Fiscal Year 2016
Department of State Health Services
Contract General Provisions

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ARTICLE I CONTRACT COMPONENTS

Section 1.01 Contract Components. As used in herein, the "Contract" consists of the following documents:

a. The Contract, including any applicable Program Attachment(s); The Department of State Health Services Fiscal Year 2016 General Provisions (General Provisions) and if applicable;
c. The solicitation document, if applicable; and
d. The response, proposal or application submitted by Contractor in response to the solicitation document, if applicable.

Section 1.02 Order of Precedence. To the extent that there is any conflict between the terms of any contract component document, the conflict shall be resolved in the above order of priority in Section 1.01.

ARTICLE II COMPLIANCE AND REPORTING

Section 2.01 Compliance. Contractor shall comply and require its subcontractor(s) to comply with the requirements of these general provisions and all other applicable state and federal statutes, regulations, rules and executive orders, as such statutes, regulations, rules and executive orders including as such statutes, regulations, rules and executive orders may be amended.

Section 2.02 Precedence of Contract Terms. To the extent this Contract imposes a higher standard or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract shall take precedence and control.

Section 2.03 Effect of Legislative Changes. Contractor agrees that upon notification from Department of State Health Services (DSHS or Department) Contractor shall comply with any changes to the term of the contract include in its contracts that are a result of legislation during the term of this Contract.

Section 2.04 Compliance with Requirements of Solicitation Document. If applicable and except as specified in these General Provisions or the Contract's terms, the Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract and may result in termination.

Section 2.05 Reporting. Contractor shall submit reports in accordance with the reporting requirements established by the Department and provided for in the Contract and in these General Provisions. Except as otherwise provided for in this Contract or General Provisions, the Contractor shall submit reports to the assigned contract manager. Contractor shall also provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the contract or upon request may constitute a breach of contract, result in delayed payment and/or the imposition of sanctions and remedies. And failure to comply with a reporting requirement may adversely affect evaluation of Contractor's ability to contract in the future with the Department.

Section 2.06 Applicable Contracts Law and Venue for Disputes. Except as provided for in Article XV, all issues related to this contract, including formation, performance and interpretation that may arise in any dispute between the Parties, shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be in Travis County, Texas.

Section 2.07 Statutes and Standards of General Applicability. Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable

to Contractor, Contractor shall comply with the following:

a. Statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion:
    1. Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
    2. Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
    3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
    4. Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
    5. Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
    6. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91;
    7. U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
    8. Tex. Labor Code Chapter 21;
    9. Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
    10. Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
    11. Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
    12. Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
    13. Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
    14. DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b. Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., as amended by Public Law113-4 (March 7, 2013), regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
c. Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
d. National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), regarding human subjects involved in research;
e. Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-26, which limits the political activity of employees whose employment is funded with federal funds;
f. Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
g. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;
h. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
i. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
j. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code Chapter 96 regarding safety standards for handling blood borne pathogens;
k. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
l. Environmental standards pursuant to the following:
    1. Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;"

2. Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;"
3. Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961;
4. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);
5. Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.;
6. Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.;
7. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j;
8. Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.;
9. Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§ 7401 et seq.;
10. Wild and Scenic Rivers Act of 1968, 16 USC §§ 1271 et seq., related to protecting certain river systems; and

m. Lead-Based Paint Poisoning Prevention Act, 42 USC §§ 4821 et seq., prohibiting the use of lead-based paint in residential construction or rehabilitation;
n. Intergovernmental Personnel Act of 1970, 42 USC §§ 4278-4763, regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration, 5 CFR Part1200 et seq;
o. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of, 42 USC §§4601 et seq (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
p. Davis-Bacon Act, 40 USC §§ 3141-3148;
q. Copeland Act, 40 USC §§ 276c and 18 USC § 874;
r. Contract Work Hours and Safety Standards Act, 40 USC § 3702 et seq., regarding labor standards for federally-assisted construction subagreements;
s. National Historic Preservation Act of 1966, § 106, 16 USC § 470; Executive Order 11593; and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
t. Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
u. Executive Order 13513 (Oct. 1, 2009), Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of this Contract;
v. Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)) and Texas Whistleblower Act (Tex. Gov. Code Chapter 554); and
w. Requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

