

Vendor ID No:  
1823007400

**HEALTH AND HUMAN SERVICES COMMISSION-  
DISABILITY DETERMINATION SERVICES  
CONTRACT NO. HHS000193400027  
(Psychologists)**

This contract for disability determination services (the “**Services**”) is between the Health and Human Services Commission (“**HHSC**”), on behalf of the Office of Disability Determination Services (“**DDS**”), and Dr. Sylvia Chen, LLC (“**Contractor**”), each of HHSC and Contractor being a “**Party**” and together the “**Parties.**”

HHSC is an agency of the state of Texas. DDS is a program within HHSC. DDS is a 100 percent federally funded program operating under federal law (42 U.S.C.A., § 405), Social Security Administration (regulations (20 CFR Part 404 and 20 CFR Part 416) and operating policies derived from them (e.g., Program Operations Manual System and other SSA-issued policy documents). These federal mandates result in significant structure to the manner in which the activities of this contract are conducted.

Contractor shall provide Dr. Sylvia Chen to provide the Services of a:

- State Agency Psychological Consultant
- Chief State Agency Psychological Consultant

This contract is a result of compliance with applicable laws and rules of the state of Texas. HHSC is contracting for the services listed in this contract on behalf of DDS, under the authority of Title 10, subtitle D, section 2155.144 of the Texas Government Code, chapter 531 of the Texas Government Code, and Texas Administrative Code, Title 1, Administration, Part 15, Chapter 391, Subchapter B, Rule §391.205, Noncompetitive Procurement. HHSC issued a Notice of Open Enrollment (“**OE**”) No. HHS0001934, on July 31, 2018 for the Services.

The Parties therefore agree as follows:

**ARTICLE 1  
CONTRACT DURATION**

**1.1 Term**

This contract is effective on October 1, 2018 and ends on September 30, 2020 (the “**Initial Contract Term**”), unless terminated sooner in accordance with the terms of this contract.

**1.2 Renewal**

At the expiration of the Initial Contract Term, this contract may be renewed by written agreement between the Parties for up to two additional, 24-month periods. A renewal may be based on performance and DDS’ continuing need for the Services. A rate escalation may be

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allowed for each renewal period. HHSC DDS will give Contractor a written notice of intent to exercise the renewal option at least 30 days prior to the expiration of the contract.

## ARTICLE 2 BUDGET/FEE SCHEDULE/PAYMENT

### 2.1 Not to Exceed Amount

The total amount expended during the Initial Contract Term will not exceed \$1,600,000.00 (the “**Cap**”), unless increased through a contract amendment executed by the Parties' respective authorized signature authority. The total value of the contract, including the Initial Contract Term and renewals, if any, is \$4,800,000.00. **By signing this Contract, Contractor acknowledges and agrees that HHSC does not commit to ordering specific quantities of Contractor's services, and HHSC is, therefore, unable to predict the amount of the "Cap" that will be used, if any.**

### 2.2 Rate Schedule

(1) Payable actions will be compensated in accordance with the following rate schedule:

| Rate                   | Description of Payable Action  |
|------------------------|--|
| \$27.00 per assessment | Mental Case Assessment   |
| \$33.75 per assessment | Mental Chief Case Assessment   |
| \$100.00 per hour      | Chief Hourly Rate  |
| \$80.00 per hour       | SAPC Hourly Rate   |
| \$16.67 per consult    | Chief Non-Case Consults  |
| \$16.67 per consult    | Chief Back-up Non-Case Consult (only when acting in capacity as back-up)         |
| \$8.33 per review      | Chief Review of Administrative Law Judge (“ <b>ALJ</b> ”) CE Request             |
| \$8.33 per review      | Chief Back-up Review of ALJ CE Request (Only when acting in capacity as back-up) |
| \$33.75 per review     | Chief or SAPC QA Reviews   |
| \$100.00 per hour      | Chief or SAPC Training Preparation   |
| \$100.00 per hour      | Chief or SAPC Provided Training or Orientation                                   |
| \$100.00 per hour      | Chief Attended Training or Orientation   |
| \$80.00 per hour       | SAPC Attended Training or Orientation  |

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|                   |   |
|-------------------|---|
| \$100.00 per hour | Chief or SAPC Mentoring of SAPCs  |
| \$100.00 per hour | Chief Special Case Review (including QIS non-QA referrals)                  |
| \$100.00 per hour | Chief Back-up Special Case Review (including QIS non-QA referrals)          |
| \$100.00 per hour | Chief Special Project   |
| \$100.00 per hour | Chief Back-up Special Project (only when acting in capacity as back-up)     |
| \$80.00 per hour  | SAPC Special Project  |
| \$100.00 per hour | Chief Meeting Preparation   |
| \$100.00 per hour | Chief Back-up Meeting Preparation (only when acting in capacity as back-up) |
| \$80.00 per hour  | SAPC Meeting Preparation  |
| \$100.00 per hour | Chief Attended Meeting  |
| \$100.00 per hour | Chief Back-up Attended Meeting (Only when acting in capacity as back-up)    |
| \$80.00 per hour  | SAPC Attended Meeting   |
| \$80.00 per hour  | Initial Orientation Period not to exceed 12 months                          |

- (2) For actions completed on claims requiring specialty review and prior authorization that Contractor is not authorized to provide, such specialty service will not be compensated.
- (3) Except as otherwise provided in this contract, DDS will not reimburse Contractor for any Contractor administrative expenses incurred in the provision of Services (e.g., travel, materials, telephone calls). DDS may reimburse Contractor for travel expenses on DDS assignments when authorized in writing by DDS in advance of such expense. Authorized travel expenses must be for a state of Texas allowable expense and must not exceed state of Texas allowable rates for such expense.

### 2.3 Invoicing and Payment

- (1) HHSC DDS will pay Contractor for completed payable actions within 30 calendar days of the end of the monthly accounting cycle in which the claim closes or Record of Payable Activity (“**ROPA**”) is submitted and upon satisfactory performance by Contractor. DDS reserves the right to deduct from amounts that are, or shall become, due and payable to Contractor under this or any contract between the Parties, any amounts which are, or shall become, payable to HHSC DDS by Contractor.

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- (2) Inaccurate or incomplete entries on or within invoices from the Contractor (ROPA actions, etc.) shall not be compensated.

**ARTICLE 3**  
**CONTRACT REPRESENTATIVES**

**3.1 Identification of Contract Representatives**

The following will act as the Representative authorized to administer activities under this contract on behalf of their respective Party:

- (1) **For HHSC DDS:**

Martin Nealeigh, CTCM  
Senior Director, Disability Policy and Program Support  
Health and Human Services Commission  
Disability Determination Services  
6101 East Oltorf Street  
Austin, TX 78741  
Phone: 512.437.8999  
Email: [martin.nealeigh@ssa.gov](mailto:martin.nealeigh@ssa.gov)

- (2) **For Contractor:**

Dr. Sylvia Chen, LLC



Either Party may change its Contract Representative by providing written notice to the other Party.

**ARTICLE 4**  
**LEGAL NOTICES**

**4.1 Requirements**

Any legal notice required from HHSC under this contract shall be deemed delivered when deposited by HHSC either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

- (1) **For HHSC:**  
Health and Human Services Commission  
4900 N. Lamar Blvd.; Mail Code 1100

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Austin, TX 78751  
Attn: Office of Chief Counsel

(2) **For Contractor:**  
Sylvia W. Chen



Legal notice given by Contractor shall be deemed effective when received by HHSC.

Either Party may change its address for notice by providing written notice to the other Party.

## **ARTICLE 5 DEFINITIONS**

### **5.1 Introduction**

For the purposes of this contract, the definitions in this Article 5 and those definitions stated elsewhere in the contract, including exhibits and attachments, shall apply.

**“Chief State Agency Psychological Consultant” (“CSAPC”)** is physician or psychologist who meets the qualifications to be an SAPC, and who is selected by the Disability Policy and Program Support (**“DPPS”**) Senior Director (**“SD”**) in consultation with the DDS Senior Management Team, with approval of the DDS Administrator.

**“Contractor”** means a SAPC or Chief SAPC.

**“Facility”** means the DDS campus at 6101 East Oltorf Street, Austin, TX, or other duty station as assigned by HHSC DDS management.

**“Health and Human Services Commission” (“HHSC”)** means the administrative agency established under chapter 531, Texas Government Code or its designee.

**“Orientation Period”** means a comprehensive SSA disability program orientation period, up to and not to exceed 12 months, designed to develop an effective working knowledge of SSA disability program concepts.

**“Program Operation Manual System” (“POMS”)** is a primary source of guidance used by the SSA and DDS to process claims for Social Security Disability Benefits.

**“Social Security Administration” (“SSA”)** is an independent agency of the federal government that administers Social Security; a social insurance program consisting of retirement, disability and survivors’ benefits. SSA was established by a law codified under 42 U.S.C. C. § 901

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“**State Agency Psychological Consultant**” (“**SAPC**”) means a member of a team that makes disability determinations at HHSC DDS. An SAPC can be either a psychiatrist or psychologist. For the purpose of this contract, Contractor is a psychologist; psychiatrists will provide Services under a separate contract. An SAPC must:

- A. Be licensed or certified as a psychologist at the independent practice level of psychology by the state of Texas; and
  - B. Possess a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation, formerly the Council on Post-Secondary Accreditation.
- OR**
- C. Be listed in a national register of health service providers in psychology, which the DDS can use to ensure the psychologist is properly credentialed.
- OR**
- D. Possess credentials in psychology that, after review and approval, the SSA deems sufficient;
- AND**
- E. Possess two years of supervised clinical experience as a psychologist in health service, at least one year of which is post-master’s degree.

Collectively, requirements A through E may be referred to as the “**eligibility standards.**”

## **ARTICLE 6 SCOPE OF WORK**

### **6.1 Introduction**

The methods and procedures for providing the Services are as outlined by Social Security Administration requirements, as prescribed in the Program Operations Manual System (“**POMS**”), DDS policies and procedures, and other authoritative references. POMS may be accessed at the following website: <https://secure.ssa.gov/poms.nsf/home!readform>.

### **6.2 State Agency Psychological Consultants**

- (1) A SAPC must:
  - (a) Provide case assessments. Case assessment consists of a variety of actions as required by the SSA to assess all types of disability claims according to the standards set forth in the SSA’s POMS and Disability Evaluation under Social Security (“**listings book**”). Such activities include:
    - (1) Preparation of assessment forms based on Contractor’s review and analysis of adequate medical and nonmedical information (electronic or paper versions of the DDS 9817 Case Assessment Form; SSA-416, Case

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Assessment Form; SSA-4734 Physical Residual Functional Capacity Assessment [RFC]; SSA-2506 Psychiatric Review Technique [PRTF]; SSA-4734-F4-SUP Mental Residual Functional Capacity Assessment [MRFC]; SSA-538-F6 Childhood Disability Evaluation Form [CDE]; or any other assessment form required by DDS or SSA that serves a similar purpose).

