

**SIGNATURE DOCUMENT FOR
HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000734500008
UNDER THE
WOMEN'S HEALTH PROGRAM**

I. PURPOSE

The **HEALTH AND HUMAN SERVICES COMMISSION** (“**SYSTEM AGENCY**”) and **Kimberly Cares, LLC**. (“**GRANTEE**”) (each a “**Party**” and collectively the “**Parties**”) enter into the following grant contract to provide funding for Women’s Health Program: Healthy Texas Women services (“**HTW**”) (the “**Contract**”).

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of 42 USC §§ 300k-300n-5; 42 USC § 300k(a); Texas Government Code § 531.0201(a)(2)(C); Texas Human Resources Code § 32.024(c-1); and Texas Government Code § 531.0995. The Contract is further authorized under Texas Government Code § 531.0204.

The state rules for program services can be found at:

- HTW: [Texas Administrative Code \(TAC\), Title 1, Part 15, Chapter 382, Subchapter A](#)

III. DURATION

The Contract is effective on **January 1, 2021** and terminates on **August 31, 2021**, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, 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 5 years.

IV. BUDGET**A. TOTAL BUDGET:**

The total amount of this Contract for HTW services will not exceed the following funding sources and amounts:

Funding for Services for FY 2021 <i>During January 1, 2021 through August 31, 2021</i>	
Funding Source and Type of Service	FY 2021 Funding Amount
Healthy Texas Women Cost Reimbursement Funding	\$52,535.90
Total Grant Value Amount	\$52,535.90

B. All expenditures under the Contract will be in accordance with **ATTACHMENT A, STATEMENT OF WORK** and the **PROGRAM POLICY MANUAL LISTED IN SECTION V**.

C. **Indirect Cost Rate:** The Grantee's acknowledged or approved Indirect Cost Rate ("ICR") is contained within **ATTACHMENT K**, and either the ICR Acknowledgement Letter, ICR Acknowledgement Letter – Ten Percent De Minimis, or the ICR Agreement Letter attached to this Contract and incorporated as **ATTACHMENT K, FORM E, INDIRECT COST RATE LETTER**.

V. REPORTING REQUIREMENTS

Reporting requirements are contained within the program policy manuals located online as listed below:

- A. HTW: https://www.tmhp.com/sites/default/files/microsites/provider-manuals/tmppm/html/index.html#t=TMPPM%2F2_Womens_Health_Srvs%2F2_Womens_Health_Srvs.htm

VI. LEGAL NOTICES

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

System Agency

Health and Human Services Commission
Office of Chief Counsel
4900 North Lamar Blvd. Mail Code:1100
Austin, TX 78751
Attention: Karen Ray*

Grantee

Kimberly Cares, LLC.
7015 Almeda Road
Houston, Texas 77054
Attention: Kimberly Barrow*

VII. NOTICE REQUIREMENTS

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

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

SIGNATURE PAGE FOLLOWS

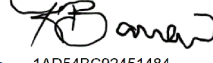
**SIGNATURE PAGE FOR SYSTEM AGENCY
CONTRACT NO. HHS000734500008**

SYSTEM AGENCY

KIMBERLY CARES, LLC.

DocuSigned by:

41F2A4A1A9AD484...

DocuSigned by:

1AD54BC92451484...

Printed Name: Joe Perez

Printed Name: Kimberly Barrow

Title: Deputy Executive Commissioner

Title: President/CEO

Date of Execution: December 18, 2020

Date of Execution: December 18, 2020

THE FOLLOWING ATTACHMENTS ARE INCORPORATED BY REFERENCE:

- ATTACHMENT A: STATEMENT OF WORK**
- ATTACHMENT B: UNIFORM TERMS AND CONDITIONS- GRANTEE V 2.16.1**
- ATTACHMENT C: DUA GOVERNMENTAL ENTITY V 8.5**
- ATTACHMENT D: DUA SECURITY PRIVACY INQUIRY (SPI) FORM**
- ATTACHMENT E: CONTRACT AFFIRMATIONS (VERSION 1.7)**
- ATTACHMENT F: SYSTEM AGENCY SOLICITATION**
 - **HTW NO. HHS0007345**
- ATTACHMENT G: GRANTEE'S SOLICITATION RESPONSE**

ATTACHMENTS FOLLOW

ARTICLE II. SCOPE OF GRANT AWARD

2.1 PROGRAM BACKGROUND

Improving the health of women, mothers and children is critical to the future of Texas. HHSC WHP provides a continuum of care through an array of women's health and family planning related services, including Healthy Texas Women (HTW).

