

**INTERLOCAL COOPERATION CONTRACT**  
**HEALTH AND HUMAN SERVICES COMMISSION**

**CONTRACT NO. HHS001062800004**

The Health and Human Services Commission (“**HHSC**” or “**System Agency**”) and Harris County Public Health (“**Performing Agency**,” “**Local Government**,” or “**Grantee**”), each a “Party” and collectively the “Parties,” enter into the following contract for Integrated Family Planning Opioid Response Pilot Project services (the “Contract”) pursuant to the provisions of the “Interlocal Cooperation Act,” Chapter 791 of the Texas Government Code.

**I. CONTRACT REPRESENTATIVES**

**System Agency**

Name: Health and Human Services Commission – Office of Women’s Health  
Address: 1100 W. 49th Street, Mail Code 1938  
City and Zip: Austin, TX 78756  
Attention: Jennifer Underwood  
Email: Jennifer.Underwood@hhs.texas.gov  
Telephone: (512) 776-3708  
Agency Number: 529

**Local Government**

Name: Harris County Public Health  
Address: 2223 West Loop South  
City and Zip: Houston, TX 77027  
Attention: Michael Brannon  
Email: Michael.Brannon@phs.hctx.net  
Telephone: (832) 927-760  
Fax Number: (713) 439-6313  
Agency Number: 159

Either Party may change its addressee and address of its Contract Representative by notifying the other Party in writing.

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

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract. Specific services provided are described in **Attachment A – Statement of Work**.

**III. CONTRACT PERIOD AND RENEWAL**

- A. The Contract is effective on October 1, 2021 and terminates on September 30, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

- B. This Contract is contingent upon the continued availability of funding. If funds become unavailable during the term of this Contract, the System Agency may terminate this Contract without penalty.

#### **IV. AMENDMENT**

The Parties to this Contract may modify this Contract only through the execution of a written amendment signed by both Parties.

#### **V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES**

- A. The total amount of this Contract, including all Work Orders issued under it, shall not exceed **\$500,000.00**, as provided for in **Attachment B – Budget**.
- B. HHSC, in its sole discretion, may approve fund transfers between categories upon Grantee's written request. That request must include a detailed explanation that supports the need for the fund transfer. Grantee must seek HHSC's written approval prior to making any fund transfers.
- C. **Indirect Cost Rate:** If an Indirect Cost Rate Letter is required but it is not issued at the time of Contract execution, the Parties agree that the Indirect Cost Rate Letter will be incorporated into the Contract upon notice by HHSC to Grantee and will not require a contract amendment.

#### **VI. LEGAL NOTICES**

- A. Legal Notices under this Contract shall be deemed delivered when deposited 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**

Name: Health and Human Services Commission  
Address: P.O. Box 13247, Mail Code 1100  
City and Zip: Austin, Texas 78711-3247  
Attention: Office of the Chief Counsel

##### **Local Government**

Name: Harris County Public Health  
Address: 2223 West Loop South  
City and Zip: Houston, TX 77027  
Attention: Michael Brannon  
Email: Michael.Brannon@phs.hctx.net  
Telephone: (832) 927-760  
Fax Number: (713) 439-6313  
Agency Number: 159

- B. Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its addressee and address for receiving legal notice by notifying the other Party in writing.

## **VII. CERTIFICATIONS**

- A. The undersigned Parties certify that:

- (1) The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- (2) Each Party executing this Contract on its behalf has full power and authority to enter into this Contract.
- (3) The proposed arrangements serve the interest of efficient and economical administration of state government; and
- (4) The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

- B. The System Agency further certifies that it has statutory authority to contract for the services described in this contract under Texas Health and Safety Code Chapters 12 and 1001 and Texas Government Code Chapter 531, to the extent applicable.

- C. The Performing Agency further certifies that it has statutory authority to contract for the services described in this contract under Texas Government Code Chapter 791, The Interlocal Cooperation Act.

## **VIII. ADDITIONAL GRANT INFORMATION**

- A. Federal Award Identification Number (FAIN): H79TI081729

Federal Award Date: June 30, 2021

Name of Federal Awarding Agency: Centers for Disease Control and Prevention CFDA

Name and Number: Texas Targeted Opioid Response (TTOR), #93.788

- B. Any updates to the Additional Federal Grant Information will be incorporated into the Contract as of the effective date of the change. HHSC will send notice of any updates to the Grantee. In the event of conflict, the updates will control over the grant information in the Contract.

