

**SIGNATURE DOCUMENT FOR  
HEALTH AND HUMAN SERVICES COMMISSION  
CONTRACT NO. HHS001199600007**

This Agreement is between the Health and Human Services Commission (HHSC), an administrative agency within the executive branch of the State of Texas, having its principal office at 4601 West Guadalupe Street, Austin, Texas 78751, and Devoted HealthPlan of Texas, Inc. (Medicare Advantage Health Plan or MA Health Plan), an entity organized under the laws of the State of Texas and having its principal office at 20405 State Highway 249, Suite 375, Houston, Texas 77070. HHSC and MA Health Plan may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The purpose of this Agreement is to establish a contract where HHSC pays the MA Health Plan a capitated rate in exchange for services provided by the MA Health Plan, as described in Attachment A, Statement of Work.

**1. LEGAL AUTHORITY**

This Agreement is entered into pursuant to Texas Human Resources Code §32.021, Texas Government Code §531.021(a), and the Texas State Medicaid Plan.

**2. DURATION**

The Agreement is effective on January 1, 2023, and terminates on December 31, 2023, unless sooner terminated pursuant to the terms and conditions of the Agreement.

**3. STATEMENT OF WORK**

The Statement of Work is included as **Attachment A, Statement of Work**.

**4. PAYMENT FOR SERVICES**

MA Health Plan shall be paid a capitated rate pursuant to the conditions stated in **Attachment A, Statement of Work**. At HHSC's sole discretion or by agreement of the Parties as authorized under the Agreement, the payment terms may be amended.

**5. CMS APPROVAL**

This Agreement requires approval by the Centers for Medicare & Medicaid Services (CMS). The Parties agree that during the pendency of such approval, neither Party is obligated to perform under this Agreement, and any expenses, costs, or liabilities incurred because of execution, or reliance thereon, of the Agreement will be at the incurring Party's sole risk.

The Parties agree to act in good faith and, if needed, to take reasonable steps to modify the Agreement to secure CMS approval. While HHSC agrees to act in good faith and reasonably pursue CMS approval, the length and substance of that pursuit will be in

HHSC's sole discretion. If HHSC is unable to secure CMS approval, HHSC will not be responsible for any MA Health Plan expense or loss incurred from such inability, and the Agreement will terminate upon notice to the MCO of such failure.

## **6. CONTRACT REPRESENTATIVES**

The following will act as the representative authorized to administer activities under this Agreement on behalf of its respective Party.

### **HHSC's Contract Representative**

Shannon Peterson  
HHSC: Managed Care Contracts & Oversight  
4601 W Guadalupe St., Mail Code H 340  
Austin, Texas 78751  
CMD\_ManagedCareOrganizations@hhsc.state.tx.us

### **MA Health Plan's Contract Representative**

Paul Jernigan  
Devoted Healthplan of Texas, Inc.  
20405 State Highway 249, Suite 375  
Houston, Texas 77070  
pjernigan@devoted.com

## **7. NOTICE REQUIREMENTS**

- 7.1 All notices and other communication from MA Health Plan to HHSC must be in writing, include the HHSC Contract number, comply with all terms and conditions of the Agreement, and be delivered to HHSC's contract representative.
- 7.2 MA Health Plan must send legal notices to HHSC at the address below and provide a copy to the HHSC's contract representative:

Health and Human Services Commission  
Attn: Office of Chief Counsel  
4601 W. Guadalupe St., MC 1100  
Austin, TX 78751

- 7.3 Notices given by HHSC to MA Health Plan may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by HHSC. Notices sent by mail shall be deemed delivered when deposited by the HHSC in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the HHSC with a common carrier, overnight, signature required.
- 7.4 Notices given by MA Health Plan to HHSC shall be deemed delivered when received by HHSC.
- 7.5 Either Party may change its contract representative or legal notice contact by providing written notice to the other Party and without formally amending the Agreement.

**8. DOCUMENTS FORMING THE AGREEMENT**

8.1 The Agreement consists of the following documents, which are incorporated by reference and made a part of this Agreement for all purposes.

This executed Signature Document;  
Attachment A – Statement of Work;  
Attachment B – Texas Medicaid Summary of Benefits;  
Attachment C – Proposed MA Product Service Areas;  
Attachment D – Contract Affirmations;  
Attachment E – Federal Certification Regarding Lobbying; and  
Attachment F – Federal Assurances-Non-Construction Programs; and

8.2 Unless expressly stated otherwise in this Agreement, in the event of conflict, ambiguity or inconsistency between or among any documents, all HHSC documents take precedence over MA Health Plan’s documents.

**9. SIGNATURE AUTHORITY**

Each Party represents and warrants that the person executing this Agreement on its behalf has full power and authority to enter into this Agreement. Any services or work performed by MA Health Plan before this Agreement is effective or after it ceases to be effective are performed at the sole risk of MA Health Plan.

**SIGNATURE PAGE FOLLOWS**

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**SIGNATURE PAGE FOR  
HHSC CONTRACT NO. HHS001199600007**

**HEALTH AND HUMAN SERVICES COMMISSION**

**DEVOTED HEALTHPLAN OF TEXAS,  
INC.**

DocuSigned by:  
*Stephanie Stephens*  
By: B904BC75D62D4C8...

DocuSigned by:  
*Daniel Quintana*  
By: 2300E0978182489...

Name: Stephanie Stephens

Name: Daniel Quintana

Title: Chief Medicaid and CHIP Services Officer

Title: Chief of Medicare Markets

Date of signature: June 22, 2022

Date of signature: June 22, 2022

**ATTACHMENT A**

**STATEMENT OF WORK**

**MEDICARE ADVANTAGE PLAN**

**HHSC CONTRACT NO. HHS001199600007**

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    Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Agreement 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. .... 15

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**Article I. BACKGROUND**

The MA Health Plan has entered into a Medicare Advantage Plan Agreement (MA Agreement) with the Centers for Medicare and Medicaid Services (CMS). Pursuant to the Texas State Plan, HHSC is financially responsible for the Cost Sharing Obligations attributable to Dual Eligible Members enrolled in the MA Agreement. HHSC will pay the MA Health Plan a per Dual Eligible Member monthly capitated payment in exchange for the MA Health Plan’s payment of Cost Sharing Obligations to healthcare service providers. The MA Health Plan shall track and pay all eligible providers the Cost-Sharing Obligations incurred on behalf of Dual Eligible Members with applicable Medicaid eligibility categories covered under

**Medicare Advantage Plan Agreement**

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this Agreement. This Statement of Work sets out the responsibilities of the Parties for Dual Eligible Members enrolled in the MA Health Plan Medicare Advantage Plan.

