

**SIGNATURE DOCUMENT FOR  
HEALTH AND HUMAN SERVICES COMMISSION  
CONTRACT NO. HHS000434500009  
UNDER THE  
DISASTER CRISIS COUNSELING PROGRAM**

**I. PURPOSE**

THE HEALTH AND HUMAN SERVICES COMMISSION (“System Agency,” or “HHSC”), an administrative agency within the executive department of the State of Texas, and PERMIAN BASIN COMMUNITY CENTERS FOR MHMR (“Grantee” or “Contractor”), a Community Mental Health Center as defined by Texas Health and Safety Code Section 534.001 (each a “Party” and collectively the “Parties”), enter into the following grant contract to provide funding activities in support of the Disaster Crisis Counseling Program (MH/DCCP), as further described herein (the “Contract”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions under the authority of the Texas Government Code, Chapters 531 and 791, and Texas Health and Safety Code Chapter 534.

**III. DURATION**

The Contract is effective as of the date signed by both Parties below, and ends on August 31, 2022, unless renewed or terminated pursuant to the terms and conditions of the Contract. Prior to August 31, 2022, HHSC may at its sole discretion extend the Contract upon written notice to Grantee for any period or periods of time no greater than a cumulative total of two (2) years. At the sole option of HHSC, HHSC may also extend the Contract beyond all exercised renewal periods as necessary to complete the mission of the program, to ensure continuity of service, or as otherwise determined by HHSC to serve the best interest of the State, provided that any such additional extension shall not exceed ninety (90) calendar days.

**IV. BUDGET**

The initial total reimbursement amount shall not exceed **ZERO DOLLARS (\$0.00)**. With respect to any Notice to Proceed, the reimbursement amount shall not exceed the budget amount set forth in the Notice to Proceed. The budget amount set forth under this **ARTICLE IV** shall automatically incorporate the budget amount(s) set forth in any and all Notices to Proceed incorporated herein in accordance with the terms and conditions of this Contract.

**V. STATEMENT OF SERVICES TO BE PROVIDED**

The Disaster Crisis Counseling Services to be performed by Grantee are described in **ATTACHMENT A01 - DISASTER CRISIS COUNSELING IMMEDIATE SERVICES PROGRAM (ISP) STATEMENT OF WORK**, and **ATTACHMENT A02 - DISASTER CRISIS COUNSELING REGULAR SERVICES PROGRAM (RSP) STATEMENT OF WORK** (each a “Statement of Work”), both of which are attached to this Contract and incorporated herein by reference. Grantee is not authorized to perform services hereunder except as authorized by a Notice to Proceed. Upon receipt of a Notice to Proceed from HHSC, Grantee shall perform or cause to be performed the Disaster Crisis Counseling Services in accordance with the Statement of Work(s) identified in the Notice to Proceed, subject to the budget and any other terms and conditions set forth in the Notice to Proceed. The Notice to Proceed is further described below in **ARTICLE VIII, NOTICES TO PROCEED**.

**VI. CONTRACT REPRESENTATIVES**

Grantee  
Permian Basin Community Centers for  
MHMR  
401 E. Illinois, Ste. 403  
Midland, TX 79701  
Ramona Thomas  
432-570-3333  
ramonathomas@permiacare.org

HHSC  
Health and Human Services Commission  
  
4900 North Lamar Boulevard  
Austin, TX 78751  
Judith Tyler  
512-206-5385  
judith.tyler@hhsc.state.tx.us

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

**VII. LEGAL NOTICES**

Legal Notices under this Contract shall be deemed delivered when received via United States mail, postage paid, certified, return receipt requested; or via common carrier, overnight, signature required, to the appropriate address below:

**System Agency**  
Health and Human Services Commission  
Brown-Heatly Building  
4900 N. Lamar Blvd.  
Austin, TX 78751-2316  
P.O. Box 13247  
Attention: General Counsel

**Grantee**  
Permian Basin Community Centers for MHMR  
401 E. Illinois, Ste. 403

Midland, TX 79701  
Attention: Ramona Thomas

Legal notice given by Grantee shall be deemed effective when received by the System Agency. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

### **VIII. NOTICES TO PROCEED**

In the event of a state and/or federal disaster declaration (a “Disaster”), HHSC will contact Grantee to assess need and project costs/budget to provide Disaster Crisis Counseling Services. Due to the urgency and short timelines associated with disaster-related grant activities, Grantee must submit Grantee’s complete needs assessment and cost/budget information to System Agency within three (3) calendar days (72 hours) of System Agency’s request for such information. Grantee acknowledges and accepts that failure to provide System Agency with all requested information within the stated 72 hours may result, in the sole and absolute discretion of System Agency, in System Agency declining to issue a Notice to Proceed with respect to the related Disaster. HHSC, in its sole and absolute discretion, may issue a Notice to Proceed to Grantee in connection with any Disaster.

Each Notice to Proceed shall be sequentially numbered, shall reference this Contract by Contract number, and shall specify, at a minimum: an award period during which Grantee shall provide the Disaster Crisis Counseling Services; the applicable federal grant information, if any; the applicable budget; and an identification of the Statement of Work hereunder to be performed by Grantee. Notices to Proceed may include additional terms and conditions, including project-specific programmatic requirements (e.g., project targets, counties to be served, project training requirements, project templates, etc.). Each Notice to Proceed is deemed an authorization by HHSC to Grantee to commence performance of the Disaster Crisis Counseling Services, in accordance with the terms and conditions of this Contract, including the applicable Notice to Proceed. Except as may be available under applicable state or federal law, including without limitation Title 2 of the Code of Federal Regulation Section 200.309, HHSC shall have no obligation to reimburse Grantee for any activities or services except as provided by this Contract and the applicable Notice to Proceed. An example Notice to Proceed template is set forth in **ATTACHMENT G** to this Contract.

Notice(s) to Proceed issued under this Contract are deemed effective and automatically incorporated into this Contract when received via United States mail, postage paid, certified, return receipt requested; via common carrier, overnight, signature required, or when sent by HHSC via electronic mail (“e-mail”) to the appropriate address below:

**Grantee Notice to Proceed Recipient Contact:**

Permian Basin Community Centers for MHMR  
401 E. Illinois, Ste. 403  
Midland, TX 79701  
Attention: Ramona Thomas

Email: ramonathomas@permiacare.org

Grantee is responsible for ensuring communication with HHSC in the event of a Disaster, including by confirming with HHSC any alternate channels of communication that may be temporarily employed by Grantee during any ongoing Disaster.