- (2) Participation in telephonic consultations with physicians, psychologists, or other acceptable sources that result in medical, psychological, or other evidence required by DDS for claim adjudication.
  - (3) Review and approval of high-risk examinations, including the review and authorization or denial of requests for high risk or special CEs.
  - (4) Consultations with DDS Disability Specialists (“**DS**”) and other DDS staff to determine adequacy of medical or psychological and other evidence, or describe alternative actions. Provide no less than 10 consultation sessions per week, as measured monthly. Such sessions must be scheduled utilizing the Scheduling of Medical Advice (“**SOMA**”), or comparable scheduling mechanism. Contractors may provide more consultations without restriction.
- (b) Provide Quality and Information Services (“**QIS**”) reviews and assessments of cases assessed by HHSC DDS QIS.
  - (c) Provide special case reviews or evaluations, or both, assigned by HHSC DDS.
  - (d) Prepare for, conduct or attend orientation, training, and meetings as required by HHSC DDS. Training includes the provision of medical or psychological expertise for contractors, adjudicators, and other HHSC DDS professional staff during scheduled sessions.
  - (e) Provide psychological expertise for special projects, as assigned by HHSC DDS.
  - (f) Provide general advice and consultation to SAPCs, with regard to decisions related to mental impairments.
  - (g) Perform the Services delegated to a Chief (see section 6.3) if the respective Chief is not available, subject to the approval of the DPPS SD.
  - (h) Be available to provide Services a minimum of 15 hours per week, as measured monthly. Such hours are reduced by three hours per day when DDS facilities are closed due to holidays or inclement weather. Contractor may provide Services more than 15 hours per week. Contractor shall notify DDS when Contractor is not available to provide the required Services.

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### 6.3 Chief State Agency Psychological Consultant

- (1) A Chief SAPC must:
  - (a) Provide all Services required of a SAPC.
  - (b) Provide quality assurance services. The Chief must review and audit the cases of the SAPCs, as directed, to ensure HHSC DDS consistency and compliance with policies and procedures.
  - (c) Provide approval of high risk examinations, including review and authorization, or denial, of requests for high risk or special CEs requested by Administrative Law Judges for purposes of obtaining current claimant medical information.
  - (d) Provide general advice and consultation to all SAPCs with regard to decisions related to their area of expertise (e.g., mental impairments).
  - (e) Provide psychological impairment evaluation training to SAPCs, Adjudicators, and other HHSC DDS professional staff.
  - (f) Provide program policy and procedure training to individual SAPCs on issues involving program consistency and compliance with policy and procedures.
  - (g) Act as the liaison with federal and state agencies on the psychological aspects of DDS program.
  - (h) Be available to provide Services a minimum of 30 hours per week, as measured quarterly. Such hours are reduced by six hours per day when DDS facilities are closed due to holidays, or inclement weather. Contractor may provide Service availability more than 30 hours per week. Contractor shall notify HHSC DDS when Contractor is not available to provide the required Services.
  - (i) Be the final authority on mental impairments issues for SAPCs in coordination with appropriate DDS staff.
  - (j) Review and assess cases of individual SAPCs to ensure program consistency and compliance with policy and procedures.
- (2) The Services stated under section 6.3 may, as needed, be delegated to a SAPC, when (a) the SAPC has a specialty or an expertise in a particular subject matter, or (2) the Chief is not available. Delegation is determined by the Chief, with approval of the DPPS SD. If a DDS claim involves a significant medication question, the Chief, if a psychologist, may refer the question to an SAPC psychiatrist for consultation.

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## ARTICLE 7 PERFORMANCE CRITERIA

### 7.1 Quality

(1) For SAPCs.

- (a) Performance quality shall be assessed based on random and targeted reviews by the Chief, or designee, DDS management, and federal and state quality assurance reviews.
- (b) If assessments of Contractor's completed cases indicate Contractor deficiencies with medical or program requirements, Contractor must comply with Chief SAPC guidance, or DDS management directives to correct and avoid such deficiencies in the future. If Contractor fails to comply with directives, and correct deficiencies, DDS may limit future claim assignments or HHSC, on behalf of DDS, may terminate the Contract, or both.

(2) For Chief SAPCs.

- (a) Performance quality shall be assessed on quality reviews performed at the direction of HHSC DDS management and federal and state quality assurance reviews.
- (b) If assessments of Contractor's completed cases indicate Contractor deficiencies with medical or program requirements, the HHSC DDS SD or designees, in consultation with the DDS Administrator, will issue a directive to the Contractor on performance expectations of corrective actions, up to and including contract termination.

### 7.2 Contractor Accuracy

- (1) Contractor must maintain accuracy at, or above, 95% (the "**Accuracy Standard**"). Accuracy will be measured by DDS internal and federal quality reviews (Group I, Medical Documentation and Medical Decision errors). A minimum of three months data from the federal fiscal year is required when calculating accuracy.
- (2) The Accuracy Standard shall apply to Contractor immediately upon the completion of the Initial Orientation Period.
- (3) A cumulative accuracy rate that begins with the start of each federal fiscal year will be used to assess Contractor's accuracy.
- (4) DDS management may monitor the Contractor through monthly or more frequent reports. DDS will inform Contractor of the accuracy rate on a quarterly basis.
- (5) If Contractor's accuracy rate, described in section 7.2.1 falls below 95%, at a quarterly measurement, DDS management will either, at its sole discretion (a) provide Contractor with at least 15 days' written notice of the termination of the Contract, or (b) continue with further monitoring of Contractor's performance.

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## **ARTICLE 8**

### **CONFIDENTIALITY AND PRIVACY**

#### **8.1 Introduction**

This section identifies Contractor's responsibilities with respect to confidentiality and privacy of certain information.

#### **8.2 Definitions**

For the purpose of this Article 8, the following definitions apply:

**"Handling PII"** means having access to PII, as defined in this Article 8.

**"Lost, compromised, or potentially compromised PII"** means that, while the Contractor is in possession of PII, the PII becomes physically missing or has been otherwise breached so that persons other than authorized users have access or potential access to the PII, regardless of the form (e.g., electronic or physical) in which it was stored.

**"Personally Identifiable Information"** as defined by the Office of Management and Budget in OMB Memorandum OMB M-06-19: "PII means any information about an individual maintained by an agency, including, but not limited to:

- (a) Education; financial transactions; medical history; criminal or employment history; and information that can be used to distinguish or trace an individual's identity. Examples of such information include name; social security number; date and place of birth; mother's maiden name; biometric records, etc.; including any other personal information which is linked or linkable to an individual.
- (b) Other examples of PII may include medical records; Social Security benefit data; official State or government issued driver's license; other identification numbers; alien registration number; government passport number; employer or taxpayer identification number or; home address."

**"Secure Area" or "Secure Duty Station"** means, for the purpose of this paragraph, the Contractor's assigned workstation within the DDS facility.

#### **8.3 Contractor Responsibility in Safeguarding PII**

Contractor shall establish, maintain, and follow SSA policy and procedures to protect PII, including those for reporting lost or compromised, or potentially lost or compromised, PII (see section 8.4). Contractor shall secure the confidentiality of records relating to DDS claimants, their beneficiaries, or recipients, in accordance with applicable federal laws, rules and regulations cited in POMS DI-35967, applicable state laws and DDS policies and

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procedures. Contractor shall abide by procedures designed to protect PII, as described below and as otherwise approved by the DDS as follows:

- (a) **General.** Contractor will not disclose or release any PII to which the Contractor has access except as required to do so to authorized employees and officials within the scope of the Contractor's duties under this contract. Contractor must properly secure and safeguard PII from loss, theft, or inadvertent disclosure. Contractor is responsible for safeguarding this information at all times, regardless of whether or not the Contractor is at his or her regular duty station.
- (b) **Transporting PII.** Contractor must NOT transport PII outside DDS' secure area or secure duty station. For the purpose of this contract, a "DDS' secure area or secure duty station" means the Contractor's assigned workstation with the DDS Facility
- (c) **Contractor Disposal of PII** Contractor will dispose of incidental PII that is not maintained in SSA' disability folder in DDS-approved recycling bins. Examples of such PII include, but are not limited to, personal notes taken during case review, duplicative "sticker" sheets or logs, and other tangible material.
- (d) **Emailing PII** Contractor may use the SSA network email to send email messages containing PII in the body or in an unencrypted attachment but only to other SSA email addresses (containing the "name@ssa.gov" format) or to email addresses belonging to an SSA-certified email system. Email directed to any other address(es) may contain PII only if the PII is entirely contained in an encrypted attachment.
- (e) **Use of PII** Contractor must not use confidential or protected PII for any purpose other than to perform the duties required by the contract.
- (f) **Acknowledgement** By signing this contract, Contractor hereby acknowledges that any unauthorized disclosure of the information provided under this contract may violate the terms of Section 1106 of the Social Security Act and the Privacy Act, 5 U.S.C. 552a and subject the Contractor to penalties.
- (g) **HHSC Access** Nothing in this contract shall limit DDS' right of access to SSA case records or other information relating to claimants, beneficiaries, or recipients served under this contract.

#### 8.4 SSA-Prescribed Procedures for Reporting Lost, Compromised, or Potentially Compromised PII

##### (1) Introduction

The reporting requirement established in this section is for reporting all incidents involving PII, with no distinction between suspected and confirmed breaches.

##### (2) Contractor Responsibility

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Contractor is responsible for taking reasonable actions to implement HHSC DDS-prescribed procedures described in section 8.4(3) (relating to Procedures) for reporting lost, compromised, or potentially compromised PII.

**(3) Procedures**

- (a) When Contractor becomes aware or suspects that PII has been lost, compromised, or potentially compromised (see section 8.2, Definitions), Contractor shall provide immediate notification of the incident to their primary DDS contact. If the primary DDS contact is not readily available, Contractor shall immediately notify one of two DDS alternates.
- (b) Contractor shall provide the primary DDS contact or the alternate, as applicable, updates on the status of the reported PII loss or compromise as they become available but shall not delay the initial report.
- (c) Contractor shall provide complete and accurate information about the details of the possible PII loss to assist the DDS contact or alternate, including the following information:
  - (1) Contractor's contact information;
  - (2) Where and when the incident occurred;
  - (3) A description of the loss, compromise, or potential compromise (e.g., nature of the compromise, scope, number of files or records, type of equipment or media, etc.);
  - (4) A description of safeguards used and how the data was stored (e.g., locked briefcase, redacted personal information, password protection, encryption, etc.);
  - (5) An identification of DDS components (organizational divisions or subdivisions) contacted, involved, or affected;
  - (6) Whether the Contractor has contacted or been contacted by any external organizations (e.g., other agencies, law enforcement, press, SSA, etc.);
  - (7) Whether the press is aware of the loss, regardless of how they were notified.
  - (8) Whether the Contractor has filed any other reports (i.e., Federal Protective Service, local police, and SSA or other agency reports); and
  - (9) Any other pertinent information.

Contractor must use the Worksheet (Attachment B) to quickly gather and organize information about the incident.

- (d) There may be rare instances outside of business hours when Contractor is unable to reach either the primary DDS contact or any of the alternates immediately. In such a situation, Contractor shall immediately call SSA's National Network Service Center ("NNSC") at **1-877-697-4889** to file the initial report directly, providing the information in 8.4(3)(c) above and

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completing the Worksheet to the best of its ability. Contractor will also contact the Center for Security and Integrity (CSI) at the Dallas Regional SSA Office at phone number **1-214-677-4331** and provide the same details of the loss as provided to the NNSC. Overall, during this time, Contractor shall cooperate as necessary with the NNSC or any of the other external organizations described in 8.4(3)(c) above.