Section 2.08 Applicability of General Provisions to Interagency and Interlocal Contracts.

a. The following sections or portions of sections of these General Provisions shall not apply to Interagency Cooperation Contracts (Texas Government Code 771) or Interlocal Cooperation Contracts (Texas Government Code Chapter 791):

1. Hold Harmless and Indemnification, Section 14.17;
2. Independent Contractor, Section 13.05;
3. Historically Underutilized Businesses (HUBs), Section 13.02 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity;
4. Debt to State and Corporate Status, Section 4.01;

5. Application of Payment Due, Section 4.02; and
6. Article XVI Claims against the Department.

b. The following additional provisions shall apply to Interlocal Cooperation Contracts:

1. Payments made by DSHS to Contractor shall be from current revenues available to DSHS; and
2. Each Party represents that it has been authorized to enter into this Contract.

Section 2.09 Civil Rights Policy and Complaints. Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten calendar days after Contractor's receipt of the claim. Notice must be directed to:

Civil Rights Office
Health and Human Services Commission
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
(888) 388-6332 or 512-438-4313
TTY Toll-free (877) 432-7232
HHSCivilRightsOffice@hhsc.state.tx.us

Section 2.10 Licenses, Certifications, Permits, Registrations and Approvals. Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

Section 2.11 Funding Obligation. This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment of the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce or terminate funding under this Contract. Notice of any restriction or reduction shall include instructions and detailed information on how DSHS shall fund the services and/or goods to be procured with the restricted or reduced funds.

Section 2.12 Whistleblower Act Protection. This Contract is required to include the Whistleblower Protection Acts (See Section 2.07(v)) protections to grantees, their subgrantees and subcontractors, and contractor must inform their employees of whistleblowers' rights and remedies. The requirement is in effect for all grants, contracts, subgrants, and subcontractors issued beginning July 1, 2013 through January 1, 2017.

ARTICLE III SERVICES

Section 3.01 Education to Persons in Residential Facilities. If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and are 22 years of age or younger, have access to educational services as required by Texas Education Code § 29.012.

Contractor shall notify the local education agency or local early intervention program as prescribed by this Section not later than the third calendar day after the date a person who is 22 years of age or younger is placed in Contractor's residential facility.

Section 3.02 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, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas:

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.

Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, in the most cost-effective, and least intrusive manner to Contractor's primary services.

Section 3.03 Consent to Medical Care of a Minor. If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Texas Family Code Chapter 32 relating to consent to treatment of a child by a non-parent or the child or other state law. If requirements of federal law relating to consent directly conflict with this Chapter, then federal law supersedes state law.

Section 3.04 Telemedicine/Telepsychiatry Medical Services. If applicable, the Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

a. Clinical oversight by Contractor'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 TAC Rule § 448.911.

Section 3.05 Services and Information for Persons with Limited English Proficiency.

a. Contractor 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. Contractor 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. Contractor 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.

ARTICLE IV FUNDING

Section 4.01 Debt to State and Corporate Status.

a. Pursuant to Texas Government Code § 403.055, the Department shall not approve and Texas Comptroller of Public Accounts shall not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency.

b. Contractor, if a corporation, certifies by execution of this Contract that it is current and shall remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Texas Tax Code §§ 171.001 et seq.). As a corporation, this Contractor further certifies that it is and shall remain in good standing with the Secretary of State's office.

c. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 4.02 Application of Payment Due. Contractor agrees that any payments due under this Contract shall be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

ARTICLE V PAYMENT METHODS AND RESTRICTIONS

Section 5.01 Payment Methods. Except as otherwise provided by the provisions of this Contract, the payment method is based on a unit rate (fixed price or a specified) or fee for service (delivery of a specified unit of service) as stated in the Contract.

Section 5.02 Invoice/Billing Submission.

a. Contractor shall bill the Department in accordance with the Contract in the form and format prescribed by DSHS. If applicable, the Contractor must submit of all required documentation, reports, forms and/or deliverables in order to receive payment from the Department.

b. Unless otherwise specified in the Contract or permitted under the Third Party Payors (See Section 5.04 below), Contractor shall submit requests for payment monthly by the last business day of the month following the end of the month covered by the bill.

c. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 5.03 Final Invoice/Billing Submission. Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than 45 calendar days following the end of the term of the Contract.