These services consist of providing low-income Texas women access to safe and reliable services at no cost including screening, diagnostic, follow-up services, appropriate referrals, along with, public information and education programs. Services also consist of access to health and family planning services to avert unintended pregnancies, positively affecting the outcome of future pregnancies and the health and well-being of women and their families.

Please refer to **Attachment 1, Women's Health Program Policy and Procedure Manual** for program-specific guidelines.

Program rules can be found at [Texas Administrative Code, Title 1, Chapter 382, Subchapter A.](#)

2.2 GRANT AWARD AND TERM

2.2.1 Available Funding

The anticipated total amount of state general revenue funding available for this procurement is **\$10,975,955** per state fiscal year during the grant term. It is HHSC's intention to make multiple awards through this solicitation to support selected programs. Funds allocated in subsequent grant terms may be more or less than the amount awarded for the initial term.

Grant cost reimbursement awards may be used to fund personnel, fringe benefits, staff travel, contractual services, equipment, supplies, other direct costs, and indirect costs per state and federal requirements and in accordance with provisions outlined in this RFA. All proposed costs must be reasonable, allocable, and allowable.

Contracts awarded under this RFA and any anticipated renewals are contingent upon the continued availability of funding. HHSC reserves the right to reallocate funds to prevent underutilization in the event HHSC determines in its sole discretion that a Respondent cannot reasonably utilize all funds awarded. This RFA is not limited to this source of funding if other sources of funding become available for these programs.

HHSC reserves the right to alter, amend, or withdraw this RFA at any time prior to the execution of a Contract if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human services agency consolidations or any other disruption of current appropriations.

Requests for funding may not be fully funded to ensure that funds are available for the broadest possible array of communities and programs.

2.2.2 Fee-for-Service Funding

Fee-for-service claims are not funded under this RFA. This RFA is for a cost reimbursement award to provide services detailed in **Section 2.2.3, Cost Reimbursement Funding**.

The fee-for-service payment method is based on the approved service code used with acceptable submission of all required documentation, forms and/or reports. Grant recipients will be reimbursed using the fee-for service reimbursement method by submitting claims to the Texas Medicaid Healthcare Partnership (TMHP) for direct clinical care services provided to Clients, which will then be paid by HHSC.

The *Texas Medicaid Provider & Procedure Manual* (TMPPM) includes information related to HHSC HTW fee-for-service program claims submission. In addition, Medicaid bulletins and Remittance and Status (R&S) banner messages provide up-to-date claims filing and payment information. The R&S banner messages, and the TMPPM are all available on the [TMHP website](#). Service codes are located on the TMHP website.

2.2.3 Cost Reimbursement Funding

HHSC HTW cost reimbursement funding is used for support services that enhance services provided by the Grantee to a Client under the HTW fee-for-service program. Support services include, but are not limited to:

1. Assisting eligible women with enrollment into the HTW program;
2. Direct clinical care for women deemed presumptively eligible for the HTW fee-for-service program;
3. Staff development and training related to HTW program service delivery; and
4. Client and community based educational activities related to the HTW program.

Costs may be assessed against any of the following categories the Grantee identifies during their budget development process:

- a. Personnel,
- b. Fringe benefits,
- c. Travel,
- d. Equipment and supplies,
- e. Contractual,
- f. Other, and
- g. Indirect costs.