**IX. ADDITIONAL GRANT INFORMATION**

The following grant information shall be included in each Notice to Proceed hereunder for which federal grant funds are a funding reimbursement source:

Federal Award Identification Number  
Federal Award Date  
Name of Federal Awarding Agency  
CFDA Name and Number  
Awarding Official Contact Information

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY  
CONTRACT NO. HHS000434500009**

**HEALTH AND HUMAN SERVICES COMMISSION**

**PERMIAN BASIN COMMUNITY CENTERS  
FOR MHMR**

DocuSigned by:

*Trina Ita*

97DC64070502414...  
Signature

Trina Ita

Associate Commissioner

May 31, 2019

Date

DocuSigned by:

*Ramona Thomas*

CE6CF99BA716430...  
Signature

Ramona Thomas

CEO

May 31, 2019

Date

**THE FOLLOWING CONTRACT ATTACHMENTS ARE HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A01 - DISASTER CRISIS COUNSELING IMMEDIATE SERVICES PROGRAM (ISP) STATEMENT OF WORK**
- ATTACHMENT A02 - DISASTER CRISIS COUNSELING REGULAR SERVICES PROGRAM (RSP) STATEMENT OF WORK**
- ATTACHMENT B - UNIFORM TERMS AND CONDITIONS – GRANTEE VER. 2.16.1**
- ATTACHMENT C - HHSC SPECIAL CONDITIONS**
- ATTACHMENT D - DATA USE AGREEMENT VER. LMHA 8.3**
- ATTACHMENT E - FEDERAL ASSURANCES AND LOBBYING CERTIFICATIONS**
- ATTACHMENT F - FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACTION (FFATA) CERTIFICATION FORM**
- ATTACHMENT G - EXAMPLE NOTICE TO PROCEED TEMPLATE**

**ATTACHMENTS FOLLOW**

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

**I. GRANTEE RESPONSIBILITIES**

A. Grantee shall develop and provide Crisis Counseling Assistance and Training Program (CCP) Services specified in this Contract as needed to anyone eligible for services under the Federal Emergency Management Administration (FEMA) Immediate Services Program (ISP) grant and in accordance with the services and objectives described in Grantee's FEMA ISP CCP grant.

B. POPULATIONS SERVED

1. Prioritized Populations:

Individuals and groups including but not limited to: emergency first responders, disaster workers, disaster survivors, children, veterans, seniors, persons with disabilities, and other persons present and/or residing in the Texas counties included in the federal disaster declaration(s) for Individual Assistance will be prioritized.

2. Eligibility:

Any resident of the counties included in the federal disaster declaration(s) for Individual Assistance within the Grantee's service delivery area as defined within the Grantee's FEMA ISP CCP grant. If additional counties within the Grantee's service delivery area are subsequently added to this federal disaster declaration, residents of those counties will become eligible for CCP services. In this event, the System Agency, in consultation with the Grantee, determines any additional programmatic costs.

3. Service Determination:

Services are limited to Crisis Counseling Assistance and Training specifically related to the impact of the disaster. The provision of the CCP services are only billable to the FEMA ISP CCP grant and shall not be otherwise billed. Eligible disaster survivors who need on-going behavioral health-related counseling and/or treatment shall be referred to the Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) and/or other community-based public and/or private resources.

4. Continued Eligibility for Services:

Individuals who meet initial eligibility as described in Section I.B.2. above may receive up to three no-cost crisis counseling encounters. After three encounters, CCP staff shall reassess the individual using grant required assessment forms. If needed, CCP staff shall make referrals to behavioral health or other disaster recovery resources. Thereafter, utilization review shall occur every six encounters. Encounters must follow record keeping requirements as outlined in Section I.D.

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

**C. GRANTEE STAFFING**

1. System Agency may provide technical assistance in interviewing and selection of Grantee CCP Team Leader(s), at the request of the Grantee.
2. Grantee program staff includes; but is not limited to: Program Manager, Team Leader, Administrative Assistant, Crisis Counselor, Budget/Fiscal Analyst, Child Specialist, Media Liaison, and Community Liaison positions, funded by the FEMA CCP ISP grant. The number and type of positions shall be determined by the FEMA Grant Needs Assessment Formula.
3. The Grantee's CCP Program Manager(s) and/or Team Leader(s) shall attend program management meetings as outlined in the approved FEMA ISP CCP grant or as deemed necessary by System Agency.
4. Grantee shall participate in joint management activities of CCP services. System Agency will provide programmatic technical assistance and financial oversight.
5. Grantee shall report to System Agency prior to making any program significant personnel actions that may impact contract or grant performance, positions and/or program staff or individuals.
6. System Agency will conduct periodic programmatic and fiscal on-site and desk reviews during the term of this Contract to assist in Grantee's compliance with federal requirements as outlined in the FEMA CCP ISP grant and accordance with §2 CFR 200 Federal Regulations.
7. Grantee shall obtain prior written approval from the System Agency for programmatic and/or fiscal changes to the approved FEMA ISP CCP grant budget, included with each Notice to Proceed issued under this Contract.

**D. RECORD KEEPING**

1. System Agency shall provide Grantee with login and password to the Substance Abuse and Mental Health Services Administration (SAMHSA) CCP Online Data Collection and Evaluation System (ODCES) System.
2. Grantee shall provide list of CCP employee names and assigned ODCES numbers upon request.
3. Grantee's CCP staff shall complete and electronically submit the following data form(s) as they apply to each encounter. These forms are part of ODCES and are available on the following website: <https://ccpdata.org/ccp2field/> through the SAMHSA Online Data System.

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

Daily Forms:

- 1) Individual Crisis Counseling Services Encounter Log;
  - 2) Group Encounter Log;
  - 3) Weekly Tally Sheets;
  - 4) Adult Assessment & Referral Tool; and
  - 5) Child/Youth Assessment & Referral Tool.
4. Grantee shall submit Weekly Summary Reports to the System Agency as assigned by the System Agency during the performance period of the FEMA ISP CCP grant.
  5. Grantee shall disseminate the Participant Feedback Survey(s) to all survivors participating in an individual, family crisis counseling encounter, or group counseling session as determined by the CCP and/or the System Agency. The System Agency will identify a 1 or 2-week period at 6 and 12-months post-disaster to determine Grantee's dissemination date(s) of the Participant Feedback Survey(s).
  6. Grantee shall participate in the Provider Feedback Survey(s) as determined by the CCP and/or the System Agency. The System Agency will identify a 1 or 2-week period at 6 and 12-months post-disaster in which the Provider Feedback Survey(s) will be administered.
  7. Grantee shall maintain the CCP program encounter records and surveys as outlined in 2 CFR §200.333 Retention Requirements for Records.
  8. Grantee shall maintain financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to the FEMA ISP CCP grant for a period determined in accordance with the Health and Human Services Commission (HHSC) Grantee Uniform Terms and Conditions.
  9. Records produced under this Contract are considered property of the Grantee. The System Agency retains the right of access to any documents, papers, or other records that are pertinent to the contract award, in accordance with the HHSC Grantee Uniform Terms and Conditions.
  10. Transitory records are government programmatic records that have short-term use only and do not need to be filed. They are produced or received in the course of routine actions, in the preparation of other records which replace them, or for convenient reference. If not needed as evidence of an activity or for litigation purposes, they can be deleted or destroyed pursuant to the Grantee's records management plan.
  11. Hard copies of data forms are considered transitory records and shall be destroyed by the Grantee after the data is entered into and accepted by the SAMHSA ODCES pursuant to the Grantee's records management plan.



