

HHSC Contract No. HHS000640200030

**SIGNATURE DOCUMENT FOR  
TEXAS HEALTH AND HUMAN SERVICES CONTRACT  
UNDER THE  
EARLY CHILDHOOD INTERVENTION SERVICES GRANT PROGRAM**

**I. PURPOSE**

The Health and Human Services Commission (“**HHSC**” or “**System Agency**”), an administrative agency within the executive department of the state of Texas, and Heart of Texas Region MHMR Center (“**Grantee**”), each a “**Party**” and collectively the “**Parties**,” enter into the following contract for Early Childhood Intervention Services Grant Program (the “**Contract**”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of the 20 United States Code §§1431 – 1444; 34 Code of Federal Regulations (“**CFR**”), Part 303; *Texas Human Resources Code* Chapter 73; and in accordance with *Texas Administrative Code* (“**TAC**”) Title 1, Part 15, Chapter 392, Subchapter B, TAC Title 40, Part 2, Chapter 108, and *Texas Government Code* Chapter 531.

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

Grantee shall perform or cause to be performed Early Childhood Intervention (“**ECI**”) Services and other contract requirements in accordance with the Contract, including the Statement of Work, ECI Program Service Area, Payment for Services, and Budget, which are attached and incorporated herein as **Attachments A through D**, respectively.

**IV. DURATION**

The Contract is effective on September 1, 2020 and terminates on August 31, 2021, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. HHSC, at its sole discretion, may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed five years. Notwithstanding the limitation in the preceding sentence, HHSC, at its sole discretion, also may extend the Contract beyond five years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interest of the State.

**V. BUDGET**

The total reimbursement amount shall not exceed **\$1,263,804.00** for the initial term, which is allocated for ECI services. The total not-to-exceed amount of this Contract is \$6,319,020.00. All expenditures under the Contract will be in accordance with **Attachments C and D, Payment for Services and Budget**.

**Indirect Cost Rate:** The Grantee’s acknowledged or approved Indirect Cost Rate (“**ICR**”) is contained within **Attachment D, Budget** and either the ICR Acknowledgement Letter, ICR Acknowledgement Letter – Ten Percent De Minimis, or the ICR Agreement Letter is attached to this Contract and incorporated as **Attachment K, ICR Letter**.

If HHSC, at its sole discretion, approves or acknowledges an updated indirect cost rate, the new rate, together with the revised ICR Acknowledgement Letter, ICR Acknowledgement Letter – Ten Percent De Minimis, or the ICR Agreement Letter, will be included in the revised **Attachment K** and amended **Attachment D**.

**VI. REPORTING REQUIREMENTS**

Grantee shall satisfy all Contract reporting requirements as set forth in **Attachments A and C**, respectively.

**VII. CONTRACT REPRESENTATIVES**

The following will act as the representative authorized to administer activities under this Contract on behalf of their respective Party. The designated Party Representatives are:

**HHSC**

Jessica Mitchell, CTCM  
1100 W. 49<sup>th</sup> Street; Mail Code 3029  
Austin, Texas 78751  
(512) 776-4330  
Jessica.Mitchell@hhsc.state.tx.us

**Grantee**

David Hanlin  
PO Box 890  
Waco, TX, 76703  
(254) 297-7098  
david.hanlin@hotrmhmr.org

**VIII. LEGAL NOTICES**

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

**HHSC**

Health and Human Services Commission  
Attn: Office of Chief Counsel  
4900 North Lamar Boulevard; MC 1100  
Austin, Texas 78751

**Grantee**

Heart of Texas Region MHMR Center  
Attn: Daniel Thompson  
110 12th Street  
Waco, TX, 76701

***with copy to:***

Health and Human Services Commission  
Attn: Jessica Mitchell  
1100 W. 49<sup>th</sup> Street; Mail Code 3029  
Austin, Texas 78751

**IX. NOTICE REQUIREMENTS**

Notice given by Grantee will be deemed effective when received by HHSC. Either Party may change its address for notices by providing written notice to the other Party. All notices submitted to HHSC must:

- A. include the Contract number;
- B. be sent to the person(s) or Department(s) identified in the Contract; and
- C. comply with all terms and conditions of the Contract.

**X. ADDITIONAL GRANT INFORMATION**

Federal Award Identification Number (FAIN): **H181A200171**

Federal Award Date: **7/1/2020**

Name of Federal Awarding Agency: **U. S. Department of Education**

CFDA Name and Number: **Infant & Toddler/Families (Part C) 84.181A**

Awarding Official Contact Information: **Gregory Corr, (202) 245-7309**

[gregg.corr@ed.gov](mailto:gregg.corr@ed.gov)

**XI. CONTRACT SUPPLEMENTAL CONDITIONS**

**Attachment E, HHSC Uniform Terms and Conditions - Grants (“UTCs”)**, of this Contract is revised as follows:

11.1 **Section 8.2, Termination for Convenience**, of the UTCs is deleted in its entirety and replaced with the following:

**8.2 Termination for Convenience or Nonrenewal**

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. Pursuant to [Tex. Admin. Code Title 1, Part 15, Chapter 392, Subchapter B, §392.109](#), Grantee must provide System Agency at least 120 calendar days written notice before terminating or non-renewing, and System Agency must provide Grantee at least 90 days written notice of its intent of nonrenewal. The termination can be of the Contract or for one or more service areas as described in **Section 3** of Attachment A to this Contract.

11.2 **Section 9.1, Amendment**, of the UTCs is deleted in its entirety and replaced with the following:

**9.1 Amendment**

The Contract may only be amended by an Amendment executed by both Parties, except System Agency may amend this Contract through execution of a unilateral amendment signed by a System Agency representative with delegated authority and provided to the Grantee under the following circumstances:

- a. To add or reduce the contract number of children or service area(s);
- b. To correct an obvious clerical error in the Contract;
- c. To incorporate new or revised federal or state statutes, rules, or policies;
- d. To comply with a court order or judgment; and
- e. To change the name of the Grantee in order to reflect the Contactor’s name as recorded by the Texas Secretary of State.

11.3 **Section 9.2, Insurance**, of the UTCs is hereby amended to add a new Subsection C as follows:

C. Notwithstanding the forgoing, if Grantee is a state agency or department, district, authority, county, municipality, or other political subdivision of the State,

then nothing in this Contract should be construed to limit Grantee's right to self insure in accordance with Texas Government Code Chapter 2259.

11.4 **Section 9.5, Subsection A, Indemnity**, of the UTCs is deleted in its entirety and replaced with the following:

**A. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, 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.**

11.5 **Section 9.17, No Waiver of Sovereign Immunity**, of the UTCs is deleted in its entirety and replaced with the following:

**9.17 No Waiver of Sovereign Immunity**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency. Notwithstanding the forgoing, if Grantee is a state agency or department, district, authority, county, municipality, or other political subdivision of the state, then nothing in the Contract should be construed to abrogate any rights or affirmative defenses available to System Agency and Grantee under doctrines of sovereign and official immunity.

