DEPARTMENT OF STATE HEALTH SERVICES

This contract, number 2010-033287 (Contract), is entered into by and between the Department of State Health Services (DSHS or the Department), an agency of the State of Texas, and COLLIN COUNTY HEALTH CARE SERVICES (Contractor), a Government Entity, (collectively, the Parties).

1. **Purpose of the Contract.** DSHS agrees to purchase, and Contractor agrees to provide, services or goods to the eligible populations as described in the Program Attachments.

2. **Total Amount of the Contract and Payment Method(s).** The total amount of this Contract is $1,438,559.00, and the payment method(s) shall be as specified in the Program Attachments.

3. **Funding Obligation.** This Contract is contingent upon the continued 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 to 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.

4. **Term of the Contract.** This Contract begins on 10/01/2009 and ends on 09/30/2010. DSHS has the option, in its sole discretion, to renew the Contract as provided in each Program Attachment. DSHS is not responsible for payment under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.

5. **Authority.** DSHS enters into this Contract under the authority of Health and Safety Code, Chapter 1001.

6. **Documents Forming Contract.** The Contract consists of the following:

   a. Core Contract (this document)
   b. Program Attachments:

      2010-033287-001 NSS-WIC LOCAL AGENCY-NOIMM

   c. General Provisions (Sub-recipient)
   d. Solicitation Document(s), and
   e. Contractor's response(s) to the Solicitation Document(s).
   f. Exhibits

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by DSHS and Contractor and incorporated herein.

7. **Conflicting Terms.** In the event of conflicting terms among the documents forming this Contract, the order of control is first the Core Contract, then the Program Attachment(s), then the General Provisions, then the Solicitation Document, if any, and then Contractor's response to the Solicitation Document, if any.

8. **Payee.** The Parties agree that the following payee is entitled to receive payment for services rendered by Contractor or goods received under this Contract:

Name: COLLIN COUNTY
Address: 2300 BLOOMDALE RD #3100
MCKINNEY, TX 75071-8517
Vendor Identification Number: 17560008736026

9. **Entire Agreement.** The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.

By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named party.

DEPARTMENT OF STATE HEALTH SERVICES	COLLIN COUNTY HEALTH CARE SERVICES
By:_____ Signature of Authorized Official	By:_____ Signature
_____ Date	_____ Date
Evelyn Delgado	_____ Printed Name and Title
Assistant Commissioner for Family and Community Health Services	_____ Address
1100 WEST 49TH STREET AUSTIN, TEXAS 78756	_____ City, State, Zip
512.458.7321	_____ Telephone Number
Evelyn.Delgado@dshs.state.tx.us	_____ E-mail Address for Official Correspondence

CONTRACT NO. 2010-033287
PROGRAM ATTACHMENT NO.001
PURCHASE ORDER NO. 0000355257

CONTRACTOR: COLLIN COUNTY HEALTH CARE SERVICES

DSHS PROGRAM NSS-WIC LOCAL AGENCY-NOIMM

TERM: 10/01/2009 THRU: 09/30/2010

SECTION I. STATEMENT OF WORK:

Contractor shall administer the Department of State Health Services (DSHS) Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) to provide supplemental food instruments, nutrition education, and counseling to enhance good health care at no cost to low-income pregnant and postpartum women, infants and children identified to be at nutritional risk. Contractor shall:

A. Perform professional, administrative and clerical services necessary to determine eligibility, provide food instruments, and provide appropriate nutrition education and counseling to qualified women, infants and children in a specified geographic area. Contractor shall ensure adequate staff coverage and uninterrupted delivery of services. Services shall be performed according to the statures, rules, policies, and directives of DSHS Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and/or as directed by the United States Department of Agriculture (USDA) as referenced in this Program Attachment. During the term of this Program Attachment, USDA may issue regulations, instructions, policies and/or directives, which may be incorporated into the DSHS WIC Program Policy and Procedures Manual and program rules.

B. Provide services in the authorized geographic service area(s) described in Contractor's application and agreed to by DSHS. Contractor may change the authorized geographic service area(s) with written approval from DSHS. If DSHS does not approve Contractor's proposed change of geographic service area(s), Contractor may terminate this Program Attachment with at least thirty (30) days written notice.

C. Assist DSHS or USDA in the collection of data that will identify benefits of this nutrition intervention program and furnish financial, health, nutrition education and any other special reports in a timely manner as required by DSHS WIC Program's written rules and policies for the compilation of such data.

D. Determine eligibility of applicants through assessment of their categorical income, residence and nutritional status, and provide nutrition education and counseling to eligible participants.

E. Appoint a Contractor WIC Director/Supervisor.

F. Train Contractor's Local Agency staff.

G. Submit the following reports/plans by the due date:

1. Monthly Incentive Funding Summary Report by the 15th day of the following month;
2. WIC Local Agency Performance Measure Report by the 15th day of the following month; and
3. WIC Information System Environment (WISE) Cost Report by April 30, 2010.

H. Conduct outreach to potential participants.

I. Complete surveys as requested.

J. Within ten days of receiving a DSHS request for a Vendor Evaluation, Contractor shall contact vendor applicant to set up an appointment to conduct the evaluation. Contractor shall conduct on-site evaluation, completing WIC Vendor Evaluation Forms and fax/return forms to the DSHS no later than one business day after the on-site evaluation.

K. Determine participants' access to health care, medical care and other human services, and make appropriate referrals. Contractor shall have a system in place to provide participants with appropriate health services or make appropriate referrals to health care providers under written agreements that ensure confidentiality of participants' personal information.

L. Issue pre-numbered food instruments furnished by DSHS to qualified participants who shall use such instruments to obtain specified food items from participating vendors; maintain complete accountability and security of all food instruments received from DSHS. Contractor shall be held financially responsible for all unaccounted for food instruments and/or for the redeemed value of those issued to ineligible participants. In addition, Contractor shall be held financially liable for issuance of infant formula instruments that are not authorized or prescribed according to the WIC Policy and Procedures Manual.

M. Permit DSHS or its agent to install a Very Small Aperture Terminal (VSAT) at all Contractor WIC clinics and administrative offices using Texas-WIN software on a network or stand alone personal computer. Installation at all Contractor permanent WIC sites is required. VSAT installation for new sites or sites moving from one location to another requires a minimum of 30 days notice.