- C. **Texas Grant Management Standards (TxGMS)**

The Texas Grant Management Standards (TxGMS), published by the Texas Comptroller, replaces the Uniform Grant Management Standards (UGMS) and applies to grant agreements that begin on or after January 1, 2022. Additionally, as provided in TxGMS, if a state awarding agency adds funds to a grant that existed before March 1, 2021, TxGMS will apply to it from that point forward, unless the state awarding agency specifically indicates that TxGMS will not apply. Applicable references to UGMS in this Grant Agreement will be superseded by TxGMS accordingly.

**IX. CONTRACT SUPPLEMENTAL CONDITION**

A. **Attachment C, HHS Uniform Terms and Conditions – Grant (“UTCs”)**, of this Contract is revised as follows:

1. **Section 9.5A, Indemnity**, is deleted in its entirety and replaced with the following:

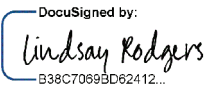
**TO THE EXTENT ALLOWED BY LAW, GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, 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.**

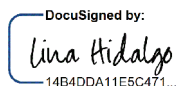
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS001062800004**

**HEALTH AND HUMAN SERVICES COMMISSION**

**Harris County Public Health**

DocuSigned by:  
  
B38C70899D62412...  
Signature  
Lindsay Rodgers  
Associate Commissioner, HDS  
Date October 13, 2021

DocuSigned by:  
  
14B4DDA11E5C471...  
Signature  
Lina Hidalgo  
County Judge  
Date October 13, 2021

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

- Attachment A – Statement of Work**
- Attachment B – Budget**
- Attachment B-1 – Budget Workbook**
- Attachment C – Uniform Terms and Conditions (Grant V. 2.16.1)**
- Attachment D – Data Use Agreement – Local Health Department**
- Attachment D-1 – Security Privacy Inquiry Form (V. 2.1)**
- Attachment E – Contract Affirmations (V. 1.8)**
- Attachment F – Indirect Cost Rate Letter (Use If Applicable)**
- Attachment G – Federal Assurances and Certifications**
- Attachment H – Certification Regarding Lobbying**

## **ATTACHMENT A – STATEMENT OF WORK**

### **I. PURPOSE**

1. The purpose of this program is to reduce opioid overdose death and improve access to opioid response services through partnership with Family Planning programs. Performing Agency will establish and provide oversight for a single-site Integrated Family Planning Opioid Response (“IFPOR”) program.
2. IFPOR programs combine prevention, treatment, and recovery support strategies with a primary focus on reducing overdose death. IFPOR programs implement programming using four key strategies: provide overdose reversal education and disseminate opioid overdose reversal medication; provide induction onto U.S. Food and Drug Administration approved medications used to treat opioid use disorder and link patients to ongoing care; provide peer recovery support services; and provide community health care provider follow-up and support.

### **3. GOALS**

- A. To prevent opioid overdose death and increase access to opioid treatment and recovery services.
- B. Achieve a target rate of 25 persons served per month when the IFPOR program is fully operational.

### **4. TARGET POPULATION**

- A. The primary population is all of the patients receiving Family Planning clinic services at risk for opioid overdose.

## **II. PERFORMING AGENCY RESPONSIBILITIES**

### **1. PROGRAM IMPLEMENTATION**

- A. Performing Agency will provide integrated opioid response prevention, treatment, and recovery services and activities to the identified primary population where the target population is located, as approved by the Health and Human Services Commission (“HHSC”).
- B. The IFPOR provider site must be actively serving persons within the target population no later than three months following the date of the interagency contract agreement execution.

### **2. BASIC STRATEGIES**

Performing Agency will utilize four basic strategies to provide integrated and collaborative opioid response services:

- A. **Strategy 1: Overdose Prevention Education and Naloxone** – This strategy provides education to patients, family, friends and supportive allies on how to recognize and respond to an overdose event and provides access to opioid overdose reversal medications.

Performing Agency will:

- i. Coordinate HHSC approved overdose prevention education trainings for the participating Family Planning clinic site. Require all relevant staff to receive training within six months of project start date using a training curriculum approved by System Agency, such as *A Harm Reduction Approach to Overdose Prevention*.