**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

**E. PROVISION OF SERVICES**

1. Grantee shall provide crisis counseling services at no cost as described in the *Crisis Counseling Assistance and Training Program Guidance*, that is available on the SAMHSA website <https://www.samhsa.gov/sites/default/files/images/fema-ccp-guidance.pdf>.
2. Grantee shall provide crisis counseling services to populations in accordance with the FEMA CCP ISP grant and as directed by the System Agency. These populations are identified in Section I.B.1 of the Statement of Work.
3. Grantee shall provide crisis counseling services without regard to race, religion, sex, or national origin.
4. Grantee shall complete all individual services information in compliance with Section I.B. Populations Served.
5. Grantee shall attempt to meet the estimated number of encounters with individuals to be served as identified in the FEMA ISP CCP grant. Grantee and System Agency acknowledge that the estimated number of persons to be served changes throughout the term of this Contract as needs are more clearly identified by ongoing needs assessments.

**F. SUPPLIES AND CONTROLLED ITEMS**

1. Supplies and controlled items, such as computers, software, mobile phones, and peripherals purchased with the CCP grant are owned by Grantee. Grantee is responsible for maintaining updates for all software including but not limited to: operating systems, antivirus, and malicious software protection, and the regular and routine maintenance and upkeep of items purchased with FEMA ISP CCP grant.
2. Grantee is responsible for maintaining an inventory of all supplies and controlled items purchased or provided with FEMA ISP CCP grant according to 2 CFR §200.313 Equipment. The inventory shall include:
  - a. A description of the property item;
  - b. Serial and/or model or other identification number(s), if applicable;
  - c. The acquisition date and cost;
  - d. The location, use, and condition of the property item; and
  - e. The source of the funding for the property item.
3. The record of the disposition of CCP resources must include the date of disposal and sale price, if applicable. Property items must be retained in accordance with the

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

FEMA ISP CCP grant and Grantee's records management policy.

4. Grantee shall maintain inventory of clothing items, costs, and items assigned to CCP staff. Grantee shall obtain guidance from the System Agency in the disposition of clothing items issued or purchased with the CCP grant. Clothing items issued to or purchased with CCP grant funds shall only be worn while performing CCP work related duties.

**II. PERFORMANCE MEASURES**

- A. Grantee shall report CCP program data as determined by System Agency in accordance with the following requirements:
  1. Grantee will submit electronic copies of the Grantee's policies and procedures to the System Agency as follows:
    - a. Time, labor, and leave;
    - b. Travel and expense reporting;
    - c. Employee compensation and benefits;
    - d. Equipment assignment and usage; and
    - e. General personnel policies.
  2. Grantee will complete and submit the following reports:
    - a. Encounter data on CCP activities must be entered daily in the ODCES by Grantee's staff.
    - b. CCP Weekly Summary Report(s) as specified by System Agency for the duration of the Contract in the format specified by the System Agency.
    - c. Grantee's CCP Employee Roster, Attachment A-2 of this contract, is due not later than the 20<sup>th</sup> day of each month. Rosters shall include employee's name, employee ID number, title, employment start date, employment termination date, hourly rate, percent of time charged to this contract, and regular work hours per week as applicable. Rosters shall be produced and submitted in alphabetical order by last name of the CCP employee with the monthly invoice packet.
    - d. Grantee's CCP employee training report is due quarterly. Training reports shall include the CCP employee's name, employee ID number, title, and title of required training courses completed and be produced and submitted in alphabetical order by last name of the CCP employee.
    - e. Grantee's monthly invoices are due each month not later than the 20<sup>th</sup> day of the

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

following month. Invoices shall be submitted in accordance with Section III. INVOICE AND PAYMENT, of this Statement of Work.

- f. Grantee shall prepare quarterly and/or final programmatic and fiscal report(s) using the templates provided by the System Agency.
  - g. Grantee's CCP grant Final Program Report is due not later than 45 calendar days after the FEMA ISP CCP grant performance period ends.
  - h. Grantee's Financial Status Report (FSR). This report is due not later than 45 calendar days after the FEMA ISP CCP grant performance period ends. The form will be provided by the System Agency.
3. Grantee shall electronically submit all reports, documentation, and other required information to the assigned CCP grant program coordinator, the assigned CCP Contract Manager, [DBHS@hhsc.state.tx.us](mailto:DBHS@hhsc.state.tx.us), [MHContracts@hhsc.state.tx.us](mailto:MHContracts@hhsc.state.tx.us) as instructed by the System Agency.
  4. Grantee's CCP program staff that have not completed the trainings listed below shall complete the training courses within the timeframe outlined by the FEMA ISP CCP grant and/or the System Agency:
    - a. *Psychological First Aid Training*
    - b. *Skills for Psychological Recovery Training*
    - c. *SAMHSA Just In Time Training*
    - d. *SAMHSA Online Data Collection and Evaluation System (ODCES) Training*.
    - e. *SAMHSA Core Content Training*
  5. System Agency, at its discretion, may deliver trainings and will coordinate the date with the Grantee at the location provided by the Grantee or at another agreed upon site.
  6. Grantee shall notify System Agency within thirty (30) days after project closure that all transitory records of individuals' information have been destroyed or will be maintained in compliance with the Grantee's record retention policy.
  7. System Agency will provide any revised FEMA or SAMHSA grant guidance within five (5) days of receipt of the information.

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

**III. INVOICE AND PAYMENT**

- A. Grantee shall electronically submit a copy of the Grantee's Financial Policies with the first invoice packet.
- B. Grantee shall electronically submit financial invoice packets on a monthly basis, not later than the 20th day of the following month for each month.
- C. Grantee shall submit financial invoice packets using the subject line: "INVOICE PACKET – Month – Grantee Name"
- D. Grantee shall request payment using the CCP Invoice and Expenditure Summary (Invoice) template, Attachment A-1 of the contract. The invoice shall be dated and certified by the Grantee's Chief Financial Officer (CFO) or designee, who by signature or electronic certification, attests to the accuracy and completeness of the documents contained in the invoice. Invoice packets submitted without required documentation shall not be processed. The invoice packet submitted for payment shall include:
  - 1. The signed or electronically certified Invoice with expenditure summary,
  - 2. The Monthly CCP Employee Roster, and
  - 3. Monthly general ledger report for the CCP designated cost centers expenditures to support monthly invoice.
- E. Grantee shall maintain and provide upon request, all supporting documentation and proof of payment for all expenses reported as incurred during the period of time covered by the invoices submitted. Supporting documentation shall include; but is not limited to:
  - 1. Payroll detail reports, or similar report from Grantee's accounting system that details salary, fringe, deductions from gross pay, and any other benefits paid to Grantee's CCP employees. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  - 2. Salaries, wages, and benefits paid by the Grantee in excess of the amount or rate approved in the CCP grant are ineligible expenses and will not be reimbursed.
  - 3. Proof of payment of Grantee's employee's wages, salaries, and benefits. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  - 4. Employee time reports from Grantee's timekeeping system for each CCP employee that indicates actual hours worked, any leave taken and type of leave taken and/or any accrued, paid time off. Reports shall be produced, verified, and submitted in alphabetical order by last name of the CCP employee. Time sheets shall include the supervisor's signature or electronic certification approval of the CCP employee's time.

