, funds validation, or the making of excerpts and transcriptions. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor; the requirement to make books, records, documents and papers; and the requirement to cooperate is included in any subcontract that the Contractor awards under this Contract.

**T. DARS Monitoring.** The Contractor and any subcontractors associated with this Contract agree to permit on-site monitoring visits and desk reviews, as deemed necessary by DARS to review all financial or other records and management control systems relevant to the provision of goods and services under this

Contract. The Contractor will include this requirement in any subcontract associated with this agreement.

**U. Remedies.** The Contractor and any of its subcontractors associated with this Contract will remedy in a timely manner, any weaknesses, deficiencies or program noncompliance found as a result of a review, audit or investigation, and any performance or fiscal exceptions found by DARS, the State Auditor's Office, the federal funding agency, their successor agencies, or any of their duly authorized representatives. The remedy can include a refund of disallowed costs or billed amounts or any other appropriate sanctions or penalties deemed necessary by DARS.

**V. Federal and State Requirements.** The Contractor will comply with all applicable state and federal laws, rules and regulations governing the provision of services under this Contract and state policies and procedures issued by DARS, including but not limited to requirements specifically stated in this Contract.

1. The Contractor agrees to comply with state and federal antidiscrimination laws, including without limitation:

- i. [Title VI of the Civil Rights Act of 1964](#) (42 U.S.C. §2000d et seq.);
- ii. Section [504](#) and [508](#) of the Rehabilitation Act of 1973 (29 U.S.C. §794):  
This Contract may be subject to [HHS's EIR accessibility requirements](#). If so, the Contractor must follow the terms and conditions published in HHS's [Uniform Accessibility Clause](#);
- 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. The [HHS administrative rules, as set forth in the Texas Administrative Code](#), to the extent applicable to this Agreement.

2. The Contractor 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.

3. The Contractor agrees to comply with [Title VI of the Civil Rights Act of 1964](#), and its implementing regulations at [45 C.F.R. Part 80](#) or [7 C.F.R. Part 15](#), prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. 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, to ensure that

persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

4. The Contractor agrees to comply with [Executive Order 13279](#), and its implementing regulations at [45 C.F.R. Part 87](#) or [7 C.F.R. Part 16](#). These provide in part that any organization that participates in programs funded by direct financial assistance from the U. S. Department of Agriculture or the U. S. Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. Upon request, the Contractor will provide the Health and Human Services Commission's (HHSC's) Civil Rights Office with copies of all of the Contractor's civil rights policies and procedures.

6. The Contractor must notify HHSC's Civil Rights Office about any civil rights complaints received relating to its performance under this Agreement. The notice must be delivered no more than 10 calendar days after the Contractor receives the complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office  
701 W. 51st Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: 1-888-388-6332  
Phone: (512) 438-4313  
TTY Toll Free: 1-877-432-7232  
Fax: (512) 438-5885

7. Federal Grant Requirements.

If applicable, the Contractor will comply with:

- i. Title [34 C.F.R. Part 74](#), Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;
- ii. the Office of Management and Budget's (OMB) circulars [A-133](#), [2 CFR, Part 215](#), [A-110](#), [2 CFR Part 220](#), [2 CFR Part 220](#), [A-21](#), [2 CFR Part 225](#), [A-87](#), [A-102](#), [2 CFR, Part 230](#), [A-122](#) and/or [2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#);
- iii. the [Uniform Grant Management Standards \(UGMS\)](#) issued by the State of Texas; and
- iv. Contract Cost Principles and Procedures [Title 48 Chapter 1 Subchapter E Part 31](#).

8. Reporting of Abuse, Neglect, or Exploitation. The Contractor will comply with Chapter 48, Human Resources Code, regarding reporting of abuse, exploitation, or neglect of persons who are disabled or are age 65 or older.

9. E-Verify. To the extent required by law, the Contractor certifies and ensures that the Contractor utilizes and will continue to utilize, for the term of this Contract including any subsequent extensions, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- i. all persons employed to perform duties in Texas, during the term of the Contract; and



ii.all persons (including subcontractors) assigned by the respondent to perform work pursuant to the Contract, within the United States.