## **Article II. DEFINITIONS**

**Coinsurance** is a percentage of costs normally paid by a member for medical services provided under an MA Product. Coinsurance amounts must comply with the terms of the MA Agreement.

**Co-payments** are fixed dollar amounts that a member normally must pay for a medical service provided under a Medicare Advantage Product. Co-payment amounts must comply with the terms of the MA Agreement.

**Cost Sharing Obligations** mean those financial payment obligations incurred by HHSC in satisfaction of the Deductibles, Coinsurance, and Co-payments for the Medicare Part A and Part B programs with respect to Dual Eligible Members. Effective January 1, 2020, Cost Sharing Obligations include co-insurance provided during a Dual Eligible Member's Medicare-covered stay in a skilled nursing facility when the Dual Eligible Member is enrolled in a MA Health Plan that is contracted with HHSC and receives Medicaid services under the State's fee-for-service model. For purposes of this Agreement, Cost Sharing Obligations do not include: (1) Medicare premiums that HHSC is required to pay under the Texas State Plan on behalf of Dual Eligible Members, (2) wrap-around services that are covered by Medicaid, and (3) Coinsurance for Part A services provided during a Dual Eligible Member's Medicare-covered stay in a nursing facility when the member is also enrolled in STAR+PLUS for their Medicaid services. Payment of coinsurance to the skilled nursing facility for a Part A skilled stay is covered by the STAR+PLUS MCO.

**Deductible** means fixed dollar amounts that a member normally must pay out-of-pocket before the costs of services are covered by an MA Health Plan. Deductibles must comply with the terms of the MA Agreement.

**Dual Eligible** means a Medicare managed care recipient who is also eligible for Medicaid, and for whom HHSC has a responsibility for payment of Cost Sharing Obligations under the Texas State Plan. For purposes of this Agreement, Dual Eligibles are limited to the following categories of recipients: QMB Only, QMB Plus, and SLMB Plus.

**Dual Eligible Member** means a Dual Eligible who is eligible to participate in, and voluntarily enrolled in, the MA Health Plans MA Product.

**Medicare Advantage Agreement (MA Agreement)** means the Medicare Advantage Plan Agreement between the MA Health Plan and CMS to provide an MA Product.

**Medicare Advantage Product (MA Product)** means the Medicare Part C and other health plan services provided to members pursuant to an MA Agreement.

**Network Provider** means a provider who has a contract with the MA Health Plan, or its subcontractor, for the delivery of healthcare services to the MA Health Plan's members.

**Qualified Medicare Beneficiary (QMB)** means an individual who is entitled to Medicare Part A, meets federal income criteria, and whose resources do not exceed twice the Supplemental Security Income (SSI) limit. A QMB is eligible for Medicaid payment of Medicare premiums, Deductibles, Coinsurance, and Co-payments (except for Medicare Part D) (collectively, these benefits are called "QMB Medicaid Benefits"). Categories of QMBs are:

- **QMB Only** – means a QMB who does not qualify for any additional QMB Medicaid Benefits.
- **QMB Plus** – means a QMB who also meets the financial criteria for full Medicaid coverage. QMB Plus individuals are entitled to QMB Medical Benefits, plus all benefits available under the Texas State Plan for fully eligible Medicaid recipients.

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**Specified Low-income Medicare Beneficiary (SLMB)** means an individual who is entitled to Medicare Part A and meets federal income and resource criteria. A SLMB is eligible for payment of Medicaid payment of Medicare Part B premiums. Categories of SLMBs are:

- **SLMB Only** – means a SLMB does not qualify for any additional Medicaid benefits.
- **SLMB Plus** – means a SLMB who also meets the financial criteria for full Medicaid Coverage. SLMB Plus individuals are entitled to payment of Medicare Part B premiums, plus all benefits available under the Texas State Plan for fully eligible Medicaid recipients.

### Article III. MA HEALTH PLAN'S OBLIGATIONS

#### 3.01 MA Health Plan Offer to Dual Eligibles Residing in CMS-approved Service Areas.

(a) The MA Health Plan must offer the MA Product to Dual Eligibles who: (1) reside in a Texas service area where the MA Health Plan has been authorized, per CMS, to offer the MA Health Plan, and (2) are otherwise eligible to receive the MA Product. A service area is the geographic area in which member or potential member reside and for whom the MA Health Plan is approved by CMS to provide services by CMS.

(b) The MA Health Plan has applied to the CMS to provide the MA Product in the Texas service areas described in **Attachment C, Proposed MA Product Service Areas**. No later than fifteen (15) business days after CMS approves or denies the MA Health Plan's application to provide the MA Product in a Texas service area, the MA Health Plan must provide HHSC with written notice of such CMS action. The MA Health Plan represents and agrees that the information included in **Attachment C, Proposed MA Product Service Areas**, is accurate and complete as of the date of MA Health Plan's execution of this Agreement. Additionally, the MA Health Plan must notify HHSC of all amendments to the MA Agreement's Texas service areas including but not limited to the addition, deletion, or modification of a Texas service area, CMS contract code, plan identification, or plan name. The MA Health Plan must notify HHSC no later than fifteen (15) business days after the effective date of such an amendment to the MA Agreement.

(c) No later than fifteen (15) business days after receiving the MA Health Plan notice of CMS' approval of or amendment to one or more Texas service areas, HHSC will notify the MA Health Plan of the effective date of coverage of the Texas service area(s) under this Agreement. All modifications requiring changes to HHSC's system(s) will be effective prospectively. The MA Health Plan must begin covering Cost Sharing Obligations for Dual Eligible Members in the Texas service areas that are added to the scope of this Agreement on the effective date identified in HHSC's notice, and HHSC will pay for these Dual Eligible Members in accordance with Article V.

#### 3.02 Enrollment.

(a) Unless a Dual Eligible is otherwise not eligible to enroll in the MA Product under federal Medicare Advantage plan rules, the MA Health Plan must accept all Dual Eligibles who select the MA Health Plan's MA Product without regard to physical or mental condition, health status or need for or receipt of healthcare services, claims experience, medical history, genetic information, disability, marital status, age, sex, national origin, race, color, or religion, and must not use any policy or practice that has the effect of such discrimination.