N. Connect portable computers (notebook or laptop) that use Texas-WIN software daily to a (VSAT) and transfer data to DSHS. Daily is defined as Monday – Friday and Saturday if WIC services are provided. Portable computers may go to any of the Contractor's WIC sites for data transfer.

O. Review the immunization records of WIC Program applicants/participants to ensure that immunizations are current. Make appropriate referrals to health care providers for necessary immunizations.

P. Offer services during extended hours of operation outside the traditional times of 8:00 a.m. to 5:00 p.m., Monday through Friday, according to the Contractor's Annual Plan of Operations as approved by DSHS and incorporated by reference in this Program Attachment.

Q. Implement or expand Contractor's Breastfeeding Peer Counseling program to provide training and salary of peer counselors who assist pregnant and breastfeeding WIC participants in normal breastfeeding situations. If Contractor requests participation in the Breast Feeding Peer Counseling program, funding for this activity will be contingent on availability and written approval by DSHS.

R. Implement special projects according to DSHS-approved plan related to nutrition education, outreach or breastfeeding if project is requested by Contractor and approved by DSHS. Funding for special projects is contingent upon availability and approval in writing by DSHS of the Contractor's plan for the special project.

S. Implement lactation services for WIC participants who have breastfeeding problems that are beyond the expertise of Contractor's local WIC staff and/or peer counselors using International Board Certified Lactation Consultants or the most qualified equivalent. Lactation services may also include Contractor's Local WIC Agency staff training and the provision of lactation equipment. DSHS will provide written approval of Contractor's plan to use lactation funding. Contractor's plan shall include qualifications of any non-board certified lactation consultant, which is included in the proposal.

T. Ensure adequate staff coverage and uninterrupted delivery of WIC services if any member of Contractor's staff is approved in writing by DSHS to participate in the DSHS Dietetic Internship program. This internship will consist of no less than 1200 hours of supervised learning experiences in a variety of nutrition-related facilities and will prepare Contractor's selected staff member to better meet the needs of WIC participants.

U. Stock DSHS-provided manual pumps, single-user and multi-user electric breast pumps and collection kits and distribute the appropriate pumps and/or kits to eligible WIC participants.

V. Implement or expand Contractor's use of a Registered Dietitian (RD) who is registered with the Commission on Dietetic Registration to provide for Contractor that include, or not limited to: assistance with quality assurance, staff training, assistance with the Annual Nutrition Education and Breastfeeding plan, individual counseling for high-risk participants, and facilitated discussion classes.

Contractor shall comply with all applicable federal and state laws, rules, regulations, standards, and guidelines in effect on the beginning date of this Attachment as amended, including, but not limited to:

1. Uniform Federal Assistance Regulations, 7 CFR Parts 15, 15a, 15b, 246, 248, 3016, 3017 and 3018;
2. WIC Program and Farmers' Market Nutrition Program Rules, 25 Texas Administrative Code, §§ 31.11-31.37; and
3. Child Nutrition Act of 1966, as amended, 42 USC 1786.

The following documents are incorporated by reference and made a part of this Program Attachment:

1. DSHS Standards for Public Health Clinic Services, revised January 31, 2004;
2. USDA Food and Nutrition Service (FNS) Guidelines;
3. USDA FNS Instructions issued under the FNS Directives Management System; and
4. Current WIC Policy and Procedures Manual.

Within thirty (30) days of receipt of an amended standard(s) or guideline(s), Contractor shall inform DSHS, in writing, if it shall not continue performance under this Program Attachment in compliance with the amended standard(s) or guideline(s). DSHS may terminate the Program Attachment immediately or within a reasonable period of time as determined by DSHS.

All activities related to WIC, including timeframes, budget, and any revisions shall be approved by DSHS.

SECTION II. PERFORMANCE MEASURES

The following performance measures will be used to assess, in part, Contractor's effectiveness in providing the services described in this Program Attachment, without waiving the enforceability of any of the other terms of the contract.

Contractor shall ensure:

1) An average of 95% of families a quarter who participate in DSHS WIC Program by receiving food instruments shall also receive nutrition education classes or individual counseling services to coincide with food instrument issuance;

2) Of all pregnant women who enter DSHS WIC Program, an average of 20% a quarter shall be certified as eligible during the period of the first trimester of their pregnancy;

3) An average of 85.5% of clients a quarter who are enrolled in the DSHS WIC Program, excluding dual participants, transfer locked and/or migrant clients, shall participate as food instrument recipients each month (breast-feeding infants are also included in the client count); and

4) 98% of participants who indicate during the enrollment process for the DSHS WIC Program that they have no source of health care shall be referred to at least one (1) source of health care at certification of eligibility.

Contractor shall submit the *WIC Local Agency Performance Measure Report* which describes Contractor's efforts towards meeting performance measures. The report shall be in an approved format as provided by DSHS, and shall be completed and submitted to DSHS within fifteen (15) calendar days after the end of each month.

SECTION III. SOLICITATION DOCUMENT: N/A

SECTION IV. RENEWALS: DSHS may renew this contract for one renewal period if funds are available.

SECTION V. PAYMENT METHOD: Cost reimbursement

SECTION VI. BILLING INSTRUCTIONS:

Contractor shall request payment using the State of Texas Purchase Voucher (Form B-13) and Financial Status Reports (FSR) and submit by electronic mail to DSHS Contract Development and Support Branch at WicVouchers@dshs.state.tx.us

SECTION.VII. BUDGET:

SOURCE OF FUNDS: CFDA # 10.557

All categories of costs billed to DSHS WIC Program, and allocation of such costs, shall be in accordance with the "Plan to Allocate Direct Costs" (PADC) submitted by Contractor and approved by the DSHS WIC Program. This document is incorporated herein by reference and made a part of this Program Attachment.

Total reimbursements will not exceed $1,438,559.00.

