

HHSC Contract No. HHS000693900006

**SIGNATURE DOCUMENT FOR
TEXAS HEALTH AND HUMAN SERVICES CONTRACT
UNDER THE
CHILDREN’S AUTISM GRANT PROGRAM**

I. PURPOSE

The Health and Human Services Commission (“**HHSC**”), an administrative agency within the executive branch of the state of Texas, and Permian Basin Community Center for MHMR dba PermianCare (“**Grantee**”), each a “**Party**” and collectively the “**Parties**,” enter into the following contract for Autism Grant Program Services (the “**Contract**”).

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of the *Texas Human Resources Code* §117.082, *Texas Administrative Code* (“**TAC**”) Title 40, Part 2, Chapter 105, and *TAC* Title 1, Part 15, Chapter 392, Subchapter C, and is authorized by and in compliance with the provisions of the *Texas Government Code* Chapter 531.

III. STATEMENT OF SERVICES TO BE PROVIDED

Grantee shall perform or cause to be performed Children’s Autism Program Services (“**Program**”) and other contract requirements in accordance with the Contract, including the Statement of Work, which is attached and incorporated herein as **Attachment A**.

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. PAYMENT FOR SERVICES PROVIDED

The total reimbursement amount shall not exceed **\$208,721.00**, which is based on the hourly rate of \$72.98 (the “**HHSC Hourly Rate**”). All expenditures under the Contract will be in accordance with **Attachment A**.

Indirect Cost Rate: The Grantee’s acknowledged or approved Indirect Cost Rate (“**ICR**”) is contained within HHSC Hourly Rate 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 I, Indirect Cost Rate Letter**.

If an Indirect Cost Rate Letter is required but it is not issued at the time of Contract execution, the Parties agree to amend the Contract to include the Indirect Cost Rate Letter as **Attachment I** and revise HHSC Hourly Rate when the Indirect Cost Rate Letter is issued.

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 amended **Attachment I** and revised HHSC Hourly Rate.

VI. REPORTING REQUIREMENTS

Grantee shall satisfy all invoice and reporting requirements as set forth within in **Attachment A**. All invoice and reporting requirements will survive the termination or expiration of this Contract.

VII. CONTRACT REPRESENTATIVES

The following will act as the designated Representative authorized to administer activities, including, but not limited to, non-legal notices, consents, approvals, requests, or other general communications provided for or permitted to be given under this Contract. The designated Party Representatives are:

Grantee

Chris Barnhill
401 E. Illinois, Suite 401
Midland, Texas 79701
(432) 570-3333
chrisbarnhill@permiacare.org

HHSC

Janete Olague, CTCM
1100 W. 49th Street; Mail Code 1938
Austin, Texas 78751
(512) 776-2180
janete.olague01@hhsc.state.tx.us

VIII. LEGAL NOTICES

Any legal notice required under this Contract shall be deemed delivered when deposited by the 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:

Grantee

Permian Basin Community Ctr for MHMR
Attn: Chris Barnhill
401 E. Illinois, Suite 401
Midland, Texas 79701

HHSC

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

with copy to:

Health and Human Services Commission
Attn: Janete Olague, Children's Autism
Program Contract Manager
1100 W. 49th Street; Mail Code 1938
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. GENERAL INSURANCE REQUIREMENTS

Grantee shall carry insurance in the types and amounts indicated in **Attachment F, General Insurance Requirements**, for the duration of this Contract. The insurance shall be evidenced by delivery to HHSC of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions. Upon request, HHSC, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements.

XI. PRIVACY, SECURITY, AND BREACH NOTIFICATION

Grantee certifies that it is, and shall remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification in accordance with the Texas Health and Human System Data Use Agreement, attached as Attachment H and incorporated in this Contract by reference.

