

**Fiscal Year 2012 Department of State Health Services Contract
General Provisions for Substance Abuse Contracts
(Core/Subrecipient)**

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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 will 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 Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

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 any 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 will 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 will 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, will 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

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located through web links 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.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

- a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) 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; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) 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; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, regarding employment verification;
- c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
- d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
- e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
- f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
- g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
- h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
- i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
- k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for

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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;

- m) 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);
- n) 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;
- o) 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;
- p) 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;
- q) 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;”
- r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
- t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal 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 contract manager 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 will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

- a) The following sections or portions of sections of these General Provisions will 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;

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- 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 will 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 will 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 will 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, will 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, Contractor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (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. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all

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

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, Contractor shall not provide treatment of a minor unless 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 supersedes 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 a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

- a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
- b) contraindication considerations for telemedicine use;
- c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e) use by credentialed licensed providers providing clinical care within the scope of their licenses;
- f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g) priority in scheduling the system for clinical care of individuals;
- h) quality oversight and monitoring of satisfaction of the individuals served; and
- i) management of information and documentation for telemedicine services that ensures timely access to

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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 must not exceed the actual cost of providing the services. No client 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 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. 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 using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE 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 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 shall not use funds provided through this Contract 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

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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, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income 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, the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm> 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. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified 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 Attachment will 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. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

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

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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 contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance 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/cfpm.shtm>.

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 last business day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. Contractor shall submit the final FSR no later than sixty (60) calendar 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. Third party payors include, but are not limited to, 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 who 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 thirty (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 shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will 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

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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 of the Services Article of these General Provisions 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 will 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 due date(s). 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 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220); and UGMS, as applicable	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization	48 CFR Part 31,	OMB Circular A-	UGMS and applicable

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other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	133 and UGMS	Federal awarding agency common rule
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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 shall 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. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify 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 must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible 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 and shall not use the same lead auditor or coordinating audit partner (having primary responsibility for the audit) to conduct the independent audit for more than five (5) consecutive years.

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 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
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

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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 and regulations.

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 shall 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

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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, will 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 include this provision concerning records retention 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, and update as necessary, the name and address of the party responsible for storage of records to the contract manager 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 financial records, client and patient records, if any, and Contractor's 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. 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 make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 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. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon

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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 identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to 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: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (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 contract manager 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 contract manager 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 must 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 contract manager 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 must 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 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 contract manager 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 contract manager 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

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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 contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 Misuse of Funds and Performance Malfeasance. Contractor shall report to the contract manager 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 Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the HHS Office of Inspector General at <http://www.oig.hhs.gov/fraud/hotline/> no later than three (3) working days from the date that 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 offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager 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 providing services under this Contract 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 Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have 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

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ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
- f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g) neither it, nor its principals have within the three(3)-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 Contractor 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(3)-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 contract manager 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 contract manager 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 shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 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 Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and

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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 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 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 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 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

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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 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 will 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/cfpm.shtm>. Contractor shall maintain an appropriate contract administration system to ensure 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 and procedures 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 contract manager 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 must 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 at all times 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 maintain copies of liability policies on site for inspection by DSHS and shall submit copies of

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

Section 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, or by email to <mailto:coscap@dshs.state.tx.us> no later than the 60th calendar day after the effective date of the Contract, except when 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. If the Cost Allocation Plan changes during the Contract term, Contractor shall 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 Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>.

Section 12.09 No Endorsement. Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 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

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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 shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 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 and Vendor Subcontractors. Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding \$100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan. Contractor shall monitor subrecipient 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 by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

- a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
- b) a detailed description of the services to be provided;
- c) measurable method and rate of payment and total not-to-exceed amount of the contract;
- d) clearly defined and executable termination clause; and
- 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).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article).

Section 12.13 Status of Subcontractors. Contractor shall 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 in Subrecipient Subcontracts. Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect

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the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include 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 shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor.

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. If 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. If the Contract is terminated 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 contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the 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. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the 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 contract manager assigned to the Program Attachment.

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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 must 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 contract manager 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 **Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory 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 maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained 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 must 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 must revert 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 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 must 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 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. 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. 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

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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 contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall 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 contract manager 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 must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must 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 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, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the contract manager 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 any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

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Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

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 contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall 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 has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
- 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

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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 must 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) If 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, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

Section 13.06 Other Intangible Property. At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses, etc. Contractor shall inventory all such non-copyrightable intangible property. 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 will 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 will 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 will 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 will 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

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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 will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will 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 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. The 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 contract manager 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 will 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 will 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 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 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 contract manager 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

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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 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 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) budget transfer to other categories of funds for direct payment to trainees for training allowances;
- c) change in clinic hours or location;
- d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
- 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); and
- 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).

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website available at <http://www.dshs.state.tx.us/grants/forms.shtm>, 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 contract manager 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 will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 Electronic and Information Resources Accessibility and Security Standards. As required by 1 Tex. Admin. Code Chapters 213 and 206, 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

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Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) 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 certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

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 no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other 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 will 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 will 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.

Section 13.24 Cooperation and Communication. Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor’s duties or responsibilities under this Contract.

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;

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- 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 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 and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or 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 remedies or 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 in this section 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 Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

- a) terminate this Contract 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 Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor 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 an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall 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;

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- 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 conducted;
- 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 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 or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, 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, match insufficiency, 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 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;
- v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
- w) impose other remedies, sanctions or penalties permitted by statute.