SECTION VIII. SPECIAL PROVISIONS:

General Provisions, **Compliance and Reporting** Article I, Section 1.07, **Statutes and Standards of General Applicability**, is hereby amended to include the following:

> Contractor shall comply with all provisions required by implementing the regulations of the Department of Agriculture, 7 CFR Part 246, 248; Department of Justice Guidelines for Enforcement of Title VI, Civil Rights Act of 1964; 28 CFR § 50.3 and 28 CFR Part 42; and Food & Nutrition Service (FNS) directives and guidelines, to the effect that no person will, on the grounds of race, color, national origin, sex, age, or disability be excluded from participation under any program or activity for which Contractor receives federal financial assistance from FNS; and hereby gives assurance that it shall immediately take measures necessary to implement this Program Attachment.

Contractor shall compile data, maintain records and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA and State of Texas personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. The Department of Agriculture, Food and Nutrition Service (USDA), has the right to seek judicial enforcement if Contractor violates any nondiscrimination laws. This Assurance is binding on Contractor, its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the Department of Agriculture. The person or persons whose signatures appear on the Core Contract are authorized to sign this Assurance on behalf of Contractor.

Contractor shall comply with all of the requirements of the current WIC Policy and Procedures Manual and Program rules as well as state and federal laws and amendments governing or regulating the WIC Program. A copy of the current WIC Policy and Procedures Manual has been made available to Contractor. The WIC Policy and Procedures Manual, and all revisions made to the WIC Policy and Procedures Manual are incorporated into this Agreement by reference. Contractor has a duty to remain familiar with the contents within the WIC Policy and Procedures Manual.

Contractor is responsible for ensuring that employees or agents acting on behalf of Contractor comply with all of the requirements of the WIC Policy and Procedures Manual, Program rules and all state and federal laws and amendments governing and regulating the WIC Program.

General Provisions, **Payment Methods and Restrictions** Article IV, Section 4.01, **Payment Methods**, is hereby modified to include the following paragraphs:

The participant caseload will be assigned by DSHS by giving written notice to Contractor. The participant caseload is subject to change upon written notice to Contractor from DSHS with Contractor's concurrence. Contractor assumes liability for all food costs resulting from Contractor exceeding its assigned caseload. The number of individuals served in excess of assigned caseload are not to be included in the calculation of earned administrative funds as described below.

DSHS will reimburse Contractor for administrative costs incurred when determining eligibility, providing appropriate nutrition education and counseling, issuing food instruments, making participant referrals, vendor evaluation, outreach, start-up costs and general administrative support.

Administrative costs will be reimbursed based on actual costs, but not to exceed the "maximum reimbursement" set out below, based upon the sum of the participants who actually receive food instruments each month plus infants who do not receive any food instruments whose breastfeeding mothers were participants to the extent that the total so derived does not exceed Contractor's total assigned caseload within any given month. Surplus funds (the amount by which maximum reimbursements exceed actual costs) can

be accumulated and carried forward within the Program Attachment term. Surplus encumbered by September 30 shall be billed and vouchers received by DSHS no later than sixty (60) calendar days following the term of the program attachment.

PARTICIPANTS SERVED PER MONTH MAXIMUM REIMBURSEMENT:

During the term of the Program Attachment, Contractor shall earn administrative funds at the rate of $10.40 for each participant served as defined above.

DSHS may pay for additional goods or services as specified in this Attachment if provided by Contractor during the term of this Attachment (but not otherwise paid during the term of this Attachment) if it is in the best interest of DSHS to do so, and funds are available.

The Contractor will be notified if a change in funding occurs and will have thirty (30) days to provide written notice to the DSHS if it intends to terminate this Program Attachment.

Contractor agrees that:

(1) Contractor shall identify and document separately not less than 19% of total administrative costs as expenditures directly related to nutrition education and counseling. Nutrition education and counseling expenditures shall be supported by documentation of participant attendance or non-attendance within the DSHS WIC Program.

(2) DSHS will reimburse Contractor for administrative expenses at a rate not greater than 5.26 times the amount of properly documented expenditures for nutrition education and counseling, but not more than is earned based on actual participation not to exceed Contractor's assigned participant caseload, plus any incentive funds allocated to Contractor by DSHS.

(3) DSHS will limit (cap) reimbursement of Contractor's indirect costs at twenty (20) percent applied to Contractor's total direct salaries plus benefits reimbursed by DSHS.

(4) DSHS will identify annually to Contractor an amount of funds that shall be spent for breastfeeding promotion. The allocation of breastfeeding funds to Contractor will be based on Contractor's proportional share of the statewide combined total of pregnant and breastfeeding participants as reported to DSHS WIC Program.

(5) DSHS WIC Program also reserves the right to withhold a proportionate amount of earned administrative funds when evidence exists that nutrition education and/or breastfeeding promotion is not being provided by Contractor, or Contractor is not complying with the provisions of USDA and/or DSHS directives.

(6) DSHS reserves the right to utilize a competitive offering for the award of any future contracts at the end of the term of this Program Attachment.

(7) DSHS may amend or terminate this Program Attachment if available funds become reduced, depleted, or unavailable during the term of the Program Attachment to the extent that the WIC Program is unable to provide administrative funding at the rate(s) stated in this Program Attachment. DSHS will provide written notification to Contractor of such fact.

(8) DSHS may pay for additional services as specified in this Program Attachment if provided by Contractor during the term of this Program Attachment (but not otherwise paid during the term of this Program Attachment) if it is in the best interest of DSHS and DSHS WIC Program to do so. If Contractor exceeds the amount of earned administrative funds as stated above, Contractor shall continue to bill DSHS for the services provided. If additional funds become available at a later date for the provision of these services, DSHS WIC Program may pay Contractor a share of these funds.

(9) DSHS may provide incentives to Contractor's Local WIC Agencies for participants who are provided WIC services outside the normal traditional hours to the extent that federal funding is available.

(10) During the term of this Program Attachment, DSHS may adjust the base reimbursement rate as defined in this Program Attachment if it is in the best interest of DSHS and the DSHS WIC Program and if administrative WIC Grant funds change.

Contractor shall indicate separately on the face of the claim for reimbursement (State of Texas Purchase Voucher, Form B-13) the costs associated with nutrition education, breast-feeding, and other administrative costs.