(b) MA Health Plan must provide enrollment files of Dual Eligible Members covering monthly reporting periods. The files must comply with State formatting requirements. After the conclusion of a

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monthly reporting period, the MA Health Plan must submit the enrollment file no earlier than the first business day and no later than twenty (20) calendar days following the expiration of a three (3)-month lag period. HHSC will then verify eligibility of the Dual Eligible Members with HHSC's eligibility system and CMS enrollment information and return the validated enrollment information to the MA Health Plan by the fifth business day of the month following receipt of the enrollment file. By way of example, the MA Health Plan must submit the January 2023 enrollment file no earlier than May 1, 2023 (the first business day of the month following a three-month lag period) and no later than May 20, 2023. HHSC will return validated enrollment information to the MA Health Plan no later than June 7, 2023 (the fifth business day of the month).

If the enrollment file does not include a Dual Eligible Member by the 20th calendar day deadline, the MA Health Plan: (1) will lose the opportunity to receive the per member per month (PMPM) capitation payment for such Dual Eligible Member for the reporting period, and (2) will be responsible for all Cost Sharing Obligations for such Dual Eligible Member for the reporting period.

### *3.03 Healthcare Services.*

(a) The MA Health Plan must provide the MA Product to all Dual Eligible Members who are qualified to receive such services under the terms of the MA Agreement.

The MA Health Plan must pay all eligible Network Providers and out-of-network providers the Cost Sharing Obligations incurred on behalf of Dual Eligible Members. Except as provided in Section 3.03(b), the amount or method of payment for Cost Sharing Obligations included in the agreements with Network Providers or out-of-network providers may differ between agreements.

(b) In accordance with the Medicaid State Plan, Supplement 1 to Attachment 4.19-B, the amount of the MA Health Plan's payment of Cost Sharing Obligations for the following services must be the same as or greater than the Medicare rate for the services:

1. behavioral health services provided by psychiatrists, psychologists, and licensed clinical social workers;
2. the services identified by codes R0070 and R0075, relating to the transport of portable x-ray equipment; and
3. ambulance services, including ground and air ambulance services.

### *3.04 Copies of MA Agreement.*

Upon execution of this Agreement, the MA Health Plan must provide HHSC with a copy of the MA Agreement and all attachments. The MA Health Plan must provide HHSC with the actuarial value for Medicare Cost Sharing Obligations for the projection period consistent with the CMS bid submission. The MA Health Plan agrees to provide HHSC a summary of its benefit designs for Dual Eligible Members as well as financial data in a set format that allows HHSC, in HHSC's sole determination, to determine the cost of services and utilization experience to calculate the PMPM rates. In addition, the MA Health Plan must also provide all amendments to the MA Agreement or the Bid Pricing Tool to HHSC within fifteen (15) business days of receiving a request for this information.

### *3.05 Cost Sharing Protections for Dual Eligible Members.*



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(a) The MA Health Plan must notify its Network Providers, in writing (via a provider manual, provider bulletin, or other contractual document) that Network Providers:

- (1) must not hold a Dual Eligible Member liable for the Cost Sharing Obligations; and
- (2) must accept as payment in full the MA Health Plan's payment of the Cost Sharing Obligations and must not seek additional payment from HHSC or a Dual Eligible Member for healthcare services covered under the MA Product offered by the MA Health Plan and provided to the Dual Eligible Member.

#### 3.06 Compliance with Laws.

The MA Health Plan must comply with all applicable laws, rules, policies, and regulations governing this Agreement, including all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended or modified.

#### 3.07 Privacy, Security, and Breach Notification

(a) "Breach" means the acquisition, access, use, or disclosure of Confidential Information in an unauthorized manner which compromises the security or privacy of the Confidential Information.

"HHS Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the MA Health Plan electronically or through any other means that consists of or includes any of all of the following:

- (1) Dual Eligible Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information (as these terms are defined in 45 C.F.R. §160.103).
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information (as defined in Internal Revenue Service Publication 1075);
- (5) Personal Identifying Information (as defined in Texas Business and Commerce Code Chapter 521);
- (6) Social Security Administration Data (defined as information received from a Social Security Administration federal agency system of records), including, without limitation, Medicare or Medicaid information (defined as information relating to an applicant or recipient of Medicare or Medicaid benefits);
- (7) Substance Use Disorder Treatment Records as defined in 42 C.F.R. Part 2;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

(b) Any HHS Confidential Information received by the MA Health Plan under this Agreement may be disclosed only in accordance with applicable law and as authorized in this Agreement. By signing this Agreement, the MA Health Plan certifies that the MA Health Plan is, and intends to remain for the term of this Agreement, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation, the following:

- (1) Title 5 United States Code (USC) Part I, Chapter 5, Subchapter II, Section 552a, Records Maintained on Individuals, The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988;

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- (2) Title 26 USC, Internal Revenue Code;
- (3) Title 42 USC Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (4) Title 42 USC Chapter 7, the relevant portions of the Social Security Act;
- (5) Title 42 USC Chapter I, Subchapter A, Part 2, Confidentiality of Substance Use Disorder Patient Records;
- (6) Title 45 Code of Federal Regulations (CFR) Chapter A, Subchapter C, Part 160, General Administrative Requirements;
- (7) Title 45 CFR Chapter A Subchapter C, Part 164, Security and Privacy;
- (8) Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information;
- (9) Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information;
- (10) Texas Business and Commerce Code Title 11, Subtitle B, Chapter 521 Unauthorized Use of Identifying Information;
- (11) Texas Government Code, Title, 5, Subtitle A, Chapter 552, Public Information, as applicable;
- (12) Texas Health and Safety Code, Title 2, Subtitle D, Chapter 81, Section 81.006, Funds.
- (13) Texas Health and Safety Code Title 2, Subtitle I, Chapter 181, Medical Records Privacy;
- (14) Texas Health and Safety Code Title 7, Subtitle E, Chapter 611, Mental Health Records;
- (15) Texas Human Resources Code, Title 2, Subtitle A, Chapter 12, Section 12.003, Disclosure of Information Prohibited;
- (16) Texas Occupations Code, Title 3, Health Professions, as applicable;
- (17) Constitutional and common law privacy; and
- (18) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Agreement.
- (19) The MA Health Plan further agrees that the MA Health Plan will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

(c) *Cybersecurity Training*- All of the MA Health Plan's authorized users, workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code, Title 10, Subtitle B, Chapter 2054, Section 2054.5192, Cybersecurity Training Required: Certain State MA Health Plans, by the Texas Department of Information Resources.