Section 5.04 Third Party Payors. Except as provided in this Contract, Contractor shall screen all clients and may not bill the Department 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 Contractor 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 Department 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 Department for the deductible;
d. Not bill the Department 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 Department; and
g. Provide third party billing functions at no cost to the client**.**

ARTICLE VI TERMS AND CONDITIONS OF PAYMENT

Section 6.01 Prompt Payment. Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department shall pay Contractor. Payments are contingent upon a signed Contract and shall not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If these conditions are met, Department shall make payment in accordance with the Texas Prompt Payment Act (Texas Government Code Chapter 2251). Contractor acknowledges and agrees that it shall comply with the provisions in the Texas Prompt Payment Act regarding its prompt payment of its financial obligations to its subcontractors.

Section 6.02 Payment by Department. Payment of invoices by the Department shall not constitute acceptance or approval of Contractor's performance nor foreclose the right of the Department and HHSC to recover excessive or illegal payments. All invoices and Contractor's performance are subject to review and audit by the Department.

Section 6.03 Withholding Payments. Department may withhold all or part of any payments to Contractor to offset overpayments that Contractor has not refunded to Department. Department may take repayment from funds due to the Contractor for services performed or goods delivered in amounts necessary to fulfill Contractor's repayment obligations.

ARTICLE VII CONFIDENTIALITY

Section 7.01 Maintenance of Confidentiality. Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI) and any other information that discloses confidential personal information or identifies any client served by DSHS in accordance with any applicable federal and state law, rules and regulations, including but not limited to:

a. 7 Code of Federal Regulations (CFR) Part 246; 42 CFR Part 2, 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]);
b. Texas Health and Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611 and 773;
c. Texas Occupations Code, Chapters 56 and 159; and
d. Any other applicable federal and state laws, rules or regulations.

The HHS Data Use Agreement (Version 8.3) at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf is incorporated as part of the Contract and describes 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. For the purpose of this Contract, the:
☐ Contractor does not access Confidential Information and does not have to comply with HHS Data Use Agreement (Version 8.3); or

☐ Contractor accesses Confidential Information as defined in and agrees to comply with the HHS Data Use Agreement (Version 8.3).

Section 7.02 Department Access to PHI and Other Confidential Information.
Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 Exchange of Client-Identifying Information.
Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Texas Health and Safety Code § 533.009 and 25 TAC Chapter 414, Subchapter A or any other applicable federal or state laws, rules or regulations.

Contractor shall disclose information described in Texas Health and Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Texas Health and Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 Security of Patient or Client Records.
Contractor shall ensure that patient and client records are managed in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Contract to

this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Contract to this Contract, as applicable or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 HIV/AIDS Model Workplace Guidelines. If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome), AIDS Model Workplace Guidelines for Businesses, State Agencies and State Contractors Policy No. 090.021. Contractor 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. A link to the Model Workplace Guidelines can be found at: http://www.dshs.state.tx.us/hivstd/policy/policies.shtm .

ARTICLE VIII PUBLIC INFORMATION ACT

Section 8.01 Texas Public Information Act. The Contractor understands that DSHS shall comply with the Texas Public Information Act (Texas Government Code Chapter 552).

If the Contractor is not a state agency, institution of higher education or other governmental entity, then the Contractor is required to make any information created or exchanged with the state pursuant to a contract, which is 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.

ARTICLE IX RECORDS RETENTION

Section 9.01 Retention.

a. Contractor shall retain and preserve records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall maintain all records, including but not limited to financial that are generated or collected by Contractor under the provisions of this Contract for a period of four years after the termination of this Contract.

b. If the federal retention period for services are funded through Medicaid is more than four years, then the Contractor will retain the records for longer period of time.

c. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved.

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

e. Contractor shall include this provision concerning records retention in any subcontract it awards.

f. Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner.

g. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to this Contract.

ARTICLE X ACCESS, INSPECTION AND AUDIT OF RECORDS

Section 10.01 Access and Inspection. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, the Office of the Inspector General at HHSC (OIG) and the State Auditor's Office (SAO) or any of their successor agencies, unrestricted access to and the right to examine any site where business is conducted or client 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 deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.