General Provisions, **Payment Methods and Restrictions** Article IV, Section 4.04, **Working Capital Advance**, is not applicable to this Program Attachment. However, Contractor will be allowed the option of receiving a two (2) month cash advance in accordance with WIC Program Policy and Procedures.

General Provisions, **Records Retention** Article VIII, Section 8.01, **Retention** shall be replaced with the following:

Recordkeeping requirements. Contractor shall maintain full and complete records concerning Program operations. Such records shall comply with 7 CFR Part 3016 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.

(2) All records shall be retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later. If USDA deems any of the WIC program records to be of historical interest, it may require DSHS or the Contractor to forward such records to the USDA whenever either entity is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with WIC program funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the USDA, DSHS and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

General Provisions, **Notice Requirements** Article X**,** Section 10.01, **Child Abuse Reporting Requirement,** is hereby amended to include the following:

If Contractor chooses to interview a client to determine if an affirmative defense to prosecution exists, **as defined by DSHS**, which would allow them under the DSHS policy to not make a report of child abuse, the Contractor shall conduct these interviews in the following manner:

- For ineligible clients, the interview shall be conducted after the entire WIC visit is done. For eligible clients, the interview may occur at the point in time when all WIC activities, including communication of eligibility and individual counseling, are completed with the exception of food instrument issuance.
- The interview shall be conducted only by a competent authority or a supervisor and in a confidential setting.
- Prior to asking the client any questions, the interviewer shall inform the client that the questions have no bearing on the client's WIC eligibility and receipt of services.

General Provisions, **General Business Operations of Contactor** Article XII, Section 12.02, **Management and Control Systems**, Item a, regarding internal budgeting and Item c, regarding billing, collection, and fee schedules are not applicable to this Program Attachment.

General Provisions, **General Business Operations of Contractor** Article XII, Section 12.06, **Overtime Compensation**, is not applicable to this Program Attachment.

General Provisions, **General Business Operations of Contractor** Article XII**,** the last three sentences of Section 12.20, **Equipment (including Controlled Assets) Purchases**, are not applicable to this Program Attachment.

General Provisions, **General Business Operations of Contractor** Article XII**,** Section 12.23, **Property Inventory and Protection of Assets**, is amended to include the following:

Contractor shall also maintain an inventory of equipment and designated reportable assets placed in the custody of the Contractor by DSHS. Contractor shall submit an annual cumulative report to DSHS Property Management Group in a format and upon a delivery date designated by DSHS. Contractor shall administer a program of maintenance, repair and protection of assets under this Contract so as to assure their full availability and usefulness. In the event Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assess provided under this Contract, it shall use the proceeds to repair or replace said assets.

General Provisions, **General Business Operations of Contractor** Article XII, Section 12.26, **Property Acquisitions**, is not applicable to this Program Attachment.

General Provisions, **General Terms** Article XIII, Section 13.15, **Amendment**, shall be replaced with the following:

Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this contract must be in writing through letters of amendment. By signing this Contract, Contractor agrees to abide by all letters of revisions to the Contract.

Fiscal Year 2010 Department of State Health Services Contract
General Provisions
(Core/Subrecipient)

Table of Contents

ARTICLE I COMPLIANCE AND REPORTING 1

Section 1.01 Compliance with Statutes and Rules.. 1
Section 1.02 Compliance with Requirements of Solicitation Document 1
Section 1.03 Reporting. 1
Section 1.04 Client Financial Eligibility 1
Section 1.05 Applicable Contracts Law and Venue for Disputes 1
Section 1.06 Applicable Laws and Regulations Regarding Funding Sources 1
Section 1.07 Statutes and Standards of General Applicability 2
Section 1.08 Applicability of General Provisions to Interagency and Interlocal Contracts 4
Section 1.09 Civil Rights Policies and Complaints 5
Section 1.10 Licenses, Certifications, Permits, Registrations and Approvals 5

ARTICLE II SERVICES 6

Section 2.01 Education to Persons in Residential Facilities 6
Section 2.02 Disaster Services 6
Section 2.03 Consent to Medical Care of a Minor 6
Section 2.04 Telemedicine Medical Services 6
Section 2.05 Fees for Personal Health Services 7
Section 2.06 Cost Effective Purchasing of Medications 7
Section 2.07 Services and Information for Persons with Limited English Proficiency 7

ARTICLE III FUNDING 7

Section 3.01 Debt to State and Corporate Status 7
Section 3.02 Application of Payment Due 8
Section 3.03 Use of Funds. 8
Section 3.04 Use for Match Prohibited.. 8
Section 3.05 Program Income 8
Section 3.06 Nonsupplanting 8

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS 8

Section 4.01 Payment Methods 8
Section 4.02 Billing Submission 9
Section 4.03 Final Billing Submission. 9
Section 4.04 Working Capital Advance 9
Section 4.05 Financial Status Reports (FSRs) 9
Section 4.06 Third Party Payors 9

ARTICLE V TERMS AND CONDITIONS OF PAYMENT 10

Section 5.01 Prompt Payment 10
Section 5.02 Withholding Payments 10
Section 5.03 Condition Precedent to Requesting Payment 10
Section 5.04 Acceptance as Payment in Full 10

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS 10
Section 6.01 Allowable Costs 10
Section 6.02 Independent Single or Program-Specific Audit 12
Section 6.03 Submission of Audit 12
ARTICLE VII CONFIDENTIALITY 13
Section 7.01 Maintenance of Confidentiality 13
Section 7.02 Department Access to PHI and Other Confidential Information 13
Section 7.03 Exchange of Client-Identifying Information 13
Section 7.04 Security of Patient or Client Records 13
Section 7.05 HIV/AIDS Model Workplace Guidelines 14
ARTICLE VIII RECORDS RETENTION 14
Section 8.01 Retention 14
ARTICLE IX ACCESS AND INSPECTION 14
Section 9.01 Access 14
Section 9.02 State Auditor's Office 15
Section 9.03 Responding to Deficiencies 15
ARTICLE X NOTICE REQUIREMENTS 15
Section 10.01 Child Abuse Reporting Requirement 15
Section 10.02 Significant Incidents 15
Section 10.03 Litigation 16
Section 10.04 Action Against the Contractor 16
Section 10.05 Insolvency 16
Section 10.06 Misuse of Funds and Performance Malfeasance 16
Section 10.07 Criminal Activity and Disciplinary Action 16
Section 10.08 Retaliation Prohibited 17
Section 10.09 Documentation 17
ARTICLE XI ASSURANCES AND CERTIFICATIONS 17
Section 11.01 Certification 17
Section 11.02 Child Support Delinquencies 18
Section 11.03 Authorization 18
Section 11.04 Gifts and Benefits Prohibited 18
Section 11.05 Ineligibility to Receive the Contract 18
Section 11.06 Antitrust 19
Section 11.07 Initiation and Completion of Work 19
ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR 19
Section 12.01 Responsibilities and Restrictions Concerning Governing Body, Officers and Employees 19
Section 12.02 Management and Control Systems 19
Section 12.03 Insurance 20
Section 12.04 Fidelity Bond 20
Section 12.05 Liability Coverage 20