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

5. Employee mileage logs or reports and/or vouchers indicating actual point-to-point travel and number of miles traveled. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee. Grantee CCP employee travel expenses must be submitted to the Grantee for payment not later than the 5<sup>th</sup> day of the month following the month the travel expense was incurred. Any travel expense payments made more than 30 days after the travel expense was incurred may be disallowed by the System Agency.
  6. Proof of payment of Grantee's employee's travel expenses, if paid separately from wages, salaries, and benefits. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  7. General ledger detail reports from Grantee's accounting system identifying the vendor name, address, vendor ID, and telephone number for all goods, services, and or equipment purchased and copies of supporting documentation, such as invoices, billing statements, purchase orders, credit card receipts, etc., supporting the purchase of and proof of delivery of goods, services, and/or equipment and payment for goods, services, and/or equipment used for authorized purposes of the FEMA ISP CCP grant.
  8. Indirect Administrative costs are not an eligible CCP grant expense and will not be reimbursed.
- F. System Agency will review, approve, and route invoices for payment. The additional supporting documentation may be requested at any time by the System Agency.
- G. Invoices submitted in excess of the total amount of the FEMA ISP CCP grant are not eligible for reimbursement.
- H. Grantee shall electronically submit the invoice packet to:
1. The HHSC Claims Processing Unit at [HHSCAP@hhsc.state.tx.us](mailto:HHSCAP@hhsc.state.tx.us);
  2. The HHSC Contract Management Unit at [MHContracts@hhsc.state.tx.us](mailto:MHContracts@hhsc.state.tx.us);
  3. The Disaster Behavioral Health Services Division at [DBHS@hhsc.state.tx.us](mailto:DBHS@hhsc.state.tx.us); and
  4. The assigned HHSC CCP Contract Manager.
- Any alternative submission arrangements shall be approved in writing by the assigned CCP Contract Manager.
- I. Grantee shall maintain electronic file folders of CCP financial supporting documentation with cost centers specific to the FEMA ISP CCP grant. System Agency will provide the

**ATTACHMENT A01 -  
DISASTER CRISIS COUNSELING  
IMMEDIATE SERVICES PROGRAM  
STATEMENT OF WORK**

electronic file folders to Grantee to maintain as FEMA ISP CCP audit binders.

- J. Invoices and any supporting documentation shall be maintained in the electronic file folders and made available for inspection by the System Agency upon request.
- K. Invoices and supporting documentation are also subject to audit by the FEMA, SAMHSA, the Texas Division of Emergency Management (TDEM) of the Texas Department of Public Safety, the System Agency and/or other state or federal entities. Grantee shall provide electronic file folders with the invoices and supporting documentation as FEMA ISP CCP audit binders upon request.
- L. Grantee shall respond to emails requesting invoice corrections or additional financial information no later than five (5) business days from the date of email. If invoice corrections or additional information is not received by System Agency within the five (5) business days, the invoice will be reduced by the amount(s) in question.

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

**I. GRANTEE RESPONSIBILITIES**

A. Grantee shall develop and provide Crisis Counseling Assistance and Training Program (CCP) Services specified in this Contract as needed to anyone eligible for services under the Federal Emergency Management Administration (FEMA) Regular Services Program (RSP) grant and in accordance with the services and objectives described in Grantee's FEMA RSP CCP grant.

B. POPULATIONS SERVED

1. Prioritized Populations:

Individuals and groups including but not limited to: emergency first responders, disaster workers, disaster survivors, children, veterans, seniors, persons with disabilities, and other persons present and/or residing in the Texas counties included in the federal disaster declaration(s) for Individual Assistance will be prioritized.

2. Eligibility:

Any resident of the counties included in the federal disaster declaration(s) for Individual Assistance within the Grantee's service delivery area as defined within the Grantee's FEMA RSP CCP grant. If additional counties within the Grantee's service delivery area are subsequently added to this federal disaster declaration, residents of those counties will become eligible for CCP services. In this event, the System Agency, in consultation with the Grantee, determines any additional programmatic costs.

3. Service Determination:

Services are limited to Crisis Counseling Assistance and Training specifically related to the impact of the disaster. The provision of the CCP services are only billable to the FEMA RSP CCP grant and shall not be otherwise billed. Eligible disaster survivors who need on-going behavioral health-related counseling and/or treatment shall be referred to the Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) and/or other community-based public and/or private resources.

4. Continued Eligibility for Services:

Individuals who meet initial eligibility as described in Section I.B.2. above may receive up to three no-cost crisis counseling encounters. After three encounters, CCP staff shall reassess the individual using grant required assessment forms. If needed, CCP staff shall make referrals to behavioral health or other disaster recovery resources. Thereafter, utilization review shall occur every six encounters. Encounters must follow record keeping requirements as outlined in Section I.D.

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

**C. GRANTEE STAFFING**

1. System Agency may provide technical assistance in interviewing and selection of Grantee CCP Team Leader(s), at the request of the Grantee.
2. Grantee program staff includes; but is not limited to: Program Manager, Team Leader, Administrative Assistant, Crisis Counselor, Budget/Fiscal Analyst, Child Specialist, Media Liaison, and Community Liaison positions, funded by the FEMA CCP RSP grant. The number and type of positions shall be determined by the FEMA Grant Needs Assessment Formula.
3. The Grantee's CCP Program Manager(s) and/or Team Leader(s) shall attend program management meetings as outlined in the approved FEMA RSP CCP grant or as deemed necessary by System Agency.
4. Grantee shall participate in joint management activities of CCP services. System Agency will provide programmatic technical assistance and financial oversight.
5. Grantee shall report to System Agency prior to making any program significant personnel actions that may impact contract or grant performance, positions and/or program staff or individuals.
6. System Agency will conduct periodic programmatic and fiscal on-site and desk reviews during the term of this Contract to assist in Grantee's compliance with federal requirements as outlined in the FEMA CCP RSP grant and accordance with §2 CFR 200 Federal Regulations.
7. Grantee shall obtain prior written approval from the System Agency for programmatic and/or fiscal changes to the approved FEMA RSP CCP grant budget, included with each Notice to Proceed issued under this Contract.

**D. RECORD KEEPING**

1. System Agency shall provide Grantee with login and password to the Substance Abuse and Mental Health Services Administration (SAMHSA) CCP Online Data Collection and Evaluation System (ODCES) System.
2. Grantee shall provide list of CCP employee names and assigned ODCES numbers upon request.
3. Grantee's CCP staff shall complete and electronically submit the following data form(s) as they apply to each encounter. These forms are part of ODCES and are available on the following website: <https://ccpdata.org/ccp2field/> through the SAMHSA Online Data System.