Contractor 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.

Section 10.02 State Auditor's Office. Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds shall apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 10.03 Responding to Deficiencies. Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site shall be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to document and resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance (See Article XV).

ARTICLE XI REPORTING REQUIREMENTS

Section 11.01 Child Abuse Reporting Requirement. This section applies to mental health and substance abuse contractors and contractors for the following public health programs:

a. Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD);
b. Family Planning;
c. Primary Health Care;
d. Maternal and Child Health; and
e. Women, Infants and Children (WIC) Nutrition Services.

All Contractors shall comply with child abuse reporting guidelines and requirements in Texas Family Code Chapter 261 relating to investigations of reports of child abuse and neglect.

Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements.

Contractor shall use the DSHS Child Abuse Reporting Form located at www.dshs.state.tx.us/childabusereporting as required by the Department. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

This section is in addition to and does not supersede any other legal obligation of the Contractor to report child abuse.

Section 11.02 Significant Incidents. In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Contract significant incidents involving substantial disruption of Contractor's program operation or affecting or potentially affecting the health, safety or welfare of Department funded clients or participants within 72 hours of discovery.

Section 11.03 Litigation.
Contractor shall notify the contract manager assigned to this Contract of litigation related to or affecting this Contract and to which Contractor is a party within seven calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, which includes but is not limited to environmental and civil rights matters, professional liability and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 11.04 Contract or License Action Against the Contractor.
Contractor shall notify the contract manager assigned to the contract if Contractor has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three working days of the suspension or termination. Such notification must include the:

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 contract;
d. Date of suspension or termination; and
e. Contract or case reference number.

If Contractor has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three working days of the surrender, suspension or revocation to the contract manager assigned to the Contract by submitting a one-page description that includes the:

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 11.05 Insolvency. Contractor shall notify in writing the contract manager assigned to the Contract of Contractor's insolvency, incapacity or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three working days of the date of determination that Contractor is insolvent or incapacitated or the date Contractor discovered an unpaid obligation to the IRS or TWC. The Contractor shall also notify in writing the contract manager assigned of its plan to seek bankruptcy protection within three working days of such action by Contractor.

Section 11.06 Performance Malfeasance. Contractor shall report to the contract manager assigned to the Contract any knowledge of debarment, suspected fraud or unlawful activity related to performance under this Contract. Contractor shall make such report no later than three working days from the date that Contractor has

knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act (31 U.S.C. §§3729-3733) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the SAO at http://sao.fraud.state.tx.us, and to the HHS Office of Inspector General at http://www.oig.hhs.gov/fraud/hotline/ no later than three working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 11.07 Criminal Activity and Disciplinary Action.

a. Contractor affirms that Contract nor any no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime.

b. Contractor shall report in writing the contract manager assigned to the Contract, no later than three working days from the date that Contractor has knowledge or reason to believe such activity has taken place, if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that:

    1. Would constitute a criminal offense equal to or greater than a Class A misdemeanor;
    2. Reasonably would constitute grounds for disciplinary action by a state or federal regulatory authority;

c. Has 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. Contractor 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 DSHS.

Section 11.08 Retaliation Prohibited. Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 11.09 Documentation. Contractor shall maintain appropriate documentation of all notices and reporting to DSHS as required under these General Provisions or this Contract.

ARTICLE XII ASSURANCES AND CERTIFICATIONS

Section 12.01 Certification. Contractor certifies by execution of this Contract to the following and will include such in all of its subcontracts:

a. It is not disqualified under 2 CFR § 376.935 or ineligible for participation in federal or state assistance programs;
b. Neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c. It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d. It is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
e. It is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
f. That no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g. Neither it, nor its principals have within the three year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h. Neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses in subsection (g) above; and
i. Neither it, nor its principals within a three year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Contract. Also, if Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Contract.

Section 12.02 Child Support Delinquencies. As required by Texas Family Code § 231.006, a child support obligor who is more than 30 calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 12.03 Authorization. Contractor certifies that it possesses legal authority to contract for the services described in this Contract and if applicable, a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and to provide such additional information as may be required.