The Contractor shall provide, upon the request of DARS, an electronic or hardcopy screenshot of either the confirmation screen or the tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

10. If applicable, the Contractor will comply with:

- i.[Health and Safety Code Section 85.113](#) (workplace and confidentiality guidelines regarding AIDS and HIV);
- ii.the requirements of the [Immigration Reform and Control Act of 1986](#) (8 U.S.C. §1324a, *et seq.*) and any subsequent immigration laws related to verification of employment and the retention of verification forms for any individuals hired after November 6, 1986, who will perform any labor or services under this Contract, including the [Immigration Act of 1990](#) and [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 \(IIRIRA\)](#);
- iii.all state and federal licensing and certification requirements and regulations prescribed by the U.S. Department of Health and Human Services, and DARS;
- iv.the [Clean Air Act](#) (42 U.S.C. §7401 *et seq.*) and the [Federal Water Pollution Control Act](#) (33 U.S.C. §1251 *et seq.*);
- v.all of the mandatory standards and policies relating to energy efficiency contained in the state's energy conservation plan, [Executive Order RP-49](#), and are related to the [Energy Policy and Conservation Act](#) (Pub.L.94-163);
- vi.the [Fair Labor Standards Act \(FLSA\)](#) (29 U.S.C. §201 *et seq.*) regarding minimum wages, overtime pay, recordkeeping, and child labor;
- vii.[U.S.C. §675\(4\)](#), which requires that Foster care maintenance payments must be expended for items that are provided by foster parents and facilities; and
- viii.Referral of Debt to IRS for Tax Refund Offset 45 C.F.R. 31.

**W. Anti-Trust.** In accepting the Contract, the Contractor certifies and agrees as follows:

1. Neither the Contractor, nor the person represented by the Contractor, nor any person acting for the represented person has:
  - i.violated the antitrust laws codified by [Chapter 15, Business and Commerce Code](#), or the federal antitrust laws; or
  - ii.directly or indirectly communicated the bid or offer associated with this Contract to a competitor or other person engaged in the same line of business.

2. The Contractor hereby assigns to DARS any and all claims for overcharges associated with this Contract arising from the Contractor's violation of the anti-trust laws of the United States, [15 U.S.C.A. Section 1, et seq. \(1973\), as amended](#), and the anti-trust laws of the State of Texas, [Texas Business and Commerce Code, Section 15.01](#), et seq. (1967), as amended.

**X. Debts or Delinquencies to State.** If the Contractor is indebted to or owes delinquent taxes to the state, pursuant to [§403.0551](#) of the Government Code, any payments owed to the Contractor under this Contract will be applied toward elimination of the Contractor's indebtedness to the state, delinquency in payment of taxes to the state, or delinquency in payment of taxes that the Texas Comptroller of Public Accounts administers or collects until the indebtedness or delinquency is paid in full.

**Y. Withholding/Recoupment of Payments.** DARS may withhold or recoup payments due or paid under this Contract, in whole or in part, in the event of the Contractor's noncompliance with any term or provision of this Contract, any federal or state law or regulation, or any DARS rules or standards, including but not limited to the requirements specifically stated in this Contract, relating to the Contractor's performance under this Contract, as pursuant to Title 1 Texas Administrative Code (TAC), Chapter 392 Purchase of Goods and Services for Specific Health and Human Services Commission Programs, Subchapter D, DARS Contract Management Requirement, Section §392.317.

**Z. Certifications.** The certifications below represent material facts upon which DARS relies when contracting for services. If DARS determines that the Contractor knowingly made erroneous certifications, DARS may pursue all available remedies in accordance with Texas and Federal law.

1. If this is a contract for goods or services that equals or exceeds \$25,000 or a grant or a subgrant in any amount, then the Contractor/grantee agrees as follows:

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts

- i. Neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or by the State of Texas.
- ii. The Contractor will include this certification statement (provided in item i, directly above), without modification, in all covered subcontracts and solicitations for all covered subcontracts.
- iii. The Contractor will not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DARS or other federal department or agency, as applicable.
- iv. A Contractor may rely upon a certification of a potential subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the Contractor knows that the certification is

erroneous. A contractor must, at a minimum, obtain certifications from its covered subcontractors upon each subcontract's initiation and upon each renewal.

- v. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this contract certification document. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.
- vi. Except for contracts authorized under this paragraph AA(1)iii of these terms, if a Contractor in a covered contract knowingly enters into a covered subcontract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, DARS may pursue available remedies, including suspension and/or debarment.
- vii. The Contractor will provide immediate written notice to DARS if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- viii. Where the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Contract.

