

**ATTACHMENT D
SUPPLEMENTAL & SPECIAL CONDITIONS**

SUPPLEMENTAL CONDITIONS

THE FOLLOWING SUPPLEMENTAL CONDITIONS APPLY TO THIS CONTRACT AND MODIFY THE HHS UNIFORM TERMS AND CONDITIONS

Section 2.03 Financial Status Reports (FSRs), of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13, is revised to read as follows:

Except as otherwise provided in these Uniform Terms and Conditions or in the terms of any Attachment(s) that is incorporated into the Contract, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to DSHS Contract Development and Support Branch (CDSB) by the last business day of the month following the end of each quarter of the Program Attachment term for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

Article IV, Allowable Costs and Audit Requirements of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13 is modified to include:

4.04 Cost Allocation Plan.

- a. Grantee shall implement and follow the applicable Cost Allocation Plan.
- b. Grantee shall submit a Cost Allocation Plan on the format approved by System Agency to the DSHS Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to: coscap@dshs.state.tx.us, or to such other email address or follow such other process as requested by System Agency, no later than the 60th calendar day after the effective date of the Contract, except when a Grantee has a current Cost Allocation Plan on file with the System Agency. If Grantee's plan is the same as the plan previously submitted to System Agency, by signing this Contract, Grantee certifies that its current Cost Allocation Plan for the current year is the same as the plan previously submitted.
- c. If the Cost Allocation Plan changes during the Contract term, Grantee shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within 30 calendar days after the effective date of the change.

Section 9.21 Civil Rights, of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13, is modified to add the following:

- g. Grantee 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; 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 Grantee receives federal financial assistance from FNS; and hereby gives assurance that it shall immediately take measures necessary to implement this Contract.
- h. Grantee shall compile data, maintain records and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA and System Agency 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 Grantee violates any nondiscrimination laws. This Assurance is binding on Grantee, its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the

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Department of Agriculture. The person or persons whose signatures appear on the Contract are authorized to sign this Assurance on behalf of Grantee.

Article IX Miscellaneous Provisions of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13, is modified by adding the following:

Section 9.22 Equipment and Supplies

a. Reportable Capital Assets.

Grantee shall maintain an inventory of reportable capital assets placed in the custody of the Grantee by System Agency. Grantee shall conduct an annual inventory for each administrative and clinic site and submit to DSHS Property Management in a format and upon a delivery date designated by System Agency. Grantee 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 Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this Contract, it shall use the proceeds to repair or replace said assets.

b. Grant Purchased Equipment.

Equipment means tangible personal property having a useful lifetime of more than one year and a per-unit acquisition cost that exceeds the lesser of the capitalization level established by the of \$5,000 or more. Grantee shall inventory all equipment, and report the inventory on the DSHS Contractor's Property Inventory Report form.

c. Supplies.

1. 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.
2. Tangible personal property includes controlled assets, including firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of \$500 or more, but less than \$5,000, which includes desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment are also considered Supplies.
3. Prior approval by System Agency of the purchase of Controlled Assets is not required, but such purchases must be reported on the DSHS Contractor's Property Inventory Form as detailed in this section.

d. Property Inventory and Protection of Assets.

1. Grantee shall maintain an inventory of equipment, supplies defined as controlled assets, and property described in this Section and submit an annual cumulative report of the equipment and other property on DSHS Contractor's Property Inventory Report to the DSHS 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 at: <http://www.dshs.state.tx.us/contracts/forms.shtm>.
2. Grantee shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness.