Section 12.04 Gifts and Benefits Prohibited. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 12.05 Ineligibility to Receive the Contract.

a. Pursuant to Texas Government Code § 2155.004 and federal law, Contractor is ineligible to enter into this Contract with the Department if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor nor its employees nor anyone acting for Contractor has received compensation from DSHS for participation in the developing, drafting or preparation of specifications, requirements or statements of work for this Contract or in the Solicitation Document associated with this Contract.

b. Pursuant to Texas Government Code §§ 2155.006 and 2261.053, Contractor is ineligible to enter into this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law or been assessed a federal civil or administrative penalty, 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.

c. Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Texas Government Code §§ 2155.004, 2155.006 or 2261.053 and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 12.06 Antitrust. Pursuant to 15 USC Sec. 1, et seq., and Texas Business & Commerce Code § 15.01, et seq. Contractor certifies that neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws nor communicated directly or indirectly regarding a bid made to any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

ARTICLE XIII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 13.01 Program Site. Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire and safety standards.

Section 13.02 Historically Underutilized Businesses (HUBs). If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Contract, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Texas Government Code Chapter 2161 and 34 TAC § 20.14 et seq. Contractors may obtain a list of HUBs at http://www.window.state.tx.us/procurement/prog/hub. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval of the revised plan from the Department's HUB Coordinator before proposed changes shall be effective under this Contract.

Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity in accordance with 34 TAC § 20.16(c).

Section 13.03 Buy Texas. Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Texas Government Code § 2155.4441.

Section 13.04 Status of Subcontractors. Contractor shall require that all subcontractors certify that they

are/have:

a. In good standing with all state and federal funding and regulatory agencies;
b. Not currently debarred, suspended or otherwise excluded from participation in federal grant programs;
c. Not delinquent on any repayment agreements;
d. Not had a required license or certification revoked;
e. Not ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract (Assurances and Certifications Article) or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article); and
f. Not had a contract terminated by the Department.

Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three years any license issued by the Department.

Section 13.05 Independent Contractor. Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents shall not be eligible for unemployment compensation from the Department or the State of Texas.

Section 13.06 Tax Liability. Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has a liability or has failed to remain current on a delinquent liability to the IRS, this Contract shall be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department shall not enter into a contract with Contractor for three years from the date of termination.

Section 13.07 Notice of Organizational Change. Contractor shall submit written notice to the contract manager assigned to the Contract within 10 business days of any change to Contractor's name, contact information, key personnel, organizational structure, such as merger, acquisition or change in form of business, legal standing or authority to do business in Texas.

A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the amendment provisions in Article XIII.

Section 13.08 No Endorsement. Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS and from using the Department's name, logo or website link in any manner that is intended or that could be perceived as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 13.09 E-Verify System. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

a. All persons employed to perform duties within Texas, during the term of the Contract; and
b. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

ARTICLE XIV GENERAL TERMS

Section 14.01 Assignment. Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this

Contract without the prior written consent of the Department.

Section 14.02 Lobbying.

a. Contractor shall comply with Texas Government Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state 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 contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352).

b. If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Contract a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or shall be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement.

c. Contractor shall file the declaration, certification, and disclosure:

    1. At the time of application for this Contract;
    2. Upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and
    3. At the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Contract. Contractor shall include this provision in any subcontracts.

Section 14.03 Conflict of Interest. Contractor represents to the Department that it and its subcontractors, if any, do not have, nor shall Contractor or its subcontractors knowingly acquire or retain any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family) or any affiliate or subcontractor and Department or HHSC, their commissioners, officers or employees, or any other entity or person involved in any way in any project that is the subject of this Contract.

Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Contract within 10 days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within 10 days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 14.04 Transactions Between Related Parties. Contractor shall identify and report to DSHS any transaction between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor.

Contractor shall submit to the contract manager assigned to the Contract the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party shall perform under this Contract.

Contractor shall comply with Texas Government Code Chapter 573.

Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR § 74.42.

Section 14.05 Intellectual Property.

a. Texas Health and Safety Code §12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract. "Intellectual property" is created property that may be protected under copyright, patent, or trademark/service mark law.

b. For purposes of this Contract, intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is a "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS.

c. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.