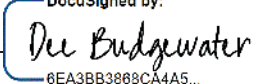
XII. SIGNATURE AUTHORITY

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

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR SYSTEM AGENCY
CONTRACT NO. HHS000693900006**

**HEALTH AND HUMAN SERVICES
COMMISSION**

By:  _____
DocuSigned by:
6EA3BB3888CA4A5...
Name: Dee Budgewater

Title: Deputy Executive Commissioner

Date of execution: August 21, 2020

**PERMIAN BASIN COMMUNITY CENTER FOR
MHMR**

By:  _____
DocuSigned by:
44F60F49218E463...
Name: Chris Barnhill

Title: Chief Executive Officer

Date of execution: August 21, 2020

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

- Attachment A- Statement of Work**
- Attachment B- Focused ABA Services Treatment Strategies Chart**
- Attachment C- HHSC Uniform Terms and Conditions - Grant (Version 2 16.1)**
- Attachment D- HHSC Autism Program Supplemental Conditions**
- Attachment E- HHSC Additional Provisions Conditions – Autism Program**
- Attachment F- General Insurance Requirements**
- Attachment G- Contract Affirmations (Version 1.6)**
- Attachment H- Texas HHS Data Use Agreement (Community Center Version 8.5, October 23, 2019)**
- Attachment I- Indirect Cost Rate Letter**

Attachments Follow

Attachment A

Statement of Work**1. Program Purpose**

The purpose of this Program is to provide Applied Behavior Analysis services to children ages 3 to 15 with a diagnosis on the autism spectrum who reside in the state of Texas. Grantee shall provide services regardless of race, color, national origin, sex, age, religion, disability, political beliefs, sexual orientation, and family income.

2. Grantee Responsibilities

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 applicable federal and state laws, rules, regulations, standards, guidelines, and policies in effect on the beginning date of this Contract unless amended, including, but not limited to, *Texas Human Resources Code* §117.082;
- 2.3 Ensure compliance with all state and federal statutes and regulations, HHSC rules, policies, procedures, and guidelines governing the Program, included but not limited to, *TAC* Title 40, Part 2, Chapter 105, and *TAC* Title 1, Part 15, Chapter 392, Subchapter C. The foregoing rules in *TAC* Titles 40 and 1 as they relate to the 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;
- 2.4 Ensure compliance at all times with the current Program Policy Manual that is available online and can currently be accessed at: <https://hhs.texas.gov/doing-business-hhs/provider-portals/assistive-services-providers/resources-autism-contractors>, as it may be modified or revised;
- 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 (“CPA”), from time to time and in its sole discretion, may revise the online link provided in this subsection. Grantee is responsible for contacting CPA at any time that Grantee is not able to access the online materials to request the updated link. Grantee is always 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 always responsible

for complying with the Grant Technical Assistance Guide, including any revisions to the standards during the Contract term;

- 2.7 Maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications of this Contract are met;
- 2.8 Enroll eligible children in accordance *TAC* Title 40, Part 2, Chapter 105, Subchapter C, §105.309 and the requirements established in the Program Policy Manual;
- 2.9 Add a child considered eligible for services based on the criteria set forth in the Program Policy Manual to the Grantee's interest list when there is no opening or funding available for HHSC Focused Applied Behavior Analysis (“**ABA**”) Services in the Program's service area in accordance with *TAC* Title 40, Part 2, Chapter 105;
- 2.10 Provide Focused ABA Services according to the Treatment Strategies Chart, attached hereto as Attachment B; and
- 2.11 Participate in quarterly conference calls and annual face-to-face meetings with no additional compensation, unless otherwise specified by HHSC.