Section 12.06	Overtime Compensation	21
Section 12.07	Program Site	21
Section 12.08	Cost Allocation Plan	21
Section 12.09	Reporting for Unit Rate and Fee-For-Service Contracts	21
Section 12.10	Historically Underutilized Businesses (HUBs). Admin. Code § 20.16(c).	22
Section 12.11	Buy Texas	22
Section 12.12	Contracts with Subrecipient Subcontractors	22
Section 12.13	Status of Subcontractors	23
Section 12.14	Incorporation of Terms	23
Section 12.15	Independent Contractor	23
Section 12.16	Authority to Bind	23
Section 12.17	Tax Liability	23
Section 12.18	Notice of Organizational Change	23
Section 12.19	Quality Management	23
Section 12.20	Equipment (Including Controlled Assets) Purchases	23
Section 12.21	Supplies	24
Section 12.22	Changes to Equipment List	24
Section 12.23	Equipment Inventory and Protection of Assets	24
Section 12.24	Bankruptcy	24
Section 12.25	Title to Property.	24
Section 12.26	Property Acquisitions	25
Section 12.27	Disposition of Property..	25
Section 12.28	Closeout of Equipment	25
Section 12.29	Assets as Collateral Prohibited	25
ARTICLE XIII	GENERAL TERMS	25
Section 13.01	Assignment	25
Section 13.02	Lobbying	25
Section 13.03	Conflict of Interest	26
Section 13.04	Transactions Between Related Parties	26
Section 13.05	Intellectual Property	27
Section 13.06	Other Intangible Property	28
Section 13.07	Severability and Ambiguity	28
Section 13.08	Legal Notice	28
Section 13.09	Successors	28
Section 13.10	Headings	28
Section 13.11	Parties	28
Section 13.12	Survivability of Terms.	28
Section 13.13	Direct Operation	28
Section 13.14	Customer Service Information	28
Section 13.15	Amendment	29
Section 13.16	Contractor's Notification of Change to Certain Contract Provisions	29
Section 13.17	Contractor's Request for Revision of Certain Contract Provisions	29
Section 13.18	Immunity Not Waived	30
Section 13.19	Hold Harmless and Indemnification	30
Section 13.20	Waiver	30
Section 13.21	Electronic and Information Resources Accessibility Standards	30
Section 13.22	Force Majeure	31

Section 13.23	Interim Contracts	31
ARTICLE XIV	BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE..	32
Section 14.01	Actions Constituting Breach of Contract	32
Section 14.02	General Remedies and Sanctions	32
Section 14.03	Notice of Remedies or Sanctions	34
Section 14.04	Emergency Action	34
ARTICLE XV	CLAIMS AGAINST THE DEPARTMENT	35
Section 15.01	Breach of Contract Claim	35
Section 15.02	Notice	35
Section 15.03	Sole Remedy	35
Section 15.04	Condition Precedent to Suit	35
Section 15.05	Performance Not Suspended	35
ARTICLE XVI	TERMINATION	35
Section 16.01	Expiration of Contract or Program Attachment(s)	35
Section 16.02	Effect of Termination	36
Section 16.03	Acts Not Constituting Termination	36
Section 16.04	Termination Without Cause	36
Section 16.05	Termination For Cause	37
Section 16.06	Notice of Termination.	38
ARTICLE XVII	VOID, SUSPENDED, AND TERMINATED CONTRACTS	38
Section 17.01	Void Contracts	38
Section 17.02	Effect of Void, Suspended, or Involuntarily Terminated Contract	38
Section 17.03	Appeals Rights	38
ARTICLE XVIII	CLOSEOUT AND CONTRACT RECONCILIATION	38
Section 18.01	Cessation of Services At Closeout	39
Section 18.02	Administrative Offset	39
Section 18.03	Deadline for Closeout	39
Section 18.04	Payment of Refunds	39
Section 18.05	Disallowances and Adjustments	39
Section 18.06	Contract Reconciliation.	39

Fiscal Year 2010 Department of State Health Services Contract
General Provisions
(Core/Subrecipient)

ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). 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 control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon the Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in the Contractor's response to the Solicitation Document shall constitute a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit a required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, shall apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies as well as Office of Management and Budget (OMB) Circulars, the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code

Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Governor's Budget, Planning and Policy Division. UGMA and UGMS can be located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be located through weblinks on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 **Statutes and Standards of General Applicability.** It is Contractor's responsibility to review and comply with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor agrees to comply with the following:

a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination 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) the 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; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; and 12) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
c) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records;
d) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing;
e) Immigration Reform and Control Act of 1986, 8 USC § 1324a, regarding employment verification;
f) Pro-Children Act of 1994, 20 USC §§ 6081-6084, regarding the non-use of all tobacco products;
g) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
h) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7321-26, which limits the political activity of employees whose employment is funded with federal funds;

i) 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;
j) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
k) Texas Workers' Compensation Act, Tex. Lab. Code, Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
l) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
m) 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;
n) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
o) 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 (PL 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 rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;
p) 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 Part 900, Subpart F);
q) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
r) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), 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) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;" and

u) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the Division Contract Management Unit assigned to the Program Attachment.