**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

Daily Forms:

- 1) Individual Crisis Counseling Services Encounter Log;
  - 2) Group Encounter Log;
  - 3) Weekly Tally Sheets;
  - 4) Adult Assessment & Referral Tool; and
  - 5) Child/Youth Assessment & Referral Tool.
4. Grantee shall submit Weekly Summary Reports to the System Agency as assigned by the System Agency during the performance period of the FEMA RSP CCP grant.
  5. Grantee shall disseminate the Participant Feedback Survey(s) to all survivors participating in an individual, family crisis counseling encounter, or group counseling session as determined by the CCP and/or the System Agency. The System Agency will identify a 1 or 2-week period at 6 and 12-months post-disaster to determine Grantee's dissemination date(s) of the Participant Feedback Survey(s).
  6. Grantee shall participate in the Provider Feedback Survey(s) as determined by the CCP and/or the System Agency. The System Agency will identify a 1 or 2-week period at 6 and 12-months post-disaster in which the Provider Feedback Survey(s) will be administered.
  7. Grantee shall maintain the CCP program encounter records and surveys as outlined in 2 CFR §200.333 Retention Requirements for Records.
  8. Grantee shall maintain financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to the FEMA RSP CCP grant for a period determined in accordance with the Health and Human Services Commission (HHSC) Grantee Uniform Terms and Conditions.
  9. Records produced under this Contract are considered property of the Grantee. The System Agency retains the right of access to any documents, papers, or other records that are pertinent to the contract award, in accordance with the HHSC Grantee Uniform Terms and Conditions.
  10. Transitory records are government programmatic records that have short-term use only and do not need to be filed. They are produced or received in the course of routine actions, in the preparation of other records which replace them, or for convenient reference. If not needed as evidence of an activity or for litigation purposes, they can be deleted or destroyed pursuant to the Grantee's records management plan.
  11. Hard copies of data forms are considered transitory records and shall be destroyed by the Grantee after the data is entered into and accepted by the SAMHSA ODCES pursuant to the Grantee's records management plan.

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

**E. PROVISION OF SERVICES**

1. Grantee shall provide crisis counseling services at no cost as described in the *Crisis Counseling Assistance and Training Program Guidance*, that is available on the SAMHSA website <https://www.samhsa.gov/sites/default/files/images/fema-ccp-guidance.pdf>.
2. Grantee shall provide crisis counseling services to populations in accordance with the FEMA CCP RSP grant and as directed by the System Agency. These populations are identified in Section I.B.1 of the Statement of Work.
3. Grantee shall provide crisis counseling services without regard to race, religion, sex, or national origin.
4. Grantee shall complete all individual services information in compliance with Section I.B. Populations Served.
5. Grantee shall attempt to meet the estimated number of encounters with individuals to be served as identified in the FEMA RSP CCP grant. Grantee and System Agency acknowledge that the estimated number of persons to be served changes throughout the term of this Contract as needs are more clearly identified by ongoing needs assessments.

**F. SUPPLIES AND CONTROLLED ITEMS**

1. Supplies and controlled items, such as computers, software, mobile phones, and peripherals purchased with the CCP grant are owned by Grantee. Grantee is responsible for maintaining updates for all software including but not limited to: operating systems, antivirus, and malicious software protection, and the regular and routine maintenance and upkeep of items purchased with FEMA RSP CCP grant.
2. Grantee is responsible for maintaining an inventory of all supplies and controlled items purchased or provided with FEMA RSP CCP grant according to 2 CFR §200.313 Equipment. The inventory shall include:
  - a. A description of the property item;
  - b. Serial and/or model or other identification number(s), if applicable;
  - c. The acquisition date and cost;
  - d. The location, use, and condition of the property item; and
  - e. The source of the funding for the property item.
3. The record of the disposition of CCP resources must include the date of disposal and sale price, if applicable. Property items must be retained in accordance with the

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

FEMA RSP CCP grant and Grantee's records management policy.

4. Grantee shall maintain inventory of clothing items, costs, and items assigned to CCP staff. Grantee shall obtain guidance from the System Agency in the disposition of clothing items issued or purchased with the CCP grant. Clothing items issued to or purchased with CCP grant funds shall only be worn while performing CCP work related duties.

**II. PERFORMANCE MEASURES**

- A. Grantee shall report CCP program data as determined by System Agency in accordance with the following requirements:
  1. Grantee will submit electronic copies of the Grantee's policies and procedures to the System Agency as follows:
    - a. Time, labor, and leave;
    - b. Travel and expense reporting;
    - c. Employee compensation and benefits;
    - d. Equipment assignment and usage; and
    - e. General personnel policies.
  2. Grantee will complete and submit the following reports:
    - a. Encounter data on CCP activities must be entered daily in the ODCES by Grantee's staff.
    - b. CCP Weekly Summary Report(s) as specified by System Agency for the duration of the Contract in the format specified by the System Agency.
    - c. Grantee's CCP Employee Roster, Attachment A-2 of this contract, is due not later than the 20<sup>th</sup> day of each month. Rosters shall include employee's name, employee ID number, title, employment start date, employment termination date, hourly rate, percent of time charged to this contract, and regular work hours per week as applicable. Rosters shall be produced and submitted in alphabetical order by last name of the CCP employee with the monthly invoice packet.
    - d. Grantee's CCP employee training report is due quarterly. Training reports shall include the CCP employee's name, employee ID number, title, and title of required training courses completed and be produced and submitted in alphabetical order by last name of the CCP employee.
    - e. Grantee's monthly invoices are due each month not later than the 20<sup>th</sup> day of the

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

following month. Invoices shall be submitted in accordance with Section III. INVOICE AND PAYMENT, of this Statement of Work.

- f. Grantee shall prepare quarterly and/or final programmatic and fiscal report(s) using the templates provided by the System Agency.
  - g. Grantee's CCP grant Final Program Report is due not later than 45 calendar days after the FEMA RSP CCP grant performance period ends.
  - h. Grantee's Financial Status Report (FSR). This report is due not later than 45 calendar days after the FEMA RSP CCP grant performance period ends. The form will be provided by the System Agency.
3. Grantee shall electronically submit all reports, documentation, and other required information to the assigned CCP grant program coordinator, the assigned CCP Contract Manager, [DBHS@hhsc.state.tx.us](mailto:DBHS@hhsc.state.tx.us), [MHCContracts@hhsc.state.tx.us](mailto:MHCContracts@hhsc.state.tx.us) as instructed by the System Agency.
  4. Grantee's CCP program staff that have not completed the trainings listed below shall complete the training courses within the timeframe outlined by the FEMA RSP CCP grant and/or the System Agency:
    - a. *Psychological First Aid Training*
    - b. *Skills for Psychological Recovery Training*
    - c. *SAMHSA Just In Time Training*
    - d. *SAMHSA Online Data Collection and Evaluation System (ODCES) Training*.
    - e. *SAMHSA Transition To RSP Training*
    - f. *SAMHSA RSP Mid-Program Training*
    - g. *SAMHSA Disaster Anniversary Training*
    - h. *SAMHSA RSP Phasedown Training*
  5. System Agency, at its discretion, may deliver trainings and will coordinate the date with the Grantee at the location provided by the Grantee or at another agreed upon site.
  6. Grantee shall notify System Agency within thirty (30) days after project closure that all transitory records of individuals' information have been destroyed or will be maintained in compliance with the Grantee's record retention policy.
  7. System Agency will provide any revised FEMA or SAMHSA grant guidance within five (5) days of receipt of the information.