(d) *Business Associate Agreement*- The MA Health Plan will ensure that any Subcontractor of the MA Health Plan who has access to HHSC Confidential Information will sign a HIPAA-compliant Business Associate Agreement with the MA Health Plan, and the MA Health Plan will submit a copy of that Business Associate Agreement to HHSC upon request.

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(e) *MA Health Plan's Incident Notice, Reporting and Mitigation*- The MA Health Plan's obligation begins at discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information. "Incident" is defined as an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. The MA Health Plan's obligation continues until all effects of the Incident are resolved to HHSC's satisfaction, hereafter referred to as the "Incident Response Period".

(f) *Notification to HHSC*- The MA Health Plan must notify HHSC within the timeframes set forth in Section (1) below. The MA Health Plan must require that its Subcontractors and MA Health Plans take the necessary steps to assure that the MA Health Plan can comply with all of the following Incident notice requirements.

(1) Initial Incident Notice:

Within twenty-four (24) hours of discovery, or in a timeframe otherwise approved by HHSC in writing, the MA Health Plan must preliminarily report on the occurrence of an Incident to the HHSC Privacy and Security Officers via email at: [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us).

This initial notice must, at a minimum, contain:

(i) all information reasonably available to MA Health Plan about the Incident, (ii) confirmation that the MA Health Plan has met any applicable federal Breach notification requirements, and

(iii) a single point of contact for the MA Health Plan for HHSC communications both during and outside of business hours during the Incident Response Period.

(2) Formal Incident Notice:

No later than three (3) Business Days after discovery of an Incident, or when the MA Health Plan should have reasonably discovered the Incident, the MA Health Plan must provide written formal notification to HHSC using the Potential Privacy/Security Incident Form which is available on the HHSC website at <https://hhsconnection.hhs.texas.gov/rights-responsibilities/office-chief-counsel/privacy>. The formal notification must include all available information about the Incident, and the MA Health Plan's investigation of the Incident.

(g) *MA Health Plan Investigation, Response, and Mitigation*- The MA Health Plan must fully investigate and mitigate, to the extent practicable and as soon as possible or as indicated below, any Incident. At a minimum, the MA Health Plan will:

- (1) Immediately commence a full and complete investigation;
- (2) Cooperate fully with HHSC in its response to the Incident;
- (3) Complete or participate in an initial risk assessment;
- (4) Provide a final risk assessment;
- (5) Submit proposed corrective actions to HHSC for review and approval;
- (6) Commit necessary and appropriate staff and resources to expeditiously respond;
- (7) Report to HHSC as required by HHSC and all applicable federal and state laws for Incident response purposes and for purposes of HHSC's compliance with report and notification requirements, to the satisfaction of HHSC;

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- (8) Fully cooperate with HHSC to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
- (9) Fully cooperate with HHSC's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;
- (10) Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
- (11) Provide HHSC with a final report on the Incident explaining the Incident's resolution.

*(h) Breach Notification to Individuals and Reporting to Authorities*

(1) In addition to the notices required in this section, the MA Health Plan must comply with all applicable legal and regulatory requirements in the time, manner, and content of any notification to individuals, regulators, or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required in Title 45 CFR Chapter A, Subchapter C Part 164, Subpart D Notification in the Case of Breach of Unsecured Protected Health Information and Texas Business and Commerce Code, Title 11, Subtitle B, Chapter 521, Section 521.053(b), Notification Required Following Breach of Security of Computerized Data, or as specified by HHSC following an Incident.

(2) The MA Health Plan must assure that the time, manner, and content of any Breach notification required by this section meets all federal and state regulatory requirements.

(3) Breach notice letters must be in the MA Health Plan's name and on the MA Health Plan's letterhead and must contain contact information to obtain additional information, including the name and title of the MA Health Plan's representative, an email address, and a toll-free telephone number.

(4) The MA Health Plan must provide HHSC with copies of all distributed communications related to the Breach notification at the same time the MA Health Plan distributes the communications.

(5) The MA Health Plan must demonstrate to the satisfaction of HHSC that any Breach notification required by applicable law was timely made. If there are delays outside of the MA Health Plan's control, the MA Health Plan must provide written documentation to HHSC of the reasons for the delay.

**Article IV. HHSC'S OBLIGATIONS**

*4.01 Payment*

HHSC will pay the MA Health Plan in accordance with the terms of this Agreement, including those found in Article V.

*4.02 Eligibility Verification*

(a) HHSC will verify Medicaid eligibility by the fifth business day of the month following the receipt of the MA Health Plan's monthly enrollment file, in accordance with Section 3.02(b).

(b) To verify Medicaid eligibility of an individual member, HHSC agrees to provide the MA Health Plan with real-time access to HHSC's claims administrator's Medicaid eligibility verification system.

*4.03 Service Areas.*

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HHSC authorizes the MA Health Plan to add the MA Product to Texas service areas that are not identified in **Attachment C, Proposed MA Product Service Areas**, provided it receives prior CMS approval and complies with the notice requirements specified in this Agreement.

**Article V. COMPENSATION***5.01 Payment.*

(a) HHSC will pay the MA Health Plan a PMPM capitation payment of **\$10.00** as payment for the Cost Sharing Obligations for each Dual Eligible Member who is enrolled in the MA Product in a CMS-authorized Texas service area and confirmed by HHSC as eligible to participate, regardless of whether the Dual Eligible Member receives healthcare services during the period covered by the payment. HHSC will pay each PMPM capitation payment to MA Health Plan within thirty (30) calendar days after HHSC returns the validated enrollment file to the MA Health Plan in accordance with Section 3.02(b).

(b) If the MA Health Plan includes a Dual Eligible Member on the monthly enrollment file by the deadline set forth in Section 3.02 and HHSC fails to pay the PMPM capitation payment for such Dual Eligible Member based on State error, HHSC will pay the MA Health Plan any outstanding PMPM capitation payment owed thirty (30) calendar days after receiving written notice of the error from the MA Health Plan.