NOTE: Indirect costs are costs incurred for a common or joint purpose benefiting more than one project or cost objective of Respondent's organization and not readily identified with a particular project or cost objective. Typical examples of indirect costs may include general administration and general expenses such as salaries and expenses of executive

officers, personnel administration and accounting; depreciation or use allowances on buildings and equipment; and costs of operating and maintaining facilities.

Reimbursement is requested by using a purchase voucher and supporting schedule. Vouchers and supporting documentation must be submitted by the last business day of the month following the month in which expenses were incurred.

The Cost Reimbursement payment method is based on an approved budget and submission of expense reimbursement request. Respondents are required to finance upfront operational costs and request reimbursement for costs incurred. Payments are made by HHSC to reimburse the Respondents for actual cash disbursements in accordance with supporting documentation. The cost reimbursement amount requested may not exceed 25% of Respondent's expected HTW fee-for-service payments for the funding period.

No more than five (5) percent of the cost reimbursement payments will be received under this contract for expenses related to performing administrative functions derived from subcontracting the terms of the contract. Administrative functions include, but are not limited to, the Grantee's personnel costs for provision of oversight and technical assistance related to contracting with a subcontractor, monitoring subcontractor performance, and all other related general and administrative expenses for administration of the subcontract, such as related fringe, rent, and office supplies.

2.2.4 Grant Term

The initial grant funding period for this grant will be twelve (12) months. It is anticipated that the grant funding period will begin September 1, 2020 through August 31, 2021. The grant may be extended for two (2) additional two (2) year periods at HHSC's sole discretion. Continued funding of a contract is contingent upon the availability of funds and the satisfactory performance of the Grantee during the prior budget period. Funding may vary and is subject to change each renewal period. Reimbursement will only be made for those allowable expenses that occur within the term of the grant. No pre-award spending will be allowed.

2.3 ELIGIBLE RESPONDENTS

In order to be considered for a grant award as a result of this RFA, an Applicant must meet all the eligibility requirements below at time of application submission:

To be eligible for an award as a result of this Solicitation, an Applicant must:

1. Be established as a legal entity,
2. Have a physical business address in Texas, located within the proposed service area,
3. Have the authority to do business in the state of Texas,
4. Not have an exclusion record in the System for Award Management, and
5. Be either:
 - a. A public or private organization,

- b. A faith-based organization,
- c. A governmental entity as defined by [Texas Government Code Chapter 771](#), or
- d. A local government as defined by [Texas Government Code, Chapter 791](#).

Additionally, Successful Respondents must meet and comply with the criteria listed below prior to grant execution and continue to meet and comply with the criteria through the grant term:

1. Respondent shall not be debarred, suspended, or otherwise excluded or ineligible for participation in federal or state assistance programs.
2. As part of the pre-compliance check for responsiveness to this RFA, HHSC will perform a check for debarment/suspension through the federal [System for Award Management](#) (SAM) website at <https://sam.gov/SAM/> and the Texas Comptroller of Public Accounts (CPA). In compliance with CPA rules, HHSC will conduct a name search of all Grantees during the contract award phase using the websites listed in this section. A Respondent will be considered ineligible to contract with HHSC, regardless of funding source, if a name match is found on any of the following lists:
 - a. [CPA list of Vendors Debarred from doing business with the State of Texas](#);
 - b. [CPA Franchise Tax Account Status](#) (for status of good standing);
 - c. [CPA Divestment Statute Lists](#):
 - i. List of companies that boycott Israel;
 - ii. List of Scrutinized Companies with Ties to Sudan;
 - iii. List of Scrutinized Companies with Ties to Iran;
 - iv. List of Designated Foreign Terrorist Organizations; and
 - v. List of Scrutinized Companies with Ties to Foreign Terrorist Organizations; and
 - d. [The Office of the Inspector General List of Excluded Individuals/Entities](#).
3. Applicant must have demonstrated financial history to fund activities and to cover Project costs prior to receiving reimbursement. Respondent may not be eligible for award if audit reports or financial statements submitted with the application identify concerns regarding the future viability of the Respondent, material non-compliance, or material weaknesses that are not satisfactorily addressed, as determined by HHSC.