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

**III. INVOICE AND PAYMENT**

- A. Grantee shall electronically submit a copy of the Grantee's Financial Policies with the first invoice packet.
- B. Grantee shall electronically submit financial invoice packets on a monthly basis, not later than the 20th day of the following month for each month.
- C. Grantee shall submit financial invoice packets using the subject line: "INVOICE PACKET – Month – Grantee Name"
- D. Grantee shall request payment using the CCP Invoice and Expenditure Summary (Invoice) template, Attachment A-1 of the contract. The invoice shall be dated and certified by the Grantee's Chief Financial Officer (CFO) or designee, who by signature or electronic certification, attests to the accuracy and completeness of the documents contained in the invoice. Invoice packets submitted without required documentation shall not be processed. The invoice packet submitted for payment shall include:
  - 1. The signed or electronically certified Invoice with expenditure summary,
  - 2. The Monthly CCP Employee Roster, and
  - 3. Monthly general ledger report for the CCP designated cost centers expenditures to support monthly invoice.
- E. Grantee shall maintain and provide upon request, all supporting documentation and proof of payment for all expenses reported as incurred during the period of time covered by the invoices submitted. Supporting documentation shall include; but is not limited to:
  - 1. Payroll detail reports, or similar report from Grantee's accounting system that details salary, fringe, deductions from gross pay, and any other benefits paid to Grantee's CCP employees. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  - 2. Salaries, wages, and benefits paid by the Grantee in excess of the amount or rate approved in the CCP grant are ineligible expenses and will not be reimbursed.
  - 3. Proof of payment of Grantee's employee's wages, salaries, and benefits. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  - 4. Employee time reports from Grantee's timekeeping system for each CCP employee that indicates actual hours worked, any leave taken and type of leave taken and/or any accrued, paid time off. Reports shall be produced, verified, and submitted in alphabetical order by last name of the CCP employee. Time sheets shall include the supervisor's signature or electronic certification approval of the CCP employee's time.

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

5. Employee mileage logs or reports and/or vouchers indicating actual point-to-point travel and number of miles traveled. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee. Grantee CCP employee travel expenses must be submitted to the Grantee for payment not later than the 5<sup>th</sup> day of the month following the month the travel expense was incurred. Any travel expense payments made more than 30 days after the travel expense was incurred may be disallowed by the System Agency.
  6. Proof of payment of Grantee's employee's travel expenses, if paid separately from wages, salaries, and benefits. Reports shall be produced and submitted in alphabetical order by last name of the CCP employee.
  7. General ledger detail reports from Grantee's accounting system identifying the vendor name, address, vendor ID, and telephone number for all goods, services, and or equipment purchased and copies of supporting documentation, such as invoices, billing statements, purchase orders, credit card receipts, etc., supporting the purchase of and proof of delivery of goods, services, and/or equipment and payment for goods, services, and/or equipment used for authorized purposes of the FEMA RSP CCP grant.
  8. Indirect Administrative costs are not an eligible CCP grant expense and will not be reimbursed.
- F. System Agency will review, approve, and route invoices for payment. The additional supporting documentation may be requested at any time by the System Agency.
- G. Invoices submitted in excess of the total amount of the FEMA RSP CCP grant are not eligible for reimbursement.
- H. Grantee shall electronically submit the invoice packet to:
1. The HHSC Claims Processing Unit at [HHSCAP@hhsc.state.tx.us](mailto:HHSCAP@hhsc.state.tx.us);
  2. The HHSC Contract Management Unit at [MHCContracts@hhsc.state.tx.us](mailto:MHCContracts@hhsc.state.tx.us);
  3. The Disaster Behavioral Health Services Division at [DBHS@hhsc.state.tx.us](mailto:DBHS@hhsc.state.tx.us); and
  4. The assigned HHSC CCP Contract Manager.
- Any alternative submission arrangements shall be approved in writing by the assigned CCP Contract Manager.
- I. Grantee shall maintain electronic file folders of CCP financial supporting documentation

**ATTACHMENT A02 -  
DISASTER CRISIS COUNSELING  
REGULAR SERVICES PROGRAM  
STATEMENT OF WORK**

with cost centers specific to the FEMA RSP CCP grant. System Agency will provide the electronic file folders to Grantee to maintain as FEMA RSP CCP audit binders.

- J. Invoices and any supporting documentation shall be maintained in the electronic file folders and made available for inspection by the System Agency upon request.
- K. Invoices and supporting documentation are also subject to audit by the FEMA, SAMHSA, the Texas Division of Emergency Management (TDEM) of the Texas Department of Public Safety, the System Agency and/or other state or federal entities. Grantee shall provide electronic file folders with the invoices and supporting documentation as FEMA RSP CCP audit binders upon request.
- L. Grantee shall respond to emails requesting invoice corrections or additional financial information no later than five (5) business days from the date of email. If invoice corrections or additional information is not received by System Agency within the five (5) business days, the invoice will be reduced by the amount(s) in question.

HHSC Uniform Terms and Conditions Version 2.16  
Published and Effective: March 26, 2019  
Responsible Office: Chief Counsel



# TEXAS

## Health and Human Services

**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions - Grant**  
**Version 2.16.1**



**TABLE OF CONTENTS**

**ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS** ..... 4

    1.1 Definitions ..... 4

    1.2 Interpretive Provisions ..... 6

**ARTICLE II. PAYMENT METHODS AND RESTRICTIONS**..... 6

    2.1 Payment Methods ..... 6

    2.2 Final Billing Submission ..... 7

    2.3 Financial Status Reports (FSRs)..... 7

    2.4 Use of Funds ..... 7

    2.5 Use for Match Prohibited ..... 7

    2.6 Program Income ..... 7

    2.7 Nonsupplanting..... 8

    2.8 Allowable Costs..... 8

    2.9 Indirect Cost Rates ..... 8

**ARTICLE III. STATE AND FEDERAL FUNDING** ..... 8

    3.1 Funding..... 8

    3.2 No Debt Against the State ..... 8

    3.3 Debt and Delinquencies..... 8

    3.4 Recapture of Funds..... 8

**ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS** ..... 9

    4.1 Allowable Costs. .... 9

    4.2 Audits and Financial Statements ..... 10

    4.3 Submission of Audits and Financial Statements ..... 11

**ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**..... 11

    5.1 General Affirmations..... 11

    5.2 Federal Assurances ..... 11

    5.3 Federal Certifications ..... 11

**ARTICLE VI. INTELLECTUAL PROPERTY** ..... 11

    6.1 Ownership of Work Product ..... 11

    6.2 Grantees Pre-existing Works ..... 12

    6.3 Agreements with Employees and Subcontractors ..... 12

    6.4 Delivery Upon Termination or Expiration ..... 12

    6.5 Survival ..... 12

**ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE** ..... 13

    7.1 Books and Records ..... 13

    7.2 Access to Records, Books, and Documents ..... 13

    7.3 Response/Compliance with Audit or Inspection Findings ..... 13

    7.4 SAO Audit ..... 14

    7.5 Confidentiality ..... 14

**ARTICLE VIII. CONTRACT MANAGEMENT AND EARLY TERMINATION** ..... 14

    8.1 Contract Remedies ..... 14

    8.2 Termination for Convenience ..... 14

    8.3 Termination for Cause ..... 14

**ARTICLE IX. MISCELLANEOUS PROVISIONS** ..... 15

    9.1 Amendment ..... 15

    9.2 Insurance ..... 15

    9.3 Legal Obligations ..... 15

    9.4 Permitting and Licensure ..... 16

    9.5 Indemnity ..... 16

    9.6 Assignments ..... 16

    9.7 Independent Contractor ..... 17

    9.8 Technical Guidance Letters ..... 17

    9.9 Dispute Resolution ..... 17

    9.10 Governing Law and Venue ..... 17

    9.11 Severability ..... 17

    9.12 Survivability ..... 18

    9.13 Force Majeure ..... 18

    9.14 No Waiver of Provisions ..... 18

    9.15 Publicity ..... 18

    9.16 Prohibition on Non-compete Restrictions ..... 19

    9.17 No Waiver of Sovereign Immunity ..... 19

    9.18 Entire Contract and Modification ..... 19

    9.19 Counterparts ..... 19

    9.20 Proper Authority ..... 19

    9.21 E-Verify Program ..... 19

    9.22 Civil Rights ..... 19

    9.23 System Agency Data ..... 21

## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

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

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

“Attachment” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference, and made a part of this Contract.