(c) The PMPM capitation payment will be payment in full for the Cost Sharing Obligations attributable to a Dual Eligible Member as well as all costs associated with the administration of this Agreement. Neither the MA Health Plan nor its Network Providers will seek additional payment from HHSC, Dual Eligible Members, or healthcare providers for such Cost Sharing Obligations.

*5.02 Rights of Set-off.*

With respect to any amount that HHSC in good faith determines should be reimbursed to it or is otherwise payable to it by the MA Health Plan pursuant to this Agreement, HHSC may deduct the entire amount owed against the charges otherwise payable or expenses owed to it under this Agreement until such time as the entire amount determined to be owed has been paid. HHSC will provide the MA Health Plan with written notice of and supporting information concerning such offsets and will be relieved of its obligation to make any payments to the MA Health Plan until such time as all such amounts have been paid to HHSC.

*5.03 Modification of Payment.*

The PMPM capitation rate is subject to modification in accordance with Section 9.07 if HHSC reasonably determines that: (1) changes in state or federal laws, rules, regulations, or policies materially affect the rate; (2) an amendment, modification, or change to the MA Agreement materially affects the rate; or (3) other information justifies a modification to the rate. HHSC will provide the MA Health Plan notice of a modification to the rate sixty (60) calendar days prior to the effective date of the change, unless HHSC determines that circumstances warrant a shorter notice period. If the MA Health Plan does not accept the rate change, the parties may terminate this Agreement in accordance with Article VIII.

**Article VI. REMEDIES***6.01 Understanding and expectations.*

## Medicare Advantage Plan Agreement

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The remedies described in this Article are directed to MA Health Plan's timely and responsive performance of this Agreement, and the creation of a flexible and responsive relationship between the parties. The MA Health Plan will be subject to performance evaluation by HHSC. Performance reviews may be conducted at the discretion of HHSC at any reasonable time and may relate to any responsibility or requirement of the MA Health Plan under this Agreement. Any responsibilities or requirements not fulfilled by the MA Health Plan may be subject to the remedies set forth in this Agreement.

### 6.02 Tailored remedies.

#### (a) Understanding of the Parties.

The MA Health Plan agrees and understands that HHSC may pursue tailored contractual remedies for noncompliance with this Agreement, to the extent that noncompliance is not due to adherence with the requirements of the MA Agreement. At any time and at its discretion, HHSC may impose or pursue one or more remedies for each instance of noncompliance and will determine remedies on a case-by-case basis. HHSC's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that HHSC may have pursuant to this Agreement or at law or equity.

#### (b) Corrective action plan.

(1) At its discretion, HHSC may require the MA Health Plan to submit a written plan ("Corrective Action Plan") to correct or resolve a deficiency or breach of this Agreement, as determined by HHSC.

(2) The Corrective Action Plan must provide:

- (A) A detailed explanation of the reasons for the cited deficiency;
- (B) The MA Health Plan's assessment or diagnosis of the cause; and
- (C) A specific proposal to cure or resolve the deficiency; and
- (D) The MA Health Plan's timeline for cure or resolution of the deficiency.

(3) The Corrective Action Plan must be submitted by the deadline set forth in HHSC's written request for a Corrective Action Plan, unless an extension is granted by HHSC.

(4) The Corrective Action Plan is subject to approval by HHSC.

(5) HHSC will notify the MA Health Plan in writing of whether HHSC approves of the MA Health Plan's proposed Corrective Action Plan.

(6) If HHSC approved the MA Health Plan's proposed Corrective Action Plan, HHSC may condition such approval on completion of tasks in the order of priority that HHSC may reasonably prescribe,

(7) If HHSC does not approve the MA Health Plan's proposed Corrective Action Plan, HHSC may:

- (A) Disapprove portions of the MA Health Plan's proposed Corrective Action Plan; or
- (B) Require additional or different corrective actions relating to the breach.

Notwithstanding the submission and acceptance of a Corrective Action Plan, the MA Health Plan remains responsible for achieving all contractual requirements.

(8) HHSC's acceptance of a Corrective Action Plan under this Section will not:

- (A) Excuse the MA Health Plan's prior substandard performance;
- (B) Relieve the MA Health Plan of its duty to comply with performance standards; or

**Medicare Advantage Plan Agreement**

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(C) Prohibit HHSC from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.

(c) Administrative remedies.

(1) At its discretion, HHSC may impose one or more of the following remedies for each item of noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:

(A) Assess liquidated damages up to \$500 per month or portion of the month the MA Health Plan fails to provide a complete copy of the MA Agreement and all amendments, modifications, or changes as required by Section 3.05, or, in the case of all other breaches of this Agreement, assess liquidated damages up to \$100 per calendar day until the breach is cured to the satisfaction of HHSC;

(B) Conduct accelerated monitoring of the MA Health Plan. Accelerated monitoring includes more frequent or more extensive monitoring by HHSC or its agent;

(C) Require additional, more detailed data or reports to be submitted by the MA Health Plan;

(D) Withhold or recoup payment to the MA Health Plan; or

(E) Terminate the Agreement in accordance with Article VIII.

(2) For purposes of this Agreement, an item of noncompliance means a specific action of the MA Health Plan that:

(A) Violates any provision of this Agreement;

(B) Represents a failure of MA Health Plan to be reasonably responsive to a request by HHSC for information, assistance, or support relating to this Agreement within the timeframe specified by HHSC.

(3) HHSC will provide notice to the MA Health Plan of its assessment of an administrative remedy, with the exception of accelerated monitoring, which may be unannounced.

(d) Damages.

(1) HHSC will be entitled to actual or liquidated damages resulting from the MA Health Plan's failure to comply with any of the terms of this Agreement. In some cases, the actual damage to HHSC as a result of the MA Health Plan's failure to meet any aspect of the responsibilities of this Agreement is difficult or impossible to determine with precise accuracy. Therefore, liquidated damages will be assessed in writing against and paid by the MA Health Plan in accordance with Section 7.02(c)(1)(A)–(B). Liquidated damages may be assessed if HHSC determines such failure is the fault of the MA Health Plan (including the MA Health Plan's subcontractors or agents) and is not materially caused or contributed to by HHSC or its agents. If at any time, HHSC determines the MA Health Plan has not met any aspect of the responsibilities of this Agreement due to mitigating circumstances, HHSC reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and must be signed by the appropriate executive of HHSC.