11.6 **Article IX, Miscellaneous Provisions**, of the UTCs is amended to add a new Subsection 9.24 as follows:

**9.24 Subcontracting**

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

provide services under the terms of this contract. If the Grantee uses a subcontractor for any or all of the work required, the following conditions will apply:

- a. Grantee planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors; Grantee must obtain prior written approval from System Agency before entering into an agreement which subcontracts any portion of Grantee's Scope of Work.
- b. Subcontracting shall be conducted solely at the Grantee's expense; Subcontracts entered into by Grantee will be in writing.
- c. System Agency retains the right to check a subcontractor's background and approve or reject the use of submitted subcontractors; Grantee accepts responsibility for compensating any party with whom Grantee enters into a subcontract to provide services under the terms of this contract.
- d. The Grantee shall be the sole contact for the System Agency;
- e. Grantee shall accept responsibility for ensuring that services rendered under the terms and conditions of this contract by the subcontractor are performed by appropriately licensed, certified, or credentialed individuals.
- f. The Grantee shall list a designated point of contact for all System Agency inquiries.

11.7 **Article IX, Miscellaneous Provisions**, of the UTCs is amended to add a new Subsection 9.25 as follows:

**9.25 Identity**

The Grantee must notify System Agency in writing at least 60 calendar days before the intended effective date of any change in legal entity status, such as ownership or control, name change, legal status with the Texas Secretary of State, or State Comptroller's Texas Identification Number. Grantee will notify System Agency in writing: within ten calendar days after any address change, including the location of the agency's office, physical address, or mailing address; immediately of any change in administrator or director; and within seven working days of any change in the contact telephone number designated in the contract.

*Signature Page Follows*

**SIGNATURE PAGE FOR  
HHSC CONTRACT NO. HHS000640200030**

**Health and Human Services  
Commission**

DocuSigned by:  
By: Dee Adams Budgewater  
Dee Budgewater  
6FA3BB3868CA4A5...  
Deputy Executive Commissioner

**Heart of Texas Region MHMR Center**

DocuSigned by:  
By: Daniel Thompson  
8F8A31A3DED041A...  
Name: Daniel Thompson

Title: Chief Executive Officer

Date of execution: August 3, 2020

Date of execution: July 27, 2020

**The following Attachments to this Contract are hereby attached and incorporated by reference:**

- Attachment A, Statement of Work**
- Attachment B, ECI Program Service Area**
- Attachment C, Payment for Services**
- Attachment D, Budget**
- Attachment E, HHSC Uniform Terms and Conditions - Grant (Version 2.16.1)**
- Attachment F, HHSC Special Conditions - Grant (Version 1.2)**
- Attachment G, Contract Affirmations (Version 1.6)**
- Attachment H, Federal Assurances for Non-Construction Programs**
- Attachment I, Federal Certification Regarding Lobbying**
- Attachment J, Texas HHS Data Use Agreement (Version 8.5 Community Center)**
- Attachment K, Indirect Cost Rate Letter**

*Attachments Follow*

Attachment A

**Statement of Work**

**1. Program Purpose**

The purpose of the HHSC’s ECI services program is to ensure that all eligible children under age three and their families receive quality early intervention services, resources and support needed to reach their developmental goals.

**2. Grantee Requirements**

*To participate as a provider under this Contract, the Grantee must:*

- 2.1 Ensure compliance with this Contract, including these Grantee Requirements.
- 2.2 Ensure compliance with all state and federal statutes and regulations, HHSC rules, policies, procedures, and guidelines governing the ECI program, included but not limited to, TAC Title 40, Part 2, Chapter 108 and TAC Title 1, Part 15, Chapter 392, Subchapter B. The foregoing rules in TAC Titles 1 and 40 as they relate to the ECI program may be further modified, revised, and moved within their existing titles or into TAC Title 26 during the term of the Contract. In the event of such modifications or moves, Grantee shall be required to comply with said rules.”
- 2.3 Maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications of this Contract are met.
- 2.4 Comply with HHSC rules, policies, contract requirements, and applicable instruction manuals regarding the collection and timely submission of complete and accurate data. Ensure that complete and accurate data is entered into the Texas Kids Intervention Data System (“TKIDS”) by the established due dates and that there is adequate internal control, security and oversight for the approval and submission of such data.
- 2.5 Comply with all requirements under the Uniform Grant Management Standards (“UGMS”), currently available online at: <https://ctgprod-alb.comptroller.texas.gov/purchasing/grant-management/>. The Texas Comptroller of Public Accounts, from time to time and in its sole discretion, may revise the online link provided in this subsection. Grantee is responsible for contacting HHSC at any time that Grantee is not able to access the online materials to request the updated link. Grantee is at all times responsible for complying with the UGMS, including any revisions to the standards during the Contract term;
- 2.6 Ensure compliance with the HHSC Grant Technical Assistance Guide, currently available online at: <https://hhs.texas.gov/doing-business-hhs/grants>. HHSC, from time to time and in its sole discretion, may revise the online link provided in this subsection. Grantee is responsible for contacting HHSC at any time that Grantee is not able to access the online materials to request the updated link. Grantee is at all times responsible for complying with the Grant Technical Assistance Guide, including any revisions to the standards during the Contract term;

- 2.7 Ensure that personnel paid from the funds received as a result of this Contract are duly licensed in good standing and/or qualified to perform the required services, or are otherwise qualified.
- 2.8 Maintain adequate staff to provide services throughout the term of this contract.
- 2.9 Comply with all state and local requirements regarding fire and safety inspections and make necessary corrections indicated in such inspections.
- 2.10 Ensure personnel have first aid and cardiopulmonary resuscitation (“**CPR**”) training that will have direct contact with families or children.
- 2.11 Cooperate with HHSC efforts to collect revenue for eligible costs that were not previously reimbursed by Medicaid or other payment sources.
- 2.12 Ensure that for each funding source approved in Grantee’s budget as locally collected federal, state, local, or private funds: the source is verifiable from Grantee’s records; funding from the source is not included as a contribution for any other program; program costs are necessary and reasonable for proper and efficient accomplishment of program objectives, and allowable and allocable under the applicable cost principles; and these funds are not paid by the Federal Government under any other award.
- 2.13 Implement the use of the HHSC ECI logo lockup, and meet requirements listed in the HHSC ECI Graphics Manual for all printed and electronic materials used by the HHSC ECI program for marketing, public awareness, child find, promotion, public education, program correspondence, and forms related to the HHSC ECI program. Grantee must ensure that its ECI program uses “**ECI**” as part of its program name.
- 2.14 Assist with the transition of families and children to other appropriate ECI programs in the event that the program is not approved for funding in a subsequent contract period, the service area is changed, or the contract is terminated.
- 2.15 Assist consenting parents in enrolling eligible children in Medicaid, CHIP, and other applicable medical assistance programs. Grantee must verify Medicaid eligibility for all ECI children in accordance with the Texas Medicaid Provider Procedures Manual.
- 2.16 Enroll as a Texas Medicaid provider for applicable program services funded in **Section 5** of Attachment A to this Contract, and be in compliance with all applicable federal, state, and local laws and regulations about the services provided as well as comply with all requirements specific to the Texas Medicaid Program. Grantee must complete all paperwork and necessary enrollment documents in order to be reimbursed for the Medicaid and CHIP services provided by Grantee’s staff. Grantee must have provider agreements with all Medicaid Managed Care Plans and CHIP Managed Care Plans that serve Grantee’s designated service area. The provider agreements must be complete and active with any required updates as needed. Grantee must also make and document a good faith effort to enroll as a provider with private insurance companies serving ECI families in the local service area. Grantee must ensure that all therapists providing Medicaid services for ECI children are enrolled correctly with the Texas Medicaid Program. If requested by HHSC



ECI, Grantee must submit to HHSC ECI, in a format specified by HHSC, the Texas Provider Identifier (“**TPI**”) and National Provider Identifier (“**NPI**”) number for each direct service staff within 60 days from the date of hire of the staff or when a contract for staff is implemented. Any exception to this requirement must be approved by HHSC.