   If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes:

   1. Copyright in any intellectual property developed under this Contract including any subcontract; and
   2. Any rights of copyright to which a Contractor purchases ownership with contract funds.

d. Any rights of copyright, service or trademarks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds

e. If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Contract.

Section 14.06 Other Intangible Property. At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs or software licenses with a value of $500 or more. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision shall survive the termination or expiration of this Contract.

Section 14.07 Severability and Ambiguity. If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions shall continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 14.08 Legal Notice. Except as otherwise provided in this Contract or General Provisions, any notice required or permitted to be given by the provisions of this Contract or General Provisions shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 14.09 Successors. This Contract shall be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 14.10 Survivability of Terms. Termination or expiration of this Contract or a Contract for any reason shall not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed shall survive any such termination or expiration or remain to be performed, including but not limited to maintaining confidentiality of information and records retention.

Section 14.11 Customer Service Information. If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Texas Government Code Chapter 2114 regarding Customer Service surveys.

Section 14.12 Amendment. All amendments to this Contract must be in writing and agreed to by both Parties. If a Contractor requests an amendment, it must be submitted in writing and include a justification for the request, to the contract manager assigned to the Contract.

Section 14.13 Contractor's Notification of Change of Contact Person or Key Personnel. Within ten calendar days shall notify in writing the contract manager assigned to the Contract of any change enumerated in the Contractor's Contact Personnel or Key Personnel, if included in their response to a solicitation document.

Section 14.14 Unilateral Amendment. The Department reserves the right to amend this Contract through execution of a unilateral amendment signed by the contract manager for this Contract and provided to the Contractor with ten days notice prior to execution of the amendment under the following circumstances to:

a. Correct an obvious clerical error in this Contract;
b. Incorporate new or revised federal or state laws, regulations, rules or policies; and

c. Change the name of the Contractor in order to reflect the Contractor's name as recorded by the Texas Secretary of State.

Section 14.15 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. DSHS/HHSC shall provide written notice of interim extension amendment to the Contractor 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. DSHS will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.

d. Contractor 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 HHS/DSHS.

Section 14.16 Immunity Not Waived. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 14.17 Hold Harmless and Indemnification.
Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments, and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 14.18 Waiver. Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract shall not constitute a waiver of either party's rights under this Contract.

Section 14.19 Electronic and Information Resources Accessibility and Security Standards.

a. **Applicability.**

   The following Electronic and Information Resources (EIR) requirements apply to the Contract because the Contractor performs services that include EIR that DSHS employees are required or permitted to access or members of the public are required or permitted to access.

   This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by HHSC's clients or recipients after completion of the Agreement.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

b. **Definitions.**
For purposes of this Section:

"Accessibility Standards" means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 TAC Chapter 206 and/or Chapter 213.

"**Electronic and Information Resources**" means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

"Electronic and Information Resources Accessibility Standards" means the accessibility standards for electronic and information resources contained in 1 Texas Administrative Code Chapter 213.

"Product" means information resources technology that is, or is related to, EIR.

"Web Site Accessibility Standards/ Specifications" means standards contained in Volume 1 Tex. Admin. Code Chapter 206(c) Accessibility Requirements.

Under Tex. Gov't Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, DSHS must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

c. **Evaluation, Testing, and Monitoring.**
1. DSHS may review, test, evaluate and monitor Contractor's Products and services, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.
Neither the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Contractor's assertion of compliance with the Accessibility Standards.

2. Contractor agrees to cooperate fully and provide DSHS and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

d. **Representations and Warranties.**
1. Contractor represents and warrants that:

i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and

ii. If the Products will be in the custody of the state or a DSHS client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless DSHS or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.

2. In the event Contractor becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Contractor represents and warrants that it will, in a timely manner and at no cost to DSHS, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.

3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which DSHS relies in awarding this Contract.

4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

e. **Remedies.**

1. Under Tex. Gov't Code § 2054.465, neither the Contractor nor any other person has cause of action against DSHS for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.

2. In the event of a breach of Contractor's representations and warranties, Contractor will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which DSHS may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which DSHS may be entitled under this Contract and other applicable law.