(2) The liquidated damages prescribed in Section 7.02(c)(1)(A)–(B) are not intended to be in the nature of a penalty; but are intended to be reasonable estimates of HHSC's projected financial loss and damage resulting from the MA Health Plan's nonperformance, including financial loss as a result of project delays. Accordingly, in the event the MA Health Plan fails to perform in accordance with this Agreement, HHSC may assess liquidated damages only as provided in this Article.

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(3) If the MA Health Plan fails to perform any of the responsibilities described in this Agreement, HHSC may assess liquidated damages for each occurrence of a liquidated damages event, to the extent consistent with HHSC's tailored approach to remedies and Texas law.

(4) HHSC may elect to collect liquidated damages:

(A) Through direct assessment and demand for payment delivered to the MA Health Plan;  
or

(B) By deduction of amounts assessed as liquidated damages as set-off against payments then due to the MA Health Plan or that become due at any time after assessment of the liquidated damages. HHSC will make deductions until the full amount payable by the MA Health Plan is received by HHSC.

(e) Equitable Remedies.

(1) The MA Health Plan acknowledges that, if the MA Health Plan breaches its material obligation under this Agreement, HHSC may be irreparably harmed. In such a circumstance, HHSC may proceed directly to court to pursue equitable remedies.

(2) If a court of competent jurisdiction finds that the MA Health Plan breached any such obligations, the MA Health Plan agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by the MA Health Plan and restraining it from any further breaches.

**Article VII. DISPUTE RESOLUTION**

*7.01 General Agreement of the Parties.*

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under this Agreement. The Parties express their mutual commitment to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Section.

*7.02 Duty to Negotiate in Good Faith.*

Any dispute that in the judgment of any Party to this Agreement may materially or substantially affect the performance of this Agreement will be reduced to writing and delivered to the other Party within ten business days. The Parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the Parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the Parties shall be reduced to writing and delivered to all Parties within ten business days.

*7.03 Claims for Breach of Agreement.*

(a) *General Requirement.* As required by Tex. Gov't Code Chapter 2260, any claim by the MA Health Plan for breach of this Agreement must be resolved in accordance with the dispute resolution process established by HHSC in accordance with Tex. Gov't Code Chapter 2260.

(b) *Negotiation of Claims.* The Parties expressly agree that if the MA Health Plan's claim for breach of this Agreement cannot be resolved by the Parties in the ordinary course of business or through the use



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of all reasonable and informal means will be submitted to the negotiation process provided in Tex. Gov't Code Chapter 2260, Subchapter B.

(1) To initiate the process, the MA Health Plan must submit written notice to HHSC that specifically states that the MA Health Plan invokes the provisions of Tex. Gov't Code Chapter 2260, Subchapter B. The notice must comply with the requirements of Tex. Gov't Code Chapter 2260, Subchapter B and 1 Tex. Admin. Code Chapter §391.621.

(2) The Parties agree that the MA Health Plan's compliance with Tex. Gov't Code Chapter 2260, Subchapter B, will be a condition precedent to the filing of a contested case proceeding under Tex. Gov't Code Chapter 2260, Subchapter C.

(c) *Contested Case Proceedings.* The contested case process provided in Tex. Gov't Code Chapter 2260, Subchapter C, will be the MA Health Plan's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC if the Parties are unable to resolve their disputes under Section 7.03(b). The Parties expressly agree that compliance with the contested case process provided in Tex. Gov't Code Chapter 2260, Subchapter C, will be a condition precedent to seeking consent to sue HHSC from the Texas Legislature under Chapter 107, Texas Civil Practices and Remedies Code. Neither the execution of this Agreement by HHSC nor any other conduct of any representative of HHSC relating to this Agreement will be considered a waiver of HHSC's sovereign immunity to suit.

(d) *HHSC Rules.* The submission, processing, and resolution of MA Health Plan's claim is governed by 1 Tex. Admin. Code §391.621, Subchapter F, in addition to the provisions of Tex. Gov't Code Chapter 2260.

(e) *MA Health Plan's Duty to Perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by the MA Health Plan of any duty or obligation with respect to the performance of this Agreement. Any changes to the Agreement as a result of a dispute resolution will be implemented in accordance with Section 9.07.

### **Article VIII. TERMINATION**

8.01 This Agreement may be terminated by mutual written agreement of the Parties.

8.02 HHSC may terminate the Agreement in whole or in part and at any time when, in its sole discretion, it determines that termination is in the best interests of HHSC. The termination will be effective on the date specified in HHSC's notice of termination. HHSC will provide the MA Health Plan written notice of this termination at least thirty (30) calendar days prior to the effective date of termination, unless HHSC determines that circumstances warrant a shorter notice period.

8.03 In addition to the reasons set forth above or as otherwise provided by the U.S. Bankruptcy Code, or any successor law, HHSC may terminate this Agreement upon the following conditions:

(a) HHSC may terminate this Agreement at any time if a court of competent jurisdiction finds MA Health Plan 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 MA Health Plan's duties under this Agreement.

(b) HHSC may terminate this Agreement at any time following the determination by a competent judicial or quasi-judicial authority and MA Health Plan's exhaustion of all legal remedies that MA Health Plan, its employees, agents, subcontractors, or representatives have either offered or given anything of value to an officer or employee of HHSC or the State of Texas in violation of state law. For purposes of this Section, a "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited

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to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with state or federal law.

(c) HHSC may terminate the Agreement if funds for the continued fulfillment of this Agreement by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise. HHSC will provide the MA Health Plan written notice of such termination at least one hundred and twenty (120) calendar days prior to termination, unless circumstances warrant a shorter notice period.

(d) The Parties have the mutual right to terminate the Agreement at any time and in whole or in part if one or the other determines, at each party's sole discretion, that the other party has materially breached the Agreement.

8.04 The MA Health Plan may terminate this Agreement by providing HHSC written notice at least thirty (30) calendar days prior to termination. The termination will be effective on the date specified in the MA Health Plan's notice of termination.

8.05 In the event of termination pursuant to this Section (7.03), HHSC will pay the PMPM capitation payment for Cost Sharing Obligations incurred through the effective date of termination, provided the MA Health Plan has complied with the submission requirements set forth in Section 3.02(b). All pertinent provisions of the Agreement will form the basis of settlement. This provision will survive the termination of the Agreement.

