



TEXAS

Health and Human Services

Dr. Courtney N. Phillips, Executive Commissioner

**Request for Applications
for
Early Childhood Intervention and Respite Services**

RFA No. HHS0006402

**Date of Release: December 18, 2019
Responses Due: January 31, 2020 at 2:00 PM**

NIGP Class/Item Codes:

**948-45 Home Health Care Services
948-47 Health Care Center Services
948-86 Therapy and Rehabilitation Services
952-76 Respite Care Services
952-85 Support Services**

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ARTICLE 1. EXECUTIVE SUMMARY, DEFINITIONS, AND AUTHORITY

1.1 EXECUTIVE SUMMARY

The Health and Human Services Commission (“**HHSC**”), through its Early Childhood Intervention (“**ECI**”) Program announces the expected availability of grant funds to provide infants and toddlers with disabilities and developmental delays and their families with early intervention services designed to enhance the child’s development and the capacity of families to meet their child’s needs.

This Request for Applications (“**RFA**”) will be required to ensure that appropriate early intervention services be made available statewide to all eligible children from birth through 36 months of age with disabilities and their families.

HHSC will make funds available for Successful Respondents to deliver ECI and Respite Services beginning on or before September 1, 2020. It is expected that Respondents to this RFA shall have demonstrated experience, expertise, and infrastructure to perform the work outlined herein.

To be considered for award, Respondents must execute **Exhibit A, Affirmations and Solicitation Acceptance**, **Exhibit C, Assurances Non-Construction**, and **C-1 Certification Regarding Lobbying** of this Solicitation and provide all other required information and documentation as set forth in this Solicitation.

1.2 DEFINITIONS

As used in this Solicitation, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below. Refer to **Exhibit B, HHSC Uniform Terms and Conditions –Exhibit B-1, HHSC ECI Supplemental Conditions (Version 1.2)** and **Exhibit D, Draft Early Childhood Intervention Services Contract Template** for additional definitions. Additionally, as used in this Solicitation, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Addendum” - A written clarification or revision to this Solicitation issued by the HHSC.

“Assessment” - The ongoing procedures used by appropriate qualified personnel throughout the period of a child’s eligibility for early childhood intervention services to assess the child’s individual strengths and needs and determine the appropriate services to meet those needs.

“Assistive Technology Devices” - Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

“Assistive Technology Services” - A service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

“Budget” - A financial schedule that describes how funds will be used and/or describes the basis for reimbursement for the provision of contracted services. The type of budget for services under the RFA will be categorical (line item).

“Budget Period” - The duration of the budget (stated in the number of months the contract will reflect from begin date to end date of the term of the contract). Each renewal will have its own budget period.

“Battelle Developmental Inventory, second edition, normative update” (“BDI-2 NU”) - A comprehensive evaluation tool that addresses cognitive, physical, communication, social/emotional, and adaptive development.

“Categorical Budget” - A line item financial schedule with defined expense categories documented in the program attachment that describes how funds will be used and/or the basis for reimbursement of the provision of contracted services.

“Child” - An infant or toddler, from birth through 36 months of age.

“Child Find” - The activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

“Client” - A Child with developmental delays, disabilities, or certain medical diagnoses who receives ECI services, and their families.

“Complaint” - A formal written allegation submitted to HHSC stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

“Contract Term” - The period of time during which the contract or program attachment will be effective from begin date to end, or renewal date. The contract term may or may not be the same as the budget period.

“Cost Reimbursement” - A payment mechanism by which contractors are reimbursed for allowable costs incurred up to the total amount specified in the contract. Costs must be incurred in carrying out approved activities and must be based on an approved eight -category line-item (categorical) budget. Amounts expended in support of providing services and goods, if any, in accordance with the contract terms and conditions must be billed on a monthly basis for reimbursement unless otherwise specified in the contract. Reimbursement is based on actual allowable costs incurred that comply with the cost principles applicable to the grant and subgrants.

“Due Date” - Established deadline for submission of a document or deliverable.

“Effective Date” - The date the contract term begins.

“Early Intervention Specialist” - A credentialed professional who meets specific educational requirements established by HHSC ECI Program and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

“ESBD”- The Electronic State Business Daily, the electronic marketplace where State of Texas contract opportunities over \$25,000 are posted. The ESBD may currently be accessed at <http://www.txsmartbuy.com/sp>.

“Federal Indicators”- Measures for ensuring compliance with Part C requirements of IDEA that are reported to the Office of Special Education Programs.

“FERPA” - Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. It is the Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

“Fiscal Year” – Is the state of Texas fiscal year from September 1 through August 31 of each year. This is not to be confused with federal fiscal year or federal grant project periods.

“HHS Grants Website” - The website where HHSC announces the availability of grant funds. The HHS Grants website may currently be accessed at: <https://apps.hhs.texas.gov/pcs/rfa.cfm>.

“Health and Human Services Commission” or “HHSC” - The administrative agency established under Chapter 531 of the *Texas Government Code* or its designee.

“Individualized Family Service Plan (“IFSP”)” - A written plan of care for providing early childhood intervention services and other medical, health and social services to an eligible child and the child's family when necessary to enhance the child's development.

“Indirect Costs” - Costs incurred for a common or joint purpose benefiting more than one project or cost objective of respondent's organization and not readily identified with a particular project or cost objective. Typical examples of indirect costs may include general administration and general expenses such as salaries and expenses of executive officers, personnel administration and accounting; depreciation or use allowances on buildings and equipment; and costs of operating and maintaining facilities.

“Interdisciplinary Team”- In accordance with the definition of multidisciplinary team in 34 CFR §303.24 (relating to Multidisciplinary) and a team that consists of at least two ECI professionals from different disciplines, one of which must be a Licensed Professional of the Healing Arts (“LPHA”), and the child's parent.

“Key Personnel” - A Respondent organization's Project Contact, Fiscal Contact, and Executive Director and/or any other key stakeholders in the Proposed Project.

“Locally Collected Funds” - Includes Locally Collected Federal, State, Local, and Private funds and in-kind contributions from sources other than the HHSC ECI contract that support the ECI program.

“Locally Collected Funds Requirement” - Consists of the funding from revenue sources other than public and private insurance, family payments, Medicaid Administrative Claims, program income classified as “other”, unsolicited cash contributions, and in-kind contributions that contractors are required to maintain or increase from year to year.

“Medicaid” - The medical assistance entitlement program administered by the Texas Health and Human Services Commission.

“Medicaid Administrative Claiming (“MAC”)” - Reimbursement of expenditures for activities that facilitate access to Medicaid services.

“Natural Environments” - Settings that are natural or typical for a same-aged infant or toddler without a disability, which may include the home or community settings, and includes the daily activities of the child and family or caregiver.

“Project” - The work and activities for which grant funding is awarded and information is provided as part of the response to this Solicitation. During the open application period and before selection of grant recipients are made, the Project will be known as the Proposed Project.

“Random Moment Time Study (“RMTS”)” - A work-study method that polls participants at random time intervals over a given time period and totals the results to determine work effort for the entire population of participating staff members over that same period.

“Respondent” - The individual or entity responding to this Solicitation, that may also be referred to as **“Applicant.”**

“Solicitation” - This RFA including any Exhibits and Addenda, if any.

“Specialized Skills Training (“SST”)” - Includes skills training and anticipatory guidance for family members or other routine caregivers provided by an Early Intervention Specialist to ensure effective treatment and to enhance the child's development.

“Stakeholder” - An individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

“Successful Respondent” - An organization that receives a grant award as a result of this RFA, that may also be referred to as **“Grantee,” “Awarded Applicant,” “Subrecipient,”** or **“Grant Recipient.”**

“Targeted Case Management (“TCM”)” - Referral, facilitation, coordination, and monitoring activities that occur after it has been determined that the child is ECI eligible and the activities do meet the definition of a Medicaid billable service.

“Telehealth Services” - Healthcare services, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

“Texas Kids Integrated Data System (“TKIDS”)”- Database where grantees submit client and service data to the state office.

“Timely Services” - Relates to “Federal Indicator 1,” Early Childhood Intervention Services needed by the child that are delivered as planned in the IFSP within 28 days of the family signing the IFSP.

[“Work Plan”](#) - A plan that describes how services will be delivered to the eligible population that includes specifics about who will receive services, who will be responsible for the work, timelines for completion of activities, and how services will be evaluated when complete. To be an enforceable part of the contract, details from the work plan must be approved by HHSC and incorporated in the contract.

1.3 AUTHORITY

HHSC is soliciting the services listed herein pursuant to the Individuals with Disabilities Education Act (“IDEA”), P.L. 101-476, 104 Stat. 1142 (1990), codified as amended at 20 U.S.C. §1400 et seq., and in accordance with Texas Human Resources Code Chapter 73.

ARTICLE 2. SCOPE OF GRANT AWARD

2.1 PROGRAM BACKGROUND

Since 1991, HHSC has overseen and coordinated the planning and delivery of Texas Health and Human Service programs throughout the state of Texas. HHSC, directed by Dr. Courtney N. Phillips Executive Commissioner, and established in accordance with *Texas Government Code* Chapter 531.

ECI is a statewide program for families with children from birth through 36 months of age, with developmental delays, disabilities, or certain medical diagnoses that may impact development. ECI supports families to help their children reach their potential through developmental services. ECI services are planned and provided using a family centered interdisciplinary-team approach, including family members, coordination with pediatricians and other care professionals, caretaker involvement and coaching for integration in daily routines. Childcare facilities, parks, grocery stores, and restaurants that have on sight play equipment are some examples of where children in their daily routines typically learn and play.

Services are provided by a variety of local agencies and organizations across Texas. Staff from ECI programs may include early intervention specialists, nurses, psychologists, dieticians, paraprofessionals, teachers, social workers, as well as physical, occupational, speech and language therapists. Families and professionals work as a team to plan appropriate services based on the unique needs of the child and family.

The ECI program is funded at no cost to families through state and federal funds, which provide for evaluations and assessments to determine eligibility and need for services. ECI asks families who can afford to do so to share in the cost of services. The amount a family pays for ECI services is determined using a sliding fee scale and is based on family size and income after allowable deductions.

HHSC strives to ensure that all eligible children up to 36 months of age and their families receive quality early intervention services, resources, and support needed to reach their developmental goals. These services are provided in partnership with families within community contexts and are designed to promote measurable changes in the trajectory of the child’s development. A Successful Respondent will implement comprehensive IDEA Part C early intervention services including the carrying out of all federal and state requirements for its entire contracted geographic area for all eligible children.

To view current ECI client data by county see [Exhibit E, ECI Served Data by County](#).

2.2 SCOPE OF ECI SERVICES

The ECI program is centered on a collaboration between families and professionals as they work together as a team to plan appropriate services based on the unique strengths and needs of the child and family. Services are provided in natural environments, such as the home and in community settings such as child care facilities, play groups and Mothers' Day Out programs. ECI services are planned and provided using an interdisciplinary team approach, including family members, coordination with pediatricians and other care professionals, caretaker involvement and coaching for integration in daily routines in settings where children typically live, learn and play.

Individualized intervention services, as determined by the interdisciplinary team, must be provided to meet the developmental needs of the child and the needs of the family related to enhancing the child's development. All services identified for the child must be listed in the IFSP. With the concurrence of the family, all services identified as needed by the interdisciplinary team may be addressed in the IFSP. Service providers must be knowledgeable in child development and developmentally appropriate behavior, as well as possess the requisite education, licenses, credentials, demonstrated competence, and experience. The array of required early intervention services must include, but is not limited to, the following:

- A. Assistive Technology
- B. Audiology Services
- C. Behavioral Intervention
- D. Counseling
- E. Early Identification, Screening & Assessment
- F. Family Education and Training
- G. Health Services
- H. Medical Services
- I. Nursing Services
- J. Nutrition
- K. Occupational Therapy
- L. Physical Therapy
- M. Psychological Services
- N. Service Coordination/Case Management
- O. Social Work
- P. Specialized Skills Training
- Q. Speech-Language Pathology
- R. Vision Services

For a detailed description of contractually required ECI services see [Exhibit D, Draft Early Childhood Intervention Contract Template](#).

2.3 GRANT AWARD AND TERM

2.3.1 Available Funding

The total approximate initial amount of funding available for Fiscal Year 2021 is \$111,000,000.00. It is HHSC's intention to make multiple awards through this Solicitation. The specific dollar amount awarded to each Successful Respondent depends upon the merit

and scope of the proposal, and other best value considerations. This decision is at the sole discretion of HHSC.

Grants awarded as a result of this RFA will be funded on a cost reimbursement basis. Funds are awarded for the purpose specifically defined in this RFA and must not be used for any other purpose. Funds may be used for personnel, fringe benefits, staff travel, equipment, supplies, other direct costs and indirect costs, and recovery services such as transportation are allowed in the budget. Funds must not be used to supplant local, state, or federal funds.

2.3.2 Grant Term

It is anticipated the initial grant period for any contract awarded under this Solicitation will begin **September 1, 2020** through **August 31, 2021**. Subject to the availability of funds, HHSC, at its sole discretion, may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed five years. Notwithstanding the limitation in the preceding sentence, HHSC, at its sole discretion, also may extend the Contract beyond five years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interest of the state of Texas.

Reimbursement will only be made for those allowable expenses that occur within the term of the grant. No pre-award spending will be allowed

2.4 ELIGIBLE APPLICANTS

To be eligible to apply for a grant, a Respondent must be a private non-profit 501(c) (3) organization or governmental entity. Respondents must, at a minimum, have experience providing developmental services to infants or children from birth to 36 months of age, and must also comply with all requirements outlined in **Article 2** of this Solicitation.

2.5 PROGRAM REQUIREMENTS

To meet the mission and objectives of the ECI and Respite Services program, Successful Respondents must accept and be in compliance with all program requirements as set forth within **Exhibit D, Draft Early Childhood Intervention Contract Template** which is attached and incorporated by reference hereto.

2.6 SERVICE AREA

HHSC seeks qualified Respondent(s) to provide services under the ECI and Respite Services program.

Successful Respondents must provide a proposal that shall ensure service boundaries are clear, simple and seamless for families and referral sources and that service areas are funded in a cost-effective manner. Respondents may propose serving any of the current ECI service areas, listed in **Exhibit F, HHSC Service Areas Map for ECI** or may propose a new service area.

Respondents that choose to submit a proposal for part of a county must include information about how they plan to collaborate with other grantees to ensure the entire county is served and that there are no gaps in service.

2.7 BILLING REQUIREMENTS

For a complete list of all ECI billing requirements, please see **Exhibit D, Draft Early Childhood Intervention Contract Template**. Please note that billing requirements, including requirements related to third party billing, are subject to change.

2.8 PROHIBITIONS

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

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

2.9 STANDARDS

A Successful Respondent must comply with the requirements applicable to this funding source cited in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR 200); the *Uniform Grant Management Standards (UGMS)*, and all statutes, requirements and guidelines applicable to this funding.

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

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

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

A Successful Respondent must ensure that its policies do not have the effect of excluding or limiting the participation of persons in the its programs, benefits or activities on the basis of national origin, and must take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

A Successful Respondent must comply with Executive Order 13279 and its implementing regulations at 45 CFR Part 87 or 7 CFR Part 16, which provide that any organization that participates in programs funded by direct financial assistance from the U.S. Dept. of Agriculture or U.S. Dept. of Health and Human Services must not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

2.10 DATA USE AGREEMENT

By entering into a Grant contract with HHSC as a result of this Solicitation, a Successful Respondent agrees to be bound by the terms of **Exhibit G, The Texas Health and Human Services System Data Use Agreement (“DUA”) and Security and Privacy Initial Inquiry (“SPI”)**, as applicable to Respondent’s organizational structure, attached as **Attachment J of Exhibit D, Draft Early Childhood Intervention Contract Template**.

2.11 NO GUARANTEE OF VOLUME, USAGE OR COMPENSATION

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

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

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

ARTICLE 3. ADMINISTRATIVE INFORMATION

3.1 SCHEDULE OF EVENTS

EVENT	DATE/TIME
Solicitation Release Date	December 18, 2019
Pre-Submittal Webinar	January 8, 2020 at 11:00 am
Deadline for Submitting Questions	January 15, 2020 at 5:00 pm
Estimated Deadline for Posting Questions & Answers	January 22, 2020
Deadline for submission of Solicitation Responses <i>[NOTE: Responses must be RECEIVED by HHSC by the deadline.]</i>	January 31, 2020 at 2:00 pm
Anticipated Notice of Award	June 2020
Anticipated Contract Start Date	September 1, 2020

Note: These dates are a tentative schedule of events. HHSC reserves the right to modify these dates at any time upon notice posted to the [ESBD](#), [HHSC Grants](#), and [Texas.gov eGrants](#) websites. Any dates listed after the Solicitation Response deadline will occur at the discretion of HHSC and may occur earlier or later than scheduled without notification on the [ESBD](#), [HHSC Grants](#), and [Texas.gov eGrants](#) websites.

3.2 CHANGES, AMENDMENT OR MODIFICATION TO SOLICITATION

HHSC reserves the right to change, amend or modify any provision of this Solicitation, or to withdraw this Solicitation, at any time prior to award, if it is in the best interest of HHSC and will post such on the [ESBD](#), [HHSC Grants](#), and [Texas.gov eGrants](#) websites. It is the responsibility of the Respondent to periodically check the [ESBD](#) and [HHSC Grants](#) websites to ensure full compliance with the requirements of this Solicitation.

3.3 IRREGULARITIES

Any irregularities or lack of clarity in this Solicitation should be brought to the attention of the Point of Contact listed in **Section 3.4.1** as soon as possible so corrective addenda may be furnished to prospective Respondents.

3.4 INQUIRIES

3.4.1 Point of Contact

All requests, questions or other communication about this Solicitation shall be made in writing to the HHSC's Point of Contact addressed to the person listed below. All communications between Respondents and other HHSC staff members concerning the Solicitation are strictly prohibited, unless noted elsewhere in this RFA. **Failure to comply with these requirements may result in disqualification of Respondent's Solicitation Response.**

Name: Carolyn R. DeBoer, CTCD, CTCM
Title: Purchaser

Address: 1100 West 49th Street, Austin, Texas 78756
Phone: 512-406-2447
Email: carolyn.deboer@hhsc.state.tx.us

3.4.2 Prohibited Communications

All communications between Respondents and other HHSC staff members concerning the Solicitation may not be relied upon and Respondent should send all questions or other communications to the point-of contact. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation. **Failure to comply with these requirements may result in disqualification of Respondent's Solicitation Response.**

3.4.3 Questions

HHSC will allow written questions and requests for clarification of this Solicitation. Questions must be submitted in writing and sent by U.S. First class mail or email to the Point of Contact listed in **Section 3.4.1** above. Respondents' names will be removed from questions in any responses released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- A. Identifying Solicitation number
- B. Section Number
- C. Paragraph Number
- D. Page Number
- E. Text of passage being questioned
- F. Question

Note: Questions or other written requests for clarification must be received by the Point of Contact by the deadline set forth in Section 3.1 above. Please provide entity name, address, phone number; fax number, e-mail address, and name of contact person when submitting questions.

3.4.4 Clarification request made by Respondent

Respondents must notify the Point of Contact of any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in the Solicitation in the manner and by the deadline for submitting questions.

3.4.5 Responses

Responses to questions or other written requests for clarification may be posted on the [ESBD](#) and [HHSC Grants](#) websites. HHSC reserves the right to amend answers prior to the deadline of Solicitation Responses. Amended answers may be posted on the [ESBD](#) and [HHSC Grants](#) websites. It is the Respondent's responsibility to check the [ESBD](#) and [HHSC Grants](#) websites. HHSC also reserves the right to decline to answer any question or questions or to provide a single consolidated response of all questions they choose to answer in any manner at HHSC sole discretion.

3.4.6 Respondent Pre-Submittal Webinar Conference

HHSC will conduct an **optional** Pre-Submittal Webinar January 8, 2020 at 11:00 am. Respondents will need to register for the webinar using the following weblink

<https://attendee.gotowebinar.com/register/2086236855141917196> .

3.5 SOLICITATION RESPONSE COMPOSITION

3.5.1 General Instructions

All Respondents Applications must be:

- A. Clearly legible;
- B. Sequentially page-numbered and include the respondents name at the top of each page;
- C. Organized in the sequence outlined in **Article 9 - Submission Checklist**;
- D. In Arial or Times New Roman font, size 12 or larger for normal text, no less than size 10 for tables, graphs, and appendices;
- E. Blank forms provided in the attachments must be used (electronic reproduction of the forms is acceptable; however, all forms must be identical to the original form(s) provided); do not change the font used on forms provided;
- F. Correctly identified with the RFA number and submittal deadline;
- G. Responsive to all RFA requirements; and
- H. Signed by an authorized official in each place a signature is needed (copies must be signed but need not bear an original signature).
- I. Page is defined as front only print. A paper with print on front and back is considered two pages.

3.5.2 Submission in Separate Parts

Paper documents (i.e. the original and all hard copies) must be separated by parts. Electronic submissions must be separated by electronic medium used for submission (i.e. flash drive).

The entire Solicitation Response – all separated paper documents and electronic copies – must then be submitted in one package to HHSC at the address listed in **Section 3.6.3**. The number of copies and directions for submitting an “Original” and “Copies” are outlined in **Article 9, Submission Checklist**. All submissions should adhere the following order:

1. Respondent Information, including all forms;
2. Narrative Application, including all forms;
3. Expenditure Application; and
4. Applicable Exhibits, Forms and Addendums.

3.6 SOLICITATION RESPONSE SUBMISSION AND DELIVERY

3.6.1 Deadline

Solicitation Responses must be received at the address in **Section 3.6.3** time-stamped by HHSC no later than the date and time specified in **Section 3.1**.

3.6.2 Labeling

Solicitation Responses shall be placed in a sealed box and clearly labeled as follows:

SOLICITATION NO.: HHS0006402
SOLICITATION NAME: Early Childhood Intervention and Respite Services
RESPONSE DEADLINE: January 31, 2020 @ 2:00 p.m.
PURCHASER'S NAME: Carolyn R. DeBoer
RESPONDENT'S NAME: _____

HHSC will not be held responsible for any Solicitation Response that is mishandled prior to receipt by HHSC. It is Respondent's responsibility to mark appropriately and deliver the Solicitation Response to HHSC by the specified date and time in **Section 3.1** Schedule of Events.

3.6.3 Delivery

Respondent must deliver Solicitation Responses by one of the methods below. Solicitation Responses submitted by any other method (e.g. facsimile, telephone, email) will **NOT** be considered.

U.S. Postal Service/Overnight/Express Mail/Hand Delivery
Health and Human Services Commission Procurement and Contracting Services Building Building S Attn: Response Coordinator 1100 W 49th. MC 2020 Austin, Texas 78756

Note: All Solicitation Responses become the property of HHSC after submission and will not be returned to Respondent.

3.6.4 Alterations, Modifications, and Withdrawals

Prior to the Solicitation submission deadline, a Respondent may:

- A. Withdraw its Solicitation Response by submitting a written request to the Point of Contact identified in **Section 3.4.1**; or
- B. Modify its Solicitation Response by submitting a written amendment to the Point of Contact identified in **Section 3.4.1**. HHSC may request Solicitation Response Modifications at any time.