- (1) Contractor shall document the call with the CAPRS (Change, Asset, and Problem Reporting System) number which the NNSC will assign. The Contractor shall provide the CAPRS number to the primary DDS manager or, if unavailable, one of the alternates to this manager.
- (e) Contractor shall limit disclosure of the information and details about an incident to only those with a need to know. The security or PII loss incident reporting process will ensure that SSA's reporting requirements are met and that security or PII loss incident information is only shared as appropriate.

#### **8.5. Additional Contractor Responsibilities When There Is a Loss of PII**

- (a) In the event of a security or PII loss incident, Contractor shall take immediate steps to address consequential security issues that have been identified, including steps to minimize further security risks to those individuals whose personal information was lost, compromised, or potentially compromised.
- (b) Contractor shall confer with DDS in reviewing the actions the Contractor has taken and plans to take in dealing with the incident.
- (c) Contractor shall bear the responsibility and any cost for any data breach, remediation actions, or both that might arise from the security or PII loss incident. If SSA determines that the risk of harm requires notification of affected individual persons of the security breach or other remedies, Contractor shall carry out these remedies without cost to SSA

### **ARTICLE 9 MISCELLANEOUS TERMS AND CONDITONS**

#### **9.1 Full Suitability Determination**

Contractor must submit to a full suitability determination by the SSA to determine whether credentials may be issued in order to have access to Social Security disability data, records and systems. Contracting to provide the Services for HHSC DDS is contingent upon a full suitability clearance through SSA.

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**9.2 Criminal Background Check**

Contractor must submit to a statewide criminal background check (“CBC”) prior to providing services to DDS and annually thereafter, at Contractor’s expense as determined by DDS. Documentation that the CBC was conducted (with no information contained within the actual report) will be included in the Contract Vendor file maintained by DDS.

**9.3 Contractor Indemnification**

If Contractor is a physician or psychiatrist, the state of Texas shall indemnify Contractor in accordance with Texas Civil Practice & Remedies Code, Chapter 104.

**9.4 Final Action Taken Against Contractor**

Contractor must immediately report to HHSC DDS any proposed or final action taken against Contractor by any certification or licensing entity, or law enforcement entity. Failure to report within three business days of issuance is grounds for breach of contract.

**9.5 Employee of HHSC**

By signing this contract, Contractor that acknowledges and agrees that Contractor is not an employee of HHSC, and is not eligible for HHSC employee benefits, and will not represent themselves as an HHSC employee.

**9.6 Deliverables**

Contractor must provide SAPC deliverable actions as defined in Article VI, as required by federal SSA (20 CFR Part 404 and 20 CFR Part 416) and DDS regulations (POMS DI 24501.001) at DDS office location. Specific regulatory citations are listed in Attachment A, Summary of Pertinent Regulatory and POMS Requirements. Contractor must comply with the directive of, and coordinate service delivery with, DDS.

**9.7 Contractor Compliance of Contract Terms**

Contractor must cooperate with periodic monitoring of the Contractor’s evaluations, consultation notes, authorizations or denials, assessments, or other products and data for the purposes of assessing Contractor compliance with the terms and standards set forth in this contract.

**9.8 Contractor Notification of Availability to DDS**

Contractor must notify DDS of availability to enable planning for assignment of deliverable actions.

**9.9 Contractor Review and Reevaluation of Assessments**

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Contractor must review and reevaluate any assessment returned by DDS management, QIS staff, or federal reviewer, in which such assessment has, or could have, contributed to a quality deficiency.

9.10 **Contractor Awareness of Revisions**

Contractor must maintain a current awareness of revisions to state or federal regulations and DDS policies or procedures.

9.11 **Payable Actions Recorded**

Contractor must record payable actions or enter payable actions into a computer-based or other system according to DDS procedures.

9.12 **Hours Worked Recorded**

Contractor must record hours worked on a form as deemed appropriate by DDS management.

9.13 **Contractor Unique Numeric Identifier**

Contractor must permit DDS to assign a unique numeric identifier to the Contractor. This number will be used by DDS to identify who has signatory responsibility for each case.

9.14 **Contractor SAMC or SAPC Unique Number Identifier**

Contractor must permit DDS to assign a unique numeric identifier to each SAPC specialty area. This number will be used by DDS to identify the specialty of the SAPC who has signatory responsibility for each case.

9.15 **Contractor SSA and DDS Understanding**

Contractor must maintain current professional understanding of SSA and DDS program guidelines relating to the Services.

9.16 **Contractor Licensure Eligibility**

Contractor must maintain current eligibility standards to be an SAPC, as identified under the definition of an SAPC (see Article V, Definitions). Copies of annual updates or renewals of the professional license must be provided to DDS at least 30 days prior to license expiration date.

9.17 **Contractor Noncompliance Remedy Requirements**

Contractor must remedy in a timely manner, any weaknesses, deficiencies, or program noncompliance found as a result of a review, audit, or investigation, and performance or

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fiscal exceptions found by DDS, the State Auditor's Office, federal funding agency, their successor agencies, or any of their duly authorized representatives. Such remedy will include refund of disallowed costs or billed amounts or other appropriate remedial actions deemed necessary by DDS.

**9.18 Contractor Internet Use Guidance**

Contractor must abide by guidance for use of the internet as provided on DDS Form 9534S (DDS Guidelines for Internet Use) and indicate Contractor's understanding and agreement to this guidance by signing a copy of the form annually.

**9.19 Contractor Required Computer Skills**

Contractor must maintain skills to access and use the computer for case processing and e-mail receipt and distribution.

**9.20 Contractor Treatment of DDS Staff**

Contractor must provide equal and courteous treatment to all DDS staff with whom they have contact.

**9.21 Contractor Responsibility to Provide Training**

Contract Subcontracting for Services Contractor must provide training to DDS professional staff and other Contractors when requested by the DDS.

**9.22 Contractor Subcontracting Services**

Contractor must not enter into any subcontract(s) for services under this contract.

**9.23 Contractor Responsibility to Pay Income Tax**

Contractor must pay, according to law, the Contractor's income tax. If Contractor is not a corporation, Contractor may be liable for self-employment (Social Security) tax, according to law. Contractor is not an employee of HHSC, including DDS, DDS for any purpose.

**9.24 Contractor Notification of Any Legal Status**

Contractor must notify DDS in writing at least 60 calendar days before the intended effective date of any change in legal entity status, such as ownership or control, name change, legal status with the Secretary of State, or State Comptroller's Texas Identification Number.

**9.25 Contractor Responsibility to Notify DDS of Non-Compliance of Contract**

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Contractor must immediately notify DDS 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 DDS to terminate the contract.

**9.26 Contractor Certification for Contract that Equals or Exceeds \$100,000**

If this contract equals or exceeds \$100,000 over the life of the contract, Contractor certifies as follows:

- (1) Certification Regarding Lobbying (Certification for Contracts, Grants, Loans, and Cooperative Agreements)
  - (a) 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.
  - (b) 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.
  - (c) Contractor shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.
  - (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**9.27 Contractor Compliance with All Laws and Regulations**

Contractor will comply with all applicable state and federal laws, rules and regulations governing provision of services under this contract and state policies and procedures issued by DDS, including but not limited to requirements specifically stated in this contract.

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**9.28 DDS' Right to Publish**

DDS and the federal awarding 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.

**9.29 Right to Terminate Contract**

In addition to other termination rights provided under this contract, including any attachments and exhibits, this contract may be terminated once the orientation period has concluded, by mutual consent or by either party with 15 days written notice. DDS may disable the Contractor's access card(s) to the building and computer system at any time, and prevent re-entry into the Facility.

**9.30 Contractor Compliance with Chapter 48, Human Resources Code**

Contractor will comply with Chapter 48, Human Resources Code, regarding reporting of abuse, exploitation or neglect of elderly or disabled persons.

**9.31 Contractor Compliance with Texas Health and Safety Code**

Contractor will comply with Texas Health and Safety Code sections 85.113 and 85.115, relating to workplace and confidentiality guidelines regarding AIDS and HIV-related medical information.

**9.32 Contract Changes Required in Writing**

This contract, including attachment and exhibits, 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. Any other attempted changes, including oral modifications, written notices that have not been signed by both parties, or other modifications of any type, shall be invalid.

**9.33 Contractor Implications of Conflict of Interest**

Contractor must avoid all implications of possible conflict of interest ("COI") between their services for SSA and DDS, and their professional practices as required by SSA's PC Guidelines in POMS DI 39569.100, Conflict of Interest, and as amended herein. Contractor must avoid:

- (1) Working concurrently with another state agency or under contract with another DDS.
- (2) Performing CEs;

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- (3) Acquiring or maintaining, directly or indirectly (including any member of their families) any financial interest in a medical partnership, corporation, or similar relationship in which CEs are provided.
- (4) Participating in the review or determination of a case when
  - (a) they have prior knowledge of that case, e.g. the claimant was a patient, or
  - (b) the adjudicator (DS) is a relative (as defined in HHSC HRM Chapter 1 B., Nepotism); or
- (5) Acting in any official matter which involves a relative, a personal acquaintance, or their own personal records.
- (6) Working as a consultant for an appointed or authorized representative.

#### 9.34 **Conflicts of Interest**

Contractor must avoid both actual conflicts of interest as well as the appearance of a conflict of interest. Contractor represents, to the best of his or her knowledge and belief, that this contract does not present Contractor with a conflict of interest with respect to any past, current, or potential contract or employment such that Contractor would be unable to perform impartially and without bias.

#### 9.35 **Direct or Indirect Interests of Contractor**

Contractor warrants having no interest, and will acquire no direct or indirect interest, that would conflict in any manner with its performance under this contract.

#### 9.36 **Contractor Compliance with State and Federal Laws**

Contractor will comply with all additional applicable state and federal laws, rules, regulations and policies regarding conflicts of interest under this contract.

#### 9.37 **Contractor Responsibility to Avoid Conflict of Interest**

Contractor is responsible for processing or adjudicating disability cases, must avoid any potential conflict between HHSC's interest and their own personal interests. In order to avoid a potential COI, Contractor must disqualify itself in questionable situations. A Disqualified HHSC DDS contractor must not handle, and are prohibited from accessing, the applicant's file. Disqualified contractors may help supply information needed to document a claim, when appropriate. Contractors are required to disqualify themselves and alert DDS management to a potential COI in cases involving a personal acquaintance or family member (whether as a claimant, provider of medical evidence, or appointed representative). Failure by Contractor to notify DDS Management of a potential conflict of interest, later determined to be a conflict of interest, may result in termination of the contract.

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**9.38 Contract that Equals or Exceeds \$25,000**

If this is a contract for goods or services that equals or exceeds \$25,000 over the life of the contract, then Contractor agrees as follows:

1. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts
  - a. Neither Contractor nor its principals is 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.
  - b. Where Contractor is unable to certify to any of the statements in this certification, Contractor shall attach an explanation to this contract.

**9.39 Garnishing of Delinquent Taxes**

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 comptroller administers or collects until the indebtedness or delinquency is paid in full.

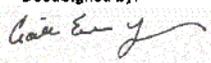
**ARTICLE 10  
CONTRACT EXECUTION**

**10. Execution**

The parties may sign this contract in counterparts, each of which will be deemed an original but all of which together will constitute one document. Electronically transmitted signatures will be deemed originals for all purposes relating to the contract.