3. **Autism Services**

To meet the mission and objectives of grant funds awarded under this Contract, Grantee must meet the following requirements:

- 3.1 Grantee will provide Focused Autism services to eligible clients in HHSC approved counties in accordance with applicable laws, rules, policies, and the Policy Manual. Autism services may include, but are not limited to, screening and eligibility determination, Applied Behavior Analysis services, autism case management and appropriate referrals, as necessary.
- 3.2 Grantee will provide services meeting the service parameters described in accordance with the Program rules and the requirements established in the Program Policy Manual.
- 3.3 Grantee will maintain documentation of all services provided in accordance with the Program rules and the requirements established in the Program Policy Manual.
- 3.4 Grantee will administer treatment protocols in accordance with the Program rules and the requirements established in the Program Policy Manual.
- 3.5 Grantee will must be maintained client and family participation requirements in accordance with the Program rules and the requirements established in the Program Policy Manual.
- 3.6 Grantee will assist HHSC in performing a client satisfaction survey in accordance with the requirements established in the Program Policy Manual.
- 3.7 Grantee will not provide services to children in institutional placements.

- 3.8 Grantee will comply with *Texas Family Code* §261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Family and Protective Services. Grantee will ensure that all program personnel and sub-contractors are properly trained and adhere to this Contract requirement and compliance with *Texas Family Code* §261.101.
- 3.9 Grantee will cooperate fully with HHSC investigations of any complaint received from families or other parties regarding Grantee's Autism services, and when applicable as determined by HHSC and any other entity on behalf of HHSC, develop a corrective action plan to address identified issues in accordance with Program Policy Manual.
- 3.10 Grantee shall maintain an emergency evacuation plan that complies with all applicable local, state, and federal laws, rules and regulations governing provision of services under this Contract.

4. **Telehealth and Telemedicine Medical Services**

- 4.1 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 the state of Texas 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,”) and telemedicine medical services (“a health care service delivered by a physician licensed in the state of Texas, or a health professional acting under the delegation and supervision of a physician licensed in the state of Texas, and acting within the scope of the physician’s or health professional’s license to a patient at a different physical location than the physician or health professional using telecommunications or information technology”) as defined in *Texas Government Code* §531.001(7) (using the meaning assigned by *Texas Occupations Code* §111.001) as provided through Texas Medicaid.
- 4.2 Grantee must comply with all of the following:
 - a. Families must give written consent that they agree to receive services via telehealth and telemedicine;
 - b. Telehealth and telemedicine services must comply with all Texas Medicaid requirements for telehealth, as well as the licensure/practice act requirements for each provider; and
 - c. 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**”).

5. **Service Delivery Area(s)**

- 5.1 The children served must reside in the service area approved by HHSC. The service area for this Contract includes: **Brewster, Culberson, Ector, Howard, Hudspeth, Jeff Davis, Martin, Midland, and Pecos**. Grantee may provide services to children outside

of its designated service area, if Grantee requests and receives written approval from HHSC, and the children reside in counties not covered by another Program grantee.

- 5.2 All requests for changes in service area assignments must be approved in writing by HHSC before implementation. HHSC reserves the right to negotiate the geographic boundaries of service areas awarded.

6. **Eligible Population**

- 6.1 Program eligibility is determined by applicable law set forth in Program rules and the requirements established in the Program Policy Manual.
- 6.2 The contracted number of children is for Autism services is 22. This represents the Grantee's projected number of unduplicated children to be served during the Contract period. If during the Contract period it is foreseen that the Grantee might be unable to serve the contracted number of children, HHSC may reduce the Grantee's grant award amount in order to encumber funds under another Autism services contract so that additional children may be served, or to expend the funds on other appropriate purposes.

7. **Personnel Standards and Requirements**

- 7.1 Grantee must maintain qualified staff in accordance with Program rules and the requirements established in the Program Policy Manual.
- 7.2 Grantee must conduct a criminal background checks in accordance with Program rules and the requirements established in the Program Policy Manual.
- 7.3 Grantee must provide staff training and development in accordance with the requirements established in the Program Policy Manual.
- 7.4 Grantee must notify HHSC of changes in CEO, CFO, program director, and key personnel, in accordance with the requirements established in the Program Policy Manual. Notwithstanding the proceeding sentence, the Grantee must notify and seek approval of HHSC changes in program director and key personnel.