2. If this Contract (including all subgrants or subcontracts) equals or exceeds \$100,000 the Contractor/grantee agrees as follows:

Certification Regarding Lobbying (Certification for Contracts, Grants, Loans, and Cooperative Agreements)

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), Disclosure Form to Report Lobbying, in accordance with its instructions.
- iii. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- iv. This certification of the statements in paragraph AA (2) is a material representation of fact upon which reliance was placed by DARS when this



transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by [Section 1352, Title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**AA. Prohibited Responses and Contracts.** Under Government Code, sections [2155.006](#) and [2261.053](#), as applicable, the vendor or Contractor certifies that the individual or business named in this Contract is eligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**BB. Intellectual Property.** DARS and any federal funding agency reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal or State of Texas government purposes: 1. the copyright in any work developed under this Contract, and 2. any rights of copyright to which the contractor purchases ownership with contract support.

**CC. Buy Texas.** In accordance with Texas Government Code §2155.4441, the State of Texas requires that during the performance of a contract for services, the contractor will purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of the state.

**DD. Force Majeure.** DARS may grant relief from performance of the Contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain relief from performance of the Contract based on force majeure, the Contractor shall file a written request with DARS. The Contractor must provide DARS with proof of force majeure in writing within five business days of the Contractor's failure to perform in accordance with the Contract on the basis of force majeure or otherwise waive this right as a defense.

**EE. Dispute Resolution.** Disputes and claims for breach of contract against DARS or the State of Texas under this Contract will be resolved under the laws of the State of Texas, the [Texas Government Code Chapter 2260](#) and DARS rules, policies, and procedures.

**FF. Failure to Perform.** If the Contractor fails to perform in accordance with the provisions of this Contract, DARS may upon written notice to the Contractor, take adverse action against the Contractor, up to and including terminating the Contract in whole or in part. If notice of termination is given, all work by the Contractor shall cease on the effective date of the termination, and DARS will not pay for work performed on or after the effective date of termination. Such termination shall not be an exclusive remedy but shall be in addition to any other

rights and remedies provided by law or under this Contract. Adverse action, including termination, may result from, but is not limited to:

1. violation of the terms of this Contract;
2. any evidence of abuse, neglect, or exploitation of consumers receiving services from the Contractor as substantiated by an investigation conducted by the Contractor, an external regulatory agency, or DARS;
3. any information giving DARS reason to believe that the health or safety of DARS consumers is compromised;
4. any change in ownership or change in control that DARS believes would adversely affect the delivery of services;
5. any real or apparent conflict of interest giving DARS reason to believe that continuation of the Contract is not in the best interest of DARS, the state, or DARS consumers; or
6. any violation of state or federal law.

**GG. Contract Termination.** This Contract may be terminated by mutual consent or by either party with 30 calendar days, with written notice. DARS "Notice of Termination" will be delivered to the Contractor, specifying the extent to which performance of work under the Contract is terminated and the date upon which the termination becomes effective. DARS shall not be liable to the Contractor for any work done or materials purchased after termination or for lost profits or other damages. The right to terminate is in addition to and not in lieu of the rights provided to DARS by this Contract.

**HH. Contract Terms.** The terms of this Contract are accepted by the parties of the Contract. By signing this Contract, the persons signing the Contract are certifying that they are authorized to obligate the party for whom they are signing to the terms of the Contract. For the convenience of the parties, the signatures of authorized representatives for each party may appear on separate pages.

## **X. SANCTIONS FOR NONCOMPLIANCE**


In the event of the contractor's noncompliance with the terms of the contract, DARS will impose such sanctions as determined to be necessary by DARS, including, but not limited to:

- A.** Withholding of payments to the contractor under the contract until the contractor complies with the term of the contract.
- B.** Suspension of future assignments.
- C.** Suspension of current assignments.
- D.** Cancellation, termination, or suspension of the contract, in whole or in part.

Payee ID Number: 70031127643001 DARS Contract Number: 538-17-0014-0000000000003

**SIGNATURES**

DARS REPRESENTATIVE


  
\_\_\_\_\_  
Signature

Cheryl Fuller  
Assistant Commissioner, DRS

\_\_\_\_\_  
Title  
~~8/6/16~~ 8/22/16

\_\_\_\_\_  
Date

CONTRACTOR

  
\_\_\_\_\_  
Signature of Person  
Authorized to Sign Contract

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date  
8/6/16