**HHSC and Contractor represent that each party has caused this contract to be signed and delivered by its respective authorized representative.**

**HEALTH AND HUMAN SERVICES COMMISSION**

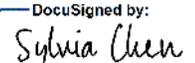
DocuSigned by:  
  
C80071B7895C4E9...

Cecile Young

Acting Executive Commissioner

September 29, 2018

**DR. SYLVIA CHEN, LLC**

DocuSigned by:  
  
8F258E89B4D141E...

Sylvia Chen

Title: Managing Member

Date of Signature: September 27, 2018

Vendor ID No:  
1823007400

**THE FOLLOWING ATTACHMENTS ARE HEREBY ATTACHED TO AND THEIR TERMS INCORPORATED INTO THE CONTRACT BY REFERENCE:**

**ATTACHMENT A SUMMARY OF PERTINENT REGULATORY AND POMS REQUIREMENTS**  
**ATTACHMENT B- WORKSHEET FOR REPORTING THE LOSS, COMPROMISE, OR POTENTIAL COMPROMISE OF PERSONNALLY IDENTIFIABLE INFORMATION**  
**ATTACHMENT C RESPONDENT'S AFFIRMATIONS AND SOLICITATION ACCEPTANCE-**  
**ATTACHMENT D HHSC'S UNIFORM TERMS AND CONDITIONS, VERSION 2.15**  
**ATTACHMENT E HHSC'S SPECIAL CONDITIONS, VERSION 1.2**  
**ATTACHMENT F HHSC SOLICITATION OE No. HHS0001934**  
**ATTACHMENT G-CONTRACTOR'S SOLICITATION RESPONSE**  
**ATTACHMENT H-ASSURANCES-NON-CONSTRUCTION PROGRAMS;**

**ATTACHMENTS FOLLOW**

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## **Attachment A**

### **SUMMARY OF PERTINENT REGULATORY AND POMS REQUIREMENTS<sup>5</sup>**

#### CONFIDENTIALITY

1. 5 U.S.C.A. 552 (FOIA) & 5 U.S.C.A. 552a (Privacy Act)
2. 20 CFR Part 401 (Privacy and Disclosure of Official Records) and 402 (Availability of Information and Records to the Public);
3. 20 CFR § 404.1631 and § 404.1633; State DDS to comply with Federal regulations and guidelines regarding confidentiality of the records and security of records system, Social Security Disability Insurance.
4. 20 CFR § 416.1031 and § 416.1033; State DDS to comply with Federal regulations and guidelines regarding confidentiality of records and security of records; Supplemental Security Income for the Aged, Blind, and Disabled (SSI).
5. Program Operations Manual System, POMS DI 39567; Privacy and Security.

#### CONFLICT OF INTEREST

1. 20 CFR § 404.1519q & 20 CFR § 416.919q
2. DDS Fiscal and Administrative Management, POMS DI 39569.100 B. Conflict of Interest, MC and PC Guidelines.

#### MEDICAL EVALUATION AND THE SAMC' and SAPC' ROLE IN THE DETERMINATION PROCESS

1. 20 CFR Part 404; Subparts H, J, P, Q; Social Security Disability Insurance.
2. 20 CFR Part 416; Subparts I, J, N; SSI Disability.
3. POMS, DI 24500; Medical Evaluation

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<sup>5</sup> This summary is not an exhaustive list of laws, regulations and rules that will govern the Parties obligations under this contract.

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### Attachment B

#### WORKSHEET FOR REPORTING THE LOSS, COMPROMISE, OR POTENTIAL COMPROMISE OF PERSONALLY IDENTIFIABLE INFORMATION

1. My primary DDS contact for reporting the loss, compromise, or potential compromise of PII is:  
*To be provided at time of award*

The alternates to this primary contact are as follows:

First Alternate:  
*To be provided at time of award*

Second Alternate:  
*To be provided at time of award*

2. Information about the individual making the report to SSA's National Network Service Center (NNSC):

Name:  
 Position: *Contractor - Employee*  
 Deputy Commissioner Level Organization: *Texas DDS*  
 Phone Numbers:  
 Work:      Cell:      Home/Other:  
 E-mail Address:  
 Check one of the following:  
 Management Official      Security Officer      Non-Management

Additional Information (to be provided when a contractor or subcontractor employee is reporting directly to the NNSC):  
*\*Contractor:*  
*\*\*Contractor name as shown on HHS/DDS contract:*

3. Information about the data that was lost or stolen:

Describe what was lost or stolen (e.g., case file, MBR (Master Beneficiary Record) data):

Which element(s) of PII did the data contain?

Vendor ID No:  
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Name        *Bank Account Info*  
SSN        *Medical/Health Information*  
*Date of Birth Benefit Payment Info*  
*Place of Birth Mother's Maiden Name*  
Address     *Other (describe):*

Estimated volume of records involved:

4.        How was the data physically stored, packaged and/or contained?

Paper or Electronic? (circle one):

If Electronic, what type of device?

Laptop    Tablet    Backup Tape    Blackberry  
Workstation    Server    CD/DVD    Blackberry Phone #  
Hard Drive    Floppy Disk    USB Drive  
Other (describe):

Additional Questions if Electronic:

Yes    No    Not Sure

- a. Was the device encrypted?
- b. Was the device password protected?
- c. If a laptop or tablet, was a VPN SmartCard lost?

Cardholder's Name:  
Cardholder's SSA logon PIN:  
Hardware Make/Model:  
Hardware Serial Number:

Additional Questions if Paper:

Yes    No    Not Sure

- a. Was the information in a locked briefcase?
- b. Was the information in a locked cabinet or drawer?
- c. Was the information in a locked vehicle trunk?
- d. Was the information redacted?
- e. Other circumstances:

5.        If the employee, Contractor, or subcontractor who was in possession of the data or to whom the data was assigned is not the person making the report to the NNSC (as listed in #2), information about this employee, Contractor, or subcontractor:

Name:    (Name shown on contract)  
Position:    *Contractor Employee – (Enter Job Title by contract...SAMC; SAPC)*  
Deputy Commissioner Level Organization:    *Texas DDS*  
Phone Numbers:

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Work:      Cell:      Home/Other:  
E-mail Address:

Additional Information (to be provided when person who was in possession of the data or assigned to the data is a Contractor/subcontractor employee):

- \*Contractor or Subcontractor (circle as appropriate):
- \*\*SSA Contract Number (if known):

6.      Circumstances of the loss:
  - a.      When was it lost or stolen?
  - b.      Brief description of how the loss or theft occurred:
  - c.      When was it reported to SSA management official (date and time)?
7.      Have any other SSA components been contacted? If so, who? (Include deputy commissioner level, agency level, regional or associate level component names)
8.      Which reports have been filed? (include FPS, local police, and SSA reports)

Report Filed    Yes    No    Report Number

Federal Protective Service

Local Police

Yes    No

SSA-3114 (Incident Alert) -- Not Applicable for Contractors

SSA-342 (Report of Survey) -- Not Applicable for Contractors or Subcontractors

Other (describe)

### AFFIRMATIONS AND OPEN ENROLLMENT ACCEPTANCE

Applicant affirms, without exception, as follows:

1. Applicant represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Open Enrollment Acceptance apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Open Enrollment or any contract resulting from this Open Enrollment.
2. Applicant represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Open Enrollment Application.
3. Applicant acknowledges that its Open Enrollment Application and subsequent documents submitted are subject to the Texas Public Information Act.
4. Applicant acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Applicant designated substantial portions of its Open Enrollment Application or its entire Open Enrollment Application as confidential or proprietary, the Open Enrollment Application is subject to being disqualified.
5. Applicant accepts the Open Enrollment terms and conditions.
6. Applicant agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Applicant's Open Enrollment Application as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
7. Applicant generally releases from liability and waives all claims against any party providing information about the Applicant at the request of HHSC.
8. Applicant acknowledges all addenda and amendments to the Open Enrollment.
9. Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
10. Applicant represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code §20.38 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder

- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
  - Texas Vegetation Native to the Region
  - USA produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy Efficient Products
  - Rubberized asphalt paving material
  - Recycled motor oil and lubricants
  - Products produced at facilities located on formerly contaminated property
  - Products and services from economically depressed or blighted areas
  - Vendors that meet or exceed air quality standards
  - Recycled or Reused Computer Equipment of Other Manufacturers
  - Foods of Higher Nutritional Value
  - Commercial production company or advertising agency located in Texas
11. Applicant has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Open Enrollment Application, this Open Enrollment, or any contract resulting from this Open Enrollment.
12. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
13. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
14. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
15. Pursuant to Section 231.006(c), Texas Family Code (relating to delinquent child support), identify below the name and social security number (SSN) of each individual, sole

proprietor, partner, shareholder, and owner with an ownership interest of at least 25 percent (25%) of the business entity submitting this Open Enrollment Response:

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

**FEDERAL PRIVACY ACT NOTICE:** Disclosure of requested Social Security Numbers (SSNs) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law. Failure by a Applicant to provide the required SSNs may result in disqualification of the Applicant's Open Enrollment Response.

- 16. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 17. Applicant certifies that: (a) the entity executing this Open Enrollment Response; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Open Enrollment are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
- 18. Applicant certifies that it, its principals, its subcontractors, and any personnel designated to perform services related to any contract resulting from this Open Enrollment are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- 19. Applicant certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Open Enrollment Application; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Open Enrollment are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Applicant may review in making this certification.
- 20. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Applicant certifies that it (1) is not the executive head any HHS Agency; (2) was not at any time during the past four years the

executive head of any HHS Agency; and (3) does not employ a current or former executive head of any HHS Agency.

21. Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
22. Applicant represents and warrants that payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this Open Enrollment are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
23. Applicant represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
24. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Applicant will not allow any former employee of an HHS Agency to perform services under any contract resulting from this Open Enrollment during the twelve (12) month period immediately following the employee's last date of employment an HHS Agency.
25. Applicant acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of an HHS Agency who during the period of state service or employment participated on behalf of an HHS Agency in a procurement or contract negotiation involving Applicant may not accept employment from Applicant before the second anniversary of the date the officer's or employee's service or employment with an HHS Agency ceased.
26. Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Open Enrollment and any resulting contract and that Applicant's provision of the requested goods and/or services under this Open Enrollment and any resulting contract would not reasonably create an appearance of impropriety
27. Applicant understands that HHSC does not tolerate any type of fraud. The agencies' policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Applicant agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
28. Applicant represents and warrants that it has not violated state or federal antitrust laws and has not communicated its Open Enrollment Application directly or indirectly to any competitor or any other person engaged in such line of business. Applicant hereby assigns to HHSC any claims for overcharges associated with any contract resulting from

this Open Enrollment under 15 U.S.C. § 1, *et seq.*, and Texas Business and Commerce Code § 15.01, *et seq.*

29. Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Applicant or any of the individuals or entities included numbered paragraph 1 of this Affirmations and Open Enrollment Acceptance within the five (5) calendar years immediately preceding the submission of this Open Enrollment Application that would or could impair Applicant's performance under any contract resulting from this Open Enrollment, relate to the contracted or similar goods or services, or otherwise be relevant to HHSCs consideration of entering into a contract. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Applicant's performance under a contract awarded as a result of this Open Enrollment, relate to the contracted or similar goods or services, or otherwise be relevant to the HHSCs consideration of entering into a contract. In addition, Applicant represents and warrants that, if awarded a contract as a result of this Open Enrollment, Applicant shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
30. Pursuant to Texas Government Code §2270.002, Applicant affirms that it: (a) does not boycott Israel; and (b) will not boycott Israel during the term of any Contract awarded.
31. Applicant affirms that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization.
32. Applicant understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Applicant is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Open Enrollment.
33. Applicant represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statues, codes, and other laws that pertain to any contract resulting from this Open Enrollment.
34. Applicant represents and warrants that the individual signing this Open Enrollment Application is authorized to sign on behalf of Applicant and to bind Applicant.