8.06 The MA Health Plan is required to participate in all activities as directed by the State which relate to member transition as a result of termination of this Agreement. This applies to terminations directed by the State, CMS or the MA Health Plan.

**Article IX. MISCELLANEOUS PROVISIONS***9.01 Non-Debarment from State or Federal Healthcare Programs.*

The MA Health Plan represents that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or mandatorily excluded from participation in any state or federal healthcare program.

*9.02 Severability.*

If any provision of the Agreement is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Agreement. It is the intent and agreement of the Parties this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Agreement will continue in full force and effect.

*9.03 Survivability.*

Expiration or termination of the Agreement for any reason does not release MA Health Plan from any liability or obligation set forth in the Agreement 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 Agreement, including without

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limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

*9.04 Force Majeure.*

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Agreement 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.

*9.05 Assignment.*

(a) The MA Health Plan must not assign all or any portion of its rights under or interests in this Agreement or delegate any of its duties without prior written consent of HHSC. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by HHSC, assignment or delegation will not release the MA Health Plan from its obligations under this Agreement.

(b) The MA Health Plan understands and agrees HHSC may in one or more transactions assign, pledge, or transfer this Agreement. This assignment will only be made to another state agency or a non-state agency that is contracted to perform agency support.

*9.06 Binding Effect.*

The Agreement shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

*9.07 Modification, Amendment, or Waiver.*

This Agreement may only be modified, amended, or waived by mutual written agreement or in accordance with Section 7.03(e). No course of dealing between the Parties will modify, amend, or waive any provision of this Agreement or any rights or obligations of any Party under this Agreement.

*9.08 Record Retention and Audit.*

(a) The MA Health Plan agrees to maintain, and require its subcontractors to maintain, supporting information and documents that are adequate to ensure that payment is made in accordance with applicable federal and state requirements. These documents, including all original claims forms, will be maintained and retained by the MA Health Plan or its subcontractors for a period of ten (10) years after the expiration of the contract period or until the resolution of all litigation, claim, financial management review, or audit pertaining to this Agreement, whichever is longer. The MA Health Plan agrees to timely repay any undisputed audit exceptions taken by HHSC in any audit of the Agreement.

(b) If HHSC determines that it has overpaid the MA Health Plan, HHSC will provide the MA Health Plan with written notice of the overpayment, including the amount of overpayment and supporting information. The MA Health Plan must promptly pay HHSC the amount of any undisputed overpayment the MA Health Plan owes HHSC, plus interest. Interest on this amount will be calculated from the date of receipt by the MA Health Plan of the undisputed overpaid amount until the date of payment to HHSC, and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of

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13-week bills) for the week in which liability is assessed. In the event an audit reveals an overpayment caused in whole or in part by the MA Health Plan's, its subcontractors' or agents' error, MA Health Plan must reimburse HHSC for all costs of the audit.

(c) For purposes of this Section 9.07 only, the term "subcontractor" does not include Network Providers.

*9.09 SAO Audit*

The MA Health Plan understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. The MA Health Plan further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The MA Health Plan must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through MA Health Plan and the requirement to cooperate is included in any subcontract it awards.

*9.10 Access to records, books, and documents.*

(a) Upon reasonable notice, MA Health Plan must provide, and require its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of this Agreement.

(b) MA Health Plan and its subcontractors must provide the access described in this Section upon HHSC's request. This request may be for, but is not limited to, the following purposes: examination; audit; investigation; contract administration; or the making of copies, excerpts, or transcripts.

(c) The access required must be provided to the following officials or entities or their designees: the United States Department of Health and Human Services; the Comptroller General of the United States; HHSC; the HHSC Office of Investigations and Enforcement; the Office of the State Auditor of Texas; Texas or federal law enforcement agencies; a special or general investigating committee of the Texas Legislature; and any other entity identified by HHSC.

(d) MA Health Plan agrees to provide the access described wherever MA Health Plan maintains these books, records, and supporting documentation. MA Health Plan further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. MA Health Plan must require its subcontractors to provide comparable access and accommodations.

(e) Upon request, MA Health Plan must provide copies of the information described in this Section free of charge to HHSC and the entities described in subsection (c).

*9.11 Governing Law & Venue.*

This Agreement is governed by the laws of the State of Texas and interpreted in accordance with Texas law, except to the extent preempted by federal law. Provided the MA Health Plan first complies with the procedures set forth in Article VIII, "Dispute Resolution," proper venue for a claim arising from this Agreement will be in a court of competent jurisdiction in Travis County, Texas. Additionally, any equitable remedy pursued by HHSC as referenced in Section 7.02(e) will be filed in a court of competent jurisdiction in Travis County, Texas.

*9.12 Publicity*

Except as otherwise required by this Agreement or by law, the MA Health Plan must not use the name of HHSC, the State of Texas, or any other state agency, or refer to HHSC or any state agency directly or indirectly in any media release, public announcement, or public disclosure relating to the Agreement or its subject matter, including in any promotional or marketing materials, customer lists, or business

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presentations (other than proposals or reports submitted to HHSC, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the federal government).

*9.13 Anti-trust.*

The MA Health Plan hereby certifies to HHSC that neither the MA Health Plan, nor the person represented by the MA Health Plan, nor any person acting for the represented person, has been found by a judgment of a court of law to have violated the anti-trust laws codified by Chapter 15, Texas Business and Commerce Code, or the federal anti-trust laws.

*9.14 Requests for public information.*

(a) HHSC agrees to promptly notify the MA Health Plan of a request for disclosure of information filed in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, that consists of information identified by the MA Health Plan as "confidential information," including information to which the MA Health Plan believes it has a proprietary or commercial interest. HHSC will deliver a copy of the request for public information to the MA Health Plan.

(b) With respect to any information that is the subject of a request for disclosure, the MA Health Plan is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information or data is confidential or otherwise excepted from required public disclosure under law. The MA Health Plan must provide the HHSC Contract Representation with copies of all communications made under this section.

(c) The MA Health Plan must make information defined as public information not otherwise excepted from disclosure under the Texas Public Information Act, Tex. Gov't Code Chapter 552 available to HHSC in a format agreeable to HHSC, accessible by the public, and at no additional charge to HHSC.