- a. **Deliverable: Submit a report in the fourth and seventh month of the project that details number of attendees and attendee profession type.**

- ii. Host at least one HHSC approved overdose prevention community education training prior to the tenth month of project start. The training should target community stakeholders that serve or have contact with individuals at risk for opioid overdose and can act as a source of overdose prevention education and/or overdose reversal medication (e.g., non-profits, law enforcement, fire departments, emergency medical services, criminal justice organizations, etc.). Performing agency shall distribute Naloxone kits to community organizations at the training or promote the MoreNarcanPlease.com website for online and remote events.

- a. **Deliverable: Provide a report no later than the 15th calendar day in the eleventh month of the Contract that includes information on the participating community organizations and units of Naloxone distributed.**

- iii. Provide and track overdose prevention education and training to all patients, any partners, or supportive allies, as possible. Performing agency shall distribute Naloxone kits to participants during in-person education and promote the MoreNarcanPlease.com website for online and remote education.

- a. **Deliverable: Submit monthly reports documenting provision of overdose prevention education and training including participant demographic information and units of Naloxone distributed in a HHSC approved format due on the 15th of the following month.**

iv. Purchase and make available for distribution, supplies that aid in reducing opioid overdose risk including but not limited to overdose reversal kits that include overdose reversal medications. These materials should be made available concurrent with individual and group overdose prevention education, and upon patient, partner, and supportive ally request. Fentanyl testing supplies may not be purchased with federal funds provided through this Contract.

**a. Deliverable: On an ongoing basis, use HHSC approved opioid overdose reversal application and documentation methods to track both provision of overdose reversal medication and overdose reversals.**

**B. Strategy 2: Induction onto Medications and Coordinated Treatment** – A person with opioid use disorder, and/or who is a survivor of an opioid overdose, may immediately experience withdrawal symptoms. Untreated symptoms often result in a recurrence to use of opioids leaving the person vulnerable to a fatal overdose. Symptoms of withdrawal can be managed with U.S. Food and Drug Administration (“FDA”)-approved medications used to treat opioid use disorder. This strategy provides induction onto medications used to treat opioid use disorder by the Performing Agency for up to four weeks from the initial screening and referral to longer-term treatment services from a licensed provider.

Performing Agency will:

i. Designate prescriber(s) of buprenorphine for the treatment of Opioid Use Disorder (“OUD”), and ensure the designated provider(s) prescribing physician, nurse practitioners, or physician assistants participate in DATA 2000 Waiver Training and obtain the waiver to prescribe provide buprenorphine for the treatment of opioid use disorder for each designated prescriber within 30 days of project start date.

**a. Deliverable: Submit a report that lists all waived prescribing practitioners due 45 days from Contract start date.**

ii. Provide universal screening for opioid use disorder.

**a. Deliverable: Submit documentation of each clinic’s policy requiring universal screening for OUD, a copy of the screening tool within one month of Contract start date, and monthly patient screening reports in a HHSC approved format due on the 15th of the following month.**



- iii. Within 24 hours of identification of a patient with OUD, make available through a process of informed consent, induction onto buprenorphine for uninsured and under-insured patients with a diagnosis of opioid use disorder.
  - a. **Deliverable: Submit documentation of each IFPOR site's diversion control policy, the informed consent form, and patient engagement and retention policies within one month of project start date. Submit monthly patient induction reports including individualized plans for long term care and referrals in a HHSC approved format due on the 15th of the following month.**
- iv. Establish Memorandum of Agreement ("MOA") with local Outreach Screening Assessment and Referral providers to facilitate admission into ongoing Medication Assisted Treatment.
  - a. **Deliverable: Any MOA must be made available upon request. NOTE: Performing Agency, as a provider of last resort, may elect to perform these functions in lieu of establishing MOAs.**
- v. Participate in an ongoing System Agency-approved peer mentorship program. Peer mentorship will be provided by both an EMS Opioid Response pilot program and Office Based Opioid Treatment provider.
  - a. **Deliverable: Submit monthly documentation of peer mentorship activities due on the 15th of the following month.**

C. **Strategy 3: Peer Recovery Support** – Through shared understanding, respect, and mutual empowerment, peer support workers help people become and stay engaged in the recovery process and reduce the likelihood of relapse. Peer support services can effectively extend the reach of treatment beyond the clinical setting into the everyday environment of those seeking a successful and sustained recovery process. This strategy integrates peer recovery support into a traditional primary care environment for up to eight weeks before referral to longer-term recovery services from a provider.