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

“Deliverable” means the work product(s), including all reports and project documentation, required to be submitted by Grantee to the System Agency.

“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.

“Grantee” means the Party receiving funds under this Contract. May also be referred to as “Contractor” in certain attachments.

“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 Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such right may be evidenced by or embodied in:

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

“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 Grantee, collectively.

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

“Program” means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

“Project” means specific activities of the Grantee that are supported by funds provided under this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

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

“Solicitation” or “Request for Applications (RFA)” means the document (including all amendments and attachments) issued by the System Agency under which applications for Program funds were requested, which is incorporated by reference for all purposes in its entirety.

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

“State 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 Travel” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Statement of Work” means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

“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, authorized representatives 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 Grantee.

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

“Uniform Grant Management Standards” or “UGMS” means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas

Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

**1.2 INTERPRETIVE PROVISIONS**

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute 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, 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. PAYMENT METHODS AND RESTRICTIONS**

**2.1 PAYMENT METHODS**

- A. Except as otherwise provided by this Contract, the payment method will be one or more of the following:
  - i. Cost Reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
  - ii. Unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
  - iii. Advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has

implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law, state and federal regulations, and at the sole discretion of the System Agency.

B. Grantee shall bill the System Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

**2.2 FINAL BILLING SUBMISSION**

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.

**2.3 FINANCIAL STATUS REPORTS (FSRs)**

Except as otherwise provided, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to System Agency by the last business day of the month following the end of each quarter for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

**2.4 USE OF FUNDS**

Grantee shall expend funds under this Contract only for approved services and for reasonable and allowable expenses directly related to those services.

**2.5 USE FOR MATCH PROHIBITED**

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the System Agency.

**2.6 PROGRAM INCOME**

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use Program Income, as provided in UGMS Section III, Subpart C, .25(g)(2), to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Contract, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Contract term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Contract.

**2.7 NONSUPPLANTING**

Grant funds may be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds in place to support current programs and related activities.

**2.8 ALLOWABLE COSTS**

Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. The Parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

**2.9 INDIRECT COST RATES**

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable contracts. Grantee will provide the necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and Uniform Grant Management Standards (UGMS).

**ARTICLE III. STATE AND FEDERAL FUNDING**

**3.1 FUNDING**

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

**3.2 NO DEBT AGAINST THE STATE**

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

**3.3 DEBT AND DELINQUENCIES**

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

**3.4 RECAPTURE OF FUNDS**

A. At its sole discretion, the System Agency may i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s), or ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice -

any funds erroneously paid by System Agency which are not expressly authorized under the Contract.

- B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee 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. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

**ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS**

**4.1 ALLOWABLE COSTS**

- A. System Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include, but are not limited to:

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local, and Tribal Governments	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Educational Institutions	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
Non-Profit Organizations	2 CFR Part 200 and UGMS	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS



For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
--	---	------------------------------------	-------------------------

B. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

**4.2 AUDITS AND FINANCIAL STATEMENTS**

**A. Audits**

- i. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee will be subject to the sanctions and remedies for non-compliance with this Contract.
- ii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.
- iii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS.
- iv. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits.
- v. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

**B. Financial Statements**

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements.

#### **4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS**

##### **A. Audits**

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically one copy of the single audit or program-specific audit to the System Agency via:

i. HHS portal at: or,

<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>

ii. Email to: [single\\_audit\\_report@hhsc.state.tx.us](mailto:single_audit_report@hhsc.state.tx.us).

##### **B. Financial Statements**

Due no later than nine months after the Grantee's fiscal year end, Grantees which are not required to submit an audit, shall submit electronically financial statements via:

i. HHS portal at:

<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>; or,

ii. Email to: [single\\_audit\\_report@hhsc.state.tx.us](mailto:single_audit_report@hhsc.state.tx.us).

#### **ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

##### **5.1 GENERAL AFFIRMATIONS**

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

##### **5.2 FEDERAL ASSURANCES**

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Grantee has reviewed the Federal Assurances and that Grantee is in compliance with all requirements.

##### **5.3 FEDERAL CERTIFICATIONS**

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

#### **ARTICLE VI. INTELLECTUAL PROPERTY**

##### **6.1 OWNERSHIP OF WORK PRODUCT**

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

therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Grantee agrees to execute all papers and to perform such other property rights as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.

**6.2 GRANTEE’S PRE-EXISTING WORKS**

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

**6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

Grantee shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Grantee’s compliance with Grantee’s obligations under this **Article VI**.

**6.4 DELIVERY UPON TERMINATION OR EXPIRATION**

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

**6.5 SURVIVAL**

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

## ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE

### 7.1 BOOKS AND RECORDS

Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee shall 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.

### 7.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, 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, Grantee shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

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

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

#### **7.4 SAO AUDIT**

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

#### **7.5 CONFIDENTIALITY**

Grantee shall maintain as confidential, and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract.

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

#### **8.1 CONTRACT REMEDIES**

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

- i. suspending all or part of the Contract;
- ii. requiring the Grantee to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Grantee found to be in error;
- iv. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
- v. imposing any other remedies, sanctions or penalties authorized under this Contract or permitted by federal or state statute, law, regulation or rule.

#### **8.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract 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. The System Agency's right to terminate the Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

#### **8.3 TERMINATION FOR CAUSE**

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

i. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Grantee 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 Grantee's duties under the Contract. Grantee's misrepresentation in any aspect of Grantee's Solicitation Response, if any, or Grantee's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

ii. **Failure to Maintain Financial Viability**

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

**ARTICLE IX. MISCELLANEOUS PROVISIONS**

**9.1 AMENDMENT**

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

**9.2 INSURANCE**

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

**9.3 LEGAL OBLIGATIONS**

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

**9.4 PERMITTING AND LICENSURE**

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

**9.5 INDEMNITY**

- A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENCE ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**
- C. For the avoidance of doubt, System Agency shall not indemnify Grantee or any other entity under the Contract.**

**9.6 ASSIGNMENTS**

- A. Grantee 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 Grantee from its obligations under the Contract.**
- B. Grantee 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.**

**9.7 INDEPENDENT CONTRACTOR**

Grantee and Grantee’s employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party’s behalf. Should Grantee subcontract any of the services required in the Contract, Grantee expressly understands and acknowledges that in entering such subcontract(s), System Agency is in no manner liable to any Subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

**9.8 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 (TGL). 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 for all purposes when it is issued.