8. **Rates, Fee Schedule, Family Cost Share, Third Party Payments**

- 8.1 Contract funds must be expended within the current Contract period. Rollover of unexpended funds to the succeeding Contract periods will not be allowed.
- 8.2 Rates are subject to change to comply with any HHSC policy changes.
- 8.3 Grantee shall charge a "Family Cost Share" in accordance with Program rules and the requirements established in the Program Policy Manual.
 - 8.3.1 Grantee is required to utilize the fee schedule, and fee schedule instructions provided by HHSC, and the income information stated on the HHSC Children's

Autism Program Enrollment Form (“**Form 6000**”) to calculate the amount of monthly family cost share required for the services of all eligible children, regardless of the availability of private insurance or other third-party payer reimbursements.

- 8.4 Grantee shall calculate the monthly fee owed by the family of each eligible child according to the requirements established in the Program Policy Manual.
 - 8.4.1 The family’s cost share amount is the fee schedule amount established by HHSC.
 - 8.4.2 If the family has insurance that covers the ABA services and the in-network provider agreement between the insurance company and the Grantee requires that the Grantee accept the deductible, copayment, or coinsurance (“**DCC**”) and insurance reimbursement as payment in full, then the family’s cost share amount is the lesser of the fee schedule amount established by HHSC or the DCC.
- 8.5 HHSC is a “payer of last resort” in accordance with Program rules and the requirements established in the Program Policy Manual.
- 8.6 The following are Grantee responsibilities for third party payer claim administration:
 - 8.6.1 Grantee must develop and maintain policies and procedures that comply with Subsection 2.4 of Attachment A to this Contract. These policies and procedures must include whether cost share will be collected monthly prior to initiation of services, monthly after services are provided, or for families with third-party payer coverage of Autism services, after payment has been received.
 - 8.6.2 Grantee must take the steps required to become an enrolled provider in all third-party payer, public, and private plans, for which HHSC Autism clients are enrolled. Grantee must maintain documentation of any barriers to becoming an enrolled provider.
 - 8.6.3 When verification reflects that third-party payer coverage exists for Program services, Grantee must ascertain and document the required information reference below within this subsection. This information must be made available to HHSC or its authorized representative within 30 calendar days when requested by HHSC. The required information is as follows:
 - a. The type and limitations of the third-party payer coverage;
 - b. Preauthorization and utilization requirements for the third-party payer coverage; and
 - c. Claims filing information.
 - 8.6.4 Grantee is responsible for filing claims for an individual child’s services within 30 calendar days of the services being provided when services are covered under an applicable third-party payer policy. Grantee is required to file claims

within applicable claims filing deadlines and appeal claims, when appropriate, within the applicable deadlines.

- 8.6.5 HHSC will not reimburse for services related to claims that were denied due to the Grantee's failure to meet established deadlines set forth within Subsection 8.6.4 of Attachment A to this Contract. Grantee shall maintain records containing evidence of claims filed by the Grantee, and of claims honored and denied by third party payers. This documentation must be made available to HHSC upon request.
- 8.6.6 If preauthorization of services is required, Grantee must comply with all third-party payer preauthorization requirements prior to initiating and/or continuing autism services. Documentation of attempts to obtain preauthorization of services must be maintained in Grantee's records.
- 8.6.7 HHSC will not reimburse for services related to claims that were denied by a third-party payer because the Grantee failed to request the required preauthorization.
- 8.6.8 When preauthorization is granted for all or only a portion of the requested services, Grantee shall notify the family in writing of the applicability of the fee schedule established by HHSC prior to the initiation of services.
- 8.6.9 The treatment hours that the Grantee has deemed necessary that exceed approved preauthorized hours are considered uncovered by insurance. The Grantee may bill HHSC for uncovered services minus any applicable cost share. HHSC will not reimburse the Grantee for Treatment hours that exceed HHSC service caps outlined in the within Program rules and the Program Policy Manual.
- 8.6.10 For each child with private insurance or other third-party payer coverage for HHSC Autism services, Grantee must calculate the monthly family cost share amount owed pursuant to the requirements identified within this Contract. The Grantee may bill HHSC for the number of hours provided to an eligible child at the contracted HHSC Hourly Rate as set forth within Section V of this Contract, less the amount of payments received from private insurance or other third-party payer and less the monthly cost share amount.
- 8.6.11 Prior to initiating services, Grantee shall discuss with the child's family estimated private insurance and other third-party payer reimbursement, as well as the estimated monthly family cost share amount owed.
- 8.6.12 Private insurance and other third-party payer reimbursements received and monthly family cost share amounts must be used to offset the amount billed to HHSC for all Autism services billed during that month. The amount of private insurance reimbursements used to offset the cost is limited to the amount that would have been paid by HHSC as referenced herein as the HHSC Hourly Rate.