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

Legal Name of Applicant:

Sylvia Wen-Hsin Chen

Sylvia Chen, PhD  
Signature of Authorized Representative

8/7/2018  
Date Signed

Sylvia Chen, Member manager  
Printed Name and Title of Authorized Representative  
*Licensed psychologist*

[Redacted]  
Phone Number

82-3007400  
Federal Employer Identification Number

[Redacted]  
Fax Number

\_\_\_\_\_  
DUNS Number

[Redacted]  
Email Address

[Redacted]  
Physical Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Mailing Address, if different

\_\_\_\_\_  
City, State, Zip Code



# TEXAS

## Health and Human Services

**Health and Human Services Commission  
Uniform Terms and Conditions - Vendor  
Version 2.15**

Published and Effective September 1, 2017

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

### 1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

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

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

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

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

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document issued by the System Agency under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“[Solicitation Response](#)” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Contractor.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

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

## 1.2 INTERPRETIVE PROVISIONS

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

## **ARTICLE II. CONSIDERATION**

### **2.1 PROMPT PAYMENT**

The System Agency will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

### **2.2 EXPENSES**

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas Textravel.

### **2.3 WORK ORDERS**

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the System Agency will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the System Agency makes no guarantee of volume or usage under this Contract.

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

#### **3.1 FUNDING**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

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

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

#### **3.3 DEBT TO STATE**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

#### **3.4 RECAPTURE OF FUNDS**

The System Agency may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor

understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

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

### **4.1 WARRANTY**

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

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

### **4.2 GENERAL AFFIRMATIONS**

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.3 FEDERAL ASSURANCES**

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.4 FEDERAL CERTIFICATIONS**

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition, Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

## **ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP**

The System Agency will own, and Contractor hereby assigns to the System Agency, all right, title, and interest in all Work.

### **5.2 INTELLECTUAL PROPERTY**

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

## **ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE**

### **6.1 BOOKS AND RECORDS**

Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor’s Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

### **6.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS**

In addition to any right of access arising by operation of law, Contractor and any of Contractor’s affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States,

the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

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

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

### **6.4 SAO AUDIT**

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

### **6.5 CONFIDENTIALITY**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

## 6.6 PUBLIC INFORMATION ACT

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

## ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

### 7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

### 7.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

### 7.3 TERMINATION FOR CAUSE

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

#### a. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

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

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial

viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

#### **7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.**

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

#### **7.5 EQUITABLE SETTLEMENT**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

### **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

#### **8.1 AMENDMENT**

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

#### **8.2 INSURANCE**

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

These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

#### **8.3 DELEGATION OF AUTHORITY**

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is

limited to the terms of the Contract. Contractor may not reply upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

#### **8.4 LEGAL OBLIGATIONS**

Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

#### **8.5 E-VERIFY**

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

#### **8.6 PERMITTING AND LICENSURE**

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

#### **8.7 INDEMNITY**

**TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND**

**LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- **CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR**
- **WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

## **8.8 ASSIGNMENTS**

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

## **8.9 SUBCONTRACTS**

Contractor will be responsible to the System Agency for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the System Agency of any Subcontractor receiving compensation of One hundred thousand dollars (\$100,000.00) or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The System Agency reserves the right to:

- a. Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for the System Agency to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
- c. Object to the subcontracting of the Work proposed to be Subcontracted.

#### **8.10 HUB/MENTOR PROTÉGÉ**

In accordance with State law, it is the System Agency's policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

#### **8.11 RELATIONSHIP OF THE PARTIES**

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

## **8.12 TECHNICAL GUIDANCE LETTERS**

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

## **8.13 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

## **8.14 SEVERABILITY**

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

## **8.15 SURVIVABILITY**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

## **8.16 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

### **8.17 DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

### **8.18.2017NO WAIVER OF PROVISIONS**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

### **8.19 PUBLICITY**

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

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

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

### **8.21 NO WAIVER OF SOVEREIGN IMMUNITY**

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

### **8.22 ENTIRE CONTRACT AND MODIFICATION**

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

### 8.23 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

### 8.24 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor with respect to compensation.

### 8.25 CIVIL RIGHTS

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
  - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  - (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - (6) Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - (7) The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Contractor agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. 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. 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. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for

the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- d. Contractor agrees to comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- e. Upon request, Contractor will provide HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- f. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

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

#### **8.26 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

#### **8.27 NOTICE OF LEGAL MATTER OR LITIGATION**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

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# TEXAS

## Health and Human Services

**Health and Human Services Commission**  
**Special Conditions**  
**Version 1.2**  
**9.1.17**

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The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions –Vendor- Version 2.15

## **Article I. SPECIAL DEFINITIONS**

**“Contractor Representatives”** means Contractor’s employees and officers

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

**“Minor Administrative Change”** refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 5.02 of these Special Conditions.

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

**“UTC”** means HHSC’s Uniform Terms and Conditions- Vendor –Version 2.15

## **Article II. GENERAL PROVISIONS**

### **2.01 Renegotiation and Reprocurement Rights**

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor’s receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

HHSC may at any time issue solicitation instruments to other potential contractors for performance of any portion of the Work covered by the Contract, including services similar or comparable to the Work, performed by Contractor under the Contract. If HHSC elects to procure the Work, or any portion thereof, from another vendor in accordance with this section, HHSC will have the termination rights set forth in the UTC.

## **Article III. CONTRACTORS PERSONNEL AND SUBCONTRACTORS**

### **3.01 Conduct and Removal**

While performing the Work under the Contract, Contractor or its representaives, or both, must comply with applicable Contract terms, State and federal rules, regulations, HHSC’s policies, and HHSC’s requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Contractor or its representative are not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing its representative from performing any Work under the Contract. HHSC may terminate the Contract.

## **Article IV. PERFORMANCE**

### **4.01 Measurement**

Satisfactory performance of the Contract, unless otherwise specified in the Contract, will be measured by:

- (a) Compliance with Contract requirements, including all representations and warranties;
- (b) Compliance with the Work requested in the Solicitation;
- (c) Results of audits, inspections, or quality checks performed by the HHSC or its designee;
- (d) Timeliness, completeness, and accuracy of Work; and
- (e) Achievement of specific performance measures.

## **Article V. AMENDMENTS AND MODIFICATIONS**

### **5.01 Formal Procedure**

No different or additional Work or contractual obligations will be authorized or performed unless contemplated within the Scope of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for Work that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract. Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

### **5.02 Minor Administrative Changes**

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Work or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 5.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

## **Article VI. DISPUTES AND REMEDIES**

### **6.01 Agreement of the Parties**

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every reasonable effort to resolve the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the UTC and Texas Government Code §2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.

### **6.02 Operational Remedies**

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the Work as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

- (a) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- (b) Require additional or different corrective action(s) of HHSC's choice;
- (c) Suspension of all or part of the Contract or Work;
- (d) Prohibit Contractor from incurring additional obligations under the Contract;
- (e) Issue Notice to stop Work Orders;
- (f) Accelerated or additional monitoring; and

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

### **6.03 Equitable Remedies**

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

#### **6.04 Continuing Duty to Perform**

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension of performance, in whole or in part, by Contractor of the Work or any duty or obligation with respect to the Contract.

### **Article VII. DAMAGES**

#### **7.01 Availability and Assessment**

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract.

#### **7.02 Specific Items of Liability**

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor representatives performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor's representatives negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor representatives, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, CONTRACTOR WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY CONTRACTOR TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.**



**Cecile Young, Acting Executive Commissioner**

**Open Enrollment For  
Psychologists**

**Enrollment Number: HHS0001934**

**Enrollment Period Opens: July 31, 2018**

**Enrollment Period Closes: August 31, 2020**

**CPA Class/Item Code:**

**952-62 - Mental Health Services: Vocational, Residential, etc.  
948-76 – Psychologists/Psychological and Psychiatric Services**

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## GENERAL INFORMATION

### 1.1 EXECUTIVE SUMMARY

- 1.1.1 The Health and Human Services Commission (“**HHSC**”), on behalf of the Office of Disability Determination Services (“**DDS**”), through this Open Enrollment (“**OE**”) seeks to procure qualified psychologists to provide disability determination services (the “**Services**”) on behalf of the Social Security Administration (“**SSA**”).
- 1.1.2 HHSC DDS makes disability determinations for Texans with severe disabilities. DDS works with those who apply for and receive Social Security Administration benefits to improve their quality of life. Those benefits include Social Security Disability Insurance (“**SSDI**”) or Supplemental Security Income (“**SSI**”).
- 1.1.3 Texans with physical or mental impairments, or both, apply for benefits directly to the SSA. SSA forwards their application to DDS who determines if an applicant is medically disabled according to federal criteria.
- 1.1.4 HHSC DDS obtains evidence from the applicant’s own medical sources. HHSC DDS staff may arrange for a consultative medical examination (“**CE**”) to obtain additional information if medical evidence is unavailable or is insufficient to make a medical determination. An adjudicative-team, consisting of a medical or psychological professional and DDS staff, make the disability determination for SSA. SSA makes the final decision about who is eligible to receive benefits.
- 1.1.5 An Applicant may be either an individual provider, or a provider through a Texas legal or professional entity.
- 1.1.6 To be considered for an award, an Applicant must sign and return to DDS (1) Attachment B, Affirmations and Solicitation Acceptance, (2) Résumé with Curriculum Vitae for each psychologist that will provide services under a resultant contract, **and** (3) provide all other required information and documentation as stated in this OE.
- 1.1.7 Information regarding HHSC and its programs is available online at <https://hhs.texas.gov/>

### 1.2 DEFINITIONS

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

"**Addendum**" means a written clarification or revision to this OE issued by HHSC.

"**Applicant**" means the entity or individual responding to this OE.

"**Chief State Agency Medical Consultant**" (“**CSAMC**”) or “**Chief State Agency Psychological Consultant**" (“**CSAPC**”) is a physician or psychologist who meets the

qualifications to be an SAMC or SAPC, and who is selected by the Disability Policy and Program Support (“**DPPS**”) Senior Director (“**SD**”) in consultation with DDS Senior Management Team, and with approval of the DDS Administrator.

“**Electronic State Business Daily**” (“**ESBD**”), the electronic marketplace where state of Texas bid opportunities over \$25,000 are posted. The ESBD may be accessed at <http://www.txsmartbuy.com/sp>

“**Facility**” means the DDS campus at 6101 East Oltorf Street, Austin, TX or other duty station as assigned by HHSC DDS management.

“**Health and Human Services Commission**” (“**HHSC**”) means the administrative agency established under Chapter 531, Texas Government Code or its designee.