B. Respondent must be a Medicaid provider with a Texas Provider Identifier (TPI) number. The TPI provided as part of the Respondent's application must be for the organization itself, and not for individual providers associated with the organization. The Applicant must have the approved Medicaid enrollment notification letter with the application. Respondents can learn more about the Texas Medicaid Provider Enrollment process by referring to the TMHP website: <http://www.tmhp.com/>.

C. Respondent's staff members, including the executive director, must not serve as voting members on Respondent's governing board.

D. Respondent must ensure **Form E, HTW Program Certification** is completed in its entirety at the time of applications and must annually certify that they do not perform or promote elective abortions and do not affiliate with any entity that does, as directed by HHSC, and for each program with TMHP and HHSC.

E. Respondent must have a Medical Director that holds a valid and current medical license to practice in the State of Texas and submit supporting documentation with the application. Respondents must meet these requirements throughout the entirety of the application process and, if chosen for grant award, must continue to meet them through the entirety of the grant funding period. If HHSC determines that a health-care provider fails to comply, HHSC may disqualify the provider from providing services. HHSC expressly reserves the right to review and analyze the documentation submitted and to request additional documentation and determine the Respondent's eligibility to compete for the grant award.

2.4 PROGRAM REQUIREMENTS

Applications submitted for consideration under the Women's Health Program Healthy Texas Women RFA, must:

A. Be submitted by an Applicant seeking to serve Clients with approved covered service selection that seeks to improve the health and well-being of low-income women and families in Texas. Covered services may be selected individually or within a group selection as outlined in **Section 2.4.2**.

B. Applicants must follow the assigned Client eligibility requirements outlined in **Attachment 1, Women's Health Program Policy and Procedure Manual**. A female is eligible to receive services through HTW if she meets the following qualifications:

1. Is age 18-44 (women are considered age 18 on the day they turn 18 and age 44 through the last day of the month during which they turn 45);
2. Is age 15-17 and has a parent or legal guardian apply, renew, and report changes to her case on her behalf (women are considered age 15 the first day of the month they turn 15 and age 17 through the day before she turns 18);
3. Resides in Texas;
4. Does not currently receive full Medicaid benefits, Children's Health Insurance Program (CHIP), or Medicare Part A or B;
5. Is not pregnant;
6. Does not have private health insurance that covers family planning services, unless filing a claim on the health insurance would cause physical, emotional or other harm from a spouse, parent, or other person; and
7. Has a countable household income at or below 200 percent of the Federal Poverty Level (FPL).

In general, people are not eligible for HTW services if they are enrolled in another third-party payor such as private health insurance, Medicaid or Medicare, or other federal, state, or local public health care coverage that provides the same services. People with third-

party insurance may be eligible for services provided by HTW if Client confidentiality is a concern.

C. Implement programs funded under this procurement and achieve the targeted goals and objectives of the RFA.

To meet the mission and objectives of the RFA solicitation, Respondents must follow federal and state guidelines, including requirements outlined in and as attached in **Attachment 1, Women's Health Program Policy and Procedure Manual.**

Successful applications will be responsible for working within the counties in their approved service areas and with target populations and within their approved Project plan that details how programs will meet program goals and obligations.

2.4.1 Project Design

Applicants must design a Project that provides access to health services to enable eligible women experiencing health needs to secure and maintain safe and accessible quality screening and diagnostic services, comprehensive family planning, and/ or women's health services.