- 8.6.13 When Grantee policy requires family cost share to be collected during the month of service, third-party payer reimbursements received shall be reconciled to the Grantee's financial records for the month that the services were rendered so that the child's actual family cost share can be determined. Credits or payments to the insured shall be made within 30 calendar days after receipt of a reimbursement. HHSC may request at any time copies of the financial records showing reconciliations that include all payment sources.
- 8.6.14 Grantee may not bill HHSC for services provided to clients with known third-party payer coverage until after the third-party payer has paid or denied services. Grantee shall maintain a copy of the third-party payer explanation of benefits for services previously billed to third party payers onsite. This information must be made available to HHSC upon request.
- 8.6.15 Grantee may submit a request for advance payment utilizing the HHSC Autism Program Advance Payment Request Form ("**Form 6003**"). Requests for advance payments shall be limited to amounts outstanding for claims made to third-party payers (number of treatment hours claimed with third-party payers multiplied by the HHSC Hourly Rate). HHSC may deny requests for advance payments within its sole discretion.

9. HHSC Reimbursements and Invoicing Processes

- 9.1 HHSC will reimburse Grantee for all charges determined and invoiced in accordance with the terms and conditions of this Contract. All payments by HHSC under this Contract will be made in accordance with the "Texas Prompt Payment Act," Chapter 2251 of the *Texas Government Code*.
- 9.2 Grantee must properly submit its invoice by the tenth day of every month, using HHSC Autism Program Invoice Form ("**Form 6002**").
- 9.3 Electronic Invoice. Grantee must submit invoices to HHSC for review and concurrence in a secure, non-alterable electronic format (*.pdf is acceptable*) emailed to: childrens_autism_program@hhsc.state.tx.us with the "Grantee's full name, invoice number, and month and year of invoice" in the subject line. Upon concurrence, HHSC will submit the invoice to Accounts Payable.
- 9.4 Invoice Requirements. Each invoice submitted be in accordance with be in accordance with *TAC* Title 34, Part 1, Chapter 20, Subchapter F, Division 1, §20.487, Invoicing Standards, which should include, but is not limited to, *as applicable*:
- Grantee's Legal Name;
 - State of Texas vendor number or federal tax identification number;
 - Grantee's Telephone number;
 - Invoice number;
 - HHSC Contract Number;
 - Description of services provided (autism services);

- Date of Service;
- Quantity of treatment hours;
- Contract hourly rate;
- Total amount of invoice;
- In aggregate:
 - charges based on the hourly rate and number of treatment hours provided in the current month for children with no third-party payer;
 - charges for services provided in the current month and for which third party payment was received or declined during the current month;
 - charges for services provided in previous months but in which payment from third party payers was received or declined during the current month;
 - amounts received from third party payers during the month;
 - cost share amount collected or owed for the current month based on the fee schedule and instructions and the Grantee's policy for collecting cost share; and
 - deductions for advance payments; and
- The name and telephone number of a person designated by the Contract to answer questions regarding the invoice.

9.5 All services shall be performed to the satisfaction of HHSC. HHSC shall not be liable for any payment for services that HHSC deems unsatisfactory, that fail to adhere to the terms of this Contract, or that have not been approved by HHSC.