Section 1.08 **Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions shall not apply to Contractors that are State agencies or units of local government; and certain additional provisions shall apply to such Contractors.

a) The following sections or portions of sections of these General Provisions shall not apply to interagency or interlocal contracts:
   1) Hold Harmless and Indemnification, Section 13.19;
   2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
   3) Insurance, Section 12.03;
   4) Liability Coverage, Section 12.05;
   5) Fidelity Bond, Section 12.04;
   6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
   7) Debt to State and Corporate Status, Section 3.01;
   8) Application of Payment Due, Section 3.02; and
   9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).

b) The following additional provisions shall apply to interagency contracts:
   1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
   2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
   3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.

c) The following additional provisions shall apply to interlocal contracts:

1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
2) Payments made by DSHS to Contractor shall be from current revenues available to DSHS; and
3) Each Party represents that it has been authorized to enter into this Contract.

d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, shall be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 **Civil Rights Policies 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 must notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

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

Section 1.10 **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. Any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval shall constitute grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers 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.

ARTICLE II SERVICES

Section 2.01 **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 who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **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 as 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: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Disaster services shall be carried out in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on the primary services of the Contractor.

Section 2.03 **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, the treatment of a minor shall be provided only if informed consent to treatment is obtained pursuant to Tex. Fam. Code, Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code, Chapter 32, federal law shall supersede state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using protocol approved by the Contractor's medical director and utilizing equipment that complies with the equipment standards as required by the Department. Procedures of telemedicine service provision must include the following requirements:

a) clinical oversight by the 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 Rule § 448.911.

Section 2.05 **Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee shall not exceed the actual cost of providing the services. No patient may be denied a service due to inability to pay.

Section 2.06 **Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 **Services and Information for Persons with Limited English Proficiency.** Contractor agrees to take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. 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. Contractor shall make every effort to avoid use of any persons under the age of eighteen (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 the use of such a 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 III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will 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 (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. 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 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will 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.

Section 3.03 **Use of Funds.** Contractor agrees that it shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor agrees funds provided through this Contract shall not be used for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income shall be used by Contractor to further the program objectives of the state or federal statute under which the Program Attachment was made, and it shall be spent on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Program income not expended in the term in which it is earned shall be refunded to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in utilizing it for the purposes and conditions set forth in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each program shall be one of the following methods:

a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill.

Section 4.03 **Final 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 sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60) calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as, a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations, or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the Division Contract Management Unit assigned to the Program Attachment to justify the need for a working capital advance. The working capital advance must be liquidated as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts.

Section 4.05 **Financial Status Reports (FSRs).** Except as otherwise provided in these General Provisions or in the terms of the Program Attachment(s), for contracts with categorical budgets, Contractor shall submit quarterly FSRs to Accounts Payable by the thirtieth calendar day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. The final FSR must be submitted not later than sixty (60) days following the end of the applicable term.

Section 4.06 **Third Party Payors.** A third party payor is 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. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. 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, in which case the 30-day requirement in the Billing Submission section will be extended until all such appeals 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 V TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor must comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department shall not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS shall determine whether costs

submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the date(s) due. DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21; and UGMS, as applicable	OMB Circular A-133	OMB Circular A-110 and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 and applicable Federal awarding agency common rule
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	OMB Circular A-133 and UGMS	UGMS and applicable Federal awarding agency common rule

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 **Independent Single or Program-Specific Audit.** If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in federal funds awarded, Contractor must have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The $500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The HHSC Office of Inspector General (OIG) will notify the Contractor to complete the Single Audit Determination Registration Form. If Contractor fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit shall be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and Uniform Grant Management Standards (UGMS) located through a web link on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every five (5) years. Incumbent audit firms may participate in the re-procurement process; however, Contractor shall not procure services of the same audit firm for more than ten (10) consecutive years and shall require that the audit firm limit the amount of time the lead or coordinating audit partner (having primary responsibility for the audit) conducts the independent audit to a maximum of five (5) years within a ten-year period. Contractor may request, in writing to the DSHS Contract Oversight and Support Section, an exception from lead partner rotation for years six (6) through ten (10) of a ten-year period if the audit firm has only one lead partner. If the request is approved, Contractor must require the audit firm to provide certification annually for years six through ten that the audit firm has no more than one partner and must require the audit firm to contract with an independent audit firm to perform a second partner review of the single or program-specific audit work performed for the Contractor. Procurement of audit services must comply with the procurement standards of 45 CFR Part 74 or 92, as applicable, including obtaining competition and making positive efforts to use small, minority-owned, and women-owned business enterprises.

Section 6.03 **Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the Texas Health and Human Services Commission (HHSC), Office of Inspector General (OIG), at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347

Texas Health and Human Services Commission

Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

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 applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable Rules.

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), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & 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 must maintain patient and client records 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 Program Attachment 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 Program Attachment 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) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. 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 RECORDS RETENTION

Section 8.01 **Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, shall apply. 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. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall ensure that this provision concerning records retention is included in any subcontract it awards. If 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 (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide the name and address of the party responsible for storage of records to the Division Contract Management Unit assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** 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, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including client and patient records, if any, and Contractor personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. 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. Further, Contractor shall ensure that information collected, assembled or maintained by the Contractor relative to this Contract is available to the Department for the Department to respond

to requests that it receives under the Public Information Act. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall ensure that this provision concerning the right of access to, and examination of, sites and information related to this Contract is included in any subcontract it awards.

Section 9.02 **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. The 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. The Contractor further agrees to 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. Contractor shall ensure that this provision concerning the authority to audit funds will apply to funds received indirectly by subcontractors through the Contractor, and the requirement to cooperate, is included in any subcontract it awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a plan of corrective action to 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 Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: HIV/STD; Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and WIC Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. 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 as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the Division Contract Management Unit assigned to the Program Attachment 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 seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the Division Contract Management Unit assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) 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, including environmental and civil rights matters, professional liability, and employee litigation. Notification shall include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the Division Contract Management Unit assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification shall include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If the Contractor, as an organization, 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 (3) working days of the surrender, suspension or revocation to the Division Contract Management Unit assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the Division Contract Management Unit assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) 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. Contractor shall notify in writing the Division Contract Management Unit assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by the Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the Division Contract Management Unit assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that the Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 **Criminal Activity and Disciplinary Action.** Contractor affirms that 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 offence related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the Division Contract Management Unit assigned to the Program Attachment 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 has engaged in any activity that would constitute a criminal offense equal to or

greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or 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 make the reports required by this section no later than three (3) working days from the date that the Contractor has knowledge or reason to believe such activity has taken place. Contractor shall ensure that any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section is prohibited from performing direct client services or from having direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 **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 10.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 **Certification.** Contractor certifies by execution of this Contract to the following:

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 excluded from participation in this transaction by any federal or state department or agency;
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 enumerated in subsection g) of this section; 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.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the Division Contract Management Unit assigned to the Program Attachment. 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 Division Contract Management Unit assigned to the Program Attachment.