- A. Applicants are encouraged to emphasize the following components in the design of their Projects. **Projects must:**
1. Use a collaborative approach to maximize existing community resources and avoid duplication of effort;
 2. Be time-limited in nature and designed to address grant funding expiring and sustainability;
 3. Enhance systems and local processes to make it easier for people to transition to, from, and between services;
 4. Address barriers to ensure services are accessible to people regardless of setting or location; and
 5. Promote improvement and positively impact health and well-being through coordinated service delivery.
- B. To be effective, services and activities provided or made available as part of the **Proposed Project should have policies and procedures in place** and include with the application as an attachment that:
1. Delineate the timely provision of services;
 2. Deem Client eligibility and service provision as soon as possible and no later than thirty (30) calendar days from initial response;
 3. Require staff to assess and prioritize Client needs;
 4. Implement with model fidelity to an evidence-based program or based upon best available research;
 5. Plan in partnership with the person and inclusion-based;
 6. Provide in an environment that is most appropriate and based on a person's preference including reasonable clinic/ reception wait times that are not a barrier to care;

7. Provide referral sources for Clients that cannot be served or receive a specific service;
8. Are culturally and linguistically sensitive;
9. Tailor services to a person's unique strengths and needs;
10. Manage funds to ensure established Clients continuity of care throughout the budget year;
11. Continue to provide services to established Clients after allocated funds are expended;
12. Identify and eliminate possible barriers to care;
13. Do not deny services due to inability to pay;
14. Have appropriate key personnel and required staff to meet the medical and health needs of Clients found in **Attachment 1, Women's Health Program Policy and Procedure Manual**;
15. Bill services appropriately through TMHP;
16. Effectively communicate and document information related to health care needs with next steps available to the Client;
17. Establish a system for monitoring abnormal screening or diagnostic results and/ or Client who has initiated patient navigation services;
18. Establish outreach and education plan for the community; and
19. Outline successful delivery of direct clinical services to Clients.

By submitting an application under this RFA, the Applicant certifies that Applicant has or will have at time of grant award services, policies, or procedures that conform with the requirements in this section as applicable. HHSC, in its sole discretion, may request to review relevant documentation during the Project period as necessary to ensure program fidelity.

2.4.2 Covered Services and Activities

Proposed Projects include funding an array of covered services. HTW seeks to promote the general and reproductive health of Texas women by providing safe and effective family planning and certain primary care services to women age 15 through 44 who meet program eligibility requirements.

Proposed Projects **must** include the Applicant's selection of proposed covered services including the provision of, or provision of immediate access to, the following:

- A. **All providers must offer the following core family planning services:**
 1. Annual family planning and prevention healthcare visit;
 2. State of Texas recommended immunizations, included in **Attachment 1, Women's Health Program Policy and Procedure Manual**;
 3. Screening and treatment of postpartum depression;
 4. Contraceptive services (pregnancy prevention and birth spacing) including:
 - a. Intrauterine devices (IUDs), contraceptive implants, oral contraceptive pills, three-month (medroxyprogesterone) injections, sterilizations, etc.;
 5. Certain screening, diagnostic and treatment services including:
 - a. Pregnancy testing and counseling,

- b. Screening, diagnosis, and treatment of Cervical Intraepithelial Neoplasia, diagnosis of cervical cancer,
 - c. HIV testing,
 - d. Breast cancer screening and diagnosis,
 - e. Cervical cancer screening (Pap smears, etc.), and
 - f. Screening for hypertension, diabetes and elevated cholesterol;
- 6. Preconception health (e.g., screening for obesity, smoking, and mental health); and
- 7. Screening and outpatient treatment of sexually transmitted diseases and infections (STD/STI) services, including:
 - a. Chlamydia and gonorrhea screening and treatment; and
 - b. HIV screening.
- B. Vendor Drug Program.** HTW uses the Vendor Drug Program (VDP), which provides statewide access to covered outpatient drugs in an efficient and cost-effective manner. HTW Clients may receive approved medications from an associated pharmacy at no cost to the Client by providing a HTW benefits card. For further information on the VDP, what drug benefits are covered by HTW, and to locate local pharmacies visit: <https://www.txvendordrug.com/providers>.
- C. Counseling and Education Services.** Enables the Client to understand the range of available services and how to access them, to make informed decisions, to reduce personal health risk, and to understand the importance of doctor recommended tests (included in **Attachment 1, Women's Health Program Policy and Procedure Manual**), health promotion and disease prevention strategies.
- D. Follow-up and Continuity of Care.**
 - 1. Tracking pending tests until results are reviewed by provider and patient is notified of results and recommended follow-up;
 - 2. Documentation of all tests and results in the Client health record;
 - 3. A mechanism to inform Clients promptly of test results that protects the patient's privacy and confidentiality while supporting and promoting timely, appropriate follow-up;
 - 4. A mechanism to track patient compliance with recommended follow-up care, schedule return visits, and follow up on missed appointments; and
 - 5. process to ensure compliance with all applicable state and local laws for disease reporting.
- E. Data Collection, Reporting and Performance.**
 - 1. Identify financial reconciliation for cost reimbursement
 - 2. Clinical Performance Measures
- F. Program Promotion and Outreach.** The program shall have an annual plan to inform the public of the purpose of the program and available services, enhance community understanding of its objectives, disseminate basic family planning and women's health care knowledge, enlist community support and recruit potential HTW Clients. The annual plan should be based on a community needs assessment and contain an evaluation strategy.
- G. Eligibility Services.** This service includes determining eligibility utilizing approved screening forms and assessed on annual basis.
- H. Follow-up and Continuity of Care.** This service includes tracking pending provider and Client results to ensure: pending results are reviewed and documented in Client