ARTICLE 4. SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS

4.1 SELECTION PROCESS, GENERALLY

A three-step selection process will be used:

- A. Eligibility screening;
- B. Evaluation based upon specific selection criteria; and
- C. Final Selection based upon State of Texas priorities.

4.2 ELIGIBILITY SCREENING

Applications will be reviewed for minimum qualifications and completeness found in **Section 2.4**. All complete applications meeting the minimum qualifications will move to the Evaluation stage. A Solicitation Response must appear realistic in terms of technical commitment, show technical competence and indicate comprehension of the risk and complexity of a potential Grant contract.

4.3 EVALUATION

Applications will be evaluated and scored in accordance with the factors required by this procurement package using **Exhibit H, Evaluation Score Tool**.

4.3.1 Specific Selection Criteria

Applications shall be evaluated based upon:

- A. Program Experience and Capacity 20%
- B. Start-Up Plans 15%
- C. Staffing Requirements 15%
- D. Service Planning, Coordination, and Delivery 30%
- E. Financial Planning 10%
- F. Budget 10%

4.4 FINAL SELECTION

HHSC intends on making multiple awards under this Solicitation. After initial screening for eligibility, application completeness, and initial scoring of the elements listed above in **Section 4.3**, a selection committee will review all eligible Respondents to determine which applications should be awarded in order to most effectively accomplish state of Texas priorities. The selection committee will recommend Grant contract awards to be made to the HHSC Executive Commissioner, who will make the final award approval.

HHSC will make all final funding decisions based on eligibility, geographic distribution across the state, state priorities, reasonableness, availability of funding and cost-effectiveness.

4.5 NEGOTIATION AND AWARD

The specific dollar amount awarded to each Successful Respondent will depend upon the merit and scope of the application, the recommendation of the Selection Committee and the decision of the Executive Commissioner. Not all Respondents who are deemed eligible to receive funds are assured of receiving an award.

The negotiation phase will involve direct contact between the Successful Respondent and HHSC representatives via phone and/or email. During negotiations, Successful Respondents may expect:

- A. An in-depth discussion of the submitted application and budget; and
- B. Requests from HHSC for clarification or additional detail regarding submitted Application.

The final funding amount and the provisions of any ECI contract awarded will be determined at the sole discretion of HHSC staff.

HHSC may announce tentative or apparent grant recipients once the Executive Commissioner has given approval to initiate negotiation and execute contracts.

Any exceptions to the requirements, terms, conditions or certifications in the RFA or attachments, addendums or revisions to the RFA or General Provisions, sought by a Respondent must be specifically detailed in writing by the Respondent on Form J: Exception Assumptions Form in its application and submitted to HHSC for consideration. HHSC will accept or reject each proposed exception. HHSC will not consider exceptions submitted separately from the Respondent's application or at a later date.

HHSC will post to the [ESBD](#) and [HHSC Grants](#) websites and may publicly announce a list of Successful Respondents that are selected for final award. This posting does not constitute HHSC's agreement with all the terms of any Successful Respondent's application and does not bind HHSC to enter into a contract with any Respondent whose award is posted.

4.6 QUESTIONS OR REQUESTS FOR CLARIFICATION BY THE HHSC

HHSC reserves the right to ask questions or request clarification from any Respondent at any time during the application process.

ARTICLE 5. NARRATIVE APPLICATION

5.1 NARRATIVE APPLICATION

5.1.1 Respondent Information

Respondent must complete and return **Form A, Face Page Respondent Information, Form B, Program Contact Information, Form K, Administrative Information** and either **Form K-1 Governmental Entity** or **Form K-2, Non-Profit or For-Profit Entity**.

5.1.2 Program Experience and Capacity

Respondent must complete and return a brief description of Respondent's experience providing early intervention services using **Form C, Program Experience and Capacity**.

5.1.3 Start-Up Plans

Respondent must complete and return a brief description of Respondent's start-up plans using **Form D, Start Up Plans**.

5.1.4 Staffing Requirements

Respondent must complete and return a brief description of Respondent's staffing requirements using **Form E, Staffing Requirements**.

5.1.5 Service Planning, Coordination, and Delivery

Respondent must complete and return a brief description of Respondent's plan for service planning, coordination and delivery using **Form F, Service Planning, Coordination and Delivery**.

5.1.6 Proposed Service Area

Respondent must complete and return a description of the boundaries the Respondent's proposed service area. Respondents may choose from a list of existing service area boundaries or propose a new service area using **Form G, Proposed Service Area**.

5.1.7 Financial Planning

Respondent must complete and return a brief description of Respondent's financial planning for the Program using **Form H, Financial Planning**.

5.1.8 Budget and Child Count

Respondent must complete and return the attached **Form I, Budget and Child Count** along with **Form I-2 Budget and Child Count Template** using the instructions and examples provided in **Form I-1, Budget and Child Count Template Instructions**.

ARTICLE 6. REQUIRED RESPONDENT INFORMATION

6.1 ADMINISTRATIVE ENTITY INFORMATION

Respondent must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this Solicitation. As a part of the Solicitation Response requested in **Article 3**, Respondent must provide the following information described in **Sections 6.2 through Sections 6.5** by completing **Form K, Administrative Information**.

6.2 LITIGATION AND CONTRACT HISTORY

Respondent must include in its Solicitation Response a complete disclosure of any alleged or significant contractual failures.

In addition, Respondent must disclose any civil or criminal litigation or investigation pending over the last five years that involves Respondent or in which Respondent has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify Respondent.

Solicitation Response may be rejected based upon Respondent's prior history with the state of Texas or with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor or significant failure(s) to meet contractual obligations.

6.3 CONFLICTS

Respondent must certify that it does not have any personal or business interests that present a conflict of interest with respect to the RFA and any resulting contract. Additionally, if applicable, the Respondent must disclose all potential conflicts of interest. The Respondent must describe the measures it will take to ensure that there will be no actual conflict of interest and that its fairness,

independence and objectivity will be maintained. HHSC will determine to what extent, if any, a potential conflict of interest can be mitigated and managed during the term of the contract. Failure to identify actual and potential conflicts of interest may result in disqualification of a Solicitation Response or termination of a contract.

Please include any activities of affiliated or parent organizations and individuals who may be assigned to this Contract, if any.

Additionally, pursuant to Section 2252.908 of the *Texas Government Code*, a Successful Respondent awarded a contract greater than \$1 million dollars, or that requires an action or vote of the governing body, must submit a Disclosure of Interested Parties to the state agency at the time the business entity submits the signed contract. Rules and filing instructions may be found on the Texas Ethics Commissions' public website and additional instructions will be given by HHSC to successful Respondents.

6.4 GRANT APPLICATION DISCLOSURE

In an effort to maximize state resources and reduce duplication of effort, HHSC, at its discretion, may require the Respondent to disclose information regarding the application for or award of state, federal, and/or local grant funding by the Respondent or Community Collaborative member organization within the past two years to provide ECI and Respite Services.

6.5 AFFIRMATIONS AND CERTIFICATIONS

Respondent must complete and return all of the following listed below as well as exhibits and forms listed in **Article 9 and 10**.

- A. Exhibit A, Affirmations and Solicitation Acceptance _____
- B. Exhibit C, Assurances Non-Construction Programs _____
- C. Exhibit C-1, Certification Regarding Lobbying _____

ARTICLE 7. EXPENDITURE APPLICATION

7.1 EXPENDITURE APPLICATION

Attached **Form I-2, Budget and Child Count Template** of this RFA includes the template for submitting the Expenditure Application. Respondents must complete this form and place it in a separate, sealed package, clearly marked with the respondent's name, the RFA number, and the RFA submission date. Instructions for completing the template can be found in the attached Form I-1 Budget and Child Count Template Instructions.

Respondents must base their Expenditure Application on the Scope of Work described in **Article 2**. This section should include any business, economic, legal, programmatic or practical assumptions that underlie the Expenditure Application. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified in writing using the **Form J, Exceptions and Assumptions Form** and incorporated into the contract resulting from this RFA are deemed rejected by HHSC.

Respondents must demonstrate that project costs outlined in the Expenditure Application are reasonable, allowable, allocable and developed in accordance with applicable state and federal grant requirements.

Respondent must utilize the HHSC template provided and identify costs to be requested from HHSC and costs to be matched. Costs must be broken out to a degree that is sufficient to determine if costs are reasonable, allowable, and necessary for the successful performance of the project.

Costs will be reviewed for compliance with UGMS and federal grant guidance found in 2 CFR Part 200, as modified by UGMS, with effective consideration given to whichever provision imposes the more stringent requirement in the event of a conflict.

Costs included in the Expenditure Application will be entered into budget tables and supported by narrative descriptions detailing the need for the requested cost and a calculation demonstrating how the cost was arrived at.

Matching funds must also be identified in the Expenditure Application, including both anticipated matching funds and funds being certified in the application. Matching funds may be provided through local philanthropic, private, or city or county funds, pooled or braided funds from Collaborative partner organizations, donated resources, or in-kind contributions committed specifically for the proposed project. State or federal funds may not be used as match.

The value of donated materials, professional services and volunteer time is to be calculated in accordance with Section .24, Subpart C, of UGMS.

ARTICLE 8. GENERAL TERMS AND CONDITIONS

8.1 GENERAL CONDITIONS

8.1.1 Costs Incurred

Respondents understand that issuance of this Solicitation in no way constitutes a commitment by HHSC to award a contract or to pay any costs incurred by a Respondent in the preparation of a response to this Solicitation. HHSC is not liable for any costs incurred by a Respondent prior to issuance of or entering into a formal agreement, contract or purchase order. Costs of developing Solicitation Responses, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the State of Texas.

8.1.2 Contract Responsibility

HHSC will look solely to Respondent for the performance of all contractual obligations that may result from an award based on this Solicitation. Respondent shall not be relieved of its obligations for any nonperformance by its contractors.

8.1.3 Public Information Act

Solicitation Responses are subject to the Texas Public Information Act (“**PIA**”), *Texas Government Code* Chapter 552, and may be disclosed to the public upon request. Subject to the PIA, certain information may be protected from public release. Respondents who

wish to protect portions of the Solicitation Response from public disclosure should familiarize themselves with this law. Information pertaining to the Solicitation will be withheld or released only in accordance with the PIA.

8.1.4 News Releases

Prior to final award a Respondent may not issue a press release or provide any information for public consumption regarding its participation in this Solicitation. Requests should be directed to the HHSC Point of Contact Identified in **Article 3**.

8.1.5 Additional Information

By submitting an Application, the Respondent grants HHSC the right to obtain information from any lawful source regarding the Respondent's and its directors', officers', and employees': (1) past business history, practices, and conduct; (2) ability to supply the goods and services; and (3) ability to comply with contract requirements. By submitting an Application, a Respondent generally releases from liability and waives all claims against any party providing HHSC information about the Respondent. HHSC may take such information into consideration in evaluating applications.

ARTICLE 9. SUBMISSION CHECKLIST

This checklist is provided for Respondent’s convenience only and identifies documents that must be submitted with this Solicitation in order to be considered responsive. Any Solicitation Response received without these requisite documents may be deemed nonresponsive and may not be considered for contract award. If Respondent is applying in multiple Regions, a complete and separate RFA proposal is required for each Region.

Original Solicitation Response Package

The Solicitation Package must include the “Original” Solicitation Response in **hard-copy** consisting of the four parts described in detail below, each under separate cover, but packaged together and clearly labeled “**Original**” on each.

A. Respondent Information (Forms A, B, K-1 and K-2)

- 1. Form A: Face Page (Respondent Information) _____
- 2. Form B: Program Contact Information _____
- 3. Form K: Administrative Information _____
- 4. Form K-1: Government Entity _____
- 5. Form K-2: Non-Profit or For-Profit Entity _____

B. Narrative Application Forms (Forms C through I)

- 1. Form C: Program Experience and Capacity _____
- 2. Form D: Start-Up Plans _____
- 3. Form E: Staffing Requirements _____
- 4. Form F: Service Planning, Coordination and Service Delivery _____
- 5. Form G: Proposed Service Area _____
- 6. Form H: Financial Planning _____
- 7. Form I: Budget and Child Count _____

C. Expenditure Application (template included)

- 1. Form I-2: Budget and Child Count Template (Submit in Excel Format)

D. Applicable Exhibits and any Signed Addendums (to be included in Solicitation Package)

- 1. Exhibit A: Affirmations and Solicitation Acceptance _____
- 2. Exhibit C: Assurances Non-Construction Programs _____
- 3. Exhibit C1: Certification Regarding Lobbying _____
- 4. Exhibit G: Data Use Agreement _____
- 5. Exhibit G: Att 2- Security and Privacy Initial Inquiry Info _____
- 6. Signed Addendums (if Applicable) _____

Copies of Solicitation Response Package

Respondent will provide the following number of **electronic** copies (all clearly labeled as "copy") in addition to the hard-copy "Original" Solicitation Response. Electronic copies must be submitted on a USB Drive and separated by folders.

- 1** Electronic copy of **Respondent Information**

- 1 Electronic copy of **Narrative Application Forms**
- 1 Electronic copy of **Expenditure Application**
- 1 Electronic copy of **Applicable Exhibits and Addendums**

ARTICLE 10. EXHIBITS AND FORMS

EXHIBIT A: AFFIRMATIONS AND SOLICITATION ACCEPTANCE	SECTIONS 1.1, 6.5
EXHIBIT B: HHSC UNIFORM TERMS AND CONDITIONS Grant	SECTION 1.2
EXHIBIT B-1: HHSC ECI SUPPLEMENTAL CONDITIONS	SECTION 1.2
EXHIBIT C: ASSURANCES NON-CONSTRUCTION PROGRAMS	SECTIONS 1.1, 6.5
EXHIBIT C-1: CERTIFICATION REGARDING LOBBYING	SECTIONS 1.1, 6.5
EXHIBIT D: DRAFT EARLY CHILDHOOD INTERVENTION CONTRACT TEMPLATE	SECTIONS 2.2, 2.5, 2.7
EXHIBIT E: ECI SERVED DATA BY COUNTY	SECTION 2.1
EXHIBIT F: HHSC SERVICE AREA MAP FOR ECI	SECTION 2.6
EXHIBIT G: DATA USE AGREEMENT	SECTION 2.10
EXHIBIT G: ATTACHMENT 2: HHSC DUA SPI	SECTION 2.10
EXHIBIT H: EVALUATION TOOL	SECTION 4.3
FORMS A-I: NARRATIVE APPLICATION	SECTION 5.1
FORM I-1 BUDGET AND CHILD COUNT TEMPLATE INSTRUCTIONS	SECTIONS 5.1, 7.1
FORM I-2 BUDGET AND CHILD COUNT TEMPLATE	SECTIONS 5.1,7.1
FORM J: EXCEPTIONS AND ASSUMPTIONS	SECTIONS 4.5, 7.1
FORM K: ADMINISTRATIVE INFORMATION	SECTION 5.1.1, 6
FORM K-1: GOVERNMENTAL ENTITY	SECTION 5.1.1
FORM K-2 NON-PROFIT OR FOR PROFIT	SECTION 5.1.1

Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent'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 Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC 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 Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent 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. Respondent 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 Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
6. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.

7. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
8. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. No exceptions, terms, or conditions will be considered if not advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Respondent that differ in any manner from HHSC's terms and conditions are rejected unless expressly accepted by HHSC in writing in a fully executed contract.
9. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
10. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
11. Respondent acknowledges all addenda and amendments to the Solicitation.
12. Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
 - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas
 - Agricultural products offered by a Texas bidder
 - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Texas Vegetation Native to the Region
 - USA-produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - Energy efficient products
 - Rubberized asphalt paving material

- Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or reused computer equipment of other manufacturers
 - Foods of higher nutritional value
 - Commercial production company or advertising agency located in Texas
14. Respondent 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 Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.
15. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
16. 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 Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
17. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this 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. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.

18. Respondent 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 Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
19. Respondent 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.
20. Respondent 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.
21. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent 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 the 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.
22. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
23. Respondent 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.
24. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
25. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this 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).
26. Respondent 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.
27. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
28. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

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

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

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

29. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent 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.
30. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
31. Respondent 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.
32. Respondent 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 Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
33. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent’s provision of the requested goods and/or services

under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

34. Respondent understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
35. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
36. Respondent 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 Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC 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 HHSC shall constitute breach of contract and may result in immediate contract termination.
37. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
 - (a) all persons employed by Respondent to perform duties within Texas; and

(b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

38. If this Solicitation is for 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, Respondent represents and warrants that neither Respondent nor any of Respondent'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.

39. If this Solicitation is for consulting services,

(A). In accordance with Section 2254.033 of the Texas Government Code, a Respondent offering to provide consulting services in response to this solicitation who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

(1) Name of individual(s) (Respondent or employee(s)): _____

(2) Status (circle one): Respondent Employee

(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:

(5) The annual rate of compensation for the employment at the time of its termination: _____

If more than one individual is identified in A(1) above, Respondent must provide responses to A(2)-(5) as to each identified individual. To satisfy this requirement, Respondent must attach a separate page or pages, as necessary, and include the information required in Section A, including subsections (1)-(5). Respondent must identify here how many pages, if any, are attached: _____. Respondent acknowledges, agrees, and certifies that all information provided is true, correct, and complete on this and all attached pages.

(B). If no information is provided in response to Section A above, Respondent certifies that neither Respondent nor any individual employed by Respondent was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response.

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

41. Respondent understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state’s Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article IX, Section 6.25.

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

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

44. Respondent 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 any contract resulting from this Solicitation.

45. Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the

performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

46. By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

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

Legal Name of Respondent: _____

Signature of Authorized Representative

Date Signed

Printed Name and Title of Authorized Representative

Phone Number

Federal Employer Identification Number

Fax Number

DUNS Number

Email Address

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

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



TEXAS

Health and Human Services

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

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“[Parties](#)” means the System Agency and Grantee, collectively.

“[Party](#)” means either the System Agency or Grantee, individually.

“[Program](#)” means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

“[Project](#)” means specific activities of the Grantee that are supported by funds provided under this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

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

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

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

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

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

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

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

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

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

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

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

1.2 INTERPRETIVE PROVISIONS

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

ARTICLE II. PAYMENT METHODS AND RESTRICTIONS

2.1 PAYMENT METHODS

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

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

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

2.2 FINAL BILLING SUBMISSION

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

2.3 FINANCIAL STATUS REPORTS (FSRS)

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

2.4 USE OF FUNDS

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

2.5 USE FOR MATCH PROHIBITED

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

2.6 PROGRAM INCOME

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

2.7 NONSUPPLANTING

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

2.8 ALLOWABLE COSTS

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

2.9 INDIRECT COST RATES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 RECAPTURE OF FUNDS

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

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

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

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

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

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

For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
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B. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

- i. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee will be subject to the sanctions and remedies for non-compliance with this Contract.
- ii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.
- iii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS.
- iv. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits.
- v. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

B. Financial Statements

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically one copy of the single audit or program-specific audit to the System Agency via:

i. HHS portal at: or,

<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>

ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements

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

i. HHS portal at:

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

ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 GENERAL AFFIRMATIONS

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

5.2 FEDERAL ASSURANCES

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

5.3 FEDERAL CERTIFICATIONS

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

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

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

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

6.2 GRANTEE’S PRE-EXISTING WORKS

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

6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

6.4 DELIVERY UPON TERMINATION OR EXPIRATION

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

6.5 SURVIVAL

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

ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE

7.1 BOOKS AND RECORDS

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

7.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

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

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

7.4 SAO AUDIT

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

7.5 CONFIDENTIALITY

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

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

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

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

8.2 TERMINATION FOR CONVENIENCE

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

8.3 TERMINATION FOR CAUSE

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

i. **Material Breach**

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

ii. **Failure to Maintain Financial Viability**

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

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 AMENDMENT

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

9.2 INSURANCE

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

B. These and all other insurance requirements under the Contract apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

9.3 LEGAL OBLIGATIONS

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

9.4 PERMITTING AND LICENSURE

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

9.5 INDEMNITY

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

9.6 ASSIGNMENTS

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

9.7 INDEPENDENT CONTRACTOR

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

9.8 TECHNICAL GUIDANCE LETTERS

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

9.9 DISPUTE RESOLUTION

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

9.10 GOVERNING LAW AND VENUE

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

9.11 SEVERABILITY

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

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

9.12 SURVIVABILITY

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

9.13 FORCE MAJEURE

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

9.14 NO WAIVER OF PROVISIONS

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

9.15 PUBLICITY

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

9.16 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

9.17 NO WAIVER OF SOVEREIGN IMMUNITY

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

9.18 ENTIRE CONTRACT AND MODIFICATION

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

9.19 COUNTERPARTS

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

9.20 PROPER AUTHORITY

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

9.21 E-VERIFY PROGRAM

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

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

9.22 CIVIL RIGHTS

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

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

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

9.23 SYSTEM AGENCY DATA

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

EXHIBIT B-1 HHSC ECI SUPPLEMENTAL CONDITIONS
(VERSION 1.2)

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

1. **SECTION 8.02** of the HHSC UTCs, **TERMINATION FOR CONVENIENCE**, is deleted in its entirety and replaced with the following:

8.02 Termination for Convenience or Nonrenewal

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC’s notice of termination. Pursuant to [1 Tex. Admin. Code §392.109](#), Grantee must provide System Agency at least 120 calendar days written notice before terminating or non-renewing, and System Agency must provide Grantee at least 90 days written notice of its intent of nonrenewal. The termination can be of the Contract or for one or more service areas as described in **Attachment A, Section 3**, of this Contract.

2. **SECTION 9.01** of the HHSC UTCs, **AMENDMENT**, is deleted in its entirety and replaced with the following:

9.01 Amendment

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

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

9.22 Subcontracting

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

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

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

9.23 Identity

The Grantee must notify System Agency in writing at least sixty (60) calendar days before the intended effective date of any change in legal entity status, such as ownership or control, name change, legal status with the Texas Secretary of State, or State Comptroller's Texas Identification Number. Grantee will notify System Agency in writing: within ten (10) calendar days after any address change, including the location of the agency's office, physical address, or mailing address; immediately of any change in administrator or director; and within seven working days of any change in the contact telephone number designated in the contract.

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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.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE 
APPLICANT ORGANIZATION 	DATE SUBMITTED 

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.

* APPLICANT'S ORGANIZATION <div style="border: 1px solid black; background-color: yellow; height: 15px; width: 100%; margin-top: 5px;"></div>	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: <input style="width: 80px;" type="text"/>	* First Name: <input style="width: 250px;" type="text"/>
* Last Name: <input style="width: 350px;" type="text"/>	Middle Name: <input style="width: 180px;" type="text"/>
* Title: <input style="width: 320px;" type="text"/>	Suffix: <input style="width: 100px;" type="text"/>
* SIGNATURE: <input style="width: 350px; height: 40px;" type="text"/>	* DATE: <input style="width: 100px; height: 20px;" type="text"/>

Exhibit D, Draft Early Childhood Intervention Contract Template
(“ECI Contract”)
SIGNATURE DOCUMENT FOR
TEXAS HEALTH AND HUMAN SERVICES COMMISSION CONTRACT
UNDER THE
EARLY CHILDHOOD INTERVENTION SERVICES GRANT PROGRAM

I. PURPOSE

The Health and Human Services Commission (“**HHSC**” or “**System Agency**”), an administrative agency within the executive department of the state of Texas, and <Grantee’s Full Legal Name including any “dba”> (“**Grantee**”), each a “**Party**” and collectively the “**Parties**,” enter into the following contract for Early Childhood Intervention Services Grant Program (the “**Contract**”). Capitalized terms and acronyms defined in **Attachment D**, HHSC Uniform Terms and Conditions, when used in this Signature Document and Attachments, have the meanings assigned in **Attachment D**, unless the context clearly indicates otherwise, or the term is otherwise defined.