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3. If Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Grantee shall use the proceeds to repair or replace those assets.
- e. **Assets as Collateral Prohibited.**
Grantees on a cost reimbursement payment method shall not encumber equipment purchased with System Agency funds without prior written approval from the System Agency.
- f. **Disposition of Property.**
 1. Grantee shall follow the procedures in the American Hospital Association's (AHA) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with System Agency funds, except when federal or state statutory requirements supersede 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.
 2. 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) will be controlled by the requirements of UGMS.
 3. 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, Grantee shall request disposition approval and instructions in writing from the contract manager assigned to this Contract.
 4. After an item reaches the end of its useful life, Grantee shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.
- g. **Closeout of Equipment.**
At the end of the term of a Contract that has no additional renewals or that will not be renewed (Closeout), or when a Contract is otherwise terminated, Grantee shall submit to the contract manager assigned to this, an inventory of equipment purchased with grant funds and request disposition instructions for such equipment.

All equipment purchased with grant funds must be secured by Grantee at the time of Closeout, or termination of this Contract, and must be disposed of according to System Agency's disposition instructions, which may include return of the equipment to System Agency or transfer of possession to another System Agency contractor, at Grantee's expense.

Article IX Miscellaneous Provisions of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13, is modified by adding the following:

Section 9.23 Contracts with Subrecipient and Vendor Subcontractors.

- a. Grantee may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in the Contract.
- b. Prior to entering into a subrecipient agreement equaling or exceeding \$100,000, Grantee shall obtain written approval from System Agency.

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- c. Grantee shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan.
- d. Grantee shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by System Agency.
- e. Grantee shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.
- f. Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:
 - 1. Name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
 - 2. Detailed description of the services to be provided;
 - 3. Measurable method and rate of payment and total not-to-exceed amount of the contract;
 - 4. Clearly defined and executable termination clause; and
 - 5. Beginning and ending dates that coincide with the dates of the Contract.
- g. Grantee is responsible to System Agency for the performance of any subcontractor.

Article VIII Contract Management and Early Termination Provision of the Health and Human Services Commission Uniform Terms and Conditions – Grant, Version 2.13, is modified by adding the following:

8.05 Termination by Grantee

If Grantee seeks to terminate this Contract, Grantee shall give System Agency no less than sixty (60) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

SPECIAL CONDITIONS

Section 1.01 Notice of Legal Matter or Litigation.

Grantee shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

Section 1.02 Notice of a Contract Action.

Grantee shall notify their assigned contract manager assigned to the Contract if Grantee has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

Section 1.03 Notice of Bankruptcy.

Grantee shall notify in writing their assigned contract manager of its plan to seek bankruptcy protection within five days of such action by Grantee.

Section 1.04 Notice of Criminal Activity and Disciplinary Actions.

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- a. Grantee shall immediately report in writing the contract manager assigned to the Contract when the Grantee has knowledge or reason to believe any that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, subContractor or volunteer that is providing services under this Contract has engaged in any activity that:
 1. Would constitute a criminal offense equal to or greater than a Class A misdemeanor; and
 2. Reasonably would constitute grounds for disciplinary action by a state or federal regulatory authority; or
 3. 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.
- b. Grantee shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by System Agency.

Section 1.05 Grantee's Notification of Change of Contact Person or Key Personnel.

Within ten days shall notify in writing the contract manager assigned to the Contract of any change enumerated in the Grantee's Contact Person or Key Personnel.

Section 1.06 Notice of IRS or TWC Insolvency.

Grantee shall notify in writing their assigned contract manager their insolvency, incapacity or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission within 5 days of the date of becoming aware of such.

Section 1.07 Disaster Services.

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

- a. Community evacuation;
- b. Health and medical assistance;
- c. Assessment of health and medical needs;
- d. Health surveillance;
- e. Medical care personnel;
- f. Health and medical equipment and supplies;
- g. Patient evacuation;
- h. In-hospital care and hospital facility status;
- i. Food, drug and medical device safety;
- j. Worker health and safety;
- k. Mental health and substance abuse;
- l. Public health information;
- m. Vector control and veterinary services; and
- n. Victim identification and mortuary services.

Section 1.08 Consent by Non-Parent or Other State Law to Medical Care of a Minor.