record; Clients are informed promptly of test results; provision of timely follow-up; compliance with recommended care; return visits; follow-up on missed appointments; and compliance with all applicable state and local laws for disease reporting, includes referral documentation and referral provider.

2.5 AWARD CONSIDERATION

To be considered for award, Applicants must execute **Exhibit A, Affirmations and Solicitation Acceptance v1.6** of this solicitation and provide all other required information and documentation set for on this solicitation.

- A. In developing a response to this RFA, all Applicants must complete and submit the following information as described in **Articles V, VI, VII, and IX** by the required deadline in **Section 3.1, Schedule of Events**:
1. Administrative Packet;
 2. Project Narrative;
 3. HTW Budget; and
 4. Exhibits that require submission (not exhibits that are for awareness and information purposes).

Respondents who submit an application package containing exceptions to any component of the RFA, including any revisions or amendments thereto, are highly discouraged to be considered for award. HHSC will not consider any exceptions submitted separately from a Response or after the application due date. Applicants must submit exceptions in **Exhibit G, Exceptions**

2.6 PERFORMANCE MEASURES

In alignment with the HHSC Business Plan, WHP encourages use of evidence-based practices and best available research in providing and delivering women's health services.

Grantees will:

- A. Track and measure implementation progress and performance using HHSC-approved performance measures and HHSC-approved reporting formats; and
- B. Agree to implement Project activities at quality levels consistent with industry standard and practice.

HHSC monitors performance of grant contracts awarded resulting from this solicitation, and noncompliance with performance requirements will be addressed per **Exhibit B, HHSC Uniform Terms and Conditions, Grant v 2.16.1**, and **Exhibit D, HHSC Special Conditions v 1.1 Grants**. The specific performance measures are included in the reports table below. HHSC will determine details including frequency, format, and submission method for each of the following reporting requirements:

REPORT	FREQUENCY
A. State of Texas HHSC Purchase Voucher and Supporting Schedule for HHSC Purchase Voucher (Form B-13)	Last business day of the month following the month in which expenses were incurred or services provided.
B. Financial Status Report (FSR)	Within 30 calendar days after the end of each quarter. Final FSR is due 45 calendar days after the end of the grant term.
C. Promotion/Outreach Plan	45 calendar days after the grant execution date.
D. Promotion/Outreach Annual Report	45 calendar days after the end of the grant period.

All Applicants receiving awards from this Solicitation must submit these reports timely and accurately throughout the grant term, regardless of Project progress or expenditure status, to report on progress and implementation.