9.6 Grantee must submit a final invoice at the end of each Contract period by November 15th that reflects the services performed that were not previously invoiced due to pending third-party reimbursements.

9.7 Grantee must comply with HHSC's rules, policies, Contract provisions, and applicable instruction manuals regarding the collection and timely submission of complete and accurate data. Complete and accurate data (including invoice and client information) must be entered into the HHSC's Children's Autism Program database by the 10th calendar day of the following month of Austin services being provided and must comply with the database user manual. The Grantee must also have in place adequate internal controls, security, and oversight for the approval and submission of such data.

9.8 Grantee will provide services to children with Autism as described within the terms of this Contract and will bill HHSC for services only on the basis of the HHSC Hourly Rate. HHSC shall not pay for services that fail to adhere to the terms and provisions of this Contract. Notwithstanding anything to the contrary herein, Grantee may bill for interpreter services, mileage reimbursement for families in accordance with *Texttravel* rates, or other HHSC preapproved Program related costs.

9.9 Grantee is required to reduce its invoice by the amount of the family cost share and may bill and collect cost share amounts owed by the responsible party (e.g., family,

third-party payers, private sources, or some combination thereof). HHSC grant funds shall not be used to pay for any portion of the required family cost share.

- 9.10 HHSC reserves the right to verify the details set forth in Grantee's invoices, either before or after payment, by requesting additional information including inspecting books of the Grantee at a mutually convenient time or documentation which clearly indicates an activity has taken place or an expense has been incurred. Any revisions deemed necessary to the invoices by HHSC will require the Grantee to resubmit the invoice with a new date the invoice is submitted.

10. Reporting Requirements and Monitoring

- 10.1 Grantee shall report financial and programmatic information by the tenth day of every month. This information may include, but not be limited to, the items as follows:

- a. Consumer Data. Unique Consumer Identification Number (contractor assigned), name, address, date of birth, ethnicity and gender, family data and parent information;
- b. Service and Billing Data. Type of service(s) provided, cost per unit of service(s) provided/type, total cost for service(s) provided, private insurance coverage information, and public insurance coverage information;
- c. Aggregate Contractor Data. Number of consumers served, types of services provided, total cost for service(s) provided, reimbursement information (if any), private and public insurance payments and family cost share payments; and
- d. Required Data. (i) Contractor Name and (ii) Payment Identification Information.

- 10.2 The Grantee and/or any subcontractors 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 Contract.

11. Performance Measures

HHSC will actively monitor Grantee's performance under this Contract including, but not limited to, the requirements as set forth in Attachment A to this Contract. All services and deliverables under the Contract shall be provided at an acceptable quality level and in a manner consistent with acceptable industry standard, custom, and practice.

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Attachment B

Focused ABA Services Treatment Strategies Chart

Language and Communication	Social Skills
<ul style="list-style-type: none"> • Functional Communication Training (FCT) • Augmentative and Alternative Communication (AAC) • Modeling/video modeling • Time delay • Reinforcement • Prompting 	<ul style="list-style-type: none"> • Video modeling • Social scripts and script fading procedures • Self-management • Peer-mediated intervention • Positive reinforcement • Prompting
Challenging Behavior	Adaptive Behavior
<ul style="list-style-type: none"> • Functional Analysis (FA) and Functional Behavior Assessment (FBA) • Response Interruption and redirection • Response cost • Skill Enrichment strategies • Differential reinforcement • Functional Communication Training (FCT) • Non-contingent reinforcement (NCR) • Extinction • Interspersed requests 	<ul style="list-style-type: none"> • Modeling/video modeling • Task-analysis and chaining • Graduated guidance • Response interruption and redirection • Self-management • Positive reinforcement • Prompting

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Attachment C

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



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
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- 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.

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.