- 2.17 Participate in the Random Moment Time Study (“**RMTS**”) as directed by HHSC and implemented by HHSC.
- 2.18 If recognized by the state of Texas as a governmental entity or as directed by HHSC, participate in the Texas Medicaid Administrative Claiming (“**MAC**”) program through a Medicaid Administrative Claiming Program contract with HHSC and meet all participation requirements. This includes completion and submission of MAC financial information for the last federal quarter in which Grantee provided services under this contract should Grantee’s contract be terminated or not renewed.
- 2.19 To the extent allowed by law, save and hold harmless HHSC, its employees and the state of Texas, from all liability, of any nature, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits, or damages of any character whatsoever resulting from injuries or damages sustained by the persons or property, resulting in whole, or in part from the performance, or omission of any employee, agent, or representative of Grantee. Grantee also agrees to indemnify and hold harmless HHSC, its employees and the state of Texas from any liability or negligence attributable, or that might be attributable, to HHSC, its employees or the state of Texas resulting, wholly or partially from the performance by Grantee, or Grantee’s agents or employees, of the contract. Grantee accepts liability for the performance of any of its personnel providing services under the terms of this contract.
- 2.20 Follow the interpretations in the Memorandum of Understanding (“**MOU**”) that HHSC entered into with the Department of Family and Protective Services (“**DFPS**”) to comply with the requirements of the Child Abuse Prevention and Treatment Act (“**CAPTA**”), 42 U.S.C. §5106a(b)(2)(B)(xxi), and 20 U.S.C. §1437, related to the referral of children, under age three who are involved in substantiated cases of child abuse or neglect, to early intervention services funded under Part C of the Individuals with Disabilities Education Act (“**IDEA**”) for a screening and take the actions required in the MOU unless it consults with HHSC and explains why it should not follow those interpretations or take those actions.
- 2.21 Grantee must review each employee’s background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide ECI services do not have criminal convictions that would result in an absolute bar to entering them, in compliance with TAC Title 26, Part 1, Chapter 745, Subchapter F, Division 4, §745.661, and follow up appropriately on any other criminal convictions. The Grantee will provide, upon the request of HHSC, an electronic or hardcopy screenshot of either the confirmation screen or receipt of completed fingerprint based background check.
- 2.22 Grantee must complete a fingerprint-based criminal background check on every new hire, or any other person who will be working under the auspices of the Grantee, before the person has direct contact with children or families, including employees who have had a fingerprint-based check as a requirement of their professional licensure. Grantee must complete a fingerprint-based criminal background check renewal on any employee, or any other person

who will be working under the auspices of the Grantee who has direct contact with children or families, at least every 24 months, unless the Grantee uses FBI Rap Back, and gets alerts of any new arrests and convictions. Employees who are covered by the FBI Rap Back service must complete fingerprint-based criminal background checks at least every five years. Employees deemed “unfingerprintable” by the Department of Public Safety or other fingerprinting entity must have a name-based background check completed every 24 months. If at any time a Grantee has reason to suspect an employee has been convicted of a crime specified in TAC Title 40, Part 2, Chapter 108, Subchapter C, §108.310, they must complete a fingerprint-based criminal background check renewal on the employee in question. When reviewing background checks, the Grantee must comply with the requirements in TAC Title 40, Part 2, Chapter 108, Subchapter C, §108.310

- 2.23 Grantee will develop, implement, and maintain program management systems including, but not limited to: accurate, auditable, correct and complete records of service access and service delivery; oversight of program’s compliance with all applicable laws, policies, and regulations; oversight of the program’s required performance standards and measures; systems to ensure the effective and efficient use of resources to deliver services to children and their families; and oversight for accepting referrals and initiating pre-enrollment processes that require that referral information be transferred to the appropriate Grantee within two business days if the family resides in another ECI Grantee’s service area.
- 2.24 HHSC Monitoring. The Grantee and any subGrantees associated with this contract agree to permit on-site monitoring visits and desk reviews, as deemed necessary by HHSC to review all financial or other records and management control systems relevant to the provision of goods and services under this contract. The Grantee will include this requirement in any subcontract associated with this agreement.

The Grantee will notify HHSC:

- A. Within two business days if at any time the Grantee is not in compliance with the provisions of this contract. A false statement regarding the Grantee’s compliance with the terms of this contract may be treated as a material breach of this contract and may be grounds for HHSC to terminate the contract; and
- B. At least 60 calendar days before the intended effective date of any change in legal entity status, such as a change in ownership or control, name, legal status with the Texas Secretary of State, or Texas Identification Number issued by the Texas Comptroller of Public Accounts.

### 3. Service Delivery Area(s)

The children served must reside in the service area approved by HHSC as set forth in **Attachment B, ECI Program Service Area**, of this Contract. Grantees may provide services to clients outside of this service area if the children reside in counties or zip codes not covered by an existing ECI Grantee.

All requests for changes in service area assignments in **Attachment B** must be approved in writing by HHSC before implementation. If HHSC, in its sole discretion, approves changes in the Grantee’s service area, then the ECI Program Service Area Form will automatically be

incorporated into this Contract and replace the old Attachment B form upon being executed by HHSC, as if originally set forth herein.

Grantees that share counties or zip codes must jointly develop a service area agreement to serve those counties or zip codes in accordance with TAC Title 1, Part 15, Chapter 392, Subchapter B, §392.107(f), which must be approved in writing by HHSC. Notwithstanding anything to the contrary herein, HHSC reserves the right to negotiate geographic boundaries for ECI services.

#### **4. Eligible Population**

ECI eligibility is determined by applicable law as outlined in TAC Title 40, Part 2, Chapter 108, Subchapter F, §108.809.

The contract number of children is **376**. This represents Grantee's projected average month ending enrollment. Failure to achieve the contract number of children may result in adjustments to the contract amount and contract number of children as described in this Section, and, in some cases, adverse actions as described in **Article VIII** of Attachment D to this Contract.