**9.9 DISPUTE RESOLUTION**

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.
- B. 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.

**9.10 GOVERNING LAW AND VENUE**

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

**9.11 SEVERABILITY**

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



enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**9.12 SURVIVABILITY**

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

**9.13 FORCE MAJEURE**

Neither Grantee nor System Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

**9.14 NO WAIVER OF PROVISIONS**

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

**9.15 PUBLICITY**

- A. Except as provided in the paragraph below, Grantee 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.
- B. Grantee may publish, at its sole expense, results of Grantee 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.
- C. Contractor is prohibited from using the Work for any Contractor or third party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

**9.16 PROHIBITION ON NON-COMPETE RESTRICTIONS**

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

**9.17 NO WAIVER OF SOVEREIGN IMMUNITY**

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

**9.18 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.

**9.19 COUNTERPARTS**

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

**9.20 PROPER AUTHORITY**

Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract.

**9.21 E-VERIFY PROGRAM**

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- i. all persons employed to perform duties within Texas during the term of the Contract; and
- ii. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Contract within the United States of America.

**9.22 CIVIL RIGHTS**

- A. Grantee agrees to comply with state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);

- v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.
- B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Grantee 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. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Grantee 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>
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the 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.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section 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.

### 9.23 SYSTEM AGENCY DATA

As between the Parties, all data and information acquired, accessed, or made available to Contractor by or through System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder, (the "**System Agency Data**"), is owned solely by System Agency. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.

ATTACHMENT C



Health and Human Services Commission  
Special Conditions  
Version: 1.2  
9.1.17

ATTACHMENT C

Contents

- Article I. Special Definitions .....3**
- Article II. Contractors Personnel and Subcontractors .....3**
  - 2.01 Conduct and Removal ..... 3
- Article III. Amendments and Modifications.....4**
  - 3.01 Formal Amendment..... 4
  - 3.02 Minor Administrative Changes ..... 4
- Article IV. Payment .....4**
  - 4.01 Enhanced Payment Procedures ..... 4
- Article V. Confidentiality .....4**
  - 5.01 Confidential System Information ..... 4
- Article VI. Disputes and Remedies.....5**
  - 6.01 Agreement of the Parties ..... 5
  - 6.02 Operational Remedies ..... 5
  - 6.03 Equitable Remedies..... 6
  - 6.04 Continuing Duty to Perform..... 6
- Article VII. Damages.....6**
  - 7.01 Availability and Assessment ..... 6
  - 7.02 Specific Items of Liability..... 7
- Article VIII. Miscellaneous Provisions .....7**
  - 8.01 Conflicts of Interest ..... 7
  - 8.02 Flow Down Provisions ..... 8
- Article IX. DSHS Legacy Provisions.....8**
  - 9.01 Notice of Criminal Activity and Disciplinary Actions ..... 8
  - 9.02 Consent by Non-Parent or Other State Law to Medical Care of a Minor ..... 8
  - 9.03 Services and Information for Persons with Limited English Proficiency ..... 8
  - 9.04 HIV/AIDS Model Workplace Guidelines ..... 9
  - 9.05 Medical Records Retention ..... 9
  - 9.06 Child Abuse Reporting Requirement ..... 9

## ATTACHMENT C

### HHSC SPECIAL CONDITIONS

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions -Grant- Version 2.16.1

#### Article I. Special Definitions

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

“**Contractor Agents**” means Contractor's representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

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

“**Item of Noncompliance**” means 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 3.01 of these Special Conditions.

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

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

“**UTC**” means HHSC's Uniform Terms and Conditions -Grant- Version 2.16.1

#### Article II. Contractors Personnel and Subcontractors

##### 2.01 Conduct and Removal

While performing the Work under the Contract, Contractor Agents 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 Agent is 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,

## ATTACHMENT C

at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any Work under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

### Article III. Amendments and Modifications

#### 3.01 Formal Amendment

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.

#### 3.02 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 an Amendment. 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 IV. Payment

#### 4.01 Enhanced Payment Procedures

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any such dispute, Contractor will continue to perform the Work in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

### Article V. Confidentiality

#### 5.01 Confidential System Information

HHSC prohibits the unauthorized disclosure of Confidential System Information. Contractor and all Contractor Agents will not disclose or use any Confidential System Information in any manner except as is necessary for the Work or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Confidential System Information. Any disclosure or transfer of Confidential System Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Confidential System Information, Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Confidential System Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Confidential System Information by any person or entity that may become known to Contractor.



## ATTACHMENT C

Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential System Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, CONTRACTOR WILL INDEMNIFY, TO THE EXTENT ALLOWABLE AS A GOVERNMENTAL ENTITY, AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM CONTRACTOR OR CONTRACTOR AGENTS FAILURE TO PROTECT CONFIDENTIAL SYSTEM INFORMATION. CONTRACTOR WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

## 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;

## ATTACHMENT C

- (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) Assessment of liquidated damages as provided in the Contract;
- (f) Accelerated or additional monitoring;
- (g) Withholding of payments; and
- (h) Additional and more detailed programmatic and financial reporting.

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. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the Work or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- (a) Through direct assessment and demand for payment to Contractor; or
- (b) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

## ATTACHMENT C

### 7.02 Specific Items of Liability

Contractor bears all risk of loss or damage due to defects in the Work, unfitness or obsolescence of the Work, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the Work, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents 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 Agents' 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 Agents, 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, TO THE EXTENT ALLOWABLE AS A GOVERNMENTAL ENTITY, 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.

## Article VIII. Miscellaneous Provisions

### 8.01 Conflicts of Interest

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

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

## ATTACHMENT C

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

### 8.02 Flow Down Provisions

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

## Article IX. DSHS Legacy Provisions

### 9.01 Notice of Criminal Activity and Disciplinary Actions

- (a) Contractor shall immediately report in writing to their contract manager when Contractor has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, subcontractor or volunteer that is providing services under this Contract has:
  - i. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
  - ii. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- (b) Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

### 9.02 Consent by Non-Parent or Other State Law to Medical Care of a Minor

Unless a federal law applies, before a Contractor or its subcontractor can provide medical, dental, psychological or surgical treatment to a minor without parental consent, informed consent must be obtained as required by Texas Family Code Chapter 32.

### 9.03 Services and Information for Persons with Limited English Proficiency

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

## ATTACHMENT C

### 9.04 HIV/AIDS Model Workplace Guidelines

Contractor shall implement System Agency's policies based on the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS), AIDS Model Workplace Guidelines for Businesses at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>, State Agencies and State Contractors Policy No. 090.021.

Contractor shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas Health & Safety Code §§ 85.112-114.

### 9.05 Medical Records Retention

Contractor shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

### 9.06 Child Abuse Reporting Requirement

- (a) Contractors shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Contractor to report child abuse.
- (b) Contractor shall develop, implement and enforce a written policy that includes at a minimum the System Agency's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements.
- (c) Contractor shall use the System Agency's Child Abuse Reporting Form located at <http://www.dshs.texas.gov/childabusereporting/> as required by the System Agency. Contractor shall retain reporting documentation on site and make it available for inspection by the System Agency.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK