Health and Human Services Commission
Special Conditions
Version 1.1

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HHSC 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 Grantee Uniform Terms and Conditions – Version 2.14

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 6.02 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 a 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. GRANTEES 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.

Article V. DSHS LEGACY PROVISIONS

Section 5.01 Notice of Criminal Activity and Disciplinary Actions

(a) Grantee shall immediately report in writing to their contract manager when Grantee has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, subcontractor or volunteer that is providing services under this Contract has:

Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or

Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.

(b) Grantee shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

Section 5.02 Notice of IRS or TWC Insolvency

Grantee shall notify in writing their assigned contract manager their insolvency, incapacity or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission within five days of the date of becoming aware of such.

Section 5.03 Disaster Services

In the event of a local, state, or federal emergency, including natural, man- made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Grantee may be called upon to assist the System Agency in providing the following services:

a. Community evacuation;
b. Health and medical assistance;
c. Assessment of health and medical needs;
d. Health surveillance;
e. Medical care personnel;
f. Health and medical equipment and supplies;
g. Patient evacuation;
h. In-hospital care and hospital facility status;
i. Food, drug and medical device safety;
j. worker health and safety;
k. Mental health and substance abuse;

l. Public health information;
m. Vector control and veterinary services; and
n. Victim identification and mortuary services.

Section 5.04 Consent by Non-Parent or Other State Law to Medical Care of a Minor

Unless a federal law applies, before a Grantee or its subcontractor can provide medical, dental, psychological or surgical treatment to a minor without parental consent, informed consent must be obtained as required by Texas Family Code Chapter 32.

Section 5.05 Telemedicine /Telepsychiatry Medical Services

If Grantee or its subcontractor uses telemedicine/telepsychiatry, these services shall be in accordance with the Grantee's written procedures. Grantee must use a protocol approved by Grantee's medical director and equipment that complies with the System Agency equipment standards, if applicable. Grantee's procedures for providing telemedicine service must include the following requirements:

a. Clinical oversight by Grantee's medical director or designated physician responsible for medical leadership;
b. Contraindication considerations for telemedicine use;
c. Qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
d. Safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
e. Use by credentialed licensed providers providing clinical care within the scope of their licenses;
f. Demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
g. Priority in scheduling the system for clinical care of individuals;
h. Quality oversight and monitoring of satisfaction of the individuals served; and
i. Management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites. Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under 25 Texas Administrative Code Rule § 448.911.

Section 5.06 Services and Information for Persons with Limited English Proficiency

a. Grantee shall take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities.
b. Grantee shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
c. Grantee shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

Section 5.07 Third Party Payors

Except as provided in this Contract, Grantee shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.

As applicable, the Grantee shall:

a. Enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs and bill those programs for the covered services;
b. Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
c. Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the System Agency for the deductible;
d. Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
e. Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
f. Bill all third party payors for services provided under this Contract before submitting any request for reimbursement to System Agency; and
g. Provide third party billing functions at no cost to the client.

Section 5.08 HIV/AIDS Model Workplace Guidelines

Grantee shall implement System Agency's policies based on the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS), AIDS Model Workplace Guidelines for Businesses at http://www.dshs.state.tx.us/hivstd/policy/policies.shtm, State Agencies and State Grantees Policy No. 090.021.

Grantee shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas. Health & Safety Code §§ 85.112-114.

Section 5.09 Medical Records Retention

Grantee shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

Section 5.10 Notice of a License Action

Grantee shall notify their contract manager of any action impacting its license to provide services under this Contract within five days of becoming aware of the action and include the following:

a. Reason for such action;
b. Name and contact information of the local, state or federal department or agency or entity;
c. Date of the license action; and
d. License or case reference number.

Section 5.11 Interim Extension Amendment

a. Prior to or on the expiration date of this Contract, the Parties agree that this Contract can be extended as provided under this Section.
b. The System Agency shall provide written notice of interim extension amendment to the Grantee under one of the following circumstances:

    1. Continue provision of services in response to a disaster declared by the governor; or
    2. To ensure that services are provided to clients without interruption.

c. The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
d. Grantee will provide and invoice for services in the same manner that is stated in the Contract.
e. An interim extension under Section (b)(1) above shall extend the term of the contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
f. An interim extension under Section (b)(2) above shall be a one-time extension for a period of time determined by the System Agency.

Section 5.12 Child Abuse Reporting Requirement

a. Grantees shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Grantee to report child abuse.
b. Grantee shall develop, implement and enforce a written policy that includes at a minimum the System Agency's Child Abuse Screening, Documenting, and Reporting Policy for Grantees/Providers and train all staff on reporting requirements.
c. Grantee shall use the System Agency's Child Abuse Reporting Form located at www.System Agency.state.tx.us/childabusereporting as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

Section 5.13 Grantee's Certification of Meeting or Exceeding Tobacco-Free Workplace Policy Minimum Standards

Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:

a) Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
b) Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Contract are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
c) Applying to all employees and visitors in this designated area; and
d) Providing for or referring its employees to tobacco use cessation services.

If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

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