Section 11.02 **Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (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 twenty-five percent (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 agrees to 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 11.03 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of the 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 the Contractor to act in connection with this Contract and to provide such additional information as may be required.

Section 11.04 **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 11.05 **Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract 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(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for the Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if the 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 Tex. Gov. 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 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for the Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with 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.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees**. Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of the Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions shall also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems**. Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its

subsequent amendments, which is available at the Department's web site: http://www.dshs.state.tx.us/contracts. Contractor shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements shall include, at a minimum, the following:

a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the Division Contract Management Unit assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond**. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to $100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance shall provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property and include DSHS as a loss payee or equivalent designation. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall also maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's

organization (collectively "responsible persons"). Contractor shall ensure that the policy includes Property of Others coverage with respect to funds and other property of the State related to this Contract, and includes DSHS as a loss payee on the policy. Contractor must maintain copies of liability policies on site for inspection by DSHS and shall submit copies of policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall not use any of the funds provided by this Contract to pay the premium portion of overtime. Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 **Program Site.** All Contractors shall ensure that the location where services are provided is in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 **Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than the 60th calendar day after the effective date of the Contract, except under the circumstance where a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as in the previous year, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as that submitted to DSHS for the previous year. In the event that the Cost Allocation Plan changes during the Contract term, Contractor must submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plan must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts.

Section 12.09 **Reporting for Unit Rate and Fee-For-Service Contracts.** Contractor shall submit reports concerning unit rate and fee-for-service contracts to the Department in accordance

with the requirements stated in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts.

Section 12.10 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 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 from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor agrees to 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 Tex. Admin. Code § 20.16(c).

Section 12.11 **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 Tex. Gov. Code § 2155.4441.

Section 12.12 **Contracts with Subrecipient Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into an agreement equaling or exceeding $100,000, Contractor shall obtain written approval from DSHS. Contracts with subcontractors shall be in writing and include the following:

a) name and address of all parties;
b) a detailed description of the services to be provided;
c) measurable method and rate of payment and total amount of contract;
d) clearly defined and executable termination clause;
e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s);
f) access to inspect the work and the premises on which any work is performed, in accordance with the Access and Inspection Article in these General Provisions; and
g) a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract.

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall monitor subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and under this Contract. Contractor shall not contract with a subcontractor, at any tier, that is debarred or suspended or excluded from or ineligible for participation in federal assistance programs.

Section 12.13 **Status of Subcontractors.** Contractor shall include in all its contracts with subcontractors, the certifications stated in the Assurances and Certifications Article of these General Provisions. Contractor shall also require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have 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 (3) years any license issued by the Department.

Section 12.14 **Incorporation of Terms.** Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract, and provide that the subcontractor is subject to audit by DSHS, HHSC and the SAO.

Section 12.15 **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 will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **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. In the event that the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. In the event of Contract termination under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the Division Contract Management Unit assigned to the Program Attachment within ten (10) business days of any change to the following: Contractor's name; contact information; key personnel, officer, director or partner; organizational structure; legal standing; or authority to do business in Texas. A change in Contractor's name requires an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment (Including Controlled Assets) Purchases.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of $5,000 or more, and "controlled assets." Controlled assets include firearms regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more: desktop and laptop computers, non-portable printers and copiers,

emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Contractors on a cost reimbursement payment method shall inventory all equipment. If the purchase of equipment is approved in writing by the Department, Contractor is required to initiate the purchase of that equipment in the first quarter of the Contract or Program Attachment term, as applicable. Failure to initiate the purchase of equipment may result in loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the Division Contract Management Unit assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Section 12.22 **Changes to Equipment List.** All items of equipment purchased with funds under this Contract shall be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the Division Contract Management Unit assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate.

Section 12.23 **Equipment Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment and submit an annual cumulative report to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at http://www.dshs.state.tx.us/contracts/forms.shtm. Contractor shall administer a program of maintenance, repair, and protection of assets under this Contract so as to assure their full availability and usefulness. In the event Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 **Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title shall revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title reverts to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 **Title to Property.** At the conclusion of the contractual relationship between the Department and the Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any

other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 **Property Acquisitions.** Department funds may not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 **Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersedes or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than $5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than $5,000) shall be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than $5,000, Contractor shall request disposition approval and instructions in writing from the Division Contract Management Unit assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor must ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.28 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the Division Contract Management Unit assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds shall be secured by the Contractor at the time of Closeout or termination of the Program Attachment and shall be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at the Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov 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 to pay any person 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 and UGMS). If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the Division Contract Management Unit assigned to the Program Attachment 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 will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event 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 Division Contract Management Unit assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in OMB Circulars A-122 Attachment B paragraph 25; A-87 Attachment B section 27; A-110 section__.27 and A-21 paragraphs 17 and 24. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it does not have nor shall it knowingly acquire any financial or other interest that would conflict in any manner with the performance of its obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor, 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 from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

Section 13.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions 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. Contractor shall submit to the Division Contract Management Unit assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to the Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to the 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. The 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 the Contractor. Contractor shall comply with Tex. Gov. 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 part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 **Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

a) "Intellectual property" means 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 "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. DSHS shall have the right to obtain and hold in its name any and all patents, copyright, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must 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.

c) 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) the 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. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that "This publication was made possible by grant number _____ from (federal awarding agency)" or "The project described was supported by grant number _____ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."

d) In the event the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks 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, the Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the Division Contract Management Unit assigned to the Program Attachment.