#### **5. ECI Services**

5.1 Grantee must comply with the requirements of 20 U.S.C. §1436(d) and 34 CFR §303.344 regarding development of an Individualized Family Service Plan (“**IFSP**”). In addition, the IFSP must include other elements as required by HHSC. Grantee must provide the array of ECI services identified in 34 CFR §303.13 in accordance with the IFSP through qualified service providers. All staff must provide services to address the development of the whole child in the context of the family, and in the context of natural learning activities, in order to strengthen the capacity of the family to meet the unique needs of their child. ECI services must be delivered in accordance with IDEA Part C and TAC Title 40, Part 2, Chapter 108.

5.2 To provide the following ECI services, the service provider must be knowledgeable in child development and developmentally appropriate behavior, as well as possess the requisite education, demonstrated competence and/or experience identified below:

##### **5.2.1 Assistive Technology Services and Devices**

a. Assistive technology services include:

- i. Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices used by children with disabilities;
- iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- v. Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

- vi. Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.
- b. Assistive technology services may be provided as a distinct service planned on the IFSP by a Licensed Occupational Therapist (“**OT**”), a Licensed Physical Therapist (“**PT**”), or a Licensed Speech-Language Pathology (“**SLP**”) according to the requirements of the their profession, or as an activity or strategy for an IFSP outcome by the OT, PT or SLP or other staff as determined by the IFSP team.
- c. Purchase of assistive technology devices or equipment may be authorized when the need is clearly stated in the child record with documentation from the child’s Physician, Registered Nurse, OT, PT, SLP, or other qualified professional, including Auditory Impairment Teachers, Audiologists, and Teachers of the Visually Impaired.
- d. Documentation must justify that the purchase is necessary for implementation of the goals and strategies in the IFSP. Only assistive technology that cannot be obtained through a third party source will be reimbursed by ECI program funds.
- e. For low-tech and readily available materials, authorization is not required. Documentation in IFSP strategies and progress notes identifies the need.

### 5.2.2 Audiology Services

- a. Audiology identifies children with auditory impairment, using at-risk criteria and appropriate audiologic screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services; provision of services for prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- b. Audiology services must be provided by either:
  - i. A Licensed Audiologist licensed by the Texas State Board of Examiners for SLP and Audiology (including only those activities in the definition within the scope of license); or
  - ii. A Teacher of the Deaf and Hard of Hearing certified by the Texas State Board of Education (including only those activities within the scope of the certification).

### 5.2.3 Behavioral Intervention

- a. Behavioral Intervention services are delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team.
- b. A behavior plan is developed by the IFSP team (that includes the plan supervisor) to:
  - i. identify goals;
  - ii. conduct a functional assessment to determine the motivation for the behavior;
  - iii. develop a hypothesis;
  - iv. design support plans; and
  - v. implement, monitor, and evaluate goals.
- c. Behavioral intervention is provided through direct one-to-one intervention with the child combined with direct intervention with the child and the parent or routine caregiver.
- d. Behavioral intervention must be provided by individuals with:
  - i. knowledge of child development;
  - ii. knowledge of developmentally appropriate behavior; and
  - iii. skills to utilize behavior analysis techniques and intervention in ways that help achieve the desired behavior change.
- e. Behavioral intervention must be provided according to a structured plan supervised by one of the following:
  - i. Licensed Behavior Analyst (“LBA”); or
  - ii. one of the following who is trained in Positive Behavior Supports or Applied Behavior Analysis:
    - 1. Licensed Psychologist (“LP”) licensed by the Texas State Board of Examiners of Psychologists.
    - 2. Licensed Psychological Associate (“LPA”) licensed by the Texas State Board of Examiners of Psychologists.
    - 3. Licensed Professional Counselor (“LPC”) licensed by the Texas State Board of Examiners of Professional Counselors.
    - 4. Licensed Clinical Social Worker (“LCSW”) licensed by the Texas State Board of Social Work Examiners.
    - 5. Licensed Marriage and Family Therapist (“LMFT”) licensed by the Texas State Board of Examiners of Marriage and Family Therapists.
    - 6. Certified Autism Specialist.
- f. The team and the parent may specify a provider with the requisite knowledge, skills and training.

#### 5.2.4 Counseling

- a. Assistance provided to the parents by qualified personnel to assist the family in understanding the special needs of the child and enhancing the child's development.
- b. Counseling may be provided through:
  - i. direct one-to-one intervention with the ECI enrolled child and their parent or routine caregiver; or
  - ii. direct group intervention with ECI enrolled children and their parents or routine caregivers.
- c. Counseling services do not include, and ECI program funds may not be used for, behavioral health services to adults, siblings or other family members related to problems outside of the parent-child relationship. Examples include substance abuse, domestic violence, specific mental health diagnoses, and marital issues. These services may be provided through referral to other community service delivery systems.
- d. Counseling must be provided (within scope of their state licensure) by:
  - i. A LCSW licensed by the Texas State Board of Social Work Examiners;
  - ii. A LPC licensed by the Texas State Board of Examiners of Professional Counselors;
  - iii. A LMFT licensed by the Texas State Board of Examiners of Marriage and Family Therapists; or
  - iv. A LP licensed by the Texas State Board of Examiners of Psychologists.

#### 5.2.5 Early Identification, Screening & Assessment

Comprehensive, interdisciplinary assessment and evaluation of the child, including tests and other evaluative methods and procedures conducted by personnel trained to use appropriate methods and procedures; and identification of the concerns, priorities, and resources of the family related to enhancing the child's development based on information provided by the family.

#### 5.2.6 Family Education and Training

- a. Activities designed to improve the knowledge and skills of parents and other family members in matters related to growth, development, and learning of their child.
- b. Family education and training may be provided through:
  - i. direct one-to-one service to the parent or routine caregiver (or the child and their parent or routine caregiver);
  - ii. direct group service to children and their parents or routine caregivers; or

iii. direct group training to parents or routine caregivers without their children present.

c. Family education and training must be provided by direct service staff with the requisite knowledge, training or skills in the information being provided.

5.2.7 Health Services may be provided by health professionals acting within the scope of their license and with appropriate training.

5.2.8 Medical Services will be reimbursed by ECI program funds only when provided by professionals acting within the scope of their license for the purpose of eligibility determination, which cannot be obtained through a third party source.

5.2.9 Nursing Services

a. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; the provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and the administration of medications, treatments, and regimens prescribed by a licensed physician.

b. Nursing Services must be provided by:

- i. A Registered Nurse licensed by the Texas Board of Nursing; or
- ii. A Vocational Nurse licensed by the Texas Board of Nursing

5.2.10 Nutrition

a. Services that include conducting individual assessments in:

- i. Nutritional history and dietary intake;
- ii. Anthropometric, biochemical, and clinical variables;
- iii. Feeding skills and feeding problems;
- iv. Food habits and food preferences;
- v. Developing and monitoring appropriate plans to address the nutritional needs of eligible children; and
- vi. Making referrals to appropriate community resources to carry out nutrition goals.

b. Nutrition services must be provided by a Dietitian licensed by the Texas State Board of Examiners of Dietitians and include:

- i. Conducting individual assessments/evaluations for nutritional history and dietary intake, body measurements, biochemical and clinical variables;
- ii. Addressing feeding skills and feeding problems, as well as food habits and food preferences; and

- iii. Involving the development and monitoring of appropriate plans to address the nutritional needs of an enrolled child, and making referrals to appropriate community resources to carry out nutrition goals.