Section 14.20 Force Majeure. Neither Party shall be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order or acts of God. The existence of any such cause of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other party as soon as practicable. This Party must also submit written notice with proof of receipt of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 14.21 Cooperation and Communication.
Contractor shall cooperate with Department staff and as applicable, other DSHS contractors and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor's duties or responsibilities under this Contract.

Section 14.22 Insurance.
Contractor shall acquire and maintain for the duration of this Contract, insurance and with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the Contractor's industry or profession. Contractor must submit evidence of insurance as required under this Contract, including if requested a schedule of coverage or "underwriter's schedules" establishing to the satisfaction of DSHS the nature and extent of coverage granted by each such policy upon request by DSHS. In the event that any policy is determined to be deficient to comply with the terms of this Contract, Contractor shall

secure such additional policies or coverage as DSHS may reasonably request or that are required by law or regulation.

ARTICLE XV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 15.01 Actions Constituting Breach of Contract. Actions or inactions that constitute breach of contract include, but are not limited to, the following:

a. Failure to properly provide the services and/or goods purchased under this Contract;
b. Failure to comply with any provision of this Contract including failure to comply with all applicable statutes, rules or regulations;
c. Failure to pay refunds or penalties owed to the Department;
d. Failure to comply with a repayment agreement with Department or agreed order issued by the Department;
e. Discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
f. Any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
g. Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 15.02 General Remedies and Sanctions. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods.

Additionally, HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract.

The Department may impose one or more remedies or sanctions for each item of noncompliance and shall determine remedies or sanctions on a case-by-case basis if Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

a. Terminate this Contract by one of means provided in Article XVII. If applicable, notify Contractor of the opportunity to request a hearing on the termination pursuant to Texas Government Code Chapter 2105 regarding administration of Block Grants;
b. Suspend all or part of this Contract by notifying that the Contractor that DSHS is temporarily discontinue performance of all or a part of the Contract as provided for in Article XVII; as of the effective date of the suspension pending DSHS's determination to terminate, amend the Contract or permit the Contractor to resume performance. Contractor shall not bill DSHS for services performed during suspension, unless expressly authorized by the notice of suspension;
c. Use as a basis to deny additional or enter into future contracts with Contractor;
d. Temporarily withhold cash payments to Contractor for proper charges or pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
e. Permanently withhold cash payments by retaining funds billed by Contractor;
f. Request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
g. Declare this Contract void upon the Department's determination that this Contract was obtained Fraudulently, or was illegal or invalid from this Contract's inception and demand repayment of any funds under this Contract;

h. Delay execution of a new contract or renewal with Contractor while other imposed or proposed sanctions are pending resolution;
i. Demand repayment from Contractor when it has been verified that Contractor has been overpaid for reasons such as payments are not supported by proper documentation or failure to comply with Contract terms;
j. Pursue a claim for damages as a result of breach of contract;
k. Require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participant, if the employee or volunteer has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
l. Withhold any payment to Contractor to satisfy any recoupment imposed by DSHS and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
m. Reduce the Contract term;
n. Recoup improper payments when Contractor has been overpaid for reasons such as payments are not supported by proper documentation, improper billing or failure to comply with Contract terms; and
o. Impose any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation or rule.

Section 15.03 Notice of Remedies or Sanctions.

a. Department shall formally notify Contractor in writing when a remedy or sanction is imposed, stating the nature of the remedies and sanction, the reasons for imposing them, the corrective actions, if any, that must be taken before the actions shall be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies or sanctions imposed.

b. Other than in the case of repayment or recoupment, Contractor is required to file, within 15 calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice.

c. If requested by the Department, the written response must state how Contractor shall correct the noncompliance by agreeing to a corrective action plan or demonstrate in writing that the findings on which the remedies or sanctions are based are either invalid or do not warrant the remedies or sanctions. If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department shall provide written notice to Contractor of Department's final decision.

d. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the plan approved by DSHS. If DSHS determines that repayment is warranted, DSHS shall issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS shall recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 15.04 Emergency Action. In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic and may include failing to provide services; providing inadequate services; or providing unnecessary services.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XVI CLAIMS AGAINST THE DEPARTMENT-NOTICE OF DISPUTE

Section 16.01 Breach of Contract Claim. The process for a breach of contract claim against the DSHS provided for in Texas Government Code Chapter 2260 and implemented in the rules at 25 TAC §§4.11-4.24 or as amended by DSHS, shall be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 16.02 Notice. Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Chapter 2260 and 25 TAC or as amended. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to DSHS Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260 are being invoked and comply with all the requirements in this Chapter and TAC. A copy of the notice must also be given to all other representatives of DSHS and Contractor.