Section 13.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and the 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, etc. 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 13.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract 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 13.09 **Successors.** This Contract shall be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 **Headings.** The articles and section headings used in this Contract are for convenience of reference only and shall not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 **Parties.** The Parties represent to each other that they are entities fully familiar with transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason shall not release either Party from any liabilities or obligations set forth in this Contract that (a) the Parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 **Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by the Contractor.

Section 13.14 **Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 **Amendment.** Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the Division Contract Management Unit assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS shall not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS may not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

a) contractor's contact person and contact information;
b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
c) cumulative budget line item transfers that exceed 10% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments of less than $100,000, provided that the total budget amount is unchanged;
d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
e) a change in the Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the Division Contract Management Unit assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email. Cumulative budget line item transfers of 10% or less among direct cost categories, other than equipment, of cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by the Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

a) cumulative budget line item transfers among direct cost categories, other than the equipment category, that exceed 10% of Program Attachments of $100,000 or more, provided that the total budget amount is unchanged;

b) line item transfer to other categories of funds for direct payment to trainees for training allowances;
c) change in clinic hours or location;
d) change in equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget, (For example, purchase of XYZ brand computer instead of approved ABC brand computer with essentially identical features as the XYZ computer);
e) changes in the equipment category of a previously approved equipment budget (other than acquisition of additional equipment, which requires an amendment to this Contract);
f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees); and
g) changes to community sites, independent school districts or schools, in substance abuse Program Attachments.

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's representative who is authorized to sign contracts on behalf of Contractor, and both original, signed forms must be submitted to the Division Contract Management Unit assigned to the Program Attachment. Any approved revision will not be effective unless signed by the DSHS Director of the Client Services Contracting Unit. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 **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 13.19 **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 13.20 **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 13.21 **Electronic and Information Resources Accessibility Standards.** As required by 1 Tex. Admin. Code Chapter 213, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code Chapter 213 when such products are available in the

commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor shall provide the Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at http://www.section508.gov/.

Section 13.22 **Force Majeure.** Neither Party will 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 will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure has been removed 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 by any reasonable method (phone, email, etc.) and, as soon as practicable, must 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 13.23 **Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments shall automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS shall notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 **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 the Department or agreed order issued by the Department;
e) failure by Contractor to provide a full accounting of funds expended under this Contract;
f) discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
g) any misrepresentation in the assurances and certifications in the Contractor's application or response to the Solicitation Document or in this Contract; or
h) Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 14.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies set forth below are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions listed below does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If the 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 actions listed below:

a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert the Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. The Contractor agrees that it shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
b) suspend all or part of this Contract. Suspension is, depending on the context, either (1) the temporary withdrawal of Contractor's authority to obligate funds pending corrective action by Contractor or its subcontractor(s) or pending a decision to terminate or amend

this Contract, or (2) an action taken by the Department to immediately exclude a person from participating in contract transactions for a period of time, pending completion of an investigation and such legal or debarment proceedings as may ensue. Contractor may not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;

c) deny additional or future contracts with Contractor;
d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;
f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
i) 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;
j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be accomplished;
l) require Contractor to obtain technical or managerial assistance;
m) establish additional prior approvals for expenditure of funds by Contractor;
n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
o) demand repayment from Contractor when it is verified that the Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
p) pursue a claim for damages as a result of breach of contract;

q) require Contractor to prohibit any employee of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any officer or governing body member, if the employee, officer or member of the governing body 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;
r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
s) reduce the Contract term;
t) recoup improper payments when it is verified that the Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
u) assess liquidated damages; or
v) impose other remedies or penalties permitted by statute.

Section 14.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response shall state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). 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 decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will 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 will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 **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 the following:

a) Contractor is noncompliant and the noncompliance has a direct adverse impact on the public or client health, welfare or safety. The direct adverse impact may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the

public or clients do not receive the benefits contemplated by the scope of work or performance measures; or

b) Contractor is expending funds inappropriately.

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 XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 1.431-1.447 shall be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract shall be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI TERMINATION

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations set forth in each Program Attachment shall end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all

Program Attachments, all or a part of this Contract may be terminated with or without cause as set forth below.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. 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 other entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the 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. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information shall survive this Contract.

Section 16.03 **Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of the Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 **Termination Without Cause.**

a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor must give the Department at least ninety (90) calendar days prior written notice and must submit a transition plan to ensure client services are not disrupted.
b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
c) Either Party may terminate this Contract or a Program Attachment with at least thirty (30) calendar days prior written notice to the other Party in the event funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment.
d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;
d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    1) Contractor fails to make payments;
    2) Contractor makes an assignment for the benefit of its creditors;
    3) Contractor admits in writing its inability to pay its debts generally as they become due;
    4) if judgment for the payment of money in excess of $50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, and within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under generally accepted accounting principles;
    5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its entry;
    6) Contractor is adjudicated bankrupt or insolvent;

7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;
8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge thereof;
9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) calendar days;
10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;

h) Contractor's management system does not meet the UGMS management standards; or
i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may hold this Contract void upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **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, suspended, or terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until 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 is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. 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 Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT AND CONTRACT RECONCILIATION

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or other entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, the Contractor agrees to immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also agrees to completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department shall have the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to the Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due. Contractor shall pay any amount due within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or the Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

Section 18.06 **Contract Reconciliation.** If Contractor is required to annually reconcile multi-year contracts, Contractor, within sixty (60) calendar days after the end of each year of this Contract, shall submit to the Division Contract Management Unit assigned to the Program Attachment all financial and reconciliation reports required by Department in forms as determined by Department. Required reconciliation forms and reports may include the following: Cash Match Participation Form, In-kind Match Participation Form, Program Income Report, Equipment Inventory, Controlled Items Inventory, Contractor's Release Agreement, and Reconciliation Refund Remittance Form. Any additional forms or reports required by Department will be posted on the DSHS website prior to the reconciliation period. Unless otherwise directed by Department, all forms and reports must be submitted in hard copies, with original signatures if required, to DSHS by the due date.

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

_____ _____

Signature Date

_____

Print Name of Authorized Individual

2010-033287

Application or Contract Number

COLLIN COUNTY HEALTH CARE SERVICES

Organization Name