(d) To the extent authorized under the Texas Public Information Act, HHSC agrees to safeguard from disclosure information received from the MA Health Plan that the MA Health Plan identifies as confidential information. The MA Health Plan must clearly mark such information as confidential information or provide written notice to the HHSC's contract representative that it considers the information confidential and must explain why the information is confidential under the recognized exceptions of the Texas Public Information Act.

*9.15 Indemnity.***A. GENERAL INDEMNITY**

- 1. FOR PURPOSES OF THIS SECTION, MA HEALTH PLAN IS REFERRED TO AS "CONTRACTOR." CONTRACTOR 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 CONTRACTOR 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.**
- 2. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE**

**Medicare Advantage Plan Agreement**

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**OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**

- 3. FOR THE AVOIDANCE OF DOUBT, SYSTEM AGENCY SHALL NOT INDEMNIFY CONTRACTOR OR ANY OTHER ENTITY UNDER THE CONTRACT.**

**B. INTELLECTUAL PROPERTY**

- 1. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:**

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

**C. ADDITIONAL INDEMNITY PROVISIONS**

- 1. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- 2. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- 3. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**

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**HEALTH AND HUMAN SERVICES**  
**Contract Number** HHS001199600007  
**Attachment** D **CONTRACT AFFIRMATIONS**

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as “Contractor”) regardless of their business form (e.g., individual, partnership, corporation).

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

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

**2. Complete and Accurate Information**

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

**3. Public Information Act**

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

**4. Contracting Information Requirements**

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



**5. Assignment**

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

**6. Terms and Conditions**

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

**7. HHS Right to Use**

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

**8. Release from Liability**

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

**9. Dealings with Public Servants**

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

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

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

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

**12. Child Support Obligation**

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

**13. Suspension and Debarment**

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

**14. Excluded Parties**

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

**15. Foreign Terrorist Organizations**

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

**16. Executive Head of a State Agency**

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

**17. Human Trafficking Prohibition**

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

**18. Franchise Tax Status**

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

**19. Debts and Delinquencies**

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

**20. Lobbying Prohibition**

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

**21. Buy Texas**

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

**22. Disaster Recovery Plan**

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

**23. Computer Equipment Recycling Program**

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

**24. Television Equipment Recycling Program**

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

**25. Cybersecurity Training**

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

**26. Restricted Employment for Certain State Personnel**

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

**27. No Conflicts of Interest**

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

**28. Fraud, Waste, and Abuse**

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General  
Attn: Fraud Hotline  
MC 1300  
P.O. Box 85200  
Austin, Texas 78708-5200

**29. Antitrust**

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

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

**30. Legal and Regulatory Actions**

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

**31. No Felony Criminal Convictions**

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

**32. Unfair Business Practices**

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

**33. Entities that Boycott Israel**

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**34. E-Verify**

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

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**35. Former Agency Employees – Certain Contracts**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

**36. Disclosure of Prior State Employment – Consulting Services**

If this Contract is for consulting services,

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

1. Name of individual(s) (Contractor or employee(s));
2. Status;
3. The nature of the previous employment with HHSC or the other State of Texas agency;
4. The date the employment was terminated and the reason for the termination; and
5. The annual rate of compensation for the employment at the time of its termination.

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

**37. Abortion Funding Limitation**

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

1. performs an abortion procedure that is not reimbursable under the state’s Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

**38. Funding Eligibility**

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

**39. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)**

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

**40. COVID-19 Vaccine Passports**

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

**41. Entities that Boycott Energy Companies**

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**42. Entities that Discriminate Against Firearm and Ammunition Industries**

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

**43. Security Controls for State Agency Data**

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.



**44. Cloud Computing State Risk and Authorization Management Program**

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.

**45. Office of Inspector General Investigative Findings Expert Review**

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

**46. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses**

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

**47. Foreign-Owned Companies in Connection with Critical Infrastructure**

If Texas Government Code, Section 2274.0102(a)(1) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

**48. Critical Infrastructure Subcontracts**

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote

access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

**49. Enforcement of Certain Federal Firearms Laws Prohibited**

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

**50. Prohibition on Abortions**

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

**51. False Representation**

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

**52. False Statements**

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

**53. Permits and License**

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

**54. Drug-Free Workplace**

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

**55. Equal Employment Opportunity**

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

**56. Federal Occupational Safety and Health Law**

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

**57. Signature Authority**

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

**Signature Page Follows**

**Authorized representative on behalf of Contractor must complete and sign the following:**

Devoted Health Plan of Texas, Inc.

**Legal Name of Contractor**

N/A

**Assumed Business Name of Contractor, if applicable (d/b/a or 'doing business as')**

N/A

**Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')**  
**Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.**

DocuSigned by:  
*Daniel Quintana*  
2300E0978182489...

5/6/2022

**Signature of Authorized Representative**

**Date Signed**

Daniel Quintana

President

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

**Title of Authorized Representative**

20405 State Highway 249, Suite 325

Houston, TX 77070

**Physical Street Address**

**City, State, Zip Code**

221 Crescent Street

Waltham, MA, 02453

**Mailing Address, if different**

**City, State, Zip Code**

(617) 958-1611

(617) 674-0570

**Phone Number**

**Fax Number**

DQuintana@devoted.com

11-716-8594

**Email Address**

**DUNS Number**

61-1896982

32076223471

**Federal Employer Identification Number**

**Texas Identification Number (TIN)**

N/A

0803071730

**Texas Franchise Tax Number**

**Texas Secretary of State Filing Number**

N/A

**SAM.gov Unique Entity Identifier (UEI)**

### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

<b>* APPLICANT'S ORGANIZATION</b>	
Devoted Health Plan of Texas, Inc.	
<b>* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE</b>	
Prefix: Mr.	* First Name: Dariel Middle Name:
* Last Name: Quintana	Suffix:
* Title: Chief of Medicare Markets	
<b>* SIGNATURE</b> DocuSigned by: <i>Daniel Quintana</i> 2300E0978182489	<b>* DATE:</b> 4/19/2022

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

<p><b>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</b></p> <p>Daniel Quintana</p>	<p><b>TITLE</b></p> <p>Chief of Medicare Markets</p>
<p><b>APPLICANT ORGANIZATION</b></p> <p>Devoted Health Plan of Texas</p>	<p><b>DATE SUBMITTED</b></p> <p>05/26/2022</p>