Performing Agency will:

- i. Coordinate HHSC approved recovery support education and training. Require all staff providing recovery services to receive Medicated Assisted Recovery Support ("MARS") training, and all other relevant staff to receive an overview of recovery and recovery support training approved by HHSC within six months of project start date.
  - a. **Deliverable: Submit a report during the fourth and seventh month of the project that details number of attendees,**

**documentation of completion when available, as well as attendee profession type no later than the 15<sup>th</sup> calendar day of that month.**

- ii. Contract with or staff certified peer recovery coaches. Recovery coaches must be available on an on-call basis to provide peer recovery support services for patients for a minimum of eight consecutive days after identification or induction and then once a week thereafter.

**a. Deliverable: Submit a monthly patient engagement and retention report in a HHSC approved format due on the 15<sup>th</sup> of the following month.**

- D. Strategy 4: Family Planning Follow-up and Support** – This strategy provides additional engagement and support activities to address unmet healthcare concerns expressed by the patient at risk for opioid overdose.

Performing Agency will:

- i. Provide follow-up and support by clinic staff to address any co-occurring opioid use disorder and primary healthcare issues to all patients identified as being at risk for opioid overdose or opioid use disorder. Qualified medical staff must be available to provide primary care consultation and support services for patients for a minimum of eight consecutive days after identification or induction and then once a week thereafter.

**a. Deliverable: Submit a monthly patient engagement and retention report in a System Agency-approved format due on the 15<sup>th</sup> of the following month.**

- 3. Performing Agency will perform and submit Government Performance and Results Act (“GPRA”) assessments for all participants who are considered engaged in treatment and recovery support services. If Performing Agency staff provide treatment services for less than four weeks or recovery services for less than eight weeks before referring patients to other providers, Performing Agency does not have to submit GPRA reports. If Performing Agency conducts a GPRA assessment, it must be conducted face to face unless a waiver is granted by the System Agency.

- A. Participants can be considered engaged in treatment if they have received treatment services for more than four weeks. Participants can be considered engaged in recovery if they have received recovery support for more than eight weeks or they have committed to long term coaching from the provider offering services.
- B. The GPRA assessments will be completed at intake, six-month follow-up, and discharge. Additionally, the six month follow-up may be conducted between months five through seven, depending on the individual’s availability. Performing

Agency and other state-funded providers will use Clinical Management for Behavioral Health Services (“CMBHS”) minimum requirements to conduct, document, and enter assessments as close to real time as possible.

- C. When the Performing Agency conducts GPRA Assessments, it shall maintain a minimum 80 percent follow-up rate for the six month assessment, regardless of discharge status, including: closed cases, administrative discharges, and participants who have left the program. If Performing Agency staff conduct an initial GPRA assessment, they shall conduct the follow up assessment, even if the patient is referred to a new provider and already receives services there.

**a. Deliverable: Performing Agency should upload their data into CMBHS within one calendar day, but no later than seven calendar days after the GPRA assessment is conducted.**

- 4. Performing Agency may offer incentives for completing the GPRA assessments mentioned below. The incentives may be offered as gift cards, transportation vouchers, and phone cards. Performing Agency shall not offer cash for incentives. Performing Agency shall document all incentives provided to clients and participants and provide to HHSC upon request.
  - A. The Completion of a GPRA six month follow-up interview (\$30 maximum per interview)
  - B. GPRA discharge interviews where program staff must search for a participant who has left the program or a participant who has dropped out of a program. (\$30 maximum per interview)
  - C. The incentives are not allowed for the following activities:
    - i. Routine GPRA discharge interviews.
    - ii. GPRA intake interviews.

## 5. SUBMISSION SCHEDULE AND REPORTING REQUIREMENTS

Performing Agency will:

- A. Submit all deliverables and supporting documentation to identified above by the due dates specified by the System Agency. Performing Agency will submit documents to [ttor@hhsc.state.tx.us](mailto:ttor@hhsc.state.tx.us) and to the assigned contract manager unless otherwise noted. Performing Agency’s duty to submit required documents will survive the termination or expiration of this Contract.