II. LEGAL AUTHORITY

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

III. STATEMENT OF SERVICES TO BE PROVIDED.

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

IV. DURATION

The Contract is effective on <Date> and terminates on <Date>, unless renewed or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract for any period(s) of time, provided the Contract term, including all extensions or renewals, does not exceed five years. Notwithstanding the limitation in the preceding sentence, the Parties may also extend the Contract beyond five years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by HHSC to serve the best interests of the State.

V. BUDGET

The total reimbursement amount shall not exceed \$<Full Amount>.00 for the initial term, which is allocated as \$<ECI Amount>.00 for ECI services and \$<Respite Amount>.00 for Respite services. All expenditures under the Contract will be in accordance with **Attachment B, Payment for Services**.

Indirect Cost Rate: The Grantee’s acknowledged or approved Indirect Cost Rate (“**ICR**”) is contained within **Attachment C, Budget** and either the ICR Acknowledgement Letter, ICR

Acknowledgement Letter – Ten Percent De Minimis, or the ICR Agreement Letter is attached to this Contract and incorporated as **Attachment K, Indirect Cost Rate Letter**.

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

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

VI. CONTRACT REPRESENTATIVES

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

Grantee

<Representative's Full Name>
<Address>
<City, State, Zip Code>
<Phone Number>
<Email Address>

HHSC

<Assigned Contract Manager>, CTCM
1100 W. 49th Street; Mail Code 3029
Austin, Texas 78751
<(512) XXX-XXXX>
<Email Address>

Either Party may change its designated Representative by providing written notice to the other Party.

VII. LEGAL NOTICES

Any legal notice required under this Contract shall be deemed delivered when deposited by HHSC either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the address set forth below for Grantee. Notice given by Grantee will be deemed effective when received by HHSC at the address below.

Grantee

<Grantee's Full Legal Name>
Attn: <Full Name>
<Address>
<City, State, and Zip>

HHSC

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

with copy to:

Health and Human Services Commission
Attn: <Assigned ECI Contract Manager>
1100 W. 49th Street; Mail Code 3029
Austin, Texas 78751

Either Party may change its address for notice by written notice to the other Party. All notices submitted to HHSC must:

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

VIII. ADDITIONAL GRANT INFORMATION

Federal Award Identification Number (FAIN): **<Number>**

Federal Award Date: **<Date>**

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

CFDA Name and Number: **<Name and Telephone Number>**

Awarding Official Contact Information: **<Federal Contact Information>**

IX. REPORTING REQUIREMENTS

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

X. PRIVACY, SECURITY, AND BREACH NOTIFICATION

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

Signature Page Follows

**SIGNATURE PAGE FOR
HHSC CONTRACT NO. <CONTRACT NUMBER>**

**HEALTH AND HUMAN SERVICES
COMMISSION**

**<GRANTEE'S FULL LEGAL NAME OF
ENTITY>**

By: _____
Dr. Courtney N. Phillips
Executive Commissioner

By: _____

Name: _____

Title: _____

Date of execution: _____

Date of execution: _____

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

- Attachment A - Statement of Work**
- Attachment B - Payment for Services**
- Attachment C - Budget**
- Attachment D - HHSC Uniform Terms and Conditions - Grant (Version 2.16)**
- Attachment E - HHSC ECI Supplemental Conditions (Version 1.2)**
- Attachment F - HHSC Special Conditions - Grant (Version 1.2)**
- Attachment G - Contract Affirmations (Version 1.5)**
- Attachment H - Federal Assurances for Non-Construction Programs**
- Attachment I - Federal Certification Regarding Lobbying**
- Attachment J - Texas HHS Data Use Agreement (Version 8.5 Governmental <or> Community Center)**
- Attachment K - Indirect Cost Rate Letter**

Attachments Follow

STATEMENT OF WORK

1. Program Purpose

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

2. Grantee Requirements

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

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

licensed in good standing and/or qualified to perform the required services, or are otherwise qualified.

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

staff within 60 days from the date of hire of the staff or when a contract for staff is implemented. Any exception to this requirement must be approved by HHSC.

- 2.17 Participate in the Random Moment Time Study (“**RMTS**”) as directed by HHSC and implemented by HHSC.
- 2.18 If recognized by the state of Texas as a governmental entity or as directed by HHSC, participate in the Texas Medicaid Administrative Claiming (“**MAC**”) program through a Medicaid Administrative Claiming Program contract with HHSC and meet all participation requirements. This includes completion and submission of MAC financial information for the last federal quarter in which Grantee provided services under this contract should Grantee’s contract be terminated or not renewed.
- 2.19 To the extent allowed by law, save and hold harmless HHSC, its employees and the state of Texas, from all liability, of any nature, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits, or damages of any character whatsoever resulting from injuries or damages sustained by the persons or property, resulting in whole, or in part from the performance, or omission of any employee, agent, or representative of Grantee. Grantee also agrees to indemnify and hold harmless HHSC, its employees and the state of Texas from any liability or negligence attributable, or that might be attributable, to HHSC, its employees or the state of Texas resulting, wholly or partially from the performance by Grantee, or Grantee’s agents or employees, of the contract. Grantee accepts liability for the performance of any of its personnel providing services under the terms of this contract.
- 2.20 Follow the interpretations in the Memorandum of Understanding (“**MOU**”) that HHSC entered into with the Department of Family and Protective Services (“**DFPS**”) to comply with the requirements of the Child Abuse Prevention and Treatment Act (“**CAPTA**”), 42 U.S.C. §5106a(b)(2)(B)(xxi), and 20 U.S.C. §1437, related to the referral of children, under age three who are involved in substantiated cases of child abuse or neglect, to early intervention services funded under Part C of the Individuals with Disabilities Education Act (“**IDEA**”) for a screening and take the actions required in the MOU unless it consults with HHSC and explains why it should not follow those interpretations or take those actions.
- 2.21 Grantee must review each employee’s background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide ECI services do not have criminal convictions that would result in an absolute bar to entering them, in compliance with 26 TAC Part 1, Chapter 745, Subchapter F, Division 4, §745.661, and follow up appropriately on any other criminal convictions. The Grantee will provide, upon the request of HHSC, an electronic or hardcopy screenshot of either the confirmation screen or receipt of completed fingerprint based background check.
- 2.22 Grantee must complete a fingerprint-based criminal background check on every new hire, or any other person who will be working under the auspices of the Grantee, before the person has direct contact with children or families, including employees who have had a fingerprint-based check as a requirement of their professional licensure. Grantee must complete a fingerprint-based criminal background check renewal on any employee, or any other person who will be working under the auspices of the Grantee who has direct contact with children or families, at least every 24 months, unless the Grantee uses FBI Rap Back, and gets alerts

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

2.23 Grantee will develop, implement, and maintain program management systems including, but not limited to: accurate, auditable, correct and complete records of service access and service delivery; oversight of program’s compliance with all applicable laws, policies, and regulations; oversight of the program’s required performance standards and measures; systems to ensure the effective and efficient use of resources to deliver services to children and their families; and oversight for accepting referrals and initiating pre-enrollment processes that require that referral information be transferred to the appropriate Grantee within two business days if the family resides in another ECI Grantee’s service area.

2.24 HHSC Monitoring. The Grantee and any subGrantees associated with this contract agree to permit on-site monitoring visits and desk reviews, as deemed necessary by HHSC to review all financial or other records and management control systems relevant to the provision of goods and services under this contract. The Grantee will include this requirement in any subcontract associated with this agreement.

The Grantee will notify HHSC:

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

3. Service Delivery Area(s)

The children served must reside in the service area approved by HHSC. The service area for this Contract includes **<Enter County (ies)>**. Grantees may provide services to clients outside of this service area if the children reside in counties not covered by an existing ECI Grantee.

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

4. Eligible Population

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

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

5. ECI Services

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

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

5.2.1 Assistive Technology Services and Devices

a. Assistive technology services include:

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

b. Assistive technology services may be provided as a distinct service planned on the IFSP by a Licensed Occupational Therapist (“**OT**”), a Licensed Physical Therapist (“**PT**”), or a Licensed Speech-Language Pathology (“**SLP**”) according

to the requirements of the their profession, or as an activity or strategy for an IFSP outcome by the OT, PT or SLP or other staff as determined by the IFSP team.

- c. Purchase of assistive technology devices or equipment may be authorized when the need is clearly stated in the child record with documentation from the child's Physician, Registered Nurse, OT, PT, SLP, or other qualified professional, including Auditory Impairment Teachers, Audiologists, and Teachers of the Visually Impaired.
- d. Documentation must justify that the purchase is necessary for implementation of the goals and strategies in the IFSP. Only assistive technology that cannot be obtained through a third party source will be reimbursed by ECI program funds.
- e. For low-tech and readily available materials, authorization is not required. Documentation in IFSP strategies and progress notes identifies the need.

5.2.2 Audiology Services

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

5.2.3 Behavioral Intervention

- a. Behavioral Intervention services are delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team.
- b. A behavior plan is developed by the IFSP team (that includes the plan supervisor) to:
 - i. identify goals;

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

5.2.4 Counseling

- a. Assistance provided to the parents by qualified personnel to assist the family in understanding the special needs of the child and enhancing the child's development.
- b. Counseling may be provided through:

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

5.2.5 Early Identification, Screening & Assessment

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

5.2.6 Family Education and Training

- a. Activities designed to improve the knowledge and skills of parents and other family members in matters related to growth, development, and learning of their child.
- b. Family education and training may be provided through:
 - i. direct one-to-one service to the parent or routine caregiver (or the child and their parent or routine caregiver);
 - ii. direct group service to children and their parents or routine caregivers; or
 - iii. direct group training to parents or routine caregivers without their children present.
- c. Family education and training must be provided by direct service staff with the requisite knowledge, training or skills in the information being provided.

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

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

5.2.9 Nursing Services

- a. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; the provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and the administration of medications, treatments, and regimens prescribed by a licensed physician.
- b. Nursing Services must be provided by:
 - i. A Registered Nurse licensed by the Texas Board of Nursing; or
 - ii. A Vocational Nurse licensed by the Texas Board of Nursing

5.2.10 Nutrition

- a. Services that include conducting individual assessments in:
 - i. Nutritional history and dietary intake;
 - ii. Anthropometric, biochemical, and clinical variables;
 - iii. Feeding skills and feeding problems;
 - iv. Food habits and food preferences;
 - v. Developing and monitoring appropriate plans to address the nutritional needs of eligible children; and
 - vi. Making referrals to appropriate community resources to carry out nutrition goals.
- b. Nutrition services must be provided by a Dietitian licensed by the Texas State Board of Examiners of Dietitians and include:
 - i. Conducting individual assessments/evaluations for nutritional history and dietary intake, body measurements, biochemical and clinical variables;
 - ii. Addressing feeding skills and feeding problems, as well as food habits and food preferences; and
 - iii. Involving the development and monitoring of appropriate plans to address the nutritional needs of an enrolled child, and making referrals to appropriate community resources to carry out nutrition goals.

5.2.11 Occupational Therapy

- a. Services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development.

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

5.2.12 Physical Therapy

- a. Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptations.
- b. These services include:
 - i. Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;
 - ii. Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems;
 - iii. Providing individual or group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - iv. Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.
- c. Physical therapy may be provided through:
 - i. direct one-to-one intervention with the child and their parent or routine caregiver; or
 - ii. direct group intervention with children and their parents or routine caregivers.

- d. Physical therapy must be provided by a:
 - i. Licensed PT licensed by the Texas State Board of Physical Therapy Examiners; or
 - ii. PT Assistant licensed by the Texas State Board of Physical Therapy Examiners, working under the direction of a Licensed PT.

5.2.13 Psychological Services

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

5.2.14 Service Coordination/Case Management

- a. Activities carried out by a service coordinator to assist and enable an infant or toddler with a disability, and the child's family to receive the services and rights, including procedural safeguards, as required pursuant to 34 CFR §303.34.
- b. Activities include but are not limited to:
 - i. Coordinating the performance of evaluations and assessments;
 - ii. Facilitating and participating in the development, review, and evaluation of the IFSP;
 - iii. Assisting families in identifying available service providers;
 - iv. Coordinating and monitoring the delivery of available services;
 - v. Informing families of the availability of advocacy services;
 - vi. Coordinating with medical and health providers; and
 - vii. Facilitating the development of a transition plan to preschool services, if appropriate.

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

5.2.15 Social Work

- a. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction; preparing a social and emotional developmental assessment of the child within the family context; providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.
- b. Social work must be provided by:
 - i. A Licensed Baccalaureate Social Worker (“**LBSW**”) licensed by the Texas State Board of Social Work Examiners;
 - ii. A Licensed Master Social Worker (“**LMSW**”) licensed by the Texas State Board of Social Work Examiners; or
 - iii. A LCSW licensed by the Texas State Board of Social Work Examiners.

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

- a. SST may be provided through:

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

5.2.17 Speech-Language Pathology

- a. Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.
- b. Speech-language pathology may be provided through:
- i. direct one-to-one intervention with the child and their parent or routine caregiver; or
 - ii. direct group intervention with children and their parents or routine caregivers.
- c. Speech-language pathology must be provided by:
- i. A SLP licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology;
 - ii. A Intern in Speech-Language Pathology licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology; or
 - iii. A Licensed Assistant in Speech-Language Pathology (SLPA) licensed by the Texas State Board of Examiners for Speech-Language Pathology and Audiology, working under the direction of a licensed SLP.

5.2.18 Vision Services

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

5.2.19 Telehealth services

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

6. Program General Requirements

- 6.1 Grantee will establish adequate internal controls and security to ensure the collection and data entry/submission of complete and accurate data in compliance with the TKIDS User Manual. The calculation methodology described in the specific requirement and federal indicator is based on data obtained from TKIDS. HHSC may include one or more of the following actions as a consequence for failure to meet the targets: provide technical assistance, require a corrective action plan or improvement plan, revise contract terms and/or provisions, withhold or reduce payments, or apply additional adverse actions as allowed under Attachment D, Article VIII, of this Contract.

6.2 Grantee shall collect and report all required consumer, services and provider information to HHSC through the TKIDS.

6.3 Grantee shall submit data in accordance with data standards and reporting requirements established in the TKIDS User Manual by the 20th day of the following month. HHSC may make changes to the data standards or requirements during the current Contract period when necessary.

6.4 Grantee will establish adequate internal controls and security for the collection and submission of complete and accurate information.

6.5 Requirements and Federal Indicators

6.5.1 Data Entry Requirements

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

6.5.2 Service Delivery Requirements

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

6.5.3 Financial Reports Requirement

- a. Definition: Grantee must comply with the number of the required reports as indicated in **Sections 7.1 to 7.4 of Attachment B** to this Contract.
 - b. Calculation methodology: Number of reports submitted by the due date divided by the total number of required reports (expressed as a percent).
 - c. Performance target: 100% of reports submitted by the due date.
- 6.5.4 The targets, definitions and methodology for the following federal indicators are available online and can currently be accessed at: <https://osep.grads360.org/#report/apr/publicView>. *(Pick Part C, the latest fiscal year available, and click on Texas on the map. Note: Your security settings may not allow you to open the link on click, however, you may copy and paste the link to your browser to access.)*

Compliance Indicators

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

Results Indicators

- d. Indicator 2 - Services in Natural Environments
- e. Indicator 3 - Early Childhood Outcomes
 - i. Child Outcome 3.A - Positive social–emotional skills (including social relationships);
 - ii. Child Outcome 3.B - Acquisition and use of knowledge and skills (including early language/communication); and
 - iii. Child Outcome 3.C - Use of appropriate behaviors to meet their needs.
- f. Indicator 4 - Family Involvement
 - i. Family Outcome 4.A - ECI have helped the family know their rights
 - ii. Family Outcome 4.B - ECI have helped the family effectively communicate their children’s needs
 - iii. Family Outcome 4.C -ECI have helped the family help their children develop and learn.
- g. Indicator 5 - Child Find (Birth to One)

h. Indicator 6 - Child Find (Birth to Three)

7. Therapies Utilization

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

8. Respite Services - Scope of Work

As required by 40 TAC Part 2, Chapter 108, Subchapter K, §108.1108, Grantee will develop and implement a process for administering the state funded reimbursement of respite services that are not directly related to IFSP goals for families of children enrolled in Grantee's ECI services program. Grantee may request reimbursement for applicable indirect charges within the total respite contract amount.

If Grantee determines it will not expend all of its Respite funds for services provided to families within its designed service area during the Contract term, it may upon providing written notification to HHSC, collaborate with other ECI Grantees in accordance with 40 TAC Part 2, Chapter 108, Subchapter K, §108.1108(c)(1) to reimburse families for respite services in areas outside of their designated service area.

9. Velocardiofacial Syndrome Information

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

10. Business Days of Operation

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

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Attachment B

PAYMENT FOR SERVICES

1. Payment for Services

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

Satisfactory performance of this contract will be measured by:

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

2. Payments and Advances

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

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

- 2.8 HHSC will determine whether costs submitted by Grantee are allowable and reimbursable.
- 2.9 If HHSC has paid funds to Grantee for unallowable or ineligible costs, Grantee will return the funds to HHSC within 30 calendar days of identification of the unallowable or ineligible costs unless another deadline is specified by HHSC.
- 2.10 HHSC may take repayment from funds available under any contract, active or expired, in amounts necessary to fulfill Grantee repayment obligations.
- 2.11 Grantee may request that funds be reallocated between budget categories for cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent of the current total annual approved budget. If a request to reallocate funds between categories is denied, HHSC may request that the contract be reduced by the identified excess funds. Grantee may make cumulative budget transfers among approved budget categories, excluding Equipment, for up to **10%** of the approved budget without prior approval from HHSC.
- 2.12 Grantee may not replace cash sources of revenue with non-cash or in-kind sources.
- 2.13 Grantee may request a cash advance in accordance with the requirements below:
 - 2.13.1 Grantee may submit a Request for Advance Payment for this Contract to meet immediate need for cash disbursement.
 - 2.13.2 The Request for Advance Payment and a state of Texas Purchase Voucher for the advance request amount must be submitted at the beginning of the contract term or at a later time in the contract term if circumstances so warrant. HHSC will evaluate and approve or disapprove the advance request in writing.
 - 2.13.3 The amount of the advance will be determined by the amount and term of this Contract. For this Contract, the amount of the advance will not exceed an amount equal to the amount of this Contract divided by the number of months remaining for this Contract.
 - 2.13.4 Advance funds must be expended within three business days of receipt and after the final monthly billing Grantee will not have advance funds on hand.
 - 2.13.5 Grantee will add interest earned on advanced funds to supplement the funds already committed to the project by both HHSC and Grantee.
- 2.14 Grantee may request mileage reimbursement limited to one of the following situations:

- 2.14.1 Mileage to the first temporary duty location, if farther than the distance from the employee's residence to the employee's primary duty location, should be reduced by the distance from the residence to the primary duty location.
- 2.14.2 Mileage to the first temporary duty location, if the distance is less than the distance from the employee's residence to the employee's primary duty location, would not be reimbursed.

3. Program Income and Other Third Party Revenue

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

utilizing it for the purposes and conditions of this Contract.

4. Reporting Requirements and Inspections

Grantee will submit financial, program, progress, service, and other reports in the established formats and by the due dates specified by HHSC in **Section 7.1 of Attachment B** to this Contract. This may include reports as requested of HHSC by the Texas Legislature, United States Department of Education, and any other federal or regulatory bodies covering Grantee's activities under this contract. Financial reports are required as provided in UGMS and will be filed regardless of whether or not expenses have been incurred. Grantee will respond to HHSC inquiries about data on reports within the timelines specified by HHSC. Submission of reports after the established due dates or failure to respond to HHSC inquiries about data on reports within the specified timelines may result in adverse actions as described in **Article VIII of Attachment D** to this Contract.

5. Equipment

- 5.1 Equipment is defined as tangible non-expendable property with an acquisition cost that equals or exceeds the lesser of the capitalization level established by Grantee for financial statement purposes or \$5,000, and a useful life of more than one year. Title to all equipment purchased from funds provided herein will be in the name of Grantee throughout the Contract term. Grantee must ensure that equipment items are used only to benefit the ECI program or that costs are properly allocated.
- 5.2 Unless initially listed and approved in the contract Attachments, Grantee must obtain prior written approval from HHSC for equipment purchases meeting the above definition. For each equipment item requested, Grantee must submit a detailed justification which includes description of features, make and model, and cost.
- 5.3 Grantee will maintain a complete, accurate and detailed property inventory listing and submit an annual cumulative report to HHSC by the due date specified in the **Section 7.4 of Attachment B** to this Contract. Grantee will administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it will use the proceeds to repair or replace said assets.
- 5.4 Upon termination or expiration of contract, title to any remaining equipment purchased from funds under this contract reverts to HHSC or any other party designated by HHSC. HHSC may, at its option and to the extent allowed by law, transfer title to such property to Grantee.
- 5.5 Grantee must follow the American Hospital Association's ("AHA") "Estimated Useful Lives of Depreciable Assets" for equipment disposition purposes, except when federal or statutory requirements supersede. After each item's end of its useful life, approval for disposition is not required. However, Grantee must ensure that disposition of any equipment and/or controlled asset is in accordance with the terms of the contract such as compliance with Generally Accepted Accounting Principles.

6. Adjustments to Contract Amount and Contract Number of Children

- 6.1 If necessary, based on procedures determined by HHSC, the contract amount and the contract number of children may be adjusted during the current Contract period by formal amendment. HHSC will inform Grantee of the method to be used for calculating contract adjustments prior to making any amendments.
- 6.2 Adjustments will be based on measurable performance related data and may include: average monthly enrollment, average monthly service delivery hours, or other relevant data.
- 6.3 During the current Contract period, HHSC may request that Grantee identify contract funds that will not be expended. HHSC may then reduce the contract by the amount of the unexpended funds.
- 6.4 Adjustments will be based on measurable performance related data and may include: average monthly enrollment, average monthly service delivery hours, or other relevant data.

7. Financial Reports and Due Dates

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

8. Standards For Program And Financial Management

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

These requirements will include at a minimum:

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

includes correcting each individual case of programmatic noncompliance, unless the child is no longer within the jurisdiction of the Grantee's local ECI program.

- 8.3 Grantee's governing board will ensure separation of powers, duties, and functions of board members and staff. Ignorance of any contract provisions or other requirements contained or referenced in this contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

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Attachment C

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Attachment D

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



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

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Grantee” means the Party receiving funds under this Contract. May also be referred to as “Contractor” in certain attachments.