#### 5.2.11 Occupational Therapy

- a. Services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development.
- b. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:
  - i. Identification, assessment, and intervention;
  - ii. Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
  - iii. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- c. Occupational therapy may be provided through:
  - i. direct one-to-one intervention with the child and their parent or routine caregiver; or
  - ii. direct group intervention with children and their parents or routine caregivers.
- d. Occupational therapy (OT) must be provided by an:
  - i. OT licensed by the Texas Board of Occupational Therapy Examiners; or
  - ii. OT Assistant licensed by the Texas Board of Occupational Therapy Examiners, working under the direction of a Licensed OT.

#### 5.2.12 Physical Therapy

- a. Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptations.
- b. These services include:
  - i. Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;
  - ii. Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems;
  - iii. Providing individual or group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and



- iv. Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.
- c. Physical therapy may be provided through:
  - i. direct one-to-one intervention with the child and their parent or routine caregiver; or
  - ii. direct group intervention with children and their parents or routine caregivers.
- d. Physical therapy must be provided by a:
  - i. Licensed PT licensed by the Texas State Board of Physical Therapy Examiners; or
  - ii. PT Assistant licensed by the Texas State Board of Physical Therapy Examiners, working under the direction of a Licensed PT.

#### 5.2.13 Psychological Services

- a. Administering psychological and developmental tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- b. Psychological services may be provided through:
  - i. direct one-to-one intervention with the child and their parent or routine caregiver; or
  - ii. direct group intervention with children and their parents or routine caregivers.
- c. Psychological services must be provided by:
  - i. A LP licensed by the Texas State Board of Examiners of Psychologists; or
  - ii. A LP Associate licensed by the Texas State Board of Examiners of Psychologists, working under the direction of a LP.

#### 5.2.14 Service Coordination/Case Management

- a. Activities carried out by a service coordinator to assist and enable an infant or toddler with a disability, and the child's family to receive the services and rights, including procedural safeguards, as required pursuant to 34 CFR §303.34.
- b. Activities include but are not limited to:

- i. Coordinating the performance of evaluations and assessments;
  - ii. Facilitating and participating in the development, review, and evaluation of the IFSP;
  - iii. Assisting families in identifying available service providers;
  - iv. Coordinating and monitoring the delivery of available services;
  - v. Informing families of the availability of advocacy services;
  - vi. Coordinating with medical and health providers; and
  - vii. Facilitating the development of a transition plan to preschool services, if appropriate.
- c. Service Coordination/Case Management may be provided through:
- i. face-to-face interaction with the parent or routine caregiver;
  - ii. telephone calls with the parent or routine caregiver; or
  - iii. collateral contacts with other ECI or community service providers.
- d. Providers of Service Coordination/Case Management must be knowledgeable in:
- i. the needs of infants and toddlers with disabilities and their families;
  - ii. Part C of the Individuals with Disabilities Education Act;
  - iii. the scope of ECI services available under the ECI program and the medical assistance program; and
  - iv. other state and community resources and supports necessary to coordinate care.
- e. Providers of Service Coordination/Case Management must complete the required case management training and comply with requirements for continuing education.
- f. Grantee must ensure service coordinators who are in the process of completing their Individualized Professional Development Plan (“**IPDP**”) receive at least four hours of supervision per month from a qualified supervisor. Supervisors of service coordinators must meet the qualifications listed in TAC Title 40, Part 2, Chapter 108, Subchapter C, §108.315(d).

#### 5.2.15 Social Work

- a. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction; preparing a social and emotional developmental assessment of the child within the family context; providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

- b. Social work must be provided by:
  - i. A Licensed Baccalaureate Social Worker (“**LBSW**”) licensed by the Texas State Board of Social Work Examiners;
  - ii. A Licensed Master Social Worker (“**LMSW**”) licensed by the Texas State Board of Social Work Examiners; or
  - iii. A LCSW licensed by the Texas State Board of Social Work Examiners.

5.2.16 Specialized Skills Training (“**SST**”)

- a. SST may be provided through:
  - i. direct one to one intervention with the child and their parent or routine caregiver; or
  - ii. direct group intervention with children and their parents or routine caregivers.
- b. Providers of SST must be knowledgeable in:
  - i. implementing strategies across developmental domains; and
  - ii. basic behavior intervention strategies (including rewards and consequences).
- c. Providers of SST must have knowledge and training in the domain in which the child has an identified developmental need.
- d. SST must be provided by an Early Intervention Specialist (“**EIS**”).
- e. Grantee must ensure an EIS who are in the process of completing their IPDP receive at least four hours of supervision per month from a qualified supervisor. Supervisors of EISs must meet the qualifications listed in TAC Title 40, Part 2, Chapter 108, Subchapter C, §108.313(c).

5.2.17 Speech-Language Pathology

- a. Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.
- b. Speech-language pathology may be provided through:
  - i. direct one-to-one intervention with the child and their parent or routine caregiver; or
  - ii. direct group intervention with children and their parents or routine caregivers.

- c. Speech-language pathology must be provided by:
  - i. A SLP licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology;
  - ii. A Intern in Speech-Language Pathology licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology; or
  - iii. A Licensed Assistant in Speech-Language Pathology (SLPA) licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology, working under the direction of a licensed SLP.

#### 5.2.18 Vision Services

- a. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders or both; and communication skills training, orientation, and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.
- b. Vision services must be provided by a Teacher of the Visually Impaired certified by the Texas State Board of Education.
- c. Orientation and mobility services are provided by an Orientation and Mobility Specialist certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

#### 5.2.19 Telehealth services

- a. Grantee may use telehealth services (“a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional’s license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology,” as defined in Texas Government Code §531.001(7) (using the meaning assigned by Section 111.001, Occupations Code) as provided through Texas Medicaid.
- b. Grantee must comply with the following:
  - i. Families must give written consent that they agree to receive services via telehealth;
  - ii. Telehealth services must comply with all Texas Medicaid requirements for telehealth, as well as the licensure/practice act requirements for each provider; and
  - iii. Technology used to provide telehealth services must be compliant with the Family Educational Rights and Privacy Act of 1974 (“**FERPA**”) and the Health Insurance Portability and Accountability Act (“**HIPAA**”).

## **6. Program General Requirements**

- 6.1 Grantee will establish adequate internal controls and security to ensure the collection and data entry/submission of complete and accurate data in compliance with the TKIDS User Manual. The calculation methodology described in the specific requirement and federal indicator is based on data obtained from TKIDS. HHSC may include one or more of the following actions as a consequence for failure to meet the targets: provide technical assistance, require a corrective action plan or improvement plan, revise contract terms and/or provisions, withhold or reduce payments, or apply additional adverse actions as allowed under Attachment D, Article VIII, of this Contract.
- 6.2 Grantee shall collect and report all required consumer, services and provider information to HHSC through the TKIDS.
- 6.3 Grantee shall submit data in accordance with data standards and reporting requirements established in the TKIDS User Manual by the 20<sup>th</sup> day of the following month. HHSC may make changes to the data standards or requirements during the current Contract period when necessary.
- 6.4 Grantee will establish adequate internal controls and security for the collection and submission of complete and accurate information.