2.7 PROHIBITIONS

Prohibitions apply to awarded funds. Grant funds may not be used to support the following services, activities, and costs:

- A. Inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- B. Lobbying;
- C. Any portion of the salary of, or any other compensation for, an elected or appointed government official;
- D. Vehicles or equipment for government agencies that are for general agency use and/or do not have a clear nexus to terrorism prevention, interdiction, and disruption (i.e. mobile data terminals, body cameras, in-car video systems, or radar units, etc. for officers assigned to routine patrol);
- E. Weapons, ammunition, tracked armored vehicles, weaponized vehicles or explosives (exceptions may be granted when explosives are used for bomb squad training);
- F. Admission fees or tickets to any amusement park, recreational activity or sporting event;
- G. Food, meals, beverages, or other refreshments, except for eligible per diem associated with grant-related travel or where pre-approved for working events;
- H. Membership dues for individuals;
- I. Any expense or service that is readily available at no cost to the grant Project;
- J. Any use of grant funds to replace (supplant) funds that have been budgeted for the same purpose through non-grant sources;
- K. Fundraising;
- L. Statewide projects;
- M. Any other prohibition imposed by federal, state, or local law; and
- N. The acquisition or construction of facilities.

2.8 STANDARDS

Respondents must comply with the requirements applicable to this funding source cited in the *Uniform Grant Management Standards* (UGMS), and all statutes, requirements, and guidelines applicable to this funding.

Respondents are required to conduct Project activities in accordance with federal and state laws prohibiting discrimination. Guidance for adhering to non-discrimination requirements can be found on the HHSC Civil Rights Office website at: <https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office>.

Upon request, a Respondent must provide the HHSC Civil Rights Office with copies of all the Respondent's civil rights policies and procedures. Respondent must notify HHSC's Civil Rights Office of any civil rights complaints received relating to performance under the grant no more than ten (10) calendar days after receipt of the complaint. Notice must be directed to:

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

A Respondent must ensure that its policies do not have the effect of excluding or limiting the participation of persons in the Respondent's programs, benefits or activities on the basis of national origin, and must 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.

2.9 DATA USE AGREEMENT

By entering into a grant agreement with HHSC as a result of this Solicitation, Respondent agrees to be bound by the terms of the Data Use Agreement attached as **Exhibit C, Data Use Agreement, v 8.5** and **Exhibit C-1, Attachment 2 HHSC Data Use Agreement Attachment 2: Security and Privacy Inquiry Form** and **Exhibit C-2, Data Use Agreement, v 8.5, Governmental Entity (if applicable)**.

2.10 NO GUARANTEE OF VOLUME, USAGE OR COMPENSATION

HHSC makes no guarantee of volume, usage, or total compensation to be paid to any Respondent under any awarded Grant, if any, resulting from this Solicitation. Any awarded Grant is subject to appropriations and the continuing availability of funds.

HHSC reserves the right to cancel, make partial award, or decline to award a Grant under this Solicitation at any time at its sole discretion.

There should be no expectation of additional or continued funding on the part of the Grant Recipient. Any additional funding or future funding may require submission of an application through a subsequent RFA.

HHSC Uniform Terms and Conditions Version 2.16.1
Published and Effective: March 26, 2019
Responsible Office: Chief Counsel



TEXAS

Health and Human Services

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

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

“[Effective Date](#)” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

“[GAAP](#)” means Generally Accepted Accounting Principles.

“[GASB](#)” means the Governmental Accounting Standards Board.

“[Grantee](#)” means the Party receiving funds under this Contract. May also be referred to as "Contractor" in certain attachments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Grantee.

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

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

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

1.2 INTERPRETIVE PROVISIONS

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

ARTICLE II. PAYMENT METHODS AND RESTRICTIONS

2.1 PAYMENT METHODS

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

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

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

2.2 FINAL BILLING SUBMISSION

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

2.3 FINANCIAL STATUS REPORTS (FSRs)

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

2.4 USE OF FUNDS

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

2.5 USE FOR MATCH PROHIBITED

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

2.6 PROGRAM INCOME

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

2.7 NONSUPPLANTING

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

2.8 ALLOWABLE COSTS

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

2.9 INDIRECT COST RATES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 RECAPTURE OF FUNDS

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

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

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

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

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

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

For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
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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://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 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.