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

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 INTERPRETIVE PROVISIONS

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

ARTICLE II. PAYMENT METHODS AND RESTRICTIONS

2.1 PAYMENT METHODS

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

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

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

2.2 FINAL BILLING SUBMISSION

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

2.3 FINANCIAL STATUS REPORTS (FSRs)

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

2.4 USE OF FUNDS

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

2.5 USE FOR MATCH PROHIBITED

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

2.6 PROGRAM INCOME

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

2.7 NONSUPPLANTING

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

2.8 ALLOWABLE COSTS

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

2.9 INDIRECT COST RATES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 RECAPTURE OF FUNDS

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

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

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

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

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

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

For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or Uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	2 CFR Part 200, Subpart F and UGMS	2 CFR Part 200 and UGMS
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- B. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

- i. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee will be subject to the sanctions and remedies for non-compliance with this Contract.
- ii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.
- iii. If Grantee, within Grantee’s fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS.
- iv. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits.
- v. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

B. Financial Statements

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically one copy of the single audit or program-specific audit to the System Agency via:

- i. HHS portal at: or,
<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>
- ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements

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

- i. HHS portal at:
<https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau>; or,
- ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 GENERAL AFFIRMATIONS

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

5.2 FEDERAL ASSURANCES

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

5.3 FEDERAL CERTIFICATIONS

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

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

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

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

6.2 GRANTEE'S PRE-EXISTING WORKS

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

6.3 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

6.4 DELIVERY UPON TERMINATION OR EXPIRATION

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

6.5 SURVIVAL

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

ARTICLE VII. RECORDS, AUDIT, AND DISCLOSURE

7.1 BOOKS AND RECORDS

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

7.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

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

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

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

7.4 SAO AUDIT

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

7.5 CONFIDENTIALITY

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

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

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

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

8.2 TERMINATION FOR CONVENIENCE

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

8.3 TERMINATION FOR CAUSE

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

i. **Material Breach**

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

ii. **Failure to Maintain Financial Viability**

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

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 AMENDMENT

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

9.2 INSURANCE

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

9.3 LEGAL OBLIGATIONS

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

9.4 PERMITTING AND LICENSURE

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

9.5 INDEMNITY

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

9.6 ASSIGNMENTS

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

9.7 INDEPENDENT CONTRACTOR

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

9.8 TECHNICAL GUIDANCE LETTERS

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

9.9 DISPUTE RESOLUTION

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

9.10 GOVERNING LAW AND VENUE

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

9.11 SEVERABILITY

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

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

9.12 SURVIVABILITY

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

9.13 FORCE MAJEURE

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

9.14 NO WAIVER OF PROVISIONS

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

9.15 PUBLICITY

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

9.16 PROHIBITION ON NON-COMPETE RESTRICTIONS

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

9.17 NO WAIVER OF SOVEREIGN IMMUNITY

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

9.18 ENTIRE CONTRACT AND MODIFICATION

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

9.19 COUNTERPARTS

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

9.20 PROPER AUTHORITY

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

9.21 E-VERIFY PROGRAM

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

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

9.22 CIVIL RIGHTS

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

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

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

9.23 SYSTEM AGENCY DATA

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

Attachment E

HHSC ECI SUPPLEMENTAL CONDITIONS
(VERSION 1.2)

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

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

“8.2 Termination for Convenience or Nonrenewal

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC’s notice of termination. Pursuant to [1 Tex. Admin. Code Part 15, Chapter 392, Subchapter B, §392.109](#), Grantee must provide System Agency at least 120 calendar days written notice before terminating or non-renewing, and System Agency must provide Grantee at least 90 days written notice of its intent of nonrenewal. The termination can be of the Contract or for one or more service areas as described in **Attachment A, Section 3**, of this Contract.”

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

“9.1 Amendment

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

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

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

“C. Notwithstanding the forgoing, if Grantee is a state agency or department, district, authority, county, municipality, or other political subdivision of the State, then nothing in this Contract should be construed to limit Grantee’s right to self insure in accordance with *Texas Government Code Chapter 2259*.”

3. **Section 9.5, Indemnity**, of the HHSC UTCs is deleted in its entirety and replaced with the following:

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

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

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

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

9.24 Subcontracting

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

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

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

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

9.25 Identity

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

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Attachment F



**Health and Human Services Commission
Special Conditions - Grants
Version 1.1**

Early Childhood Intervention (ECI) Services

Updated 9.1.17

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HHSC ECI SPECIAL CONDITIONS

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions Grant – Version 2.16.1

Article I. SPECIAL DEFINITIONS

“**Conflict of Interest**” means a set of facts or circumstances, a relationship, or other situation under which Grantee, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Grantee’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Grantee or Subcontractor an unfair competitive advantage in future HHSC procurements.

“**Grantee Agents**” means Grantee’s representatives, employees, officers, as well as any contractor or subgrantee’s employees, contractors, officers, principals and agents.

“**Data Use Agreement**” means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

“**Federal Financial Participation**” is a program that allows states to receive partial reimbursement for activities that meet certain objectives of the federal government. It is also commonly referred to as the Federal Medical Assistance Percentage (FMAP).

“**Item of Noncompliance**” means Grantee’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Project; (3) represent a failure of Grantee to be responsive to a request of HHSC relating to the Project under the Contract.

“**Minor Administrative Change**” refers to a change to the Contract that does not increase the fees or term and done in accordance with Section Section 4.01 of these Special Conditions.

“**Confidential System Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Grantee; or that Grantee may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Project, which is not designated as Confidential Information in the Data Use Agreement.

“**State**” means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

“**UTC**” means HHSC’s Uniform Terms and Conditions –Grantee- Version 2.15

Article II. GRANTEE’S PERSONNEL

Section 2.01 Qualifications

Grantee agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Grantee Agents assigned to perform the duties and responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or

turnover of personnel, Grantee remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

Section 2.02 Conduct and Removal

While performing the Project, Grantee Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Grantee Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Grantee with notice and documentation regarding its concerns. Upon receipt of such notice, Grantee must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Grantee Agent from performing the Project.

Article III. CONFIDENTIALITY

Section 3.01 Confidential System Information

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Grantee and all Grantee Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Project or the proper discharge of obligations and securing of rights under the Contract. Grantee will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Grantee, including information requested to do so by HHSC, will be in accordance with the Contract. If Grantee receives a request for Other Confidential Information, Grantee will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Grantee will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Grantee. Grantee will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Grantee all damages and liabilities caused by or arising from Grantee or Grantee Agents' failure to protect HHSC's Confidential Information as required by this section.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, GRANTEE WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM GRANTEE OR GRANTEE AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. GRANTEE WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

Article IV. MISCELLANEOUS PROVISIONS

Section 4.01 Minor Administrative Changes

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes

to the Project or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in the UTC. Upon approval of a Minor Administrative Change, HHSC and Grantee will maintain written notice that the change has been accepted in their Contract files.

Section 4.02 Conflicts of Interest

Grantee warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Grantee or Grantee Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Grantee will, and require Grantee Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Grantee and Grantee Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Grantee agrees that, if after Grantee's execution of the Contract, Grantee discovers or is made aware of a Conflict of Interest, Grantee will immediately and fully disclose such interest in writing to HHSC. In addition, Grantee will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Grantee or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Grantee agrees to abide by HHSC's decision.

If HHSC determines that Grantee was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

Section 4.03 Flow Down Provisions

Grantee must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

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Attachment G

CONTRACT AFFIRMATIONS
(VERSION 1.5 - GRANTS; SEPTEMBER 2019)

By entering into this Contract, Grantee affirms, without exception, as follows:

1. Grantee represents and warrants that these Contract Affirmations apply to Grantee and all of Grantee'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. Grantee represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Grantee understands that HHSC 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, Grantee 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. Grantee 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 Grantee agrees that the Contract can be terminated if the Grantee knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Grantee shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
6. Grantee 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. Grantee agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Grantee that differ in any manner from HHSC's terms and conditions, if any, are rejected unless expressly accepted by HHSC in writing.
7. Grantee agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.

8. Grantee generally releases from liability and waives all claims against any party providing information about the Grantee at the request of HHSC.
9. Grantee 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. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Grantee 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. 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 Grantee 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. Under Section 231.006(d) of the Texas Family Code regarding child support, Grantee 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. Grantee 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 Grantee's subcontracts, if any, if payment in whole or in part is from federal funds.
14. Grantee 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. Grantee 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. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Grantee 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. Under Section 2155.0061 of the Texas Government Code, Grantee 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. Grantee 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. Grantee 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. Grantee represents and warrants that payments to Grantee and Grantee'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. Grantee 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. Grantee agrees that upon request of HHSC, Grantee shall provide copies of its most recent business continuity and disaster recovery plans.
23. Grantee expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Grantee represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
 - providing equivalent access for effective use by both visual and non-visual means;
 - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

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

commands and other means of navigating graphical displays, and customizable display appearance.

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

24. If this Contract is for the purchase or lease of computer equipment, then Grantee certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
25. If this Contract is for the purchase or lease of covered television equipment, then Grantee certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
26. Grantee 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.
27. Grantee 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 Grantee may not accept employment from Grantee before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
28. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Grantee certifies that it does not employ an individual who was employed by HHSC or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Grantee has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
29. Grantee represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Grantee'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.
30. Grantee understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to

immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Grantee agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.

31. 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 Grantee 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 Grantee has violated any federal antitrust law; and (c) neither I nor any representative of the Grantee has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Grantee or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Grantee.
32. Grantee 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 Grantee 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 Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Grantee is unable to make the preceding representation and warranty, then Grantee instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Grantee's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Grantee acknowledges this is a continuing disclosure requirement. Grantee represents and warrants that Grantee shall notify HHSC 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 HHSC shall constitute breach of contract and may result in immediate contract termination.
33. Grantee certifies that for contracts for services, Grantee shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
 - (a) all persons employed by Grantee to perform duties within Texas; and
 - (b) all persons, including subcontractors, assigned by Grantee to perform work pursuant to this Contract within the United States of America.
34. 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, Grantee represents and warrants that neither Grantee nor any of Grantee'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.

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

36. If this Contract is for consulting services,

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

- (1) Name of individual(s) (Respondent 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, Grantee certifies that neither Grantee nor any individual employed by Grantee was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Grantee's offer to provide services.

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

38. Grantee understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under

Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Grantee represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

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

_____.

- 40. Grantee represents and warrants that if Grantee or Subcontractors, officers, or employees of Grantee have access to any state computer system or database, the Grantee, Subcontractors, officers, and employees of Grantee shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.
- 41. Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 42. Grantee 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.
- 43. Grantee represents and warrants that all statements and information prepared and submitted by Grantee in this Contract and any related Solicitation Response are current, complete, true, and accurate. Grantee acknowledges any false statement or material misrepresentation made by Grantee during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Grantee understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Grantee is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
- 44. Grantee represents and warrants that the individual signing this Contract is authorized to sign on behalf of Grantee and to bind the Grantee.

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

Legal Name of Grantee: _____

**Signature of Authorized
Representative**

Date Signed

**Printed Name and Title of
Authorized Representative**

Phone Number

**Federal Employer Identification
Number**

Fax Number

DUNS Number

Email Address

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

Attachment H

View Burden Statement

OMB Number: 4040-0007
Expiration Date: 02/28/2022

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.

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Prescribed by OMB Circular A-102

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.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>	<div style="border: 1px solid black; height: 30px; width: 100%;"></div>
APPLICANT ORGANIZATION	DATE SUBMITTED
<div style="border: 1px solid black; height: 30px; width: 100%;"></div>	<div style="border: 1px solid black; height: 30px; width: 100%;"></div>

Standard Form 424B (Rev. 7-97) Back

Attachment I

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-L.L.L., "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-L.L.L., "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.

* APPLICANT'S ORGANIZATION	
<input type="text"/>	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: <input type="text"/>	* First Name: <input type="text"/> Middle Name: <input type="text"/>
* Last Name: <input type="text"/>	Suffix: <input type="text"/>
* Title: <input type="text"/>	
* SIGNATURE: <input type="text"/>	* DATE: <input type="text"/>

Attachment J

(Version 8.5 – Community Center)

**DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE
AND
_____ (“CONTRACTOR”)**

This Data Use Agreement (“DUA”), effective as of the date signed below (“Effective Date”), is entered into by and between the Texas Health and Human Services Enterprise agency _____ (“HHS”) and _____ (“CONTRACTOR”), and incorporated into the terms of HHS Contract No. _____, in Travis County, Texas (the “Base Contract”).

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

ATTACHMENT 1. The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. **45 CFR 164.504(e)(1)-(3)** This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, **capitalized, underlined terms have the meanings set forth in the following:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“**Authorized Purpose**” means the specific purpose or purposes described in the Scope of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a Person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

HHS Data Use Agreement V.8.5 August 12, 2019
Community Center Version (LMHA, LA, LIDDA)

“**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 CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (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.

“**Legally Authorized Representative**” of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; Estates Code Ch. 752 and Texas Prob. Code § 3.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 *Obligations of CONTRACTOR*

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out the Authorized Purpose or as Required by Law.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. **45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101**

All of CONTRACTOR'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 Section 2054.519 by the Texas Department of Information Resources or offered under Texas Government Code Sec. 2054.519(f).

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or

HHS Contract No. _____

applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

(D) CONTRACTOR will not disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)(ii)(A)**

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. **45 CFR 164.502(d)(2)(i) and (ii)** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of CONTRACTOR without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and **45 CFR 164.502(e)(1)(1)(ii); 164.504(e)(1)(i) and (2)**

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. **45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.**

(H) If CONTRACTOR maintains PHI in a Designated Record Set, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

(I) CONTRACTOR will make PHI as required by HIPAA available to HHS for amendment and incorporate any amendments to this information that HHS directs or agrees to pursuant to the HIPAA. **45 CFR 164.504(e)(2)(ii)(E) and (F)**

(J) CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. **45 CFR 164.504(e)(2)(ii)(G) and 164.528**

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses

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to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)**

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. **45 CFR 164.308; 164.530(c); 1 TAC 202**

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if: **45 CFR 164.504(e)(ii)(1)(A)**

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D);

(2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA. 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 2. The SPI identifies basic privacy and security

controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306**

(R) CONTRACTOR will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards)**

(S) CONTRACTOR will designate and identify, subject to HHS approval, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. **45 CFR 164.308(a)(2)**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. **45 CFR 164.502; 164.514(d)**

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1)**

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45 CFR 164.308; 164.514(d)**

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and

manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. **45 CFR 164.504(e)(2)(i)(I)**

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d)**

(Z) CONTRACTOR will comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Breach or Event Notification to HHS. 45 CFR 164.400-414

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's satisfaction (the "incident response period"). **45 CFR 164.404**

(C) Breach Notice:

1. Initial Notice.

a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and *IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.*

b. Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410**

c. Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

2. 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by CONTRACTOR of an Event or Breach of Confidential Information, provide formal notification to the State, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: *For (a) - (m) below: 45 CFR 164.400-414*

a. The date the Event or Breach occurred;

b. The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

c. A brief description of the Event or Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);

d. A brief description of CONTRACTOR's investigation and the status of the investigation;

e. A description of the types and amount of Confidential Information involved;

f. Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

g. CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

- h. CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;
- i. The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;
- k. Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;
- l. A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

Section 4.02 *Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 164.530*

- (A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.
- (D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.03 *Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)*

- (A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) CONTRACTOR must obtain HHS's prior written approval of the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the

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name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5. SCOPE OF WORK

Scope of Work means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Scope of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

Section 6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

SECTION 6.02 HHS COMMITMENT AND OBLIGATIONS

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

Section 6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

Section 6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

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(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(D) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

1. Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
2. Require CONTRACTOR to submit to a corrective action plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
3. Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
4. Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation and the action it intends to take.

(E) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary.

(F) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 6.05 *Governing Law, Venue and Litigation*

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

Section 6.06 *Injunctive Relief*

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 6.07 *Limitation of Liability*

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR will defend and hold

harmless HHS and its Workforce against all actual and direct losses suffered by HHS and its Workforce arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce, including, but not limited to, the costs of required notices and mitigation of a breach and any fines or penalties imposed on HHS by any regulatory authority.

Section 6.08 Insurance

(A) As a governmental entity, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA and under which policy HHS is added as an additional insured. HHS reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 6.09 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, including but not limited to requirements to insure and/or indemnify HHS, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

Section 6.10 Entirety of the Contract

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 6.11 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any other law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

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ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM
HHS CONTRACT NUMBER _____

The DUA between HHS and CONTRACTOR establishes the permitted and required uses and disclosures of Confidential Information by CONTRACTOR.

CONTRACTOR has subcontracted with _____ (SUBCONTRACTOR) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBCONTRACTOR acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to CONTRACTOR under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. CONTRACTOR and SUBCONTRACTOR agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

CONTRACTOR and SUBCONTRACTOR assure HHS that any Breach or Event as defined by the DUA that SUBCONTRACTOR Discovers will be reported to HHS by CONTRACTOR in the time, manner and content required by the DUA.

If CONTRACTOR knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBCONTRACTOR that constitutes a material breach or violation of the DUA or the SUBCONTRACTOR's obligations CONTRACTOR will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBCONTRACTOR, if feasible;
3. Notify HHS immediately upon discovery of the pattern of activity or practice of SUBCONTRACTOR that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps CONTRACTOR is taking to cure or end the violation or terminate SUBCONTRACTOR's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

SUBCONTRACTOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE _____, **201** .

DATE: _____

DUA Attachment 2--
Security and Privacy Initial Inquiry

[HHS Security and Privacy Initial Inquiry Form](https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi)

(<https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>)

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Attachment J

(Version 8.5 – Governmental)

DATA USE AGREEMENT BETWEEN THE TEXAS HEALTH AND HUMAN SERVICES SYSTEM AND CONTRACTOR

This Data Use Agreement (“DUA”) is effective as of the date of the Base Contract into which it is incorporated (“Effective Date”), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services (“HHS”) and Contractor (the “Base Contract”).

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as “business associate” is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

“Authorized Purpose” means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“Authorized User” means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Breach” means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or

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loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

“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 Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (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.

“Destroy”, “Destruction”, for Confidential Information, means:

- (1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.
- (2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, “Guidelines for Media Sanitization,” such that the Confidential Information cannot be retrieved.

“Discover, Discovery” means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

“Legally Authorized Representative” of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

“Required by Law” means a mandate contained in law that compels an entity to use or disclose **Confidential Information** that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

“Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

“Workforce” means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) **With respect to PHI, Contractor shall:**

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) **With respect to ALL Confidential Information, Contractor shall:**

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential

Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor'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 Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information *in motion* includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information *at rest* requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;

- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor’s legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
 1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
 2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
 3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

(C) **With respect to ALL Confidential Information, Contractor shall NOT:**

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor’s own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and

restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Cooperation and Financial Responsibility.

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other

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notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor 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. Notice letters will be in Contractor's name and on

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Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.

(C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.

(D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.

(E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 5.02 HHS Commitment and Obligations

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

Section 5.03 HHS Right to Inspection

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

Section 5.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or

- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 5.05 Injunctive Relief

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 5.06 Indemnification

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

(A) As a governmental entity, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will either require that the policy name HHS as an additional insured or assign any payments from the insurer related to CONTRACTOR's liability arising under this DUA directly to HHS. HHS reserves the right to consider alternative means for CONTRACTOR to satisfy

CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 5.08 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 5.09 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hhsc.state.tx.us.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM

HHS CONTRACT NUMBER

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with _____ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

SUBCONTRACTOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE _____, 201 .

DATE: _____

DUA Attachment 2--
Security and Privacy Initial Inquiry

[HHS Security and Privacy Initial Inquiry Form](https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi)

(<https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>)

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Attachment K

<Insert Indirect Cost Rate Letter Here>

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A. Counties	B. ^Estimated Birth to Age 36 months Population	C. Children Receiving ECI Comprehensive Services during FY 2018	D. % of Birth to Age 36 Months Population Served during FY 2018	E. Children Receiving ECI Comprehensive Services during FY 2019, as of August 31, 2019	F. Children Receiving ECI Comprehensive Services in Medicaid during FY 2019, as of August 31, 2019	H. Children Receiving ECI Comprehensive Services in Private Consent to Bill during FY 2019, as of August 31, 2019	G. % of Children Served on 8/31/2019 with Medicaid Coverage	I. % of Children Served on 8/31/2019 with Private Insurance & Consent to Bill
Anderson	2,291	22	1%	18	13	*	72%	*
Andrews	1,405	71	5%	66	36	24	55%	36%
Angelina	5,093	189	4%	229	182	42	79%	18%
Aransas	1,150	25	2%	32	24	*	75%	*
Archer	371	11	3%	*	*	*	*	*
Armstrong	69	*	*	*	*	*	*	*
Atascosa	3,000	194	6%	191	134	50	70%	26%
Austin	1,437	66	5%	84	58	23	69%	27%
Bailey	506	36	7%	43	36	*	84%	*
Bandera	754	23	3%	28	19	*	68%	*
Bastrop	4,057	174	4%	179	128	36	72%	20%
Baylor	187	*	*	10	10	*	100%	*
Bee	1,824	104	6%	107	84	24	79%	22%
Bell	24,105	870	4%	912	553	261	61%	29%
Bexar	122,629	6,487	5%	6,743	4,413	2155	65%	32%
Blanco	492	12	2%	11	*	*	*	*
Borden	28	*	*	*	*	*	*	*
Bosque	887	35	4%	40	33	*	83%	*
Bowie	4,119	120	3%	112	86	24	77%	21%
Brazoria	19,208	448	2%	460	260	195	57%	42%
Brazos	10,849	263	2%	299	191	87	64%	29%
Brewster	546	10	2%	13	*	*	*	*
Briscoe	61	*	*	*	*	*	*	*
Brooks	464	17	4%	26	25	*	96%	*
Brown	1,823	114	6%	113	86	22	76%	19%
Burleson	835	26	3%	22	14	*	64%	*
Burnet	2,383	70	3%	81	59	11	73%	14%
Caldwell	2,360	129	5%	119	100	17	84%	14%
Calhoun	1,367	81	6%	71	50	20	70%	28%
Callahan	544	21	4%	25	14	*	56%	*
Cameron	28,423	1,328	5%	1,591	1,330	195	84%	12%
Camp	763	20	3%	24	19	*	79%	*
Carson	285	10	4%	16	*	*	*	*
Cass	1,496	24	2%	32	29	*	91%	*
Castro	487	15	3%	17	13	*	76%	*
Chambers	2,223	31	1%	27	18	10	67%	37%
Cherokee	2,789	26	1%	33	16	11	48%	33%
Childress	311	14	5%	18	10	*	56%	*
Clay	384	19	5%	20	14	*	70%	*
Cochran	226	10	4%	*	*	*	*	*
Coke	143	*	*	*	*	*	*	*
Coleman	454	14	3%	12	10	*	83%	*
Collin	49,804	1,507	3%	1,533	484	953	32%	62%
Collingsworth	192	*	*	*	*	*	*	*
Colorado	1,091	60	5%	57	40	17	70%	30%
Comal	6,697	256	4%	311	180	130	58%	42%
Comanche	702	25	4%	28	24	*	86%	*
Concho	125	*	*	*	*	*	*	*
Cooke	1,986	61	3%	74	50	27	68%	36%
Coryell	4,570	103	2%	104	71	25	68%	24%
Cottle	69	*	*	*	*	*	*	*
Crane	408	*	*	10	*	*	*	*
Crockett	237	*	*	*	*	*	*	*
Crosby	368	24	7%	11	10	*	91%	*
Culberson	125	*	*	*	*	*	*	*
Dallam	503	27	5%	26	13	*	*	*
Dallas	1,67,012	3,809	2%	3,920	2,543	1098	65%	28%
Dawson	734	45	6%	38	30	*	79%	*
De Witt	1,106	83	8%	*	*	*	*	*
Deaf Smith	1,318	107	8%	110	76	28	69%	25%
Delta	239	17	7%	21	16	*	76%	*
Denton	39,912	1,468	4%	1,560	641	852	41%	55%
Dickens	66	*	*	*	*	*	*	*
Dimmit	823	63	8%	59	48	12	81%	20%
Donley	163	14	9%	11	*	*	*	*
Duval	763	31	4%	38	34	*	89%	*
Eastland	923	30	3%	25	16	*	64%	*
Ector	11,727	274	2%	272	181	80	67%	29%
Edwards	87	*	*	*	*	*	*	*
El Paso	59,655	3,276	5%	3,381	2,159	1095	64%	32%
Ellis	9,312	408	4%	454	260	169	57%	37%
Erath	1,971	101	5%	92	74	19	80%	21%
Falls	745	39	5%	37	30	*	81%	*
Fannin	1,589	44	3%	42	26	14	62%	33%
Fayette	1,322	36	3%	35	29	*	83%	*
Fisher	194	18	9%	20	*	*	*	*
Floyd	357	28	8%	26	21	*	81%	*
Foard	57	*	*	*	*	*	*	*
Fort Bend	41,915	1,036	2%	1,063	486	513	46%	48%
Franklin	609	12	2%	16	14	*	88%	*
Freestone	1,006	18	2%	21	16	*	76%	*
Frio	1,075	101	9%	88	74	13	84%	15%
Gaines	1,474	51	3%	35	24	*	69%	*