Section 16.03 Performance Not Suspended. Neither the occurrence of an event nor the pendency of a notice of claim filed by the Contractor constitutes grounds for the suspension in whole or part of performance by Contractor.

ARTICLE XVII TERMINATION AND TEMPORARY SUSPENSION

Section 17.01 Expiration of Contract or Program Attachments.

a. Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Contract or Program Attachment shall end upon the expiration date of that Contract or Program Attachment unless extended or renewed by written amendment.

b. Prior to completion of the term of all Contracts or Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article and in the Contract.

c. A Program Attachment's term cannot extend past the Contract term in its associated Contract.

Section 17.02 Effect of Termination or Expiration.

a. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable to DSHS or another entity designated by DSHS.

b. Upon termination of all or part of this Contract, Department and Contractor shall be discharged from any further obligation created under the applicable terms of this Contract or Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS and, except as provided in the Survivability of Terms section of the General Terms Article.

c. Termination does not, however, constitute a waiver of any remedies for breach of this Contract.

Section 17.03 Termination or Temporary Suspension Without Cause.

a. Either Party may terminate this Contract or Program Attachment, as applicable with at least 30 calendar days prior written notice to the nonterminating Party.

b. If Contractor seeks to terminate a Contract that involves residential client services, Contractor shall give the Department at least 90 calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

c. The Parties can agree to terminate by mutual agreement.

DSHS may temporarily suspend or terminate this Contract or Program Attachment, as applicable if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or HHSC agencies, amendments to the Appropriations Act, health and human services consolidations or any other disruption of current appropriated funding for this Contractor Program Attachment. Contractor shall be notified in writing of any termination or temporary suspension and of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor will discontinue performance under the Contract as of the effective date of the suspension for the duration of the suspension.

Section 17.04 Immediate Termination. Department may immediately terminate this Contract or Program Attachment, as applicable, when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 17.05 Termination For Cause. Department may terminate this Contract, in whole or in part, for breach of contract by providing 10 calendar days written notice to Contractor.

Section 17.06 Notice of Termination. Either Party may deliver written notice of intent to terminate by any verifiable method. Notice of termination is effective when it is received by the non-terminating party.

ARTICLE XVIII VOID, SUSPENDED AND TERMINATED CONTRACTS

Section 18.01 Void Contracts. Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 18.02 Effect of Void, Suspended, or Involuntarily Terminated Contract. A Contractor who has been a party to a contract with DSHS that has been found to be void, is suspended or is terminated for cause is not eligible for any renewal or increase of funding for an existing contract or new contracts or renewals until in the case of suspension or termination the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void any amount paid to the Contractor is subject to recoupment by DSHS.

Section 18.03 Appeals Rights for DSHS Funded Block Grants. Pursuant to Texas Government Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Texas Government Code Chapter 2001.

ARTICLE XIX CLOSEOUT

Section 19.01 Cessation of Services at Closeout. Upon expiration or termination of this Contract or Program Attachment, as applicable, Contractor shall stop providing services or the delivery of goods under this Contract and if necessary, shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS.

Contractor shall not bill DSHS for services performed or goods delivered after termination or expiration of Contract or Program Attachment.

Upon termination or expiration of this Contract or Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 19.02 Administrative Offset. The Department has the right to administratively offset amounts owed by Contractor against any invoice submitted for payment.

Section 19.03 Deadline for Closeout. Contractor shall submit all performance, and other Closeout reports required under this Contract within 45 calendar days after the Contract or Program Attachment, if applicable, has terminated.

Section 19.04 Payment of Refunds. Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and shall result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 19.05 Disallowances and Adjustments. The Closeout of this Contract or Program Attachment does not affect the Department's right to recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections or other transactions.