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://hhsex.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. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

9.23 SYSTEM AGENCY DATA

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

Attachment D

HHSC Autism Program Supplemental Conditions

(Version 1.0)

The HHSC Uniform Terms and Conditions - Grant (“HHSC UTCs”), Attachment C of the Contract, is revised as follows:

1. **Section 9.2, Insurance**, of the HHSC UTCs is amended to add a new Subsection C as follows:

C. Notwithstanding the forgoing subsections, 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 restrict the Grantee’s right to self-insure in accordance with state law, or purchase insurance through the Texas Association of Counties or Texas Municipal League.

2. **Section 9.5, Subpart A, Indemnity**, of the HHSC 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, IF GRANTEE IS A STATE AGENCY OR DEPARTMENT, DISTRICT, AUTHORITY, COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE, 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.

3. **Section 9.17, No Waiver of Sovereign Immunity**, of the HHSC UTCs is amended to add a new sentence at the end of the paragraph as follows:

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 Grantee under doctrines of sovereign and official immunity.

Attachment E



Health and Human Services (HHS)
Additional Provisions
Version 1.0
Effective: November 7, 2019

Children's Autism Program

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ADDITIONAL PROVISIONS

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

1. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

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

2. NOTICE OF IRS OR TWC INSOLVENCY

Contractor shall notify in writing its assigned HHSC contract manager of any insolvency, incapacity or outstanding unpaid obligations of Contractor owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas within five days of the date of Contractor's becoming aware of such.

3. NOTICE OF A LICENSE ACTION

- Contractor shall notify its assigned HHSC contract manager of any action impacting Contractor's license to provide services under this Contract within five days of becoming aware of the action and include the following:
- i. Reason for such action;
 - ii. Name and contact information of the local, state or federal department or agency or entity;
 - iii. Date of the license action; and
 - iv. License or case reference number.

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Attachment F

General Insurance Requirements

Insurance Coverage Required:

Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of Health and Human Services Commission, employer's liability insurance of not less than:

\$1,000,000 each accident;
\$1,000,000 disease each employee; and
\$1,000,000 disease policy limit.

Commercial General Liability Insurance. Including premises, operations, independent Grant Recipient's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Grant Recipient's liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;
\$2,000,000 general aggregate;
\$5,000 Medical Expense each person;
\$1,000,000 Personal Injury and Advertising Liability;
\$2,000,000 products and completed operations aggregate;
\$50,000 Damage to Premises Rented to You; and
Coverage shall be on an "occurrence" basis.

The term "You" as reference in Subsection above, means the Grant Recipient.

Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

Umbrella Liability Insurance. Grant Recipient shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Grant Recipient for an amount of not less than amount \$2,000,000 that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove.

The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

Cyber/Privacy Liability Insurance Policy. Grant Recipient shall provide Cyber/Privacy Liability Insurance to cover risk of loss to electronic data. The policy must include coverage for electronic vandalism to electronic data, including coverage for a third party's

willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

Cyber Liability Insurance \$2,000,000 Claim/\$1,000,000 Aggregate.

Professional Liability Insurance. Grant Recipient shall obtain, pay for and maintain professional liability errors and omissions insurance during the Contract term, insuring Grant Recipient for an amount of not less than \$2,000,000.

Policies must include the following clauses, as applicable:

This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to System Agency.

It is agreed that Grant Recipient's insurance shall be deemed primary with respect to any insurance or self-insurance carried by System Agency for liability arising out of operations under the Contract with System Agency. Health and Human Services Commission, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with System Agency. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

A waiver of subrogation in favor of Health and Human Services Commission shall be provided in all policies.

Without limiting any of the other obligations or liabilities of Grant Recipient, Grant Recipient shall require each Sub Grant Recipient performing work under the Contract, at Sub Grant Recipient's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above.