Notes

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Galveston	18,375	358	2%	372	188	164	51%	44%
Garza	305	15	5%	17	12	*	*	*
Gillespie	1,128	29	3%	24	17	*	71%	*
Glasscock	70	*	*	*	*	*	*	*
Goliad	342	24	7%	30	22	*	73%	*
Gonzales	1,262	58	5%	46	36	11	78%	24%
Gray	1,321	86	7%	96	65	26	68%	27%
Grayson	6,400	178	3%	180	115	61	64%	34%
Gregg	6,961	249	4%	263	176	65	67%	25%
Grimes	1,373	24	2%	34	22	*	65%	*
Guadalupe	8,981	328	4%	280	135	147	48%	53%
Hale	2,155	120	6%	139	109	29	78%	21%
Hall	189	12	6%	*	*	*	*	*
Hamilton	444	22	5%	11	*	*	*	*
Hansford	357	13	4%	17	10	*	59%	*
Hardeman	221	*	*	*	*	*	*	*
Hardin	2,486	110	4%	93	61	36	66%	39%
Harris	300,667	6,678	2%	7,374	5,012	1,787	68%	24%
Harrison	3,865	69	2%	74	53	17	72%	23%
Hartley	266	*	*	*	*	*	*	*
Haskell	309	14	5%	13	*	*	*	*
Hays	10,243	371	4%	469	264	188	56%	40%
Hemphill	284	*	*	*	*	*	*	*
Henderson	3,630	42	1%	42	32	*	76%	*
Hidalgo	57,209	2,064	4%	2,223	1,783	322	80%	14%
Hill	1,902	62	3%	56	44	*	79%	*
Hockley	1,573	79	5%	73	59	19	81%	26%
Hood	2,379	148	6%	137	83	34	61%	25%
Hopkins	1,839	75	4%	82	63	14	77%	17%
Houston	1,070	32	3%	31	26	*	84%	*
Howard	2,256	115	5%	141	95	40	67%	28%
Hudspeth	197	*	*	*	*	*	*	*
Hunt	5,029	303	6%	316	212	86	67%	27%
Hutchinson	1,216	58	5%	77	52	27	68%	35%
Irion	58	0	0%	*	*	*	*	*
Jack	427	18	4%	12	*	*	*	*
Jackson	900	61	7%	59	34	24	58%	41%
Jasper	1,866	48	3%	40	31	*	78%	*
Jeff Davis	74	0	0%	*	*	*	*	*
Jefferson	14,147	426	3%	451	313	110	69%	24%
Jim Hogg	341	10	3%	11	*	*	*	*
Jim Wells	2,939	130	4%	125	103	25	82%	20%
Johnson	9,427	484	5%	494	339	143	69%	29%
Jones	695	15	2%	14	12	*	*	*
Karnes	773	87	11%	75	52	23	69%	31%
Kaufman	6,428	238	4%	225	109	110	48%	49%
Kendall	1,922	40	2%	53	23	29	43%	55%
Kenedy	27	8	30%	*	*	*	*	*
Kent	37	*	*	*	*	*	*	*
Kerr	2,369	44	2%	54	38	13	70%	24%
Kimble	200	*	*	*	*	*	*	*
King	13	*	*	*	*	*	*	*
Kinney	168	*	*	*	*	*	*	*
Kleberg	1,438	60	4%	78	61	15	78%	19%
Knox	212	13	6%	10	*	*	*	*
La Salle	456	25	5%	23	19	*	83%	*
Lamar	2,499	69	3%	56	40	16	71%	29%
Lamb	799	42	5%	43	28	10	65%	23%
Lampasas	965	34	4%	36	20	12	56%	33%
Lavaca	1,115	45	4%	56	36	18	64%	32%
Lee	949	34	4%	41	30	14	73%	34%
Leon	968	20	2%	22	11	11	50%	50%
Liberty	4,674	163	3%	166	118	32	71%	19%
Limestone	1,206	52	4%	56	47	*	84%	*
Lipscomb	207	*	*	*	*	*	*	*
Live Oak	597	25	4%	22	14	12	64%	55%
Llano	785	24	3%	35	31	*	89%	*
Loving	4	*	*	*	*	*	*	*
Lubbock	16,875	1,216	7%	1,277	855	376	67%	29%
Lynn	285	17	6%	12	10	*	83%	*
Madison	752	12	2%	10	*	*	*	*
Marion	431	*	*	*	*	*	*	*
Martin	391	22	6%	29	18	11	62%	38%
Mason	180	*	*	*	*	*	*	*
Matagorda	2,074	127	6%	142	113	38	80%	27%
Maverick	4,240	275	6%	318	239	51	75%	16%
McCulloch	469	16	3%	10	*	*	*	*
McLennan	14,178	521	4%	550	422	111	77%	20%
McMullen	33	*	*	*	*	*	*	*
Medina	2,472	94	4%	133	87	52	65%	39%
Menard	92	*	*	*	*	*	*	*
Midland	11,739	327	3%	352	204	147	58%	42%
Milam	1,320	26	2%	31	22	*	71%	*

Notes

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Mills	245	*	*	*	*	*	*	*
Mitchell	465	39	8%	34	27	*	79%	*
Montague	981	24	2%	28	24	*	86%	*
Montgomery	30,182	762	3%	804	460	297	57%	37%
Moore	1,411	71	5%	74	45	27	61%	36%
Morris	650	19	3%	25	24	*	96%	*
Motley	44	*	*	*	*	*	*	*
Nacogdoches	3,264	133	4%	149	117	34	79%	23%
Navarro	2,479	131	5%	146	114	27	78%	18%
Newton	566	10	2%	*	*	*	*	*
Nolan	890	100	11%	82	53	19	65%	23%
Nueces	22,298	823	4%	939	686	218	73%	23%
Ochiltree	748	47	6%	34	19	*	56%	*
Oldham	82	*	*	*	*	*	*	*
Orange	4,262	151	4%	188	119	60	63%	32%
Palo Pinto	1,388	66	5%	71	58	13	82%	18%
Panola	1,356	32	2%	25	15	*	60%	*
Parker	6,229	249	4%	276	140	117	51%	42%
Parmer	597	26	4%	21	13	*	62%	*
Pecos	951	18	2%	28	18	11	64%	39%
Polk	2,172	72	3%	65	49	18	75%	28%
Potter	7,167	320	4%	268	193	75	*	28%
Presidio	381	13	3%	*	*	*	*	*
Rains	533	17	3%	29	27	*	93%	*
Randall	7,174	174	2%	175	92	77	53%	44%
Reagan	240	13	5%	21	13	*	*	*
Real	186	*	*	*	*	*	*	*
Red River	605	15	2%	12	*	*	*	*
Reeves	845	34	4%	40	23	15	58%	38%
Refugio	428	23	5%	23	18	*	*	*
Roberts	46	*	0%	*	*	*	*	*
Robertson	865	15	2%	23	18	*	78%	*
Rockwall	4,587	165	4%	150	47	94	31%	63%
Runnels	600	21	4%	28	23	*	82%	*
Rusk	2,462	52	2%	58	39	15	67%	26%
Sabine	410	19	5%	22	15	*	*	*
San Augustine	410	12	3%	14	11	*	79%	*
San Jacinto	1,505	23	2%	26	22	*	85%	*
San Patricio	4,163	191	5%	207	149	44	*	21%
San Saba	286	*	*	*	*	*	*	*
Schleicher	169	*	*	*	*	*	*	*
Scurry	1,003	133	13%	117	82	23	*	20%
Shackelford	192	*	*	*	*	*	*	*
Shelby	1,513	39	3%	42	29	12	*	29%
Sherman	204	*	*	*	*	*	*	*
Smith	12,881	170	1%	189	123	52	65%	28%
Somervell	448	28	6%	20	19	*	95%	*
Starr	4,917	164	3%	129	110	11	*	9%
Stephens	516	*	*	*	*	*	*	*
Sterling	50	*	*	*	*	*	*	*
Stonewall	72	*	*	*	*	*	*	*
Sutton	275	*	*	*	*	*	*	*
Swisher	397	24	6%	29	19	*	66%	*
Tarrant	116,199	5,163	4%	5,254	3,209	1,789	61%	34%
Taylor	7,573	223	3%	223	135	42	61%	19%
Terrell	46	*	*	*	*	*	*	*
Terry	774	34	4%	30	24	*	*	*
Throckmorton	65	*	*	*	*	*	*	*
Titus	2,052	134	7%	117	94	11	80%	9%
Tom Green	6,362	307	5%	318	231	68	73%	21%
Travis	68,142	1,818	3%	1,776	1,162	448	65%	25%
Trinity	593	17	3%	18	15	*	83%	*
Tyler	945	32	3%	31	21	11	68%	35%
Upshur	1,932	71	4%	59	36	14	*	24%
Upton	203	12	6%	10	*	*	*	*
Uvalde	1,612	61	4%	72	58	10	81%	14%
Val Verde	3,259	206	6%	210	156	54	74%	26%
Van Zandt	2,783	33	1%	33	21	*	64%	*
Victoria	5,233	435	8%	497	377	125	76%	25%
Walker	2,921	30	1%	33	24	*	73%	*
Waller	2,097	78	4%	71	46	18	65%	25%
Ward	869	25	3%	34	24	*	71%	*
Washington	1,619	39	2%	54	34	*	63%	*
Webb	18,489	1,197	6%	1,335	1,123	180	84%	13%
Wharton	2,286	136	6%	156	122	29	78%	19%
Wheeler	343	25	7%	26	18	*	69%	*
Wichita	7,238	279	4%	309	219	86	71%	28%
Wilbarger	767	28	4%	14	11	*	79%	*
Willacy	1,290	53	4%	68	64	*	94%	*
Williamson	30,210	625	2%	646	314	290	49%	45%
Wilson	2,412	142	6%	120	77	44	64%	37%
Winkler	599	23	4%	24	16	*	67%	*
Wise	3,136	113	4%	110	76	28	69%	25%

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Wood	1,987	25	1%	34	25	*	74%	*
Yoakum	652	45	7%	39	24	15	62%	38%
Young	1,059	28	3%	39	29	*	74%	*
Zapata	1,062	36	3%	40	35	*	88%	*
Zavala	945	81	9%	82	72	*	88%	*
Children Missing County Information	1,661,923	424		621	388	163		

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Exhibit F: HHSC Service Areas Map for ECI

Service Area	HHSC Region	Counties Served
ECI Service Area-1	Region 2	Callahan Jones Shackelford Stephens Taylor
ECI Service Area-2	Region 7	Travis Blanco Hays Llano
ECI Service Area-3	Region 7	Travis
ECI Service Area-4	Region 6	Chambers Harris
ECI Service Area-5	Region 8	Bexar
ECI Service Area-6	Region 7	Bastrop Burnet Caldwell Fayette Lee Williamson
ECI Service Area-7	Region 6	Braxton Harris
ECI Service Area-8	Region 8	Bexar
ECI Service Area-9	Region 5	Angelina Houston Jasper Nacogdoches Newton Polk Sabine San Augustine San Jacinto Shelby Trinity Tyler
ECI Service Area-10	Region 8	Atascosa Dimmit Frio Gonzales Guadalupe La Salle Wilson Zavala Maverick Medina Real Uvalde Bandera Comal Kinney
ECI Service Area-11	Region 7	Bee McMullen and Live Oak
ECI Service Area-12	Region 1	Bell Coryell Hamilton Lampasas Milam
ECI Service Area-13	Region 1	Barley Briscoe Castro Floyd Hale Lamb Motley Parmer Swisher
ECI Service Area-13	Region 2	Brown Coleman Comanche Faskrud
ECI Service Area-13	Region 7	Mills San Saba
ECI Service Area-13	Region 8	Gillespie Kendall Kerr
ECI Service Area-13	Region 9	McCulloch Kimble Mason Menard
ECI Service Area-1	Region 3	Collin Kaufman Rockwall Fannin Grayson
ECI Service Area-15	Region 11	Brooks Duval Jim Hogg Jim Wells Kenedy Kieberg Webb Zapata Aransas San Patricio Nueces
ECI Service Area-16	Region 3	Dallas
ECI Service Area-16	Region 8	Dallas
ECI Service Area-19	Region 7	Travis
ECI Service Area-20	Region 6	Fort Bend Harris Montgomery Liberty Walker
ECI Service Area-20	Region 7	Bravos Burleson Grimes Leon Madison Robertson Washington
ECI Service Area-21	Region 11	Cameron Hidalgo Starr Willacy
ECI Service Area-22	Region 7	Boque Falls Freestone Hill Elmestone McLennan
ECI Service Area-23	Region 2	Archer Foard Hardeman Wichita Wilbarger Baylor Clay Jack
ECI Service Area-24	Region 6	Blanco Young
ECI Service Area-24	Region 5	Jefferson Orange Harris
ECI Service Area-25	Region 6	Fort Bend Harris Waller
ECI Service Area-26	Region 3	Hunt
ECI Service Area-27	Region 1	Delta Hopkins Lamar Cochran Crosby Dickens Garza Hockley Lubbock Lynn Terry Yoakum
ECI Service Area-27	Region 2	Kerr
ECI Service Area-27	Region 9	Dwison Gaines
ECI Service Area-28	Region 3	Parker Tarrant Ellis Erath Hood Johnson Navarro Palo Pinto Somervell Wise Denton Cooke
ECI Service Area-29	Region 10	El Paso
ECI Service Area-30	Region 9	Ector Midland Pecos
ECI Service Area-30	Region 10	Brewster Culberson Jeff Davis Presidio
ECI Service Area-30	Region 2	Burnetts
ECI Service Area-30	Region 8	Edwards Val Verde
ECI Service Area-31	Region 9	Coke Concho Crockett Irion Schleicher Sterling Sutton Tom Green
ECI Service Area-32	Region 1	Armstrong Carson Childress Collingsworth Dallam Deaf Smith Donley Gray Hall Hansford Hartley Hemphill Hutchinson Lipscomb Moore Ochiltree Oldham Roberts Sherman
ECI Service Area-33	Region 10	El Paso Hudspeth
ECI Service Area-3	Region 6	Austin Colorado Matagorda Wharton
ECI Service Area-3	Region 8	Calhoun Dewitt Goliad Jackson Karnes Lavaca Victoria
ECI Service Area-3	Region 11	Refugio
ECI Service Area-35	Region 11	Cameron Hidalgo
ECI Service Area-36	Region	Gregg Harrison Marion Panola Rusk Upshur
ECI Service Area-37	Region	Anderson Cherokee Handerson Rains Smith Van Zandt Wood
ECI Service Area-38	Region 6	Fort Bend Harris Waller
ECI Service Area-39	Region	Camp Cass Franklin Morris Red River Titus Bowie
ECI Service Area-40	Region 1	Potter Randall
ECI Service Area-41	Region	Harris
ECI Service Area-42	Region 3	Dallas
ECI Service Area-43	Region 9	Andrews Crane Glasscock Loving Martin Reagan Reeves Terrell Upton Ward Winkler Borden Howard
ECI Service Area-43	Region 1	Kiowa
ECI Service Area-43	Region 2	Cottle Fisher Haskell Knox Mitchell Nolan Scurry Stonewall Throckmorton



Health and Human Services Early Childhood Intervention Service Areas

Updated September 12, 2019



**DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES SYSTEM
AND
CONTRACTOR**

This Data Use Agreement (“DUA”) is effective as of the date of the Base Contract into which it is incorporated (“Effective Date”), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services (“HHS”) and Contractor (the "Base Contract").

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as “business associate” is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

“**Authorized Purpose**” means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“**Breach**” means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach

HHS Data Use Agreement v.8.5 August 8, 2019

unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

“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 Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (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.

“Destroy”, “Destruction”, for Confidential Information, means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

“Discover, Discovery” means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

“Legally Authorized Representative” of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

“Required by Law” means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

“Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

“Workforce” means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) With respect to PHI, Contractor shall:

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) With respect to ALL Confidential Information, Contractor shall:

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall

produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor'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 Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's

security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;

- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor’s legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
 1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
 2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
 3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

(C) With respect to ALL Confidential Information, Contractor shall NOT:

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor’s own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors’ compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Cooperation and Financial Responsibility.

(A) Contractor shall, at Contractor’s expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor 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. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.
- (C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.
- (D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.
- (E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 5.02 HHS Commitment and Obligations

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

Section 5.03 HHS Right to Inspection

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

Section 5.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 5.05 Injunctive Relief

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 5.06 Indemnification

Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require Contractor to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and noncontributory status.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 5.08 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 5.09 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS

and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hsc.state.tx.us.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM
HHS CONTRACT NUMBER

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with _____ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

SUBCONTRACTOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE _____, **201** .

DATE: _____

**Attachment 2-
Security and Privacy Initial Inquiry
[Attach Completed SPI Here]**

**DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES SYSTEM
AND
CONTRACTOR**

This Data Use Agreement (“DUA”) is effective as of the date of the Base Contract into which it is incorporated (“Effective Date”), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services (“HHS”) and Contractor (the "Base Contract").

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as “business associate” is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

“Authorized Purpose” means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“Authorized User” means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Breach” means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or

loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

“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 Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (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.

“Destroy”, “Destruction”, for Confidential Information, means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

“Discover, Discovery” means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

“Legally Authorized Representative” of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code § 166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

“Required by Law” means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

“Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

“Workforce” means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) With respect to PHI, Contractor shall:

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) With respect to ALL Confidential Information, Contractor shall:

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential

Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor'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 Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;

- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor’s legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
 1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
 2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
 3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

(C) With respect to ALL Confidential Information, Contractor shall NOT:

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor’s own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and

restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Cooperation and Financial Responsibility.

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;

- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other

notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor 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. Notice letters will be in Contractor's name and on

Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.

(C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.

(D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.

(E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 5.02 HHS Commitment and Obligations

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

Section 5.03 HHS Right to Inspection

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

Section 5.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or

- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 5.05 Injunctive Relief

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 5.06 Indemnification

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

(A) As a governmental entity, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will either require that the policy name HHS as an additional insured or assign any payments from the insurer related to CONTRACTOR's liability arising under this DUA directly to HHS. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy

CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 5.08 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 5.09 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hhsc.state.tx.us.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM
HHS CONTRACT NUMBER

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with _____ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

SUBCONTRACTOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE _____, **201** .

DATE: _____

**Attachment 2-
Security and Privacy Initial Inquiry
[Attach Completed SPI Here]**

**Early Childhood Intervention Respite Services
Criteria, Subcriteria Sheet
RFA No. HHS0006402**

Evaluator				
Respondent				
#	Criteria	Weight	Score	Comments
1	Program Experience and Capacity (20%)			
1.1	Respondent demonstrates necessary experience and has an organizational structure which will support a successful ECI program, including a description of how any other services the Respondent provides benefits families receiving ECI services.	7%		
1.2	Respondent adequately describes population to be served and has an adequate plan for outreaching to diverse populations and for ensuring the needs of all community members are met. Respondent has an adequate plan for how they will coordinate with existing community resources to maximize services to children.	7%		
1.3	Key management staff will have the necessary qualifications to operate a successful ECI program.	6%		
	Subtotal	20%		
2	Start Up Plans (15%)			
2.1	Respondent has an adequate plan to begin services by September 1, 2020, including adequate, trained staff to provide all required services and at least one full-time office.	7%		
2.2	Respondent has an adequate plan for accepting referrals and enrolling children and expanding as enrollment grows to meet the needs of the community.	4%		
2.2	Respondent has an adequate outreach plan to maximize child participation and ensure families of children who qualify for services are aware of ECI services. The plan includes how the Respondent will communicate with community entities in outreach and referral, early identification, and methods to evaluate child find efforts. Respondent's plan also includes how they will evaluate innovative strategies and includes a description of the efforts that will be used to target children in underserved and culturally diverse populations.	4%		
	Subtotal	15%		
3	Staffing Requirements (15%)			
3.1	Respondent has an adequate plan to attract and retain qualified service personnel. The plan includes steps if qualified personnel do not initially apply with the agency.	6%		
3.2	Initial and recurring staff training requirements are adequate to ensure staff are qualified and trained to provide ECI services. Management oversight of staff is adequate to ensure efficient provision of quality services.	6%		
3.3	Respondent has an adequate plan to ensure staff are culturally competent and responsive to the needs of children/families who represent diverse ethnic, racial, and religious backgrounds.	3%		
	Subtotal	15%		
4	Service Planning, Coordination, and Delivery (30%)			
4.1	Respondent demonstrates an understanding of each component of ECI program services and has an adequate plan to provide services to using evidence-based practice to the extent practical.	17%		
4.2	Respondent has an adequate plan to respond to both formal and informal complaints about service provision.	5%		
4.3	Respondent has an adequate internal monitoring and quality assurance system to track service delivery.	8%		
	Subtotal	30%		
5	Financial Planning (10%)			
5.1	Respondent anticipates adequate funding to provide ECI services and identifies adequate locally collected funds, including billing, fundraising, other grants and other funding, to supplement the HHSC ECI contract funds.	3%		
5.2	Respondent demonstrates necessary experience and capacity for billing Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, and types of private insurance.	4%		
5.2	Respondent demonstrates necessary experience and capacity for leveraging local and private funding for program services.	3%		
	Subtotal	10%		
6	Budget (10%)			

**Early Childhood Intervention Respite Services
Criteria, Subcriteria Sheet
RFA No. HHS0006402**

Evaluator				
Respondent				
#	Criteria	Weight	Score	Comments
6.1	Personnel and Travel are adequate to support the needs of the ECI program and its services. All costs are reasonable, necessary, and allowable to provide the ECI program.	4%		
6.2	The Supplies, Contractual and Other categories are adequate to support the needs of the ECI program and its services. All costs are reasonable, necessary, and allowable to provide the ECI program.	3%		
6.3	The Equipment and Indirect Costs categories, including the cost allocation plan as applicable, are adequate to support the needs of the ECI program and its services. All costs and cost allocation strategies are reasonable, necessary, and allowable to provide the ECI program.	3%		
Subtotal		10%		
TOTAL (%)		100%		

SECTION I: INSTRUCTIONS TAB

Legal Name of Contractor: Enter your organization's legal name.