### **6.5 Requirements and Federal Indicators**

#### **6.5.1 Data Entry Requirements**

- a. Definition: The number of ECI delivered service hours of PT, OT, SLP, and Specialized Skills Training (SST) for the month, and other data required to be entered in TKIDS, that are accurately entered into TKIDS by the 20th day of the month following the delivery of the service expressed as a percentage of the total delivered service hours of PT, OT, SLP, and SST entered into TKIDS for the month.
- b. Calculation methodology: The number of ECI delivered service hours shown on the Service Profile 12 Month Report for each service type (PT, OT, SLP, and SST) for the month is used for the measure. The numerator consists of the sum of all delivered service hours of PT, OT, SLP, and SST entered into TKIDS by the date due. The denominator consists of the sum of all delivered service hours of PT, OT, SLP, and SST entered into TKIDS by the date due plus the sum of all delivered service hours of PT, OT, SLP, and SST entered into TKIDS after the date due.
- c. Performance target: 100% of data entered by the due date for PT, OT, SLP, and SST.

### 6.5.2 Service Delivery Requirements

- a. Definition: The ratio of direct delivered service hours to children served during the month.
- b. Calculation methodology: The total number of hours of direct services delivered by Grantee divided by the number of children served during the month.
- c. Performance target: Minimum average of direct delivered services per child per month must equal or exceed 2.80 hours unless documentation is submitted to HHSC supporting that the area is medically underserved with a demonstrated regional shortage of therapists.

### 6.5.3 Financial Reports Requirement

- a. Definition: Grantee must comply with the number of the required reports as indicated in **Sections 7.1 to 7.4** of Attachment B to this Contract.
  - b. Calculation methodology: Number of reports submitted by the due date divided by the total number of required reports (expressed as a percent).
  - c. Performance target: 100% of reports submitted by the due date.

6.5.4 The targets, definitions and methodology for the following federal indicators are available online and can currently be accessed at: <https://osep.grads360.org/#report/apr/publicView>. (Pick Part C, the latest fiscal year available, and click on Texas on the map. Note: Your security settings may not allow you to open the link on click, however, you may copy and paste the link to your browser to access.)

#### Compliance Indicators

- a. Indicator 1 - Timely Services
- b. Indicator 7 - 45-Day Timeline
- c. Indicator 8 - Early Childhood Transition:
  - i. 8.A - IFSPs with transition steps and services;
  - ii. 8.B - Notification to local education agency (“LEA”), if child is potentially eligible for Part B;
  - iii. 8.C -Transition conference, if child is potentially eligible for Part B.

#### Results Indicators

- d. Indicator 2 - Services in Natural Environments
- e. Indicator 3 - Early Childhood Outcomes

- i. Child Outcome 3.A - Positive social–emotional skills (including social relationships);
  - ii. Child Outcome 3.B - Acquisition and use of knowledge and skills (including early language/communication); and
  - iii. Child Outcome 3.C - Use of appropriate behaviors to meet their needs.
- f. Indicator 4 - Family Involvement
- i. Family Outcome 4.A - ECI have helped the family know their rights
  - ii. Family Outcome 4.B - ECI have helped the family effectively communicate their children’s needs
  - iii. Family Outcome 4.C -ECI have helped the family help their children develop and learn.
- g. Indicator 5 - Child Find (Birth to One)
- h. Indicator 6 - Child Find (Birth to Three)

**7. Therapies Utilization**

In the aggregate, the total delivered service hours of therapies (PT, OT and SLP) must be at least 40% of the total delivered service hours of SST and therapies combined. If Grantee is unable to meet the required level of delivered service hours of therapies at 40%, Grantee may provide documentation to HHSC supporting that the area is medically underserved with a verifiable regional shortage of therapists.

**8. Velocardiofacial Syndrome Information**

Grantee shall provide the information developed by HHSC relevant to velocardiofacial syndrome to parents of a child who is known by Grantee to have at least two of the conditions listed in Texas Human Resources Code § 117.076(b).

**9. Business Days of Operation**

Grantee shall, at a minimum, have staff available to process referrals and meet service delivery needs of families between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Grantee must demonstrate the capacity to provide services for 52 weeks each year. Each year Grantee may select up to ten days from the official state or federal holidays to close business. This policy does not eliminate the requirement for Grantee to also offer services to families in the evening or at other times outside 8:00 a.m. through 5:00 p.m. when appropriate to meet individual family needs.

*(Remainder of Page Intentionally Left Blank)*

Attachment B

**ECI Program Service Area**

**Counties Served**

Bosque, Falls, Freestone, Hill, Limestone, and McLennan

**Cities Served**

Abbott, Aquilla, Bellmead, Beverly Hills, Blum, Bynum, Clifton, Coolidge, Covington, Cranfills Gap, Crawford, Fairfield, Groesbeck, Hewitt, Hillsboro, Hubbard, Iredell, Itasca, Kirvin, Kosse, Leroy, Lorena, Lott, Malone, Marlin, Mart, Meridian, Mertens, Mexia, Moody, Morgan, Mount Calm, Penelope, Riesel, Robinson, Rosebud, Ross, Streetman, Teague, Tehuacana, Thornton, Valley Mills, Waco, Walnut Springs, West, Whitney, Woodway, Wortham, Brandon, Axtell, Chilton, China Spring, Donie, Eddy, Elm Mott, Kopperl, Laguna Park, Prairie Hill, Reagan, Satin, McGregor, Perry, Otto, Birome, Bonanza, Bruceville, and Irene

**Zip Codes Served**

76043, 76633, 76634, 76637, 76644, 76649, 76652, 76665, 76671, 76689, 76690, 76519, 76570, 76579, 76629, 76630, 76632, 76656, 76661, 76675, 76680, 76682, 76706, 75831, 75838, 75840, 75848, 75855, 75859, 75860, 76050, 76055, 76093, 76621, 76622, 76627, 76628, 76631, 76636, 76645, 76648, 76654, 76660, 76666, 76670, 76673, 76676, 76692, 75846, 76624, 76635, 76642, 76650, 76664, 76667, 76678, 76684, 76687, 76693, 76524, 76557, 76561, 76638, 76639, 76640, 76643, 76653, 76655, 76657, 76686, 76691, 76701, 76702, 76703, 76704, 76705, 76707, 76708, 76710, 76711, 76712, 76714, 76715, 76716, 76797, 76798, and 76799

**By signing this ECI Service Area page, I certify, to the best of my knowledge and belief, the list of Counties, Cities, and Zip Codes of the Service Area is complete and accurate.**

Name:David Hanlin  
Signature:*David Hanlin*  
Title:ECI Program Director  
Date:06/01/2020



Attachment C

**Payment for Services**

**1. Payment for Services**

HHSC will reimburse the Grantee for services satisfactorily performed as established within this Contract. All reimbursement of costs will be based on actual expenses incurred in accordance with **Attachments D, Budget**, of this Contract and shall be paid pursuant to the “Texas Prompt Payment Act,” Chapter 2251 of the Texas Government Code.