As an alternative, Grant Recipient may include its Sub Grant Recipients as additional insureds on its own coverage as prescribed under these requirements. Grant Recipient's certificate of insurance shall note in such event that Sub Grant Recipients are included as additional insureds and that Grant Recipient agrees to provide workers' compensation for Sub Grant Recipients and their employees. Grant Recipient shall obtain and monitor the certificates of insurance from each Sub Grant Recipient in order to assure compliance with the insurance requirements. Grant Recipient must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Sub Grant Recipients. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Texas Labor Code.

Alternative Insurability-

Notwithstanding the preceding, HHSC reserves the right to consider reasonable alternative methods of insuring the Contract in lieu of the insurance policies customarily required. It will be the Respondent's responsibility to recommend to the HHSC alternative methods of insuring the Contract. Any alternatives proposed by Respondent should be accompanied by a detailed explanation regarding Respondent's inability to obtain the required insurance and/or bonds. HHSC shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

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Attachment G

**TEXAS HEALTH AND HUMAN SERVICES
CONTRACT AFFIRMATIONS**

(Version 1.6; November 7, 2019)

The term “**System Agency**” used in these affirmations means HHS or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under Texas law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to System Agency are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor understands that System Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Assignment

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions Attached to Response

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from System Agency's terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. System Agency Right to Use

Contractor agrees that System Agency has the right to use, produce, and distribute copies of and to disclose to System Agency employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as System Agency deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,*" published by the United States Department of the Treasury, Office of Foreign Assets Control.

15. Foreign Terrorists Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Technology Access

Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to System Agency that the technology provided to System Agency for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

24. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

25. Television Equipment Recycling

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

26. Cybersecurity Training

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

27. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

28. Disclosure of Prior State Employment

If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following:

- (i) the nature of the previous employment with System Agency or the other agency;
- (ii) the date the employment was terminated; and
- (iii) the annual rate of compensation at the time of the employment was terminated.

29. No Conflicts of Interest

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

30. Fraud, Waste, and Abuse

Contractor understands that System Agency does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's

Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.

31. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

32. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

33. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

34. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

35. Entities that Boycott Israel

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either:

- (i) it meets an exemption criteria under Section 2271.002; or
- (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the boycott certification: _____

_____.

36. E-Verify Program

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system during the term of this Contract to determine the eligibility of:

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

37. Professional or Consulting Contract

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor’s employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

38. Former Agency Employees

Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

39. Disclosure of Prior State Employment

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

- (i) Name of individual(s) (Respondent or employee(s));
- (ii) Status;
- (iii) The nature of the previous employment with HHSC or the other State of Texas agency;
- (iv) The date the employment was terminated and the reason for the termination; and
- (v) The annual rate of compensation for the employment at the time of its termination.

B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

40. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and

warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

41. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

42. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

43. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

44. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

45. Drug-Free Workplace

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

46. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

47. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

48. Signature Authority

Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor.

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Contract Affirmations Signature. Authorized representative on behalf of Contractor must complete and sign the following:

Permian Basin Community Centers for Mental Health & Mental Retardation

Legal Name of Contractor

PermiaCare

Assumed Business Name of Contractor, if applicable (D.B.A. or 'doing business as')

Midland

Texas County(s) for Assumed Business Name (D.B.A. or 'doing business as')

Attach Assumed Name Certificate(s) for each County

DocuSigned by:

44F60F49218E463... **Authorized Representative**

August 21, 2020

Date Signed

Chris Barnhill

Chief Executive Officer

**Printed Name of Authorized Representative
First, Middle Name or Initial, and Last Name**

Title of Authorized Representative

491 E Illinois, Suite 401

Midland, TX, 79701-4803

Physical Street Address

City, State, Zip Code

401 E Illinois, Suite 401

Midland, TX, 79701-4803

Mailing Address, if different

City, State, Zip Code

432-570-3333

432-570-3346

Phone Number

Fax Number

chrisbarnhill@permiacare.org

074145561

Email Address

DUNS Number

75-1401776

17514017767

Federal Employer Identification Number

Texas Payee ID No. – 11 digits

NA

NA

Texas Franchise Tax Number

Texas Secretary of State Filing Number