DBA: If Applicable

PAYEE IDENTIFICATION NUMBER (PIN): Enter your State of Texas issued Texas Identification Number (TIN)

A. FY 2020 ECI Proposed Number of Children and Funding Request

1. Number of Children Proposed
2. ECI Services Funding Requested
3. Plus: Projected Locally Collected Funds (Derived from Funding Sources Chart)
4. Total ECI Program Budget

B. Funding Application Preparer

Name:

Title:

Telephone Number:

Fax Number

Email Address:

Mailing Address:

C. Longevity of Key Staff

Executive Director:

Financial Officer

ECI Program Director:

SECTION I: REQUEST SUMMARY AND GENERAL INFORMATION

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME: HHSC

DBA: _____

PAYEE IDENTIFICATION NUMBER (PIN): 12345678910111

A. FY 2020 ECI Proposed Number of Children and Funding Request

1. Number of Children Proposed		<u>482</u>
2. ECI Services Funding Requested	\$	<u>1,765,432</u>
3. plus: Projected Locally Collected Funds (derived from Funding Sources chart)	+ \$	<u>1,482,291</u>
4. Total ECI Program Budget	\$	<u>3,247,723</u>

B. Funding Application Preparer

Name: John Smith

Title: Director

Telephone Number: 512-911-0024

Fax Number: 512-831-1698

Email Address: John.smith01@aol.com

Mailing Address: 123 Pickdel Drive
Austin, TX. 78726

C. Longevity of Key Staff

Executive Director: < 1 yr.

Financial Officer: < 1 yr.

ECI Program Director: < 1 yr.

BUDGET SUMMARY INSTRUCTIONS

List all funding sources projected for your ECI program for 09/01/20 through 08/31/21. Include ECI on the line identified.

Use the revenue codes drop-down list to identify and select the different types of funding you anticipate receiving.

You can also find the Revenue Code Tab at the end of the workbook.

Enter the amount of funding anticipated by funding source. Note: Contractors are expected to obtain and maintain these funding levels.

The Total Funds must equal the Total Amount Budgeted in column 1 on the Section 1 Tab.

Form I-1 Budget and Child Count Template Instructions

Difference: **\$318,505**

SECTION II- DO NOT TYPE ANYTHING ON THE NEXT TAB.

This tab will autofill with information entered on the Personnel, Fringe, Travel, Equipment, Supplies, Contractual, Other, and Indirect Costs tabs.

Form I-1 Budget and Child Count Template Instructions

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

B. Budget Summary

DO NOT TYPE ANYTHING ON THIS PAGE

Tab will auto fill with the information gathered from the other tabs.

BUDGET CATEGORY		1. AMOUNT BUDGETED	2. PERCENTAGE
1. Personnel		\$ 223,425	54.48%
1b. Fringe Benefits	25.00%	\$ 55,856	13.62%
2. Travel		\$ 2,838	0.69%
3. Equipment and Controlled Asset	\$ 5,000	\$ 2,400	0.59%
4. Supplies		\$ 590	0.14%
5. Contractual		\$ 28,320	6.91%
6. Other		\$ 28,320	6.91%
Total Direct Charges		\$ 341,749	83.33%
7. Indirect Charges	20.00%	\$ 68,350	16.67%
Total		\$ 410,099	100.00%

Non-Direct Cost Percentage Budgeted 49.43%

Personnel & Fringe Instructions

FRINGE BENEFITS:

Fringe benefits include, but are not limited to, the cost of employee insurance, pensions, and unemployment benefit plans. The cost of fringe benefits is allowable (in proportion to the amount of time or effort employees devote to the grant funded project), to the extent that the benefits are reasonable and are in accordance with 2 CFR Part 200.

INSTRUCTIONS:

Fringe Benefits: Provide a detailed list of costs that comprise your organizations fringe benefits.

Fringe Benefits Rate: The fringe benefit rate should be based on your organization's actual experience. The fringe benefit rate is typically calculated by dividing your organizations total fringe benefit costs by total wage/salary costs. Enter your organizations fringe benefit rate on the Personnel budget tab.

Fringe Benefits Total: The total fringe benefit amount will be automatically calculated by multiplying the rate times the salary total.

PERSONNEL: The actual cost of employee salaries devoted to working on activities directly related to the HHSC funded program. These costs are allowable to the extent that they are identified in the contract budget and conform to 2 CFR Part 200.

The actual cost of employee salaries devoted to working on activities directly related to the HHSC funded program. These costs are allowable to the extent that they are identified in the contract budget and conform to 2 CFR Part 200.

INSTRUCTIONS:

Name: Enter the name of the person who holds the position currently. If the position is vacant, write "vacant".

Professional Title: Provide the professional title of the position.

Non-direct %: Identify what percentage of the position's time will be spent on non-direct activities.

Job Functions: Using the Job Functions list on the last tab of this spreadsheet, enter all the job functions performed by this position.

Annualized Salary: Enter the total annual salary for this position.

Number of Months or Days: Select either "Months" or "Days" in the drop down box in cell F19. The cell defaults to Months. Then, enter the number of months or days this position will support the program during this fiscal year.

Adjusted Salary: This column will automatically calculate the adjusted salary of each line item based on the monthly salary times number of months.

Percentage of Time on ECI: Enter the percentage of time on ECI for which this position's salary will be allocated.

Total Amount Required: The column will automatically calculate based on information entered into previous columns.

Non-Direct Amount: The column will automatically calculate the amount of salary spent on non-direct activities.

Form I-1 Budget and Child Count Template Instructions

SECTION II: BUDGET (cont.)

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME: HHSC

SECTION II.B: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

SECTION II.B.1: Personnel Schedule (Staff)

FRINGE BENEFITS Describe the Fringe Benefits allocated to the program(s):

FICA 5.6%, SUTA 3.4%, Insurance 16%

Fringe Benefit Rate % 25.00%

Fringe Benefits Total (auto-populates) \$55,856

a. Name	b. Professional Title	c. Non-Direct %	d. Job Functions	e. Annualized Salary	Months	g. Adjusted Salary	h. % Time ECI	i. Total Amount Required (=g x h)
					f. Months or Days			
Peter Pan	Physical Therapist (LPT)	50%	1,2,4,5,6,11,17,19,26,29	\$ 78,805	12	\$ 78,805	5.00%	\$ 3,940
Tinker Bell	Other/Indirect Service (Billing Specialist)	50%	28	\$ 49,111	12	\$ 49,111	80.00%	\$ 39,289
Captain Hook	Other/Indirect Service (Medical Records Manager)	60%	28	\$ 32,689	12	\$ 32,689	60.00%	\$ 19,613
Mary Darling	Clerical/Secretary	50%	24,25,28	\$ 35,992	12	\$ 35,992	100.00%	\$ 35,992
Wendy Darling	Administrator (Assistant Director)	70%	29,30	\$ 82,397	12	\$ 82,397	100.00%	\$ 82,397
George Darling	Program Director	60%	29,30	\$ 52,742	12	\$ 52,742	80.00%	\$ 42,194
						\$ 0		\$ 0

						\$ 0		\$ 0
						\$ 0		\$ 0
							Grand Total	\$ 223,425

Job Codes Used:

Job Codes Not Used:

Form I-1 Budget and Child Count Template Instructions

j. Non-Direct Amount (= c x i)
\$ 1,970
\$ 19,645
\$ 11,768
\$ 17,996
\$ 57,678
\$ 25,316
\$ 0

\$	0
\$	0
\$	134,373

TRAVEL Instructions

The cost of transportation, lodging, meals, and related expenses incurred by employees of the organization while performing duties relevant to the program(s). Costs related to conference registration fees should be classified under the "Other" cost category.

ALL OUT OF STATE TRAVEL MUST HAVE HHSC PRIOR APPROVAL AT LEAST 30-DAYS IN ADVANCE OF TRAVEL. INCLUSION IN AN APPROVED BUDGET DOES NOT CONSTITUTE APPROVAL FOR OUT OF STATE TRAVEL.

All contracts with HHSC require a written travel policy maintained by the contractor and

Local Mileage:

Agency rate paid per mile: Enter the amount amount paid per mile driven while performing official business for the ECI contract. This rate cannot exceed the state rate, so if the state rate should be reduced during the contract period, the contractor must reduce the rate paid per mile to match the state rate.

Local mileage is defined as mileage driven in the course of doing business when the staff member will return home or to the business headquarters in the same business day. It does not include mileage driven when an overnight stay is required.

Service Delivery: Enter the amount estimated to be spent on local mileage for staff to perform service delivery. This should only include mileage paid directly to staff they drove as the result of providing services, such as evaluations and therapy, to clients.

Outreach/Child Find: Enter the amount estimated to be spent on local mileage for staff to perform child find activities, including attending local health fairs, visiting doctors' offices, etc.

Overnight Instate and Out-of-State Travel (Conferences/Trainings/Statewide Meetings) Instructions:

Description of conference/trainings/statewide meetings: Include the name and description of the conference/trainings/statewide meeting.

Justification: Briefly explain how the conference/training/statewide meeting is applicable to your program.

Location: Identify the location of conference/training/statewide meeting.

Number of Days/Employees: Identify the number of days and employees attending the conference/training/statewide meeting.

Travel Costs: Mileage, Airfare, Meals, Lodging, Other Costs

Form I-1 Budget and Child Count Template Instructions

EQUIPMENT AND CONTROLLED ASSETS Instructions

Equipment and Controlled Assets Purchases.

2 CFR Part 200 - §200.33 Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies. (https://www.ecfr.gov/cgi-bin/text-idx?SID=948b06c8a2fe4098a61bee7f81f4f220&node=2:1.1.2.2.1&rgn=div5#se2.1.200_133)

INSTRUCTIONS:

Capitalization Amount: List your agency's capitalization amount.

Description of Item: Describe each line item of equipment and attach a complete specification, if available.

Purpose & Justification: State the purpose for the item(s) and why the equipment is necessary. If the cost of the item will be allocated across multiple programs, provide the total cost and how it will be allocated in this section.

Quantity: Enter the number of units to be purchased.

Form I-1 Budget and Child Count Template Instructions

SUPPLIES Instructions

Supplies are defined as consumable items necessary to carry out the services under this HHSC program including office supplies, patient educational supplies, software, and any items of tangible items other than those defined under equipment.

INSTRUCTIONS:

Description of Item: Describe each supply item.

Purpose & Justification: State the purpose for the item(s) and why the item is necessary to support the program. If the cost of the item will be allocated across multiple programs, provide the total cost and how it will be allocated in this section.

Total Amount Required: Enter the total cost of the requested item(s).

Form I-1 Budget and Child Count Template Instructions

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

SECTION II.B.4: Supplies

a. Description of Item [If applicable, provide estimated quantity and cost (i.e. # of boxes & cost/box)]	b. Purpose & Justification	c. Total Amount Required
General office supplies	Program staff will need general office supplies, such as pens, notepads, post-it notes, staples, etc., to conduct day to day business. Amount is based on historical data from previous fiscal years.	\$ 590
Total		\$ 590

Contractual category Instructions

The costs of activities directly associated with carrying out the statement of work that are contracted by the organization to a third party are recoded in the Professional/Contract category. The contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in the HHSC contract. Prior to entering into an agreement equaling \$100,000 or more, the contractor shall obtain written approval from HHSC.

A subcontractor agreement shall be in writing and include the following:

- Name and address of all parties;
- A detailed description of the services to be provided;
- Measurable method and rate of payment and total amount of contract;
- Clearly defined and executable termination clause;
- Terms of Service dates;
- Access to inspect subcontracted service activities in the premises on which services are performed, in accordance with the General Provisions. Attach a copy of the General Provisions, Statement of Work, and any Special Provisions applicable to the subcontract.

A Successful Respondent is responsible to HHSC for the performance of any subA Successful Respondent. A Successful Respondent shall monitor both financial and programmatic performance and maintain pertinent records that shall be available for inspection by HHSC. A Successful Respondent shall ensure that subA Successful Respondents are fully aware of the requirements placed upon them by state/federal statutes and regulations and under Exhibit D of this RFA. A Successful Respondent shall not contract with a subA Successful Respondent, at any tier, which is debarred or suspended or excluded from or ineligible for participation in federal assistance programs. When subcontracting, A Successful Respondent is required to meet all applicable HUB requirements.

INSTRUCTIONS

Name: Identify the individuals or individual organizations performing the service, contractor or the professional titles for the services being contracted.

Job Functions: Using the Job Functions list on the last tab of this spreadsheet, enter all the job functions performed by this position.

Quantity: Enter the estimated hours for which services will be contracted.

Rate : Identify the rate at which the contractor will be paid.

Basis for rate: From the drop down box, identify the basis for the rate identified in column e.

Total: The total will be automatically populated by multiplying the quantity by the rate of payment.

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

SECTION II.B.5: Contractual Schedule

Definitions for Bases for Rates:

a. Name	b. Professional Title	c. Job Functions	d. Quantity	e. Rate	f. Basis for Rate	g. Total Amount Required (= d. x e.)
Kelly Colletti	Speech-Language Pathologist (SLP)	1,2,4,5,6,11,19,21,26,29	360.00	\$ 65.00	dir.svc.hrs.	\$ 23,400
Letty Mary	Speech-Language Pathologist (SLP)	1,2,4,5,6,11,19,21,26,29	24.00	\$ 90.00	evals.	\$ 2,160
Alice Maned	Licensed Dietitian (LD)	1,2,4,5,11,15,19,26	24.00	\$ 50.00	dir.svc.hrs.	\$ 1,200
Jones Dunn	Registered Nurse (RN)	1,2,4,5,6,11,12,14,19,26	24.00	\$ 65.00	dir.svc.hrs.	\$ 1,560
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
Grand Total						\$ 28,320

Job Codes Used: 0
 Job Codes Not Used: 0

OTHER Instructions

All other direct and non-direct costs not listed in any other cost category are to be included in "Other" tab.

INSTRUCTIONS:

Direct:

Direct costs should be costs associated with providing of good/services not listed in any other cost category.

Non-Direct:

Non-direct costs should be costs associated with administrative duties not listed in any other cost category.

Description of Item: Enter a general description of the good(s)/service(s)/administrative duty(ies), include quantity if applicable.

Purpose & Justification: Enter an explanation of the purpose of the good(s)/service(s)/administrative duty(ies) and why it is necessary for the program.

Total Cost: The total cost should only include the cost of good(s)/service(s)/administrative duty(ies) which will be consumed during the contract term and services that will be utilized during the contract term

Form I-1 Budget and Child Count Template Instructions

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

SECTION II.B.6: Other

a. Description of Item [If applicable, provide estimated quantity and cost (i.e. # of boxes & cost/box)]	b. Purpose & Jusitification	c. Total Amount Required
Direct		
Office space rent, 250 sq. ft	The program staff each maintain office space and costs are allocated based on square footage. Each square foot costs \$20 annually.	\$ 5,000

	Total Direct	\$ 5,000
Non-Direct		
	Total Non-Direct	\$ 0
TOTAL		\$ 5,000

Form I-1 Budget and Child Count Template Instructions

INDIRECT COST Instructions

If using an approved indirect cost rate, the Contractor must submit an indirect cost rate letter from a cognizant agency.

Regardless of the indirect cost rate method, the Contractor must submit a cost allocation plan specifically identifying all costs included in the indirect cost rate, and

INSTRUCTIONS

Approved rate: Enter the indirect cost rate to be used during the fiscal year. This rate must be supported by an approved indirect cost rate letter, central service cost allocation plan, or be no more than the 10% de minimis rate allowable per Title 2 CFR 200.

Indirect Cost Method Used: From the drop down box, select the method of determining the indirect cost rate. Supporting documentation for all methods must be provided with the completed budget.

Effective Date: Enter the date the indirect cost rate became effective.

Expire Date: Enter the date the indirect cost rate expires.

Modified Total Direct Cost or Other Cost Base: Enter the total amount of the contract expenses against which an indirect cost rate will apply. For instance, if the approved indirect cost rate may only be applied to salaries, enter the total amount of salaries to be charged indirect costs. Modified total direct costs should exclude costs over \$25,000 for any individual subcontractor. See 2 CFR 200.68 for more information. (https://www.ecfr.gov/cgi-bin/text-idx?SID=948b06c8a2fe4098a61bee7f81f4f220&node=2:1.1.2.2.1&rgn=div5#se2.1.200_168)

Total Maximum Indirect Cost Amount: This column will automatically calculate by multiplying the approved rate by the modified total direct cost or other cost

Form I-1 Budget and Child Count Template Instructions

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: HHSC

SECTION II.B.7: Indirect Costs

Identify the most recent Indirect Cost rate (if applicable). This is either an approved indirect cost rate or the De Minimis Rate in accordance with 2 CFR Part 200. Submit a copy of the cost rate certificate and the cost allocation plan with this budget.
If you do not have an HHSC approved indirect cost rate and would like to request one, please visit: <https://texasrhs.secure.force.com/GranteeLandingPage/>

Approved Rate:	20.00%	
-----------------------	--------	--

Indirect Cost Method Used	Effective Date	Expire Date	Modified Total Direct Cost or Other Cost Base	Total Maximum Indirect Cost Amount
Indirect Cost Rate	8/1/2019	7/31/2020	\$341,749.25	\$68,349.85
If using the De Minimis Cost Rate, have you ever had an indirect cost rate approved by a cognizant entity?				NO

Identify the types of costs that are being allocated as indirect costs, the allocation methodology,

SECTION II.B.3: Full-Time Equivalent Estimates ("FTEs") Instructions

It will be necessary to complete the Personnel and Contractual categories before you complete this section. Estimate and enter the number of FTE positions (including contractual staff) budgeted for the following services: specialized skills training ("SST"), physical therapy ("PT") (including by PT Assistants), occupational therapy (including by OT Assistants), and speech/language therapy ("SLP") (including by SLP Assistants and Interns Speech-Language Pathology). To calculate the FTEs for each service, you must estimate what percentage of each staff position or contractor will spend providing that service and add the percentages for each position to get the total FTEs for the service (100% = 1.00 FTE). Round your estimates to two decimal places.

For staff positions, consider direct client services, assessment/evaluation, IFSP development, travel, and paperwork as part of the time spent providing the service. For example, four physical therapists who work full time spending 80% of their time providing PT services, equates to 3.20 FTEs ($4 \times 80\% = 320\%$, $320\% \div 100\% = 3.20$ FTEs).

When employees work less than 40 hours a week, remember to consider this in the calculation. For example, four physical therapists who work 20 hours a week and who spend 80% of their working time providing PT services, the formula would be ($4 \times .5 \times 80\% = 160\%$, $160\% \div 100\% = 1.6$ FTEs).

For contractual positions, sum the total hours budgeted for the service (including direct client services, assessment/evaluation, IFSP development, travel, and paperwork) and divide by 2,080 (based on 52 weeks hours/week = 1.00 FTE) to get the estimated FTEs. Add your calculations of the staff and contractual FTEs to get the total FTEs for each service and enter in the appropriate cells.

Prices:
/ ("OT")
; in
f time
to get

Full-time
= 3.20

le, for

; @ 40
to get

SECTION II: BUDGET (cont.)

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME: HHSC

SECTION II.B.3: Full-Time Equivalent Estimates

Number of FTEs Budgeted for Specialized Skills Training

Number of FTEs Budgeted for Physical Therapy Services 1.00

Number of FTEs Budgeted for Occupational Therapy Services 2.50

Number of FTEs Budgeted for Speech/Language Therapy Services 1

Form I-1 Budget and Child Count Template Instructions

Health and Human Services Commission
Early Childhood Intervention Services

REVENUE CODES

from Section II.A. Locally Collected Federal, State, Local, and Private Funds

<u>CODE</u>	<u>FUND TYPES</u>	<u>DESCRIPTION AND EXAMPLES OF FUND TYPES</u>
01	ECI	ECI contract funds expended
02	State Funds	General Revenue, state grant-in-aid, other state funds appropriated, contracted or otherwise awarded to your agency
03	Other State	Flow through funds or sub-contract funds from state agencies or institutions which represent appropriated or contracted state funds, TRS
04	Local/City	City allocations, grant or contract, other dollar awards
05	Local/Count	County allocations, grant, contract, other dollar awards
06	United Way	Awards from United Way
07	Easter Seal	Awards from Easter Seal
09	Private	Reimbursements from client or group insurance providers
11a	THSteps-CCP	Title XIX funds from Medicaid Texas Health Steps – Comprehensive Care
11b	TCM	Title XIX funds from Medicaid Targeted Case Management
11c	MAC	Title XIX federal funds from Medicaid Administrative Claiming
11h	SST	Title XIX funds from Medicaid Specialized Skills Training
12	CSHCN	Funds received from the Children with Special Health Care Needs Program
13	School	Individual ISD or ESC contract to provide funds for ECI services
14	In-Kind / Volunteer	Volunteer services furnished by professionals, technical consultants, and other skilled and unskilled labor directly benefiting and specifically identifiable to the ECI program - this <u>does not include</u> the services of contractor agency employees if they are receiving a salary for the
15	In-Kind / Non-cash	Non-cash contributions such as charges for real property, nonexpendable personal property, or the value of goods directly benefiting and specifically identifiable to the ECI program - this <u>does not include</u> space contributions from your agency unless the property is paid for and fully
16	Cash	Unsolicited money donations or contributions for use by the ECI program
17	Visual Impairment	Funds available for children with visual impairments and used in serving ECI eligible children
18	Auditory Impairment	Funds available for children with auditory impairments and used in serving ECI eligible children
19	IDEA Part B	Individuals with Disabilities Education Act, Title VI, PL 94-142, Part B
20	Other	Any other federal funding not listed
21	Foundations	Non-profit organization award or pledge
22	Fund Raisers	Public support and revenue from enterprise activities
23	TRICARE	U.S. Department of Defense Health care entitlement program
24	Miscellaneous	All other revenues or reimbursements which are not listed above (identify sources of funds)
25	CHIP	Reimbursements from the Children’s Health Insurance Program
27	PI – Other	Program income from: use or rental of real or personal property acquired with grant funds, sale of equipment acquired under a grant, fees generated by other program/activities, jury duty reimbursements,
28	Family	Payments collected from families who are determined able to pay for

Locally Collected Funds Requirement revenue codes and fund types are shown in bold

Health and Human Services Commission
Early Childhood Intervention Services

Professional Titles

from Section II.B.1. Personnel Schedule (Staff)

Administrator
Clerical/Secretary
Early Intervention Specialist
Educational Diagnostician
Intern in Speech-Language Pathology
Licensed Audiologist
Licensed Assistant in Speech-Language Pathology (SLPA)
Licensed Baccalaureate Social Worker (LBSW)
Licensed Clinical Social Worker (LCSW)
Licensed Dietitian (LD)
Licensed Master Social Worker (LMSW)
Licensed Master Social Worker – Advanced Practitioner (LMSW-AP)
Licensed Marriage and Family Therapist (LMFT)
Licensed Occupational Therapy Assistant (OTA)
Licensed Professional Counselor (LPC)
Licensed Professional Counselor Intern (LPCI)
Licensed Psychological Associate (LPA)
Licensed Vocational Nurse (LVN)
Occupational Therapist (OT or LOT)
Other/Direct Service
Other/Indirect Service
Physical Therapist (LPT)
Physical Therapy Assistant (PTA)
Physician (MD)
Program Director
Psychologist (LP)
Public Outreach/Child Find Coordinator
Registered Nurse (RN)
Service Coordinator
Speech-Language Pathologist (SLP)
Translator/Interpreter

Health and Human Services Commission
Early Childhood Intervention Services

Job Functions

from Section II.B.1. Personnel Schedule (Staff) and
Section II.B.2. Contractual Schedule

<u>JOB CODE</u>	<u>JOB FUNCTION</u>
(1)	Child find/public awareness
(2)	Referral
(3)	(deleted – this code is no longer in use)
(4)	Assessment/evaluation
(5)	IFSP development
(6)	Assistive technology services and devices
(7)	Audiology
(8)	Auditory services
(9)	Specialized skills training
(10)	Family counseling
(11)	Family education
(12)	Health services necessary to enable the child to benefit from the other early intervention services
(13)	Medical services only for diagnostic or evaluation purposes
(14)	Nursing services
(15)	Nutrition services
(16)	Occupational therapy
(17)	Physical therapy
(18)	Psychological services
(19)	Service coordination
(20)	Social work services
(21)	Speech/language therapy
(22)	Transportation and related costs
(23)	Vision services
(24)	Translation (written)
(25)	Interpretation (oral)
(26)	Transition
(27)	Follow-along
(28)	Clerical services – general program support including
(29)	Program supervision - coordination of program activities
(30)	Program administration – coordinating training, interagency coordination, and developing program policies and/or fiscal processes (writing funding applications, budgeting, developing billing procedures, administering respite funding,
(31)	General program support other than clerical (housekeeping, client transportation, security, etc.)