Satisfactory performance of this contract will be measured by:

- a. adherence to the contract;
- b. results of independent audit reports; and
- c. timeliness, completeness, and accuracy of TKIDS data entry and required reports.

**2. Payments and Advances**

- 2.1 Grantee must submit requests for reimbursement on a state of Texas Purchase Voucher or any other form designated by HHSC.
- 2.2 Grantee must be on Direct Deposit status unless prior approval is obtained from HHSC and a waiver is on file.
- 2.3 Payments made for approved claims or notice of denial of claims submitted in accordance budgetary amounts set forth within **Attachment D** of this Contract, will be mailed not later than 30 calendar days after receipt of monthly vouchers.
- 2.4 Payment is considered made on the date postmarked or the date funds are transferred electronically.
- 2.5 HHSC is the payor of last resort for budgeted early intervention services in accordance with 34 CFR §303.510. As such, Grantee must utilize other funding for which consumers are eligible before billing HHSC for services provided.
- 2.6 Grantee will disburse program income and other third party revenue, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments from HHSC.
- 2.7 Locally collected federal, state, local, and private funds are the total funds and in-kind contributions available to support Grantee’s ECI program from sources other than the ECI contract. Funding from this contract will be used to supplement the level of locally collected federal, state, local, and private funds expended by Grantee for early intervention services and will not be used to supplant locally collected federal, state, local, and private funds received by Grantee from other sources. This provision requires Grantee to budget and expend at least the same amount of locally collected federal, state, local, and private funds in the current fiscal year for early intervention services covered under this contract as was

expended in the previous fiscal year, excluding program income and other third party revenue collections, in-kind contributions and unsolicited cash contributions, unless exceptional circumstances are approved. Allowances may be made for decreases in the number of children who are eligible to receive early intervention services and unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

- 2.8 HHSC will determine whether costs submitted by Grantee are allowable and reimbursable.
- 2.9 If HHSC has paid funds to Grantee for unallowable or ineligible costs, Grantee will return the funds to HHSC within 30 calendar days of identification of the unallowable or ineligible costs unless another deadline is specified by HHSC.
- 2.10 HHSC may take repayment from funds available under any contract, active or expired, in amounts necessary to fulfill Grantee repayment obligations.
- 2.11 Grantee may not replace cash sources of revenue with non-cash or in-kind sources.
- 2.12 Grantee may request a cash advance in accordance with the requirements below:
  - 2.12.1 Grantee may submit a Request for Advance Payment for this Contract to meet immediate need for cash disbursement.
  - 2.12.2 The Request for Advance Payment and a state of Texas Purchase Voucher for the advance request amount must be submitted at the beginning of the contract term or at a later time in the contract term if circumstances so warrant. HHSC will evaluate and approve or disapprove the advance request in writing.
  - 2.12.3 The amount of the advance will be determined by the amount and term of this Contract. For this Contract, the amount of the advance will not exceed an amount equal to the amount of this Contract divided by the number of months remaining for this Contract.
  - 2.12.4 Advance funds must be expended within three business days of receipt and after the final monthly billing Grantee will not have advance funds on hand.
  - 2.12.5 Grantee will add interest earned on advanced funds to supplement the funds already committed to the project by both HHSC and Grantee.
- 2.13 Grantee may request mileage reimbursement limited to one of the following situations:
  - 2.13.1 Mileage to the first temporary duty location, if farther than the distance from the employee's residence to the employee's primary duty location, should be reduced by the distance from the residence to the primary duty location.
  - 2.13.2 Mileage to the first temporary duty location, if the distance is less than the distance from the employee's residence to the employee's primary duty location, would not be reimbursed.

### **3. Program Income and Other Third Party Revenue**

- 3.1 Program income is defined as all revenue directly generated by a contract-supported activity or earned as a result of the contract-supported activity. Payments from families for ECI services are one source of program income. Collections from public and private insurance are considered other third party revenue. Grantee must comply with the requirements in federal regulations and circulars, and Uniform Grant Management Standards (“UGMS”) concerning program income and other third party revenue, locally collected federal, state, local, and private funds, and payor of last resort.
- 3.2 All program income and other third party revenue collected by Grantee must be reported and used for eligible ECI program expenditures.
- 3.3 Program income and other third party revenue claims, collections, uncollected amounts, and prior year collections must be reported cumulatively by source on quarterly and annual financial reports.
- 3.4 Interest earned on program income and other third party revenue will be used to supplement the funds already committed to the program.
- 3.5 Program income and other third-party revenue as defined in 2 CFR §200.307 and UGMS, and earned by Grantee as a result of ECI program services provided in a fiscal year and received by October 31<sup>st</sup> must be used for eligible program expenditures incurred in the fiscal year that is covered in the final financial status report. A fiscal year as used in this Contract means the time period between September 1st and August 31<sup>st</sup>.
- 3.6 In-kind and cash contributions, foundational grants, and other funds collected locally, that are not considered program income or other third-party revenue, as defined in 2 CFR §200.307 and UGMS, and collected in the current fiscal year for use in the ECI program, except as prohibited by requirements established by the funds:
  - 3.6.1 May be applied to the prior fiscal year;
  - 3.6.2 May be expended in the current fiscal year; or
  - 3.6.3 May be expended the next fiscal year.
- 3.7 Program Income and other third party revenue earned by Grantee as a result of services provided in the current Contract period must be placed in an account designated for ECI program use.
- 3.8 HHSC may base future funding levels, in part, upon Grantee’s proficiency in identifying, billing, collecting and reporting program income and other third party revenue, and in utilizing it for the purposes and conditions of this Contract.

### **4. Reporting Requirements and Inspections**

Grantee will submit financial, program, progress, service, and other reports in the established formats and by the due dates specified by HHSC in **Section 7.1** of this Attachment below. This may include reports as requested of HHSC by the Texas Legislature, United States Department of

Education, and any other federal or regulatory bodies covering Grantee's activities under this contract. Financial reports are required as provided in UGMS and will be filed regardless of whether or not expenses have been incurred. Grantee will respond to HHSC inquiries about data on reports within the timelines specified by HHSC. Submission of reports after the established due dates or failure to respond to HHSC inquiries about data on reports within the specified timelines may result in adverse actions as described in **Article VIII** of Attachment E to this Contract.