## III. CMBHS SYSTEM MINIMUM REQUIREMENTS

Unless other wised noted by HHSC, Performing Agency will:

1. Designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts and user roles to ensure that all the CMBHS user accounts are current.
2. Establish and maintain a security policy that ensures adequate system security and protection of confidential information.
3. Notify the CMBHS Help-desk within ten business days of any change to the designated Security Administrator or the back-up Security Administrator.
4. Ensure that access to CMBHS is restricted to only authorized users. Performing Agency shall, within 24 hours, remove access to users who are no longer authorized to have access to secure data.
5. In addition to CMBHS Helpdesk notification, Performing Agency shall submit a signed CMBHS Security Attestation Form and a list of Performing Agency's employees, contracted laborers, and subcontractors authorized to have access to secure data. The CMBHS Security Attestation Form shall be submitted electronically within 15 days of contract execution to the designated Substance Abuse Mailbox at SubstanceAbuse.Contracts@hhsc.state.tx.us.
6. Document prevention, treatment, and recovery activities and services of each participant and patient in the HHSC CMBHS system in accordance with the Contract and instructions provided by HHSC, unless otherwise noted. If CMBHS is unavailable, HHSC shall provide an alternative record keeping process. Performing Agency will ensure the following:
  - A. Maintain all documents that require participant or staff signature in the physical record for review by HHSC.
  - B. Upload documentation that is handwritten and not transcribed into the CMBHS record.
  - C. Document the following in CMBHS:
    - i. Client
    - ii. Progress Note;
    - iii. Medication Order (for patients inducted onto Buprenorphine);
    - iv. Consent for Release of Information (including revoke consent when appropriate);
    - v. Referral;
    - vi. Performance Measures;
    - vii. Screening (as needed);
    - viii. Psychoeducational Note to document group education and support group activities (as needed); and
    - ix. Administrative Note to document any other activities (as needed).
      - a. These data points are subject to change. Any updates to these above data points will be incorporated into the Contract as of the effective date of the change. HHSC will send notice of any updates to the Performing Agency. In the event of

conflict, the updates will control over data points in the Contract.

D. Attend System Agency training on CMBHS documentation.

#### IV. INVOICE AND PAYMENT REQUIREMENTS

Performing Agency will:

1. Submit monthly invoices to the email address specified on the IFPOR Monthly Voucher Packet for utilization of funds to support the activities within **Attachment A – Statement of Work**. The monthly invoice shall represent the activities conducted in the previous month.
2. All documents supporting the invoices shall be submitted to the email address specified on the IFPOR Monthly Voucher packet and to [ttor@hhsc.state.tx.us](mailto:ttor@hhsc.state.tx.us).
3. Contractors must submit these reports timely and accurately throughout the contract term, regardless of status, to report on progress and implementation.
- 4.

REPORT	FREQUENCY
A. Monthly Voucher Packet and Supporting documentation.	Last business day of the month following the month in which expenses were incurred or services provided. Final voucher is due 45 days after the end of the contract term.
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 contract term.

#### 5. Quarters for Cost Reimbursement FSR submission:

- A. Quarter 1: October - December
- B. Quarter 2: January - March
- C. Quarter 3: April - June
- D. Quarter 4: July – September

#### 6. IFPOR Cost Reimbursement Budget Revisions

- A. HHSC, in its sole discretion, may approve fund transfers between categories upon Performing Agency's written request. That request must include a detailed explanation that supports the need for the fund transfer. Performing Agency must seek HHSC's written approval prior to making any fund transfers



## ATTACHMENT B – BUDGET

1. Funding from The United States Health and Humans Services (“HHS”) and the Substance Abuse and Mental Health Services Administration (“SAMHSA”) fund the Health and Human Services Commission (“HHSC”) Substance Use Disorder project(s), which includes this Contract.
2. The total amount of this Contract, including all Work Orders issued under it, shall not exceed **\$500,000.00**. Total reimbursements will not exceed the HHSC Share, as stated in the Categorical Budget, for the term October 2021 through September 2022.
  - A. HHSC Share contain funds from the Texas Targeted Opioid Response (“TTOR”)
3. Performing Agency Share – Match is not required using State Targeted Response to the Opioid Crisis funds Cost Reimbursement Budget
  - A. HHSC shall provide written notification through technical guidance correspondence documenting approval of Performing Agency’s Fiscal Year 2022 Cost Reimbursement budget. The notification shall be incorporated into the Contract, and the information will be documented in CMBHS.
  - B. The Cost Reimbursement budget documents all approved and allowable expenditures; Performing Agency shall *only* utilize the funding detailed in Attachment B-1 – Budget Workbook for approved and allowable costs. If Performing Agency requests to utilize funds for an expense not documented on the approved budget, Performing Agency shall notify, in writing, the HHSC assigned contract representative and request approval prior to utilizing the funds. System Agency shall provide written notification regarding if the requested expense is approved.
  - C. If an Indirect Cost Rate Letter is required but it is not issued at the time of Contract execution, the Parties agree that the Indirect Cost Rate Letter will be incorporated into the Contract upon notice by HHSC to Grantee and will not require a contract amendment.
4. Any unexpended balance associated with any other HHSC Contract may not be applied to this HHSC Contract.