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

“**Office of Disability Determination Services**” (“**DDS**”) is a program within HHSC.

“**Program Operation Manual System**” (“**POMS**”) is a primary source of guidance used by the SSA and DDS to process claims for Social Security Disability Benefits.

“**Social Security Administration**” (“**SSA**”) is an independent agency of the U.S federal government that administers Social Security; a social insurance program consisting of retirement, disability and survivors’ benefits. SSA was established by a law codified under 42 U.S.C. § 901.

“**Solicitation**” means this Open Enrollment, including any exhibits and addenda, if any.

“**State**” means the state of Texas and its instrumentalities, including HHSC, its programs, and any other state agency, its officers, employees, or authorized agents.

“**State Agency Medical Consultant**” (“**SAMC**”) means a member of a team that makes medical disability determinations at HHSC DDS. A SAMC is a physician, medical or osteopathic, licensed by appropriate medical boards in the state of Texas.

“**State Agency Psychological Consultant**” (“**SAPC**”) means a member of a team that makes disability determinations at HHSC DDS. A SAPC can be either a psychiatrist or psychologist licensed by appropriate medical boards of the state of Texas.

“**System Agency**” means HHSC, including the DDS program, its officers, and employees or authorized agents.

1.2.2 Additional definitions are provided in Exhibit A, HHSC Uniform Terms and Conditions, Version 2.15, and Exhibit B, Special Terms and Conditions, Version 1.2.

### 1.3 POINT OF CONTACT

Unless specifically instructed to an alternate contact by the DDS, potential Applicants must direct all procurement communications relating to this OE to the following Point of Contact (“**POC**”):

Name: Martin Nealeigh, CTCM  
Title: Senior Director, Disability Policy and Program Support  
Address: Health and Human Services Commission (**preferred**)  
Disability Determination Services

6101 East Oltorf Street  
 Austin, TX 78741  
 Phone: 512.437.8999  
 Email: [martin.nealeigh@ssa.gov](mailto:martin.nealeigh@ssa.gov)

**1.4 PROCUREMENT SCHEDULE**

All dates are subject to change at HHSC's discretion. Applications must be received by the Point of Contact identified in section 1.3 of this OE by the enrollment closing period provided in the following Procurement Schedule:

| Procurement Schedule            |   |
|---------------------------------|---|
| Open Enrollment Period Opens    | July 31, 2018   |
| Open Enrollment Period Closes   | August 31, 2020   |
| Anticipated Contract Start Date | Upon contract execution by both parties, but no sooner than October 1, 2018 |

**Note: These dates are a tentative schedule of events. HHSC reserves the right to modify these dates at any time upon notice posted to the [HHS Open Enrollment](#) site.**

Late applications will be deemed non-responsive and will not be considered.

**1.5 AUTHORITY**

HHSC is soliciting the services listed in this OE on behalf of DDS, under the authority of Title 10, subtitle D, section 2155.144 of the Texas Government Code. chapter 531 of the Texas Government Code, and Texas Administrative Code, Title 1, Administration, Part 15, Chapter 391, Subchapter B. Rule §391.205, Noncompetitive Procurement, as applicable.

**II. SCOPE OF WORK, ELIGIBILITY REQUIRMENTS, AND RELATED MATTERS**

**2.1 SCOPE OF WORK**

2.1.1 The methods and procedures for providing the Services are as outlined by Social Security Administration requirements, as prescribed in the Program Operations Manual System (“POMS”), DDS policies and procedures, and other authoritative references. POMS may be accessed at the following website: <https://secure.ssa.gov/poms.nsf/home!readform>.

2.1.1.1 State Agency Medical Consultants (“**SAMC**”) and State Agency Psychological Consultants” (“**SAPC**”) shall:

- A. Provide case assessments. Case assessment consists of a variety of actions as required by the SSA to assess all types of disability claims according to the standards set forth in the POMS and Disability Evaluation under Social Security (“**Listings Book**”). Such activities include:
  - (1) Prepare assessment forms based on review and analysis adequate medical and nonmedical information (electronic or paper versions of DDS 9817 Case Assessment Form; SSA-416, Case Assessment Form; SSA-4734 Physical Residual Functional Capacity Assessment (“**RFC**”); SSA-2506 Psychiatric Review Technique (“**PRTF**”); SSA-4734-F4-SUP Mental Residual Functional Capacity Assessment (“**MRFC**”); SSA-538-F6 Childhood Disability Evaluation Form (“**CDE**”); or any other assessment form required by DDS or SSA that serves a similar purpose;
  - (2) Telephonic consultations with physicians, psychologists, or other acceptable sources that result in medical, psychological, or other evidence necessary to DDS for claim adjudication;
  - (3) Approval of high risk examinations, including review and authorization or denial of requests for high risk or special CEs;
  - (4) Consultations with DDS Disability Specialists (“**DS**”) and other HHSC DDS staff to determine adequacy of medical or psychological and other evidence, or describe alternative actions.
- B. Provide availability for no less than 10 consultation sessions per week, as measured monthly. Such sessions shall be scheduled utilizing the Scheduling of Medical Advice (“**SOMA**”), or comparable scheduling mechanism. Contractors may provide more consultations without restriction.
- C. Provide Quality and Information Services (“**QIS**”) reviews. Awarded Contractors will review and assess cases assigned by HHSC DDS QIS.
- D. Provide special case reviews or evaluations, or both, assigned by HHSC DDS.
- E. Prepare for, conduct, or attend orientation, trainings or meetings as requested by HHSC DDS. Training includes provision of medical or psychological expertise for contractors, adjudicators, and other DDS professional staff during the scheduled sessions.
- F. Provide medical or psychological expertise for special projects, as assigned by DDS management.
- G. Provide general advice and consultation to SAMCs or SAPCs, with regard to decisions related to physical or mental impairments.
- H. Perform the Services delegated to a Chief (see section 2.1.1.2) if the respective Chief is not available, subject to the approval of the DPPS SD.
- I. Be available to provide services a minimum of 15 hours per week, as measured monthly. Such hours are reduced by three hours per day when DDS facilities

are closed due to holidays or inclement weather. Contractor may provide Services more than 15 hours per week. Contractor shall notify DDS when Contractor is not available to provide the required Services.

2.1.1.2 Chief State Agency Medical Consultant (“**Chief SAMC**”) and Chief State Agency Psychological Consultant (“**Chief SAPC**”) shall:

- A. Provide all Services required of a SAMC and SAPC, respectively.
- B. Provide quality assurance services. The respective Chief will review and audit the cases of the SAMCs or SAPCs to ensure HHSC DDS consistency and compliance with policies and procedures.
- C. Provide approval of high risk examinations, including review and authorization, or denial, of requests for high risk or special CEs requested by Administrative Law Judges for purposes of obtaining current claimant medical information.
- D. Provide general advice and consultation to all SAMCs or SAPCs with regard to decisions related to their respective area of expertise (e.g., mental or physical impairments).
- E. Provide medical or psychological impairment evaluation training to SAMCs or SAPCs, Adjudicators, and other HHSC DDS professional staff.
- F. Provide program policy and procedure training to individual SAMCs or SAPCs on issues involving program consistency and compliance with policy and procedures.
- G. Liaison with federal and state agencies on the medical or psychological aspects of DDS program.
- H. Be available to provide Services a minimum of 30 hours per week, as measured quarterly. Such hours are reduced by six hours per day when DDS facilities are closed due to holidays, or inclement weather. Contractor may provide service availability more than 15 hours per week. Contractor shall notify HHSC DDS when Contractor is not available to provide the required Services.

## 2.2 **PERFORMANCE CRITERIA**

### 2.2.1 **Quality**

2.2.1.1 The SAMC’s and SAPC’s performance quality is assessed based on random and targeted reviews by the Chief, or designee; DDS management; and Federal and State quality assurance reviews.

- A. If assessments of Contractor’s completed cases indicate Contractor deficiencies with medical or program requirements, Contractor must comply with Chief SAMC and Chief SAPC guidance, or DDS management directives to correct and avoid such deficiencies in the future. If Contractor fails to comply with directives, and correct deficiencies, DDS may limit future claim assignments or HHSC, on behalf of DDS, may terminate the resultant Contract, or both.

2.2.1.2 Chief SAMC and SAPC performance will be assessed on quality reviews performed at the direction of HHSC DDS management and federal and state quality assurance reviews.

A. If assessments of Contractor's completed cases indicate Contractor deficiencies with medical or program requirements, the HHSC DDS SD or designees, in consultation with the DDS Administrator, will issue a directive to the Contractor on performance expectations of corrective actions, up to and including contract termination.

## 2.2.2 Contractor Accuracy

2.2.2.1 A Contractor must maintain accuracy at, or above, 95% (the "**Accuracy Standard**"). Accuracy will be measured by DDS internal and Federal quality reviews (Group I, Medical Documentation and Medical Decision errors). A minimum of three months data from the federal fiscal year is required when calculating accuracy.

- A. The Accuracy Standard shall apply to all Contractors immediately upon the completion of the Initial Orientation Period.
- B. A cumulative accuracy rate that begins with the start of each federal fiscal year will be used to assess Contractor's accuracy.
- C. DDS management may monitor the Contractor through monthly or more frequent reports. DDS will inform Contractor of the accuracy rate on a quarterly basis.
- D. If Contractor's accuracy rate, described in section 2.2.2.1 falls below 95%, at a quarterly measurement, DDS management will either, at its sole discretion (1) provide Contractor with at least 15 days' written notice of the termination of the resultant Contract, or (2) continue with further monitoring of Contractor's performance.

## 2.3 CONFIDENTIALITY AND PRIVACY

This section identifies an awarded Contractor's responsibilities with respect to confidentiality and privacy of certain information.

### 2.3.1 Protecting and Reporting the Loss of Personally Identifiable Information ("PII") Contractor's Responsibilities.

A. **Definitions:** The following terms are defined as follows for the purpose of this OE:

1. "**Handling PII**" means having access to PII, as defined in this paragraph.
2. "**Lost, compromised, or potentially compromised PII**" means that, while the Contractor is in possession of PII, the PII becomes physically missing or has been otherwise breached so that persons other than authorized users have access or

potential access to the PII, regardless of the form (e.g., electronic or physical) in which it was stored.

3. **"Personally Identifiable Information"** as defined by the Office of Management and Budget in OMB Memorandum OMB M-06-19: PII means any information about an individual maintained by an agency, including, but not limited to:
  - (a) Education; financial transactions; medical history; criminal or employment history; and information that can be used to distinguish or trace an individual's identity. Examples of such information include name; social security number; date and place of birth; mother's maiden name; biometric records, etc.; including any other personal information which is linked or linkable to an individual.
  - (b) Other examples of PII may include medical records; Social Security benefit data; official state or government issued driver's license; other identification numbers; alien registration number; government passport number; employer or taxpayer identification number or; home address.
4. **"Secure Area" or "Secure Duty Station"** means, for the purpose of this paragraph, the Contractor's assigned workstation within the DDS facility.