## **5. Equipment**

- 5.1 Equipment is defined as tangible non-expendable property with an acquisition cost that equals or exceeds the lesser of the capitalization level established by Grantee for financial statement purposes or \$5,000.00, and a useful life of more than one year. Title to all equipment purchased from funds provided herein will be in the name of Grantee throughout the Contract term. Grantee must ensure that equipment items are used only to benefit the ECI program or that costs are properly allocated.
- 5.2 Unless initially listed and approved in the contract Attachments, Grantee must obtain prior written approval from HHSC for equipment purchases meeting the above definition. For each equipment item requested, Grantee must submit a detailed justification which includes description of features, make and model, and cost.
- 5.3 Grantee will maintain a complete, accurate and detailed property inventory listing and submit an annual cumulative report to HHSC by the due date specified in the **Section 7.4** of this Attachment below. Grantee will administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it will use the proceeds to repair or replace said assets.
- 5.4 Upon termination or expiration of contract, title to any remaining equipment purchased from funds under this contract reverts to HHSC or any other party designated by HHSC. HHSC may, at its option and to the extent allowed by law, transfer title to such property to Grantee.
- 5.5 Grantee must follow the American Hospital Association's ("AHA") "Estimated Useful Lives of Depreciable Assets" for equipment disposition purposes, except when federal or statutory requirements supersede. After each item's end of its useful life, approval for disposition is not required. However, Grantee must ensure that disposition of any equipment and/or controlled asset is in accordance with the terms of the contract such as compliance with Generally Accepted Accounting Principles.

## **6. Adjustments to Contract Amount and Contract Number of Children**

- 6.1 If necessary, based on procedures determined by HHSC, the contract amount and the contract number of children may be adjusted during the current Contract period by formal amendment. HHSC will inform Grantee of the method to be used for calculating contract adjustments prior to making any amendments.

- 6.2 Adjustments will be based on measurable performance related data and may include: average monthly enrollment, average monthly service delivery hours, or other relevant data.
- 6.3 During the current Contract period, HHSC may request that Grantee identify contract funds that will not be expended. HHSC may then reduce the contract by the amount of the unexpended funds.
- 6.4 Adjustments will be based on measurable performance related data and may include: average monthly enrollment, average monthly service delivery hours, or other relevant data.

## **7. Financial Reports and Due Dates**

- 7.1 Grantee must submit requests for reimbursement on a state of Texas Purchase Voucher or any other form designated by HHSC, not later than 30 calendar days following the end of the month for which reimbursement is requested.
- 7.2 Grantee may submit a final claim for reimbursement by **November 15<sup>th</sup>** following the end of the current Contract period if all costs have not been recovered. Reimbursement requests submitted after **November 15<sup>th</sup>** following the end of the current Contract period may not be paid, at the discretion of HHSC.
- 7.3 Financial Status Report (Form 269a) and Third Party Billing Attachment must be submitted during the current Contract period by **December 30<sup>th</sup>**, **March 30<sup>th</sup>**, **June 30<sup>th</sup>**, and **November 15<sup>th</sup>**.
- 7.4 Expenditure Summary by Funding Source (“ESFS”) and Nonexpendable Personal Property Report (Form GC-11) must be submitted yearly by **November 15<sup>th</sup>**
- 7.5 Failure to enter complete and accurate data may result in HHSC taking one or more of the following actions: provide technical assistance, require a corrective action plan or improvement plan, revise contract terms and/or provisions, withhold or reduce payments, or apply additional adverse actions as allowed under as described in **Article VIII** of Attachment E to this Contract.

## **8. Standards For Program And Financial Management**

- 8.1 Grantee will develop, implement, and maintain program management, financial management, and control systems that meet or exceed the requirements of the “Uniform Grant and Contract Management Act,” *Texas Government Code* Chapter 783, and UGMS, adopted by reference in their entirety, and applicable federal and state laws, regulations and policies.

These requirements will include at a minimum:

- 8.1.1 financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;

- 8.1.2 financial management systems including accurate, correct, and complete payroll, accounting, and financial reporting records; cost source documentation; effective internal and budgetary controls; determination of reasonableness, allowableness, and appropriateness of allocation of costs; and timely and appropriate audits and resolution of any findings;
  - 8.1.3 program management systems including, but not limited to: accurate, auditable, correct and complete records of service access and service delivery; oversight of program's compliance with all applicable laws, policies, and regulations; oversight of the program's required performance standards and measures; systems to ensure the effective and efficient use of resources to deliver services to children and their families; and oversight for accepting referrals and initiating pre-enrollment processes that require that referral information be transferred to the appropriate Grantee within two business days if the family resides in another ECI Grantee's service area;
  - 8.1.4 written policies and procedures for third party billing in accordance with the requirements specified in the ECI rules and contract, including a system to effectively and efficiently bill available and appropriate third party payors and follow up with third party payors if claims are denied or not paid timely. A third party payor is any person or entity who has the legal responsibility for paying all or part of the services provided, including, but not limited to Medicaid, Children's Health Insurance Program ("CHIP"), Children with Special Health Care Needs ("CSHCN"), private insurance carriers, managed care providers, and other available federal, state, local and private funding sources; and
  - 8.1.5 billing and collection policies for implementing a family cost share system as required by TAC Title 40, Part 2, Chapter 108, Subchapter N.
- 8.2 Grantee and its governing board will bear full responsibility for the integrity of the fiscal and programmatic management of the organization. Such responsibility will include:
- 8.2.1 accountability for all funds and materials received from HHSC;
  - 8.2.2 compliance with HHSC rules, policies, and applicable federal and state laws and regulations, including any subsequent amendments or revisions of applicable rules, regulations, and policies during the current Contract period as of the effective date of the change; and
  - 8.2.3 correction of fiscal and program deficiencies identified through self-evaluation and HHSC monitoring processes. Grantee must correct any identified noncompliance as soon as possible, but in no case more than one year from identification. This includes correcting each individual case of programmatic noncompliance, unless the child is no longer within the jurisdiction of the Grantee's local ECI program.
- 8.3 Grantee's governing board will ensure separation of powers, duties, and functions of board members and staff. Ignorance of any contract provisions or other requirements contained or referenced in this contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

## Attachment D

**BUDGET****1. Budget Categories**

| <b>Table 1 – Fiscal Year 2021</b>      |                       |
|----------------------------------------|-----------------------|
| <b>Budget Category</b>                 | <b>Amount</b>         |
| Personnel                              | \$1,883,032.00        |
| Fringe Benefits                        | \$602,592.00          |
| Travel                                 | \$135,758.00          |
| Equipment and Controlled Assets        | \$3,900.00            |
| Supplies                               | \$49,486.00           |
| Contractual                            | \$2,881.00            |
| Other                                  | \$196,527.00          |
| Indirect Charges (Rate: 10.00%)        | \$279,222.00          |
| ECI Program Budget (total)             | \$3,153,398.00        |
| <i>Locally Collected Funds (minus)</i> | \$1,889,594.00        |
| <b>Total Reimbursement Amount</b>      | <b>\$1,263,804.00</b> |

2. HHSC, in its sole discretion, may approve fund transfers between budget categories upon Grantee's written request. Grantee must request and receive HHSC's approval prior to making any fund transfers among direct cost categories which exceed or are expected to exceed ten percent of the current approved total ECI Program budget. This request must include a detailed explanation that supports the need for the fund transfer. Grantee may make cumulative budget transfers among approved budget categories, excluding Equipment, for up to ten percent of the approved budget without prior approval from HHSC.

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Attachment E

HHSC Uniform Terms and Conditions Version 2.16.1  
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**



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

“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.