SECTION I: REQUEST SUMMARY AND GENERAL INFORMATION

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME:

DBA:

PAYEE IDENTIFICATION NUMBER (PIN):

A. FY 2020 ECI Proposed Number of Children and Funding Request

1. Number of Children Proposed	<input type="text"/>
2. ECI Services Funding Requested	<input type="text"/>
3. plus: Projected Locally Collected Funds (derived from Funding Sources chart)	+ \$ <input type="text" value="0"/>
4. Total ECI Program Budget	\$ <input type="text" value="0"/>

B. Funding Application Preparer

Name:

Title:

Telephone Number:

Fax Number:

Email Address:

Mailing Address:

C. Longevity of Key Staff

Executive Director:

Financial Officer:

ECI Program Director:

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: _____

B. Budget Summary

DO NOT TYPE ANYTHING ON THIS TAB.

This tab will autofill with information entered on the Personnel, Fringe, Travel, Equipment, Supplies, Contractual, Other, and Indirect Costs tabs. Please review to ensure the information is accurate prior to submission.

BUDGET CATEGORY		1. AMOUNT BUDGETED	2. PERCENTAGE
1. Personnel		\$ 0	
1b. Fringe Benefits	0.00%	\$ 0	
2. Travel		\$ 0	
3. Equipment and Controlled Asset	\$ 0	\$ 0	
4. Supplies		\$ 0	
5. Contractual		\$ 0	
6. Other		\$ 0	
Total Direct Charges		\$ 0	
7. Indirect Charges	0.00%	\$ 0	
Total		\$ 0	

Non-Direct Cost Percentage Budgeted 0.00%

SECTION II: BUDGET (cont.)

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME: _____

SECTION II.B: BUDGET (cont.)

LEGAL ENTITY NAME: _____ 0

SECTION II.B.1: Personnel Schedule (Staff)

FRINGE BENEFITS	Describe the Fringe Benefits allocated to the program(s):
Fringe Benefit Rate %	
Fringe Benefits Total (auto-populates) \$0	

a. Name	b. Professional Title	c. Non-Direct %	d. Job Functions	e. Annualized Salary	f. Months or Days	g. Adjusted Salary	h. % Time ECI	i. Total Amount Required (=g x h)	j. Non-Direct Amount (= c x i)
					Months	\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0

						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
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						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0
						\$ 0		\$ 0	\$ 0

SECTION II.B: BUDGET (cont.)

LEGAL ENTITY NAME: 0

SECTION II.B.2: Travel

Local Mileage

Agency rate paid per mile (cannot exceed state approved rate):	
Service Delivery	
Outreach/Child Find	
Supervision/Administration	
Miscellaneous	
Total Local Mileage	0

ALL OUT OF STATE TRAVEL MUST HAVE HHSC PRIOR APPROVAL AT LEAST 30-DAYS IN ADVANCE OF TRAVEL. INCLUSION IN AN APPROVED BUDGET DOES NOT CONSTITUTE APPROVAL FOR OUT OF STATE TRAVEL.

a. Overnight Instate and Out-of-State Travel				b. Totals	
Description of Conference/Workshop	Justification	Location City/State	Number of:	Travel Costs	Travel Total Costs
			Days/Employees		
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Mileage	\$0
				Airfare	
				Meals	
				Lodging	
				Other Costs	
				Total	\$0

Local Mileage

Overnight Instate and Out-of-state Costs

Total Travel Costs:

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: 0

SECTION II.B.3: Equipment and Controlled Assets

ALL EQUIPMENT AND CONTROLLED ASSETS MUST HAVE HHSC APPROVAL PRIOR TO PURCHASE. INCLUSION IN AN APPROVED BUDGET DOES NOT CONSTITUTE APPROVAL.

Enter Capitalization Amount:	
-------------------------------------	--

a. Description of Item	b. Purpose and Justification	c. Quantity	d. Cost per Unit	e. Total Amount Required
				\$ 0
				\$ 0
				\$ 0
				\$ 0
				\$ 0
				\$ 0
				\$ 0
				\$ 0
				\$ 0

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: 0

SECTION II.B.4: Supplies

a. Description of Item [If applicable, provide estimated quantity and cost (i.e. # of boxes & cost/box)]	b. Purpose & Justification	c. Total Amount Required

	Total	\$ 0

Form I-2 Budget and Child Count Template

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: _____ **0**

SECTION II.B.5: Contractual Schedule

Definitions for Bases for Rates:

a. Name	b. Professional Title	c. Job Functions	d. Quantity	e. Rate	f. Basis for Rate	g. Total Amount Required (= d. x e.)
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0
						\$ 0

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: 0 _____

SECTION II.B.6: Other

a. Description of Item [If applicable, provide estimated quantity and cost (i.e. # of boxes & cost/box)]	b. Purpose & Justification	c. Total Amount Required
Direct		
	Total Direct	\$ 0
Non-Direct		
	Total Non-Direct	\$ 0

	TOTAL	\$	0
--	-------	----	---

Form I-2 Budget and Child Count Template

SECTION II: BUDGET (cont.)

LEGAL ENTITY NAME: 0

SECTION II.B.7: Indirect Costs

Identify the most recent Indirect Cost rate (if applicable). This is either an approved indirect cost rate or the De Minimis Rate in accordance with 2 CFR Part 200. Submit a copy of the cost rate certificate and the cost allocation plan with this budget.
If you do not have an HHSC approved indirect cost rate and would like to request one, please visit: <https://texasrhs.secure.force.com/GranteeLandingPage/>

Approved Rate:

Indirect Cost Method Used	Effective Date	Expire Date	Modified Total Direct Cost or Other Cost Base	Total Maximum Indirect Cost Amount
			\$0.00	\$0.00

If using the De Minimis Cost Rate, have you ever had an indirect cost rate approved by a cognizant entity?

Identify the types of costs that are being allocated as indirect costs, the allocation methodology,

Form I-2 Budget and Child Count Template

SECTION II: BUDGET (cont.)

Please use the TAB key to navigate this page.

LEGAL ENTITY NAME: _____ 0

SECTION II.B.3: Full-Time Equivalent Estimates

Number of FTEs Budgeted for Specialized Skills Training _____

Number of FTEs Budgeted for Physical Therapy Services _____

Number of FTEs Budgeted for Occupational Therapy Services _____

Number of FTEs Budgeted for Speech/Language Therapy Services _____

Form I

Health and Human Services Commission
Early Childhood Intervention Services

REVENUE CODES

from Section II.A. Locally Collected Federal, State, Local, and Private Funds

<u>CODE</u>	<u>FUND TYPES</u>	<u>DESCRIPTION AND EXAMPLES OF FUND TYPES</u>
01	ECI	ECI contract funds expended
02	State Funds	General Revenue, state grant-in-aid, other state funds appropriated, contracted or otherwise awarded to your agency
03	Other State	Flow through funds or sub-contract funds from state agencies or institutions which represent appropriated or contracted state funds, TRS
04	Local/City	City allocations, grant or contract, other dollar awards
05	Local/Count	County allocations, grant, contract, other dollar awards
06	United Way	Awards from United Way
07	Easter Seal	Awards from Easter Seal
09	Private	Reimbursements from client or group insurance providers
11a	THSteps-CCP	Title XIX funds from Medicaid Texas Health Steps – Comprehensive Care
11b	TCM	Title XIX funds from Medicaid Targeted Case Management
11c	MAC	Title XIX federal funds from Medicaid Administrative Claiming
11h	SST	Title XIX funds from Medicaid Specialized Skills Training
12	CSHCN	Funds received from the Children with Special Health Care Needs Program
13	School	Individual ISD or ESC contract to provide funds for ECI services
14	In-Kind / Volunteer	Volunteer services furnished by professionals, technical consultants, and other skilled and unskilled labor directly benefiting and specifically identifiable to the ECI program - this <u>does not include</u> the services of contractor agency employees if they are receiving a salary for the
15	In-Kind / Non-cash	Non-cash contributions such as charges for real property, nonexpendable personal property, or the value of goods directly benefiting and specifically identifiable to the ECI program - this <u>does not include</u> space contributions from your agency unless the property is paid for and fully
16	Cash	Unsolicited money donations or contributions for use by the ECI program
17	VI	Funds available for children with visual impairments and used in serving ECI eligible children
18	AI	Funds available for children with auditory impairments and used in serving ECI eligible children
19	IDEA Part B	Individuals with Disabilities Education Act, Title VI, PL 94-142, Part B
20	Other	Any other federal funding not listed
21	Foundations	Non-profit organization award or pledge
22	Fund Raisers	Public support and revenue from enterprise activities
23	TRICARE	U.S. Department of Defense Health care entitlement program
24	Miscellaneous	All other revenues or reimbursements which are not listed above (identify sources of funds)
25	CHIP	Reimbursements from the Children’s Health Insurance Program
27	PI – Other	Program income from: use or rental of real or personal property acquired with grant funds, sale of equipment acquired under a grant, fees generated by other program/activities, jury duty reimbursements,
28	Family	Payments collected from families who are determined able to pay for

Locally Collected Funds Requirement revenue codes and fund types are shown in bold

Health and Human Services Commission
Early Childhood Intervention Services

Professional Titles

from Section II.B.1. Personnel Schedule (Staff)

Administrator
Clerical/Secretary
Early Intervention Specialist
Educational Diagnostician
Intern in Speech-Language Pathology
Licensed Audiologist
Licensed Assistant in Speech-Language Pathology (SLPA)
Licensed Baccalaureate Social Worker (LBSW)
Licensed Clinical Social Worker (LCSW)
Licensed Dietitian (LD)
Licensed Master Social Worker (LMSW)
Licensed Master Social Worker – Advanced Practitioner (LMSW-AP)
Licensed Marriage and Family Therapist (LMFT)
Licensed Occupational Therapy Assistant (OTA)
Licensed Professional Counselor (LPC)
Licensed Professional Counselor Intern (LPCI)
Licensed Psychological Associate (LPA)
Licensed Vocational Nurse (LVN)
Occupational Therapist (OT or LOT)
Other/Direct Service
Other/Indirect Service
Physical Therapist (LPT)
Physical Therapy Assistant (PTA)
Physician (MD)
Program Director
Psychologist (LP)
Public Outreach/Child Find Coordinator
Registered Nurse (RN)
Service Coordinator
Speech-Language Pathologist (SLP)
Translator/Interpreter

Health and Human Services Commission
Early Childhood Intervention Services

Job Functions

from Section II.B.1. Personnel Schedule (Staff) and
Section II.B.2. Contractual Schedule

<u>JOB CODE</u>	<u>JOB FUNCTION</u>
(1)	Child find/public awareness
(2)	Referral
(3)	(deleted – this code is no longer in use)
(4)	Assessment/evaluation
(5)	IFSP development
(6)	Assistive technology services and devices
(7)	Audiology
(8)	Auditory services
(9)	Specialized skills training
(10)	Family counseling
(11)	Family education
(12)	Health services necessary to enable the child to benefit from the other early intervention services
(13)	Medical services only for diagnostic or evaluation purposes
(14)	Nursing services
(15)	Nutrition services
(16)	Occupational therapy
(17)	Physical therapy
(18)	Psychological services
(19)	Service coordination
(20)	Social work services
(21)	Speech/language therapy
(22)	Transportation and related costs
(23)	Vision services
(24)	Translation (written)
(25)	Interpretation (oral)
(26)	Transition
(27)	Follow-along
(28)	Clerical services – general program support including
(29)	Program supervision - coordination of program activities
(30)	Program administration – coordinating training, interagency coordination, and developing program policies and/or fiscal processes (writing funding applications, budgeting, developing billing procedures, administering respite funding,
(31)	General program support other than clerical (housekeeping, client transportation, security, etc.)

FORM J: EXCEPTIONS AND ASSUMPTIONS FORM

EXCEPTIONS AND ASSUMPTIONS FORM

RFA # HHS0006402

This is the approved format for the respondent to: (1) state that no exceptions are being made to the requirements, terms, conditions, or certifications in the RFA or attachments, addendums, or revisions to the RFA or General Provisions, or (2) list all exceptions to any requirements, terms conditions, certifications or deliverables in the RFA or General Provisions.

Respondent must submit this form with their response.

Instructions:

- If no exceptions are being requested to any issue of the RFA, respondent must check the 'no exception' box below and leave the table blank.
- If exceptions are being requested, use the table below and fill in all columns for each exception.
- Ensure the RFA section number and page number or the number of the term or condition of the issue is stated.
- Ensure each exception is described fully or by reference to the exact location within the proposal and/or general provisions.
- Ensure it is stated whether the exception is part of a proposal deliverable with a clear citation to the deliverable.
- Provide an explanation of why the exception is being proposed, and any alternatives being proposed to the issue in the RFA.
- Add more table lines as necessary.
- If more space for explanations or alternatives is reasonably needed, list the exception on this form and reference the attached page(s) – Ensure each attached page clearly identifies the line item it refers to.
- Any alternatives may also be embedded in the proposal narrative as appropriate to make the narrative clear, but in the proposal narrative the exception must be noted with the line item number on this form.

If no exceptions are being requested, check this box and leave the table below blank

EXCEPTIONS AND ASSUMPTIONS FORM

RFA # HHS0006402

TABLE OF EXCEPTIONS

Exception No.	RFA Section No. and Page No. or no. of term or condition in the general provisions to which exception is requested	Full description of exception requested or reference to exact location of full description if found elsewhere in proposal and/or general provisions.	State if the exception is part of a proposal deliverable with a clear citation to the deliverable	Explanation of why the exception is being proposed and any proposed alternatives to the issue
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				

Form K – Administrative Information

Legal Business Name of Respondent:	
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This form provides information regarding identification and contract history of the Respondent, executive management, project management, governing board members, and/or principal officers. Respond to each request for information or provide the required supplemental document behind this form. If responses require multiple pages, identify the supporting pages/documentation with the applicable request.

NOTE: Administrative Information may be used in screening and/or evaluating proposals.

Identifying Information

1. The Respondent must attach the following information:

If a Governmental Entity complete Form K-1.

- Names (last, first, middle) and addresses for the officials who are authorized to enter into a contract on behalf of the Respondent.

If a Nonprofit Entity complete Form K-2.

- Full names (last, first, middle), addresses, telephone numbers, titles and occupation of members of the Board of Directors or any other principal officers. Indicate the office held by each member (e.g. chairperson, president, vice-president, treasurer, etc.).

2. Is Respondent a nonprofit organization?

YES NO

If YES, Respondent must include evidence of its nonprofit status with the proposal. Any one of the following is acceptable evidence. Check the appropriate box for the attached evidence.

- (a) A copy of a currently valid IRS exemption certificate.
- (b) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the Respondent organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

Form K – Administrative Information

- (c) A copy of the organization’s certificate of formation or similar document if it clearly establishes the nonprofit status of the organization.
- (d) Any of the above proof for a State or national parent organization, and a statement signed by the parent organization that the Respondent organization is a local nonprofit affiliate.

Conflict of Interest and Contract History

The Respondent must disclose any existing or potential conflict of interest relative to the performance of the requirements of this RFA. Examples of potential conflicts include an existing or potential business or personal relationship between the Respondent, its principal, or any affiliate or subcontractor, with the Health and Human Services Commission, or any other entity or person involved in any way in any project that is the subject of this RFA. Similarly, any existing or potential personal or business relationship between the Respondent, the principals, or any affiliate or subcontractor, with any employee of the Health and Human Services Commission must be disclosed. Any such relationship that might be perceived, or represented as a conflict, must be disclosed. Failure to disclose any such relationship may be cause for contract termination or disqualification of the proposal. If, following a review of this information, it is determined by HHSC that a conflict of interest exists, the Respondent may be disqualified from further consideration for the award of a contract.

Pursuant to Texas Government Code Section 2155.004, a Respondent is ineligible to receive an award under this RFA if the bid includes financial participation with the Respondent by a person who received compensation from HHSC to participate in preparing the specifications or the RFA on which the bid is based.

- 3. Does anyone in the Respondent organization have an existing or potential conflict of interest relative to the performance of the requirements of this RFA?**

YES NO

*If YES, detail any such relationship(s) that might be perceived or represented as a conflict.
(Attach no more than one additional page.)*

- 4. Will any person who received compensation from the Health and Human Services Commission (HHSC) for participating in the preparation of the specifications or documentation for this RFA participate financially with Respondent as a result of an award under this RFP?**

Form K – Administrative Information

YES NO

If YES, indicate his/her name, job title, agency employed by, separation date, and reason for separation.

- 5. Will any provision of services or other performance under any contract that may result from this RFA constitute an actual or potential conflict of interest or create the appearance of impropriety?**

YES NO

If YES, detail any such actual or potential conflict of interest that might be perceived or represented as a conflict. (Attach no more than one additional page.)

- 6. Are any current or former employees of the Respondent current or former employees of HHSC (within the last 24 months)?**

YES NO

If YES, indicate his/her name, job title, agency employed by, separation date, and reason for separation.

- 7. Are any proposed personnel related to any current or former employees of HHSC?**

YES NO

If YES, indicate his/her name, job title, agency employed by, separation date, and reason for separation.

- 8. Has any member of Respondent’s executive management, project management, governing board or principal officers been employed by HHSC 24 months prior to the proposal due date?**

Form K – Administrative Information

YES NO

If YES, indicate his/her name, job title, agency employed by, separation date, and reason for separation.

- 9. If the Respondent is a private nonprofit organization, does the executive director or other staff serve as voting members on the organizations governing board?**

YES NO

- 10. Is Respondent or any member of Respondent's executive management, project management, board members or principal officers:**

- Delinquent on any state, federal or other debt;
- Affiliated with an organization which is delinquent on any state, federal or other debt; or
- In default on an agreed repayment schedule with any funding organization?

YES NO

If YES, please explain. (Attach no more than one additional page.)

- 11. Has the Respondent had a contract suspended or terminated prior to expiration of contract or not been renewed under an optional renewal by any local, state, or federal department or agency or non-profit entity?**

YES NO

If YES, indicate the reason for such action that includes the name and contact information of the local, state, or federal department or agency, the date of the contract and a contract reference number, and provide copies of any and all decisions or orders related to the suspension, termination, or non-renewal by the contracting entity.

- 12. Does this proposal include financial participation by a person or entity that has been convicted of violating federal law, or been assessed a penalty in a federal civil administrative enforcement action, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005, under Government Code 2261.053?**

YES NO

If YES, please explain. (Attach no more than one additional page.)

Form K – Administrative Information

13. Has Respondent had a contract with HHSC within the past 24 months?

YES NO

If YES, list the HHSC contract number(s):

If NO, Respondent must be able to demonstrate fiscal solvency. Submit a copy of the organization's most recently audited balance sheet, statement of income and expenses and accompanying financial footnotes. If an organization does not have audited financial statements, submit a copy of the organization's most recent IRS Form 990 and an explanation why an audited financial statement is not available. HHSC will review the documents that are submitted and may, at its sole discretion, reject the proposal on the grounds of the Respondent's financial capability.

14. Has Respondent been a party to civil or criminal litigation or investigation pending over the last five years that involves Respondent or in which Respondent has been judged guilty or liable?

YES NO

ALL ADDITIONAL PAGES REQUIRED BY RESPONSES TO ADMINISTRATIVE INFORMATION (FORM K), SHOULD BE INSERTED HERE.

Form K – 1 - Governmental Entity

Legal Business Name of Respondent:	
---	--

Include the full names (last, first, middle) and addresses for the officials who are authorized to enter into a contract on behalf of the Respondent.

Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____

**Form K – 2 - NON-PROFIT OR FOR-PROFIT ENTITY
Board of Directors and Principal Officers**

Legal Business Name of Respondent:	
---	--

Include the full names (last, first, middle), addresses, telephone numbers, and titles of members of the Board of Directors or any other principal officers. Indicate the office/title held by each member (e.g. chairperson, president, vice-president, treasurer, etc.). In addition, if entity is a for-profit, include the full names and addresses for each person who owns five percent (5%) or more of the stock.

Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
<hr/>	
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
<hr/>	
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____
<hr/>	
Name: _____	Mailing Address (incl. street, city, county, state, & zip):
Title: _____	_____
Phone: _____ Ext. _____	_____
Fax: _____	_____
Email: _____	_____

**FORM K-1: GOVERNMENTAL ENTITY
Authorized Officials**

Legal Business Name of Respondent:	
---	--

Include the full names (last, first, middle) and addresses for the officials who are authorized to enter into a contract on behalf of the respondent.

Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____ _____

FORM K-2
NON-PROFIT OR FOR-PROFIT ENTITY
Board of Directors and Principal Officers

Legal Business Name of Respondent:	
---	--

Include the full names (last, first, middle), addresses, telephone numbers, and titles of members of the Board of Directors or any other principal officers. Indicate the office/title held by each member (e.g. chairperson, president, vice-president, treasurer, etc.). In addition, if entity is a for-profit, include the full names and addresses for each person who owns five percent (5%) or more of the stock.

Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____
Name: _____ Title: _____ Phone: _____ Ext. _____ Fax: _____ Email: _____	Mailing Address (incl. street, city, county, state, & zip): _____ _____ _____

Form A - Face Page
Health and Human Services Commission – Early Childhood Intervention Program

RESPONDENT INFORMATION	
1) LEGAL BUSINESS NAME :	
2) MAILING Address Information (include mailing address, street, city, county, state and zip code):	
3) PAYEE Name and Mailing Address (if different from above):	
4) DUNS Number (9-digit):	5) HHS Region:
6) Federal Tax ID No. (9 digit), State of Texas Comptroller Vendor ID No. (14 digit) or Social Security Number (9 digit): <i>*The Respondent acknowledges, understands and agrees that the Respondent's choice to use a social security number as the vendor identification number for the contract, may result in the social security number being made public via state open records requests.</i>	
7) TYPE OF ENTITY (check all that apply): <input type="checkbox"/> City <input type="checkbox"/> Nonprofit Organization* <input type="checkbox"/> Local Mental Health Authority <input type="checkbox"/> County <input type="checkbox"/> Education Service Center <input type="checkbox"/> Federally Qualified Health Centers <input type="checkbox"/> Local Education Agency <input type="checkbox"/> Hospital <input type="checkbox"/> State Controlled Institution of Higher Learning <input type="checkbox"/> Other (specify):	
*If incorporated, provide 10-digit charter number assigned by Secretary of State:	
8) Number of years experience providing developmental services to children from birth to 36 months of age:	
9) BUDGET PERIOD:	Start Date: September 1, 2020 End Date: August 31, 2021
10) PROPOSED SERVICE AREA:	
11) TOTAL ECI SERVICES FUNDING REQUESTED:	13) PRIMARY CONTACT PERSON Name: Phone: Email:
12) TOTAL RESPITE FUNDING REQUESTED: Does Respondent's projected federal expenditures exceed \$500,000, or its projected state expenditures exceed \$500,000, for Respondent's <u>current fiscal year</u> (excluding amount requested in line 10 above)? ** Yes <input type="checkbox"/> No <input type="checkbox"/> ** <i>Projected expenditures should include anticipated expenditures under all federal grants including "pass through" federal funds from all state agencies, or all anticipated expenditures under state grants, as applicable.</i>	
14) FINANCIAL OFFICER Name: Phone: Email:	
The facts affirmed by me in this proposal are truthful and I warrant the Respondent is in compliance with the assurances and certifications contained in the application. I understand the truthfulness of the facts affirmed herein and the continuing compliance with these requirements are conditions precedent to the award of a contract. This document has been duly authorized by the governing body of the Respondent and I (the person signing below) am authorized to represent the Respondent.	
15) AUTHORIZED REPRESENTATIVE Name: Title: Phone: Email:	16) SIGNATURE OF AUTHORIZED REPRESENTATIVE
	17) DATE

Form A - Face Page
Health and Human Services Commission – Early Childhood Intervention Program

This form provides basic information about the Respondent and the proposed project with the Texas Health and Human Services Commission (“HHSC”) Early Childhood Intervention (“ECI”) program, including the signature of the authorized representative. It is required to be completed. Signature affirms the facts contained in the Respondent’s application are truthful. Please follow the instructions below to complete the face page form and return with the Respondent’s proposal.

- 1) **LEGAL BUSINESS NAME** - Enter the legal name of the Respondent.
- 2) **MAILING ADDRESS INFORMATION** - Enter the Respondent’s complete physical and mailing address, city, county, state, and zip code.
- 3) **PAYEE NAME AND MAILING ADDRESS** - Payee – Entity involved in a contractual relationship with Respondent to receive payment for services rendered by Respondent and to maintain the accounting records for the contract; i.e., fiscal agent. Enter the PAYEE’s name and mailing address if PAYEE is different from the Respondent. The PAYEE is the corporation, entity or vendor who will be receiving payments.
- 4) **DUNS NUMBER** – 9-digit Dun and Bradstreet Data Universal Numbering System (“DUNS”) number. This can be obtained at: <http://fedgov.dnb.com/webform>
- 5) **HEALTH AND HUMAN SERVICE (“HHS”) REGION** – Enter Respondent’s HHS Region(s). A map of all HHSC regions may be accessed at the following link: <https://hhs.texas.gov/about-hhs/find-us>.
- 6) **FEDERAL TAX ID / STATE OF TEXAS COMPTROLLER VENDOR ID / SOCIAL SECURITY NUMBER** - Enter the Federal Tax Identification Number (9-digit) or the Vendor Identification Number assigned by the Texas State Comptroller (14-digit). *The Respondent acknowledges, understands and agrees the Respondent's choice to use a social security number as the vendor identification number for the contract may result in the social security number being made public via state open records requests.
- 7) **TYPE OF ENTITY** - Check the type of entity as defined by the Secretary of State at <http://www.sos.state.tx.us/corp/businessstructure.shtml>, http://www.sos.state.tx.us/corp/nonprofit_org.shtml, and/or the Texas State Comptroller at https://fmx.cpa.state.tx.us/fmx/pubs/tins/tinsguide/2009-04/TINS_Guide_0409.pdf. Check all other boxes that describe the entity.
- 8) **EXPERIENCE** - Enter the number of years experience Respondent has providing developmental services to children from birth to 36 months of age.
- 9) **BUDGET PERIOD** – It is from September 1, 2020 through August 31, 2021.
- 10) **PROPOSED SERVICE AREA** - List the counties to be served by the proposed project.
- 11) **TOTAL ECI SERVICES FUNDING REQUESTED** - Enter the total amount of funding requested from HHSC for proposed project activities. The total funding amount requested must match the total amount requested on the Budget Summary Form (**Form I-2**).
- 12) **TOTAL RESPITE FUNDING REQUESTED** - Enter the total amount of funding requested from HHSC for respite services.
- 13) **PRIMARY CONTACT PERSON** - Enter the name, phone, fax, and email address of the person responsible for the proposed project.
- 14) **FINANCIAL OFFICER** - Enter the name, phone, fax, and email address of the person responsible for the financial aspects of the proposed project.
- 15) **AUTHORIZED REPRESENTATIVE** - Enter the name, title, phone, fax, and email address of the person authorized to represent the Respondent.
- 16) **SIGNATURE OF AUTHORIZED REPRESENTATIVE** - The person authorized to represent the Respondent must sign in this blank.
- 17) **DATE** - Enter the date the authorized representative signed this form.

Form B – Program Contact Information
Health and Human Services Commission – Early Childhood Intervention

Legal Business Name of Respondent:	
---	--

1. This form provides information about the appropriate contacts in the respondent’s organization.
2. Mark N/A if a contact does not apply to your agency.
3. ALL phone numbers should be a direct line to the designated individual.
4. If any of the following information changes during the term of the contract, please send written notification to the program.

Contacts	
<i>Executive Director</i>	
<i>Program Director</i>	
Last Name:	Last Name:
First Name:	First Name:
Salutation:	Salutation:
Title:	Title:
Email:	Email:
Phone:	Phone:
<i>Financial Director</i>	
<i>Other (Please Specify)</i>	
Last Name:	Last Name:
First Name:	First Name:
Salutation:	Salutation:
Title:	Title:
Email:	Email:
Phone:	Phone:
<i>Other (Please Specify)</i>	
<i>Other (Please Specify)</i>	
Last Name:	Last Name:
First Name:	First Name:
Salutation:	Salutation:
Title:	Title:
Email:	Email:
Phone:	Phone:

**Form C – Program Experience and Capacity
Health and Human Services Commission – Early Childhood Intervention**

Legal Business Name of Respondent:	
---	--

Provide a brief description of Respondent’s experience providing early intervention services.
(8 pages maximum, excluding any attachments)

The response should provide enough information to demonstrate that its organization can handle the responsibility of this contract, is experienced with similar tasks, and is aware of issues and opportunities associated with meeting the needs of families of children with developmental delays or disabilities. Respondent must assure that the individuals proposed to perform the tasks required in this Request for Applications (“**RFA**”) will perform these tasks within the scope of their qualifications, including professional licenses, certifications and registrations. The response must include the following:

- 1) A description of the background of your organization and the overall ability of the organization to effectively provide and manage the services requested by this RFA, emphasizing the agency’s mission; experience providing social service programs; experience in providing services to children and families; and experience in managing governmental budgets, grants and contracts. Discuss the organizational structure, including how the ECI program would fit in. Attach an organizational chart that shows the lines of authority to your proposed ECI program. If the respondent is a multi-service organization (or would be if this program were funded), the chart should depict where its proposed ECI program would fit into the overall structure.
- 2) A description of the population to be served through ECI program in your community, including cultural, ethnic and language diversity, and how your agency will reach all populations and meet their service needs.
- 3) A description of the existing services and resources that are available to families of children birth to 36 months of age in the community, including community strengths. Explain how your program will coordinate with other programs and resources in the community to maximize services to children and describe how your service coordinators will utilize community resources. Identify by name any groups or entities such as community resource coordination groups, Head Start, child care centers, faith-based organizations, etc. that you will coordinate with to fulfill the requirements of the ECI program.
- 4) A description of how any other services your entity provides will benefit families receiving ECI services. Clearly describe any demonstrated history of accessing and fully utilizing entity and community resources or other methods of community collaboration as an “added value” to families with children.
- 5) Attach job descriptions of key management staff, such as the Executive Director, Program Director, and Chief Financial Officer, and describe the role of the Board of Directors/Trustees in agency oversight. Job descriptions must include knowledge, skills, and abilities necessary for the position.

Form D –Start-Up Plans
Health and Human Services Commission – Early Childhood Intervention

Legal Business Name of Respondent:	
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Provide a brief description of Respondent’s start-up plans.
(6 pages maximum)

The response must include the following:

- 1) Fully describe your start-up plans and timeline for providing ECI services beginning September 1, 2020, with regard to the following:
 - a. Staff and volunteer recruitment, hiring, and training
 - b. Establishment of at least one full-time office
 - c. Ensuring that subcontracted service providers are familiar with program requirements, policies, procedures, and expectations
- 2) Describe how you propose to accept referrals and enroll children beginning September 1, 2020. Describe your plans to expand administrative systems and staffing to provide services as enrollment growth occurs.
- 3) Describe your proposed public awareness/child find/interagency coordination plan. Include information on specific methods for reaching the general public to maximize child participation, involvement and communication with other community entities in outreach and referral, early identification, and methods to evaluate the effectiveness of child find efforts. Describe any innovative child find strategies that will help ensure that families with eligible children are made aware of the proposed services. Explain how you will target child find efforts to identify children in underserved areas and culturally diverse populations.

Form E –Staffing Requirements
Health and Human Services Commission – Early Childhood Intervention

Legal Business Name of Respondent:	
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Provide a brief description of Respondent’s staffing requirements.
(4 pages maximum)

The response must include the following:

- 1) A description of the methods used to attract and retain qualified service providers. If any services are to be subcontracted, explain the specific responsibilities of subcontractors and describe (as applicable) how you will ensure that staff of subcontractors meet appropriate educational, experience and training requirements. Discuss steps the agency will take if qualified service providers do not apply with the agency.
- 2) A description of the frequency of staff training, planned training topics, and staff that will be responsible for the training.
- 3) A description of how management will provide staff oversight to ensure efficient provision of quality services.
- 4) A description of how the language proficiencies and the cultural competency of program staff and volunteers will meet the needs of the children, families, and communities to be served. Explain how you will ensure that staff is aware of and sensitive to the diverse needs of children/families who represent particular ethnic, racial, and religious backgrounds.

**Form F – Service Planning, Coordination, and Delivery
Health and Human Services Commission – Early Childhood Intervention**

Legal Business Name of Respondent:	
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Provide a brief description of Respondent’s plan for service planning, coordination, and delivery.
(10 pages maximum)

The response must include the following:

- 1) A description of how each of the following services will be provided according to recommended practice in the area of early childhood intervention and will reflect evidence-based practice to the extent practical.
 - a. Referral and Intake
Describe how referrals will be made/received, including staff involved and time frames. Describe all referral sources for the proposed program. Specify ongoing efforts that will be made to ensure a well-defined referral relationship with the local Child Protective Services program to ensure that all children under age three with substantiated cases of abuse and neglect are referred for ECI services. Outline the approach to be used with families to ensure they understand fully the ECI program. Describe how families that are accessible outside of normal business hours will be served. Provide an assurance that all eligible children will be served.
 - b. Eligibility Determination
Describe your proposed screening and evaluation process. Explain how your entity will ensure that each child receives a comprehensive, interdisciplinary team evaluation (when required) and that eligibility is correctly determined. Describe how your entity will ensure that there is family involvement in the evaluation process.
 - c. Individualized Family Service Plan (“IFSP”)
Describe practices and processes for needs assessment and IFSP development according to Individuals with Disabilities Education Act (“IDEA”), Part C, and HHSC requirements. Include explanations of family involvement, team composition and timelines. Discuss how your program will identify and use child and family resources, needs and priorities. Explain how your entity will provide oversight of the IFSP process and ensure that planned services are individualized and sufficient to support the family in assisting their child to meet goals.
 - d. Required Services
Describe how your program will provide or access the ECI required services, as described in Article 2 of this RFA, in all counties proposed to be served. Include information regarding staff resources, service availability, contract arrangements with other entities, letters of agreement among entities, etc. that support your program’s ability to provide or access each service. Explain how your entity will provide oversight and coordination of services. Describe problems that can occur or barriers that might be

Form F – Service Planning, Coordination, and Delivery
Health and Human Services Commission – Early Childhood Intervention

encountered in meeting service delivery requirements, and describe how you will address the problems/barriers.

Legal Business Name of Respondent:	
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- e. Procedural Safeguards
Describe procedural safeguards policies and explain how you will ensure that procedural safeguards (e.g., notice, consent, confidentiality, and complaint procedures) are correctly and consistently implemented so that families’ rights will be observed at all times. Explain your entity’s policies and procedures to comply with the Family Educational Rights and Privacy Act (“**FERPA**”).

 - f. Transition
Describe how your program will comply with all required transition activities within required timelines. Include how your entity will incorporate transition strategies that are individualized to each child and his/her family into your IFSP and service delivery process. Describe transition resources in your community including all relevant school districts. Indicate if agreements are already in place with these entities and describe how your entity will successfully use these community resources.
- 2) Describe how the agency will respond to both formal and informal client complaints regarding the:
- a. Identification of the child;
 - b. Evaluation of the child;
 - c. Placement of the child; and
 - d. ECI services for the child.
- 3) Describe the agency’s internal monitoring system that will be used to track service delivery. Specify the frequency with which tracking will be conducted, how the information will be used, how problems will be identified and resolved in a timely manner, and the frequency of service coordinators contacts that will be made with the families.

**Form G – Proposed Service Area
Health and Human Services Commission – Early Childhood Intervention**

Legal Business Name of Respondent:	
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Respondents may choose from the list of existing service areas as shown in **Exhibit E.**

-OR-

If proposing a new service area, respondents may list all counties in the proposed service area in the space below.

If the proposal only includes a portion of a county, include the zip codes covered or other boundary indicators for the area to be served.

Note: Respondents that choose to submit a proposal for part of a county must include information about agreements with other providers of ECI services they plan to collaborate with to ensure the entire county is served and that there are no gaps in service. If awarded a contract through this RFA, respondents that will only provide services in a portion of a county must execute a Memorandum of Understanding or agreement within 60 days of contract execution with other ECI contracted entities in that county which demonstrates that the entire county is served.

Proposed Service Area

Existing Service Area #: (Indicate the numerical identifier of the exiting service area and list the counties in this service area in the space below.)

Service Area: (List all counties where services will be provided. If only serving a portion of a county, describe the service area boundaries in the county.)

Form H – Financial Planning
Health and Human Services Commission – Early Childhood Intervention

Legal Business Name of Respondent:	
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Provide a brief description of Respondent’s financial planning for the program.
(5 pages maximum)

The response must include the following:

- 1) Identify all funds projected to be dedicated to your ECI program from September 1, 2020 through August 31, 2021. The funding information you provide is intended to be comprehensive, including all funds and in-kind contributions that will comprise the total ECI program budget. Include ECI services funding requested.
- 2) Indicate if Offeror Share/Locally Collected Funds amounts are based on projections or actual commitments from funding sources. For projections, describe the methodology used to make the projections.
- 3) Describe your organization’s history of and capacity for billing Medicaid and other government sources of funding. Explain if your organization will have to implement new systems in order to bill families, all potential Medicaid programs, the Children’s Health Insurance Program (CHIP), and all types of private insurance, or describe the existing billing system that will be used.
- 4) Describe your organization’s history of obtaining and leveraging local and private funding for program services, including fundraising, city, county and United Way funds. Describe how local and private funds secured for the ECI program will be used to enhance services. For actual funding commitments, include a letter of commitment from each funding source. Each letter of commitment should include the following:
 - a. Amount committed by the funding source for the period from September 1, 2020 through August 31, 2021
 - b. Assurance that the funding source will allow the dollars to be contributed as Respondent share for the ECI program and that the funding source will not be used to match other grants
 - c. Assurance that the funds will be maintained as Respondent Share/Locally Collected Funds in subsequent fiscal years if HHSC ECI contract funds are awarded.

Form I – Budget and Child Count
Health and Human Services Commission – Early Childhood Intervention

Legal Business Name of Respondent:	
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Respondents must complete the attached HHSC ECI Budget and Child Count Template (**Form I-2**) using the instructions and examples provided in the HHSC ECI Budget and Child Count Template Instructions (**Form I-1**). Below is a summary of the information required in the **Form I-2**, see **Form I-1** for additional details.

Section I

Please complete Section I in the **Form I-2** with your general agency information.

Enter the average number of children you propose to have enrolled on the last day of each month throughout the fiscal year, September 1, 2020-August 31, 2021.

Enter the proposed ECI funding requested to facilitate the ECI program, after the inclusion of additional funding sources, throughout the fiscal year, September 1, 2020-August 31, 2021.

The Project Locally Collected Funds will autofill once the information has been completed in Section II.A.

Section II. A

The Revenue Codes tab includes a description of additional funding sources used to fund the ECI program. Using the codes found on that tab, enter all the funding sources and correlating amounts projected to be used for the ECI program from September 1, 2020-August 31, 2021. The total funds must equal the total amount budgeted in column 1 on the Section I tab. Successful Respondents are expected to obtain and maintain these funding levels.

Section II. B

This section a categorical breakdown of your budget. It will autofill once information is entered on all the category tabs from Personnel to Full-Time Equivalent estimates (“**FTEs**”).

Personnel

Please include a list of all personnel who will work on the ECI program. If the position is vacant, write the word ‘vacant’ to account for all necessary positions. Costs are allowable to the extent that they are identified in the contract budget and conform to 2 CFR Part 200.

The list will include employee’s name, professional title, percentage of time allocated as non-direct, job functions, annualized salary, and percentage of time dedicated to the ECI program. All other columns will auto-populate.

Describe the fringe benefits and associated percentages which are allocated to the ECI program. Include the fringe benefit rate. The fringe benefits total will auto-populate.

Form I – Budget and Child Count
Health and Human Services Commission – Early Childhood Intervention

Travel

The travel tab is broken into two separate categories: local mileage and overnight in state and out of state travel. For local travel, include the agency rate paid per mile, which cannot exceed the current state approved rate. List projected amount spent on mileage for service delivery, outreach efforts, supervision or administration, and all other miscellaneous local travel anticipated to occur during the fiscal year.

For overnight travel, list all projected conferences and workshops and the itemized costs. The total costs will auto-sum once data has been entered into the Travel Costs section. Out of state travel must have prior approval from HHSC ECI at least 30 days in advance of travel.

Equipment

List any equipment and controlled assets you anticipate purchasing during the fiscal year. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000, whichever is lower. Controlled assets are assets that must be secured and tracked, but which has a value less than the capitalization threshold. Commonly purchased controlled assets are laptops and tablets.

Include in each line item of equipment or controlled asset the number of units to be purchased, and why the equipment or controlled asset is necessary to operate the ECI program.

Supplies

Supplies are defined as consumable items necessary to carry out the services under the ECI program. These may include office supplies, educational supplies, software, and any tangible items other than those defined under equipment and controlled assets.

Include a proposed list of supply items, the purpose for the items, and why the items are necessary to support the ECI program.

Contractual

A Successful Respondent is responsible to HHSC for the performance of any subcontractor. A Successful Respondent shall monitor both financial and programmatic performance and maintain pertinent records that shall be available for inspection by HHSC. A Successful Respondent shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes and regulations, and under **Exhibit D** of this RFA. A Successful Respondent shall not contract with a subcontractor, at any tier, which is debarred or suspended or excluded from or ineligible for participation in federal assistance programs.

The Contractual cost category should include the list of professionals who will be subcontracted for the provision of ECI services that are directly associated with carrying out the Attachment B, of the **Exhibit D**. Enter all the individual(s) performing the service. List the estimated number of hours and rate at which the contractors will be paid.

Form I – Budget and Child Count
Health and Human Services Commission – Early Childhood Intervention

Other

All other direct and non-direct costs not listed in any other cost category are to be included in the “Other” tab.

Direct costs are costs associated with the direct provision of client services.

Non-direct costs are costs associated with administrative or clerical duties that support the program but are not direct services to clients.

Indirect Costs

All Respondents must submit a cost allocation plan. If using an indirect cost rate the Respondent must submit a cost allocation plan specifically identifying all costs included in the indirect cost rate, and those which will be paid directly.

If using an approved indirect cost rate, the Respondent must submit an indirect cost rate letter from a cognizant agency.

Regardless of the indirect cost rate method, enter the indirect cost rate to be used during the fiscal year. This rate must be supported by an approved indirect cost rate letter, central service cost allocation plan, or be no more than the 10% de minimis rate allowable per Title 2 CFR 200.

FTEs

It will be necessary to complete the Personnel and Contractual categories before you complete this section. Estimate and enter the number of FTE positions (including contractual staff) budgeted for the following services: specialized skills training (“**SST**”), physical therapy (“**PT**”) (including by PT Assistants), occupational therapy (“**OT**”) (including by OT Assistants), and speech/language therapy (“**SLP**”) (including by SLP Assistants and Interns in Speech-Language Pathology). To calculate the FTEs for each service, you must estimate what percentage of time each staff position or contractor will spend providing that service and add the percentages for each position to get the total FTEs for the service (100% = 1.00 FTE). Round your estimates to two decimal places.

For staff positions, consider direct client services, assessment/evaluation, IFSP development, travel, and paperwork as part of the time spent providing the service. For example, four physical therapists who work full-time spending 80% of their time providing PT services, equates to 3.20 FTEs ($4 \times 80\% = 320\%$, $320\% \div 100\% = 3.20$ FTEs).

When employees work less than 40 hours a week, remember to consider this in the calculation. For example, for four physical therapists who work 20 hours a week and who spend 80% of their working time providing PT services, the formula would be ($4 \times .5 \times 80\% = 160\%$, $160\% \div 100\% = 1.6$ FTEs).

For contractual positions, sum the total hours budgeted for the service (including direct client services, assessment/evaluation, IFSP development, travel, and paperwork) and divide by 2,080 (based on 52 weeks @ 40 hours/week = 1.00 FTE) to get the estimated FTEs. Add your calculations of the staff and contractual FTEs to get the total FTEs for each service and enter in the appropriate cells.