Unless federal law applies, when a Grantee provides medical, dental, psychological or surgical treatment to a minor without parental consent, either directly or through contracts with subContractors, before the Grantee provides treatment to minor unless informed consent to treatment is obtained pursuant to Texas Family Code Chapter 32.

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Section 1.09 Services and Information for Persons with Limited English Proficiency.

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

Section 1.10 Third Party Payors.

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

As applicable, the Grantee shall:

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

Section 1.11 HIV/AIDS Model Workplace Guidelines.

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

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

Section 1.12 Medical Records Retention.

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

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and regulations governing medical information.

Grantee shall maintain full and complete records concerning WIC Program operations and the following requirements:

- a. Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food benefit issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.
- b. If United States Department of Agriculture (USDA) deems any of the WIC program records to be of historical interest, it may require System Agency or the Grantee to forward such records to the USDA whenever either entity is disposing of them.
- c. All records shall be available during normal business hours for representatives of the USDA, System Agency 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.

Section 1.13 Notice of a License Action.

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

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

Section 1.14 Interim Extension Amendment.

- a. Prior to or on the expiration date of this Contract, the Parties agree that this Contract can be extended as provided under this Section.
- b. System Agency shall provide written notice of interim extension amendment to the Grantee under one of the following circumstances:
 1. Continue provision of services in response to a disaster declared by the governor; or
 2. To ensure that services are provided to clients without interruption.
- c. System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- d. Grantee will provide and invoice for services in the same manner that is stated in the Contract.
- e. An interim extension under Section (b)(1) above shall extend the term of the contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
- f. An interim extension under Section (b)(2) above shall be a one-time extension for a period of time determined by System Agency.

Section 1.15 Electronic and Information Resources Accessibility and Security Standards.

a. Applicability.

The following Electronic and Information Resources (EIR) requirements apply to the Contract because the Grantee performs services that include EIR that System Agency employees are

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required or permitted to access or members of the public are required or permitted to access.

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

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

b. Definitions.

For purposes of this Section:

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

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

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

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

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

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

c. Evaluation, Testing, and Monitoring.

1. System Agency may review, test, evaluate and monitor Grantee's Products and services, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Grantee's assertion of compliance with the Accessibility Standards.
2. Grantee agrees to cooperate fully and provide System Agency and its representatives timely

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access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

d. Representations and Warranties.

1. Grantee represents and warrants that:
 - i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and
 - ii. If the Products will be in the custody of the state or a System Agency client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless System Agency or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.
2. In the event Grantee becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Grantee represents and warrants that it will, in a timely manner and at no cost to System Agency, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
3. Grantee acknowledges and agrees that these representations and warranties are essential inducements on which System Agency relies in awarding this Contract.
4. Grantee's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

e. Remedies.

1. Under Tex. Gov't Code § 2054.465, neither the Grantee nor any other person has cause of action against System Agency for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Grantee's representations and warranties, Grantee will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which System Agency may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which System Agency may be entitled under this Contract and other applicable law.

Section 1.16 Child Abuse Reporting Requirement.

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

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reporting documentation on site and make it available for inspection by System Agency.

- d. If Grantee chooses to interview a client to determine if an affirmative defense to prosecution exists, as defined by System Agency, which would allow them under the System Agency policy to not make a report of child abuse, the Grantee shall conduct these interviews in the following manner:
 1. 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.
 2. The interview shall be conducted only by a competent authority or a supervisor and in a confidential setting.
 3. 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.

Section 1.17 Additional Requirements

- a. Grantee 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.
 4. Uniform Grant Guidance Federal Regulations, 2 CFR Part 200;
- b. The following documents are incorporated by reference and made a part of this Contract:
 1. *DSHS Standards for Public Health Clinic Services*, revised August 2004, or latest revision;
 2. USDA Food and Nutrition Service (FNS) Guidelines;
 3. USDA FNS Instructions issued under the FNS Directives Management System.