2.3.2 **Contractor Responsibility in Safeguarding PII:** Contractor shall establish, maintain, and follow SSA policy and procedures to protect PII, including those for reporting lost or compromised, or potentially lost or compromised, PII (see sections 2.3.2 (C) and (D)). Contractor shall abide by procedures designed to protect PII, as described below and as otherwise approved by the DDS as follows:

- A. **General.** Contractor will not disclose or release any PII to which the Contractor has access except as required to do so to authorized employees and officials within the scope of the Contractor's duties under this contract. Contractors shall properly safeguard PII from loss, theft, or inadvertent disclosure. Contractors are responsible for safeguarding this information at all times, regardless of whether or not the Contractor is at his or her regular duty station.
- B. **Transporting PII.** Contractors must NOT transport PII outside DDS' secure area or secure duty station.
- C. **Contractor Disposal of PII.** Contractor will dispose of incidental PII that is not maintained in SSA' disability folder in DDS-approved recycling bins. Examples of such PII include, but are not limited to, personal notes taken during case review, duplicative "sticker" sheets or logs, and other tangible material.
- D. **Emailing PII.** Contractor may use the SSA network email to send email messages containing PII in the body or in an unencrypted attachment but only to other SSA email addresses (containing the "name@ssa.gov" format) or to email addresses belonging to an SSA-certified email system. Email directed to any other address(es) may contain PII only if the PII is entirely contained in an encrypted attachment.
- E. **Use of PII.** Contractor must not use confidential or protected PII for any purpose other than to perform the duties required by the contract.

F. **Acknowledgement.** Contractor must acknowledge that any unauthorized disclosure of the information provided under the resultant Contract may violate the terms of Section 1106 of the Social Security Act and the Privacy Act, 5 U.S.C. § 552a and subject the Contractor to penalties.

2.3.3 **SSA-Prescribed Procedures for Reporting Lost, Compromised, or Potentially Compromised PII.** "Lost, compromised, or potentially compromised PII" is defined in section 2.3.1(A)(2) of this OE. The reporting requirement established in this section is for reporting all incidents involving PII, with no distinction between suspected and confirmed breaches.

A. **Contractor Responsibility.** Contractor is responsible for taking reasonable actions to implement HHSC-prescribed procedures described in section 2.3.3(B) for reporting lost, compromised, or potentially compromised PII.

**B. Procedures**

1. When a Contractor becomes aware or suspects that PII has been lost, compromised, or potentially compromised (see section 2.3.1(A)(2) of this OE), Contractor shall provide immediate notification of the incident to their primary DDS contact. If the primary DDS contact is not readily available, Contractor shall immediately notify one of two DDS alternates.
2. Contractor shall provide the primary DDS contact or the alternate, as applicable, updates on the status of the reported PII loss or compromise as they become available but shall not delay the initial report.
3. Contractor shall provide complete and accurate information about the details of the possible PII loss to assist the DDS contact or alternate, including the following information:
  - (a) Contractor's contact information;
  - (b) Where and when the incident occurred;
  - (c) A description of the loss, compromise, or potential compromise (e.g., nature of the compromise, scope, number of files or records, type of equipment or media, etc.);
  - (d) A description of safeguards used and how the data was stored (e.g., locked briefcase, redacted personal information, password protection, encryption, etc.);
  - (e) An identification of DDS components (organizational divisions or subdivisions) contacted, involved, or affected;
  - (f) Whether the Contractor has contacted or been contacted by any external organizations (e.g., other agencies, law enforcement, press, SSA, etc.);
  - (g) Whether the press is aware of the loss, regardless of how they were notified.
  - (h) Whether the Contractor has filed any other reports (i.e., Federal Protective Service, local police, and SSA or other agency reports); and

- (i) Any other pertinent information.
4. There may be rare instances outside of business hours when Contractor is unable to reach either the primary DDS contact or any of the alternates immediately. In such a situation, Contractor shall immediately call SSA's National Network Service Center (“NNSC”).
- (a) Contractor shall document the call with Change, Asset, and Problem Reporting System (“CAPRS”) number which the NNSC will assign. Contractor shall provide the CAPRS number to the primary DDS manager or, if unavailable, one of the alternates to this manager.
  - (b) Contractor shall limit disclosure of the information and details about an incident to only those with a need to know. The security or PII loss incident reporting process will ensure that SSA's reporting requirements are met and that security or PII loss incident information is only shared as appropriate.

**C. Additional Contractor Responsibilities When There Is a Loss of PII.**

- 1. In the event of a security or PII loss incident, Contractor shall take immediate steps to address consequential security issues that have been identified, including steps to minimize further security risks to those individuals whose personal information was lost, compromised, or potentially compromised.
- 2. Contractor shall confer with DDS in reviewing the actions the Contractor has taken and plans to take in dealing with the incident.
- 3. Contractor shall bear the responsibility and any cost for any data breach, remediation actions, or both that might arise from the security or PII loss incident. If SSA determines that the risk of harm requires notification of affected individual persons of the security breach or other remedies, Contractor shall carry out these remedies without cost to SSA.

**III. ELIGIBILITY REQUIREMENTS**

3.1 To be eligible to participate in this OE, an Applicant must meet the requirements stated under this Article III.

3.1.1 Credentials

- A. An Applicant must be licensed or certified as a psychologist at the independent practice level of psychology by the state of Texas; and
- B. Possess a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation, formerly the Council on Post-Secondary Accreditation.

**OR**

An Applicant must be listed in a national register of health service providers in psychology, which the DDS can use to ensure the psychologist is properly credentialed.

**OR**

An Applicant must possess credentials in psychology that, after review and approval, the SSA deems sufficient;

**AND**

- C. Possess two years of supervised clinical experience as a psychologist in health service, at least one year of which is post-master's degree.
- 3.3.2 An Applicant must be eligible to receive federal or state funds (e.g. not debarred or not excluded or terminated from a Medicaid or Medicare program). For the purpose of this requirement, "you" includes an individual psychologist, or psychologists through a Texas legal or professional entity.
- 3.3.3. Be free to participate in federal contracts with the System of Award Management (SAM). Applicant is ineligible to apply for funds under this OE if currently debarred, suspended, or otherwise excluded or ineligible for participation in Federal or State assistance programs. Search the federal excluded list at the following website:  
<https://www.sam.gov/portal/SAM/#1#1#1>;
- 3.3.4 An Applicant must not be debarred from receiving any federal or state funds at the time of the contract award. A list of debarred vendors may be viewed at:  
[http://comptroller.texas.gov/procurement/prog/vendor\\_performance/debarred/](http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/)
- 3.3.5 If the Applicant is a Texas legal or professional entity, the Applicant must be "active" or willing to become an "active" business entity authorized to do business in the state of Texas, as listed on the Texas Comptroller of Public Accounts' database located at:  
<https://comptroller.texas.gov/purchasing/vendor/information.php>.
- 3.3.6 An Applicant must be in good standing with the Texas State Board of Examiners of Psychologists.
- 3.3.7 An Applicant must accept the terms of this OE, and all attachments without exception.
- 3.3.8 An Applicant must agree to the fee, payment, and volume usage and compensation provisions stated under Article IV of this OE.
- 3.3.9 An Applicant must not have been subject to disciplinary or adverse actions or have been required to obtain additional continuing education that is above and beyond what is required for licensure by the Texas State Board of Examiners of Psychologists.
- 3.3.10 An Applicant must not have been subject of a legal proceeding challenging his or her professional competence in which a judgment or finding was made against the Provider.
- 3.3.11 An Applicant must not have any impediments to conducting business in the state of Texas.

#### IV. CONTRACT AWARD, TERM AND AMOUNT

##### 4.1 CONTRACT AWARD AND EXECUTION

- 4.1.1 HHSC intends to award multiple contracts as a result of this OE. Any award is contingent upon approval of the Executive Commissioner or designee.
- 4.1.2 If awarded a Contract, Applicant must submit to a full suitability determination by SSA to determine whether Applicant may receive credentials to have access to Social Security data, records and system. Additionally, at the awarded Applicant's expense, Applicant must annually submit a statewide criminal background check ("CBC") prior to providing services to DDS. Documentation that the CBC was conducted (with no information contained within the actual report) will be included in the Contract Vendor file maintained by DDS.
- 4.1.3 HHSC is not obligated to process any or all applications submitted. HHSC reserves the right to cancel, make partial award, or decline to award a contract under this OE at any time at its sole discretion. Applicants understand that issuance of this OE in no way constitutes a commitment by HHSC to award a contract or to pay any costs incurred by an Applicant in the preparation of a response to this OE. HHSC is not liable for any costs incurred by an Applicant prior to issuance of or entering into a formal agreement, contract, or purchase order. Costs of developing Applications, or any other similar expenses incurred by an Applicant are entirely the responsibility of the Applicant, and will not be reimbursed in any manner by the state of Texas.

##### 4.2 CONTRACT TERM

- 4.2.1 The resultant Contracts will begin on October 1, 2018, if application received prior to September 15, 2018. If application is received after September 15, 2018, the contract will begin upon execution and end on September 30, 2020 (the "**Initial Contract Term**"), unless terminated earlier in accordance with the terms of the resultant Contract.
- 4.2.2 At the end of the Initial Contract Term, the resultant contract may be renewed by amendment signed by HHSC and the Contractor for up to two, 24 month periods. Renewals may be based on Contractor's performance and DDS' continuing need for the Services. A rate escalation may be allowed for each renewal period. HHSC DDS will give Contractor written notice of intent to exercise the renewal option at least 30 calendar days prior to the expiration of the contract.

### 4.3 FEE, PAYMENT, AND VOLUME USAGE AND COMPENSATION

#### 4.3.1 Fee

Contractors selected under this OE will be compensated on a fee basis. Payable actions are compensated as follows:

| <b>Rate</b>       | <b>Description of Payable Action</b>   |
|-------------------|--|
| \$27.00           | Physical or Mental Case Assessment   |
| \$33.75           | Physical or Mental Chief Case Assessment   |
| \$100.00 per hour | Chief Hourly Rate  |
| \$80.00 per hour  | SAMC or SAPC Hourly Rate   |
| \$16.67           | Chief Non-Case Consults  |
| \$16.67           | Chief Back-up Non-Case Consult (Only when acting in capacity as back-up)         |
| \$8.33            | Chief Review of ALJ CE Request   |
| \$8.33            | Chief Back-up Review of ALJ CE Request (Only when acting in capacity as back-up) |
| \$33.75           | Chief, SAMC, or SAPC QA Reviews  |
| \$100.00 per hour | Chief, SAMC or SAPC Training Preparation   |
| \$100.00 per hour | Chief, SAMC, or SAPC Provided Training or Orientation                            |
| \$100.00 per hour | Chief Attended Training or Orientation   |
| \$80.00 per hour  | SAMC or SAPC Attended Training or Orientation                                    |
| \$100.00 per hour | Chief, SAMC, or SAPC Mentoring of SAMC or SAPC                                   |
| \$100.00 per hour | Chief Special Case Review (including QIS non-QA referrals)                       |
| \$100.00 per hour | Chief Back-up Special Case Review (including QIS non-QA referrals)               |
| \$100.00 per hour | Chief Special Project  |

|                   |   |
|-------------------|---|
| \$100.00 per hour | Chief Back-up Special Project (Only when acting in capacity as back-up)     |
| \$80.00 per hour  | SAMC or SAPC Special Project  |
| \$100.00 per hour | Chief Meeting Preparation   |
| \$100.00 per hour | Chief Back-up Meeting Preparation (Only when acting in capacity as back-up) |
| \$80.00 per hour  | SAMC or SAPC Meeting Preparation  |
| \$100.00 per hour | Chief Attended Meeting  |
| \$100.00 per hour | Chief Back-up Attended Meeting (Only when acting in capacity as back-up)    |
| \$80.00 per hour  | SAMC or SAPC Attended Meeting   |
| \$80.00 per hour  | Initial Orientation Period not to exceed 12 months                          |

#### 4.3.2 Invoicing and Payment

HHSC DDS will pay Contractor for completed payable actions within 30 calendar days of the end of the monthly accounting cycle in which the claim closes or Record of Payable Activity is submitted and upon satisfactory performance by Contractor.