5/18/2021

**ATTACHMENT B: BUDGET SUMMARY (REQUIRED)**

Legal Name of Respondent:

Harris County Public Health

Budget Categories	HHSC IFPOR Budget (1)
A. Personnel	\$0
B. Fringe Benefits	\$0
C. Travel	\$0
D. Equipment	\$7,000
E. Supplies	\$31,795
F. Contractual	\$409,434
G. Other	\$6,771
H. Total Direct Costs	\$455,000
I. Indirect Costs	\$45,000
J. Total (Sum of H and I)	\$500,000

Number of Clients to be Served	300
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	Budget Category	Distribution Total	Budget Total	Budget Category	Distribution Total	Budget Total
Check Totals For:	Personnel	\$0	\$0	Fringe Benefits	\$0	\$0
	Travel	\$0	\$0	Equipment	\$7,000	\$7,000
	Supplies	\$31,795	\$31,795	Contractual	\$409,434	\$409,434
	Other	\$6,771	\$6,771	Indirect Costs	\$45,000	\$45,000

List any budget assumptions:

Revised: 6/23/2020



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 disbursal 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://hhspportal.hhs.state.tx.us/heartwebextr/hhscSau>

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

#### B. Financial Statements

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

i. HHS portal at:

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

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

## ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

### 5.1 GENERAL AFFIRMATIONS

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

### 5.2 FEDERAL ASSURANCES

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

### 5.3 FEDERAL CERTIFICATIONS

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

## ARTICLE VI. INTELLECTUAL PROPERTY

### 6.1 OWNERSHIP OF WORK PRODUCT

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

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

## **6.2 GRANTEE'S PRE-EXISTING WORKS**

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

## **6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

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

## **6.4 DELIVERY UPON TERMINATION OR EXPIRATION**

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

## **6.5 SURVIVAL**

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

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

### **7.1 BOOKS AND RECORDS**

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

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

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

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

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

## **7.4 SAO AUDIT**

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

## **7.5 CONFIDENTIALITY**

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

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

## **8.1 CONTRACT REMEDIES**

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

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

## **8.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination. The System Agency's right to terminate the Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

## **8.3 TERMINATION FOR CAUSE**

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



i. **Material Breach**

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

ii. **Failure to Maintain Financial Viability**

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

## **ARTICLE IX. MISCELLANEOUS PROVISIONS**

### **9.1 AMENDMENT**

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

### **9.2 INSURANCE**

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

### **9.3 LEGAL OBLIGATIONS**

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

#### 9.4 PERMITTING AND LICENSURE

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

#### 9.5 INDEMNITY

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

#### 9.6 ASSIGNMENTS

- A. Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Grantee from its obligations under the Contract.**
- B. Grantee understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.**



## 9.7 INDEPENDENT CONTRACTOR

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

## 9.8 TECHNICAL GUIDANCE LETTERS

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

## 9.9 DISPUTE RESOLUTION

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

## 9.10 GOVERNING LAW AND VENUE

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

## 9.11 SEVERABILITY

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

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

#### **9.12 SURVIVABILITY**

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

#### **9.13 FORCE MAJEURE**

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

#### **9.14 NO WAIVER OF PROVISIONS**

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

#### **9.15 PUBLICITY**

- A. Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.
- B. Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.
- C. Contractor is prohibited from using the Work for any Contractor or third party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

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

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

## **9.17 NO WAIVER OF SOVEREIGN IMMUNITY**

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

## **9.18 ENTIRE CONTRACT AND MODIFICATION**

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

## **9.19 COUNTERPARTS**

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

## **9.20 PROPER AUTHORITY**

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

## **9.21 E-VERIFY PROGRAM**

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

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

## **9.22 CIVIL RIGHTS**

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

- v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.
- B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

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

### 9.23 SYSTEM AGENCY DATA

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