DDS reserves the right to deduct from amounts that are, or shall become, due and payable to Contractor under this or any contract between the parties, any amounts which are, or shall become, payable to HHSC DDS by Contractor.

#### 4.3.3 No Guarantee of Volume, Usage or Compensation

- A. HHSC makes no guarantee of volume, usage, or total compensation to be paid to any Contractor under any awarded Contract, if any, resulting from this OE. All awarded Contracts are subject to appropriations and the continuing availability of funds.
- B. HHSC will assign work to awarded Contractors based on the following guidelines:
  - (1) Skills and experience of an awarded Contractor for a particular assignment.
  - (2) The ability of an awarded Contractor to provide the requested services within the time frame needed.
  - (3) The quality, flexibility and timeliness of the awarded Contractor's performance of prior assignments under the resultant Contract.
  - (4) Any other factors relevant to a particular assignment for which a Contractor's services are needed.

## **V. ADDITIONAL INFORMATION**

### **5.1 RESPONDENT INFORMATION**

#### **5.1.1 Profile**

In addition to the documentation identified in section 6.3.1 of this OE, Applicant **must** include the following information in its Application:

- A. If applicable, the Applicant's company's ownership structure (corporation, partnership, LLC, or sole proprietorship), including any wholly-owned subsidiaries, affiliated companies, or joint ventures. *(Please provide this information in a narrative and as a graphical representation)* If Applicant is an Affiliate of, or has a joint venture or strategic alliance with, another company, Applicant must identify the percentage of ownership and the percentage of the parent's ownership. The entity performing the majority of the services under a contract, throughout the duration of the contract, must be the Applicant. Finally, please provide your proposed operating structure for the services requested under this OE and which entities (i.e. parent company, Affiliate, Joint Venture, subcontractor) will be performing them
- B. If applicable, the year the company was founded and/or incorporated. If incorporated, please indicate the state where the company is incorporated and the date of incorporation;
- C. If applicable, the location of your company headquarters and any field office(s) that may provide services for any resulting contract under this OE;
- D. If applicable, the number of employees in your company, both locally and nationally, and the location(s) from which employees may be assigned;
- E. The name, address, and telephone number of Applicant's point of contact for any resulting contract under this OE; and
- F. Indicate whether you or your company has ever been engaged under a contract by any Texas state agency. If "Yes," specify when, for what duties, and for which agency.

Note: If Applicant is an out-of-state company, a Certificate of Authority from the Secretary of State to do business in Texas must be provided as well.

## **VI. ADMINSTRATIVE INFORMATION**

### **6.1 AMENDMENTS AND ANNOUNCEMENTS REGARDING THIS OPEN ENROLLMENT**

6.1.1 HHSC will post all official communication regarding this OE on the [HHS Open Enrollment site](#). HHSC reserves the right to revise this OE at any time and to make unilateral amendments to correct grammar, organization and clerical errors. It is the responsibility of each Applicant to comply with any changes, amendments, or

clarifications posted to the HHS Open Enrollment site. Applicant must check the HHS Open Enrollment frequently for changes and notices of matters affecting this OE.

- 6.1.2 Applicant's failure to periodically check the HHS Open Enrollment site will in no way release the Applicant from "addenda or additional information" resulting in additional costs to meet the requirements of the Open Enrollment.
- 6.1.3 All questions and comments regarding this OE should be sent to the DDS Point of Contact identified in section 1.2 of this OE. Questions must reference the appropriate OE page and section number. HHSC will post subsequent answers to questions to the ESBD as appropriate. HHSC reserves the right to amend answers prior to the OE closing date.
- 6.1.4 Applicants must notify HHSC of any ambiguity, conflict, discrepancy, omission or other error in the OE.

## 6.2 DELIVERY OF NOTICES

- 6.2.1 Any notice required or permitted under this announcement by one party to the other party must be in writing and correspond with the contact information noted in section 1.2 of this OE. At all times, Applicant will maintain and monitor at least one active email address for the receipt of application-related communications from HHSC. It is the Applicant's responsibility to monitor this email address for application-related information.

## 6.3 APPLICATION SUBMITTAL INSTRUCTIONS

### 6.3.1 Overview

Applicant shall submit to the DDS the following documents:

- A. Résumé with curriculum vitae ("CV"), for each psychologist that will provide services under a resultant contract. An Applicant shall prepare a CV that clearly and concisely represents the Applicant's qualification and capabilities under this OE.
- B. Proof that the psychologist that will provide services under the resultant contract, are licensed by Texas State Board of Examiners of Psychologists.
- C. Attachment B-Affirmations and Solicitation Acceptance (signed);
- D. Attachment E-Federal Assurances (signed);
- E. Attachment F-Lobbying Certification (signed); and
- F. Respondent Profile, if applicable (see section 5.1.1).

### 6.3.2 Submission

- A. Submission of an application does not execute a contract.

- B. Applicant must submit one copy of the application documentation listed in IX. ATTACHMENTS AND FORMS. The application must be marked "**Original.**" The Original hard copy must include all required documents. Failure to submit all required documents may result in disqualification of the Application without further consideration. An Applicant shall submit an Application that clearly and concisely represents her or her qualifications and capabilities under this OE.
- C. HHSC, in its sole discretion, may reject any and all Applications or portions thereof.
- D. **The completed Application, including the documents identified in section 6.3.1 of this OE must be submitted to**

Martin Nealeigh, Disability Policy and Program Support  
Health and Human Services Commission  
Disability Determination Services  
6101 East Oltorf Street  
Austin, TX 78741

- E. Solicitation Responses shall be placed in a sealed box and clearly labeled as follows:  
SOLICITATION NO: HHS0001934  
SOLICITATION NAME: Open Enrollment for Psychologists
- F. HHSC will not be held responsible for any Application that is mishandled prior to receipt by HHSC. It is an Applicant's responsibility to mark appropriately and deliver the Application to HHSC by the specified date and time.

## VII. ELIGIBILITY SCREENING

### 7.1 INITIAL COMPLIANCE SCREENING

HHSC will perform an initial screening of all applications received. Unsigned applications and applications that do not include all required forms and sections are subject to rejection without further evaluation. If the application passes the initial screening, the Applicant will be contacted by DDS staff for further instructions or actions.

### 7.2 NON-RESPONSIVE APPLICATIONS

Unless Applicant has taken action to withdraw application for this OE, an application will be considered nonresponsive and will not be considered further when any of the following conditions occurs:

7.2.1 Applicant fails to meet OE specifications, including;

- A. Applicant fails to submit the required application, supporting documentation, or forms;
- B. Applicant is not eligible under Section 1.5 of this Open Enrollment.
- C. Application is not signed;
- D. Applicant's response is not clearly legible. Typewritten is preferred;
- E. Application is not received by the closing of the OE period provided in section 1.3 of this OE.

### **7.3 Additional Information**

- 7.7.1 By submitting an application, the Applicant grants HHSC the right to obtain information from any lawful source regarding the Applicant's, its directors', officers', and employees.
- 7.7.2 By submitting an application, an Applicant generally releases from liability and waives all claims against any party providing HHSC information about the Applicant. HHSC may take such information into consideration in screening or the validation of information on applications or supporting documentation.

### **7.4 Withdrawal of Applications**

Applicants may withdraw their Application from consideration by submitting a written request for withdrawal to the Point of Contact in section 1.2 of this OE.

## **ARTICLE VIII. GENERAL TERMS AND CONDITIONS**

### **8.1 Costs Incurred**

Applicants understand that issuance of this OE in no way constitutes a commitment by HHSC to award a contract or to pay any costs incurred by an Applicant in the preparation of a response to this OE. HHSC is not liable for any costs incurred by an Applicant prior to issuance of or entering into a formal agreement, contract, or purchase order. Costs of developing Applications, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by an Applicant are entirely the responsibility of the Applicant, and will not be reimbursed in any manner by the state of Texas.

### **8.2 Contract Responsibility**

HHSC will look solely to Applicant for the performance of all contractual obligations that may result from an award based on this OE. Awarded Contractors shall not subcontract any of its responsibilities under the resultant Contract.

### 8.3 **Public Information Act**

Applications are subject to the Texas Public Information Act (**PIA**), Texas Government Code Chapter 552, and may be disclosed to the public upon request. Subject to the PIA, certain information may be protected from public release. Applicants who wish to protect portions of the Application from public disclosure should familiarize themselves with this law. Information pertaining to the OE will be withheld or released only in accordance with the PIA.

## IX. ATTACHMENTS AND FORMS

Applicant shall submit to the DDS the following documents:

- A. Résumé with curriculum vitae (“CV”), for each psychologist that will provide services under a resultant contract. An Applicant shall prepare a CV that clearly and concisely represents the Applicant’s qualification and capabilities under this OE.
- B. Proof that the psychologist that will provide services under the resultant contract, are licensed by Texas State Board of Examiners of Psychologists.
- C. Attachment A-Affirmations and Solicitation Acceptance (signed):
- D. Attachment B-Federal Assurances (signed);
- E. Attachment C-Lobbying Certification (signed); and
- F. Respondent Profile, if applicable (see section 5.1.1).

Exhibit A  
HHSC Uniform Terms and Conditions, Vendor Version 2.15



**Exhibit A - HHSC  
UTC Version 2.15 - V1**

Exhibit B  
HHSC Special Conditions, Version 1.2



**Exhibit B - HHSC  
Special Conditions \**

## CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

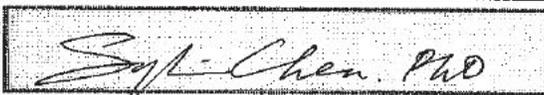
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this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

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

### Statement for Loan Guarantees and Loan Insurance

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

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

|  |   |               |            |
|--|---|---------------|------------|
| <b>* APPLICANT'S ORGANIZATION</b>                            |   |               |            |
| Dr. Sylvia Chen, LLC   |   |               |            |
| <b>* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE</b> |   |               |            |
| Prefix:  | Dr.   | * First Name: | Sylvia     |
|  |   | Middle Name:  | Wen-Hsin   |
| * Last Name:   | Chen  | Suffix:       |            |
| * Title:   | Member manager/Licensed psychologist  |               |            |
| <b>* SIGNATURE:</b>  |  |               | * DATE:    |
|  |   |               | 08/07/2018 |

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

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

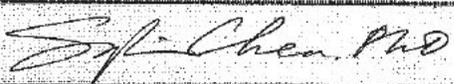
**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

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

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

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

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

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| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL<br> | TITLE<br>Member manager/Licensed Psychologist |
| APPLICANT ORGANIZATION<br>Dr. Sylvia Chen, LLC   | DATE SUBMITTED<br>08/07/2018                  |