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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 must 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 will 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 effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using 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 §§ 4.11-4.24 will 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 must 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 must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must 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

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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 will 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 AND TEMPORARY SUSPENSION

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 stated in each Program Attachment will 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 under this Article.

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 another 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 will 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 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 or Temporary Suspension 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 shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

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- b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
- c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if 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. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
- 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 for debts;
 - 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, or (d) if the execution is stayed, 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

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- 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 issuance;
 - 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 then 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 of the sequestration;
 - 9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
 - 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 not obtained or 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 void this Contract 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, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid 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

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

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possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall 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 (with no renewal) 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 has 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 Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay 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 Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

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**ARTICLE XIX PROVISIONS GENERALLY APPLICABLE TO SUBSTANCE ABUSE
CONTRACTS**

Section 19.01 **Quality Management Plan (QMP) and Quality Improvement.** As required by the Quality Management section of these General Provisions, Contractor shall comply with the requirements stated in this section relating to Contractor's Quality Management Process. Contractor shall-

- a) develop and implement a QMP that conforms with Standards of Care Rule § 448.504, and make the QMP available to DSHS upon request. The QMP must be developed no later than the end of the first quarter of the Program Attachment term. Contractor shall update and revise the QMP each biennium or sooner, if necessary. Contractor's governing body shall review and approve the initial QMP, within the first quarter of the Program Attachment term, and each updated and revised QMP thereafter. The QMP must describe Contractor's methods to measure, assess, and improve-
 - 1) implementation of evidence-based practices and research-based approaches to service delivery;
 - 2) client/participant satisfaction with the services provided by Contractor;
 - 3) service capacity and access to services;
 - 4) client/participant continuum of care; and
 - 5) accuracy of data reported to the state.
- b) participate in data verification activities as defined and scheduled by the state, including, but not limited to performing self-audits; submitting self-audit results and supporting documentation for the state's desk reviews; and participating in the state's onsite or desk reviews.
- c) submit plan of improvement or corrective action plan and supporting documentation as requested by DSHS.
- d) participate in and actively pursue QMP activities that support performance and outcomes improvement.
- e) respond to consultation recommendations by DSHS, which may include but are not limited to the following:
 - 1) staff training;
 - 2) self-monitoring activities guided by DSHS, including use of quality management tools to self-identify compliance issues; and
 - 3) monitoring of performance reports in the DSHS electronic clinical management system.

Section 19.02 **Treatment Peer Review.** A staff member of treatment or Outreach, Screening, Assessment and Referral (OSAR) Contractor may be selected for participation in the independent treatment peer review required by the Substance Abuse Prevention and Treatment (SAPT) Block Grant. If a member of Contractor's staff is selected to be a reviewer, Contractor shall ensure that the staff member participates in the treatment peer review process.

Section 19.03 **Disaster Substance Abuse Services.** In accordance with the Disaster Services section of these General Provisions, Contractor may be required to assist in mitigating the psychological trauma experienced by victims, survivors, and responders to a disaster. Contractor may assist the individual or family in returning to a normal (pre-disaster) level of functioning and assist in decreasing the psychological and physical effects of acute and/or prolonged stress. In the event clients already receiving substance abuse services are affected, Contractor may work with the affected individuals in conjunction with the individual's current support system.

Contractor shall develop policies and procedures to address response and recovery for substance abuse programs. Contractor's responsibilities include, but are not limited to the following:

- a) for treatment and OSAR Contractors, enter, and update as necessary, into CBMHS, the the names and twenty-four (24)-hour contact information of Contractor's Risk Manager or Safety Officer and at least two professional staff trained in mental health, substance abuse, or crisis counseling, one of whom may be the

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- Contractor's Risk Manager or Safety Officer, as disaster contacts
- b) for treatment and OSAR Contractors, submit disaster substance abuse services policies and procedures if requested by DSHS;
 - c) collaborate with DSHS and local preparedness, response and recovery efforts. OSAR staff shall assist in coordinating the disaster/incident response among substance abuse treatment providers, community mental health and emergency disaster service organizations, such as, emergency shelters and food banks. OSAR staff shall facilitate outreach to substance abuse clients and their families and ensure they are provided access to individual and group counseling, education, assessment, referral and community support;
 - d) assign employees to assist DSHS to meet staffing needs for shelters, morgues, schools, hospitals, Disaster Recovery Centers, community support centers, death notifications, mass inoculations sites, and other necessary services during local, state or federal emergencies;
 - e) contract with DSHS to provide FEMA-funded Crisis Counseling, Assistance and Training Program(s) (CCATP) after federal declarations as appropriate. CCATP services include housing, hiring and co-managing CCATP Team(s), as appropriate, and are described at http://www.fema.gov/pdf/media/factsheets/2009/dad_crisis_counseling.pdf; and
 - f) participate in disaster substance abuse education training programs as necessary.

Section 19.04 Abuse, Neglect, Exploitation. Contractor shall develop and implement written policies and procedures, and take all steps necessary, to protect the health, safety and welfare of its clients and participants. Contractor shall notify appropriate authorities of any allegations of abuse, neglect, or exploitation as required by Rule § 448.703. Additionally, licensed treatment facility Contractors shall verbally report all allegations of participant or client abuse, neglect, and exploitation to the Department's **Substance Abuse Investigations Division at (800) 832-9623** immediately, submit appropriate documentation within twenty-four (24) hours, and maintain adequate evidence demonstrating the Department's receipt of such documentation. The complaint form is located on the DSHS website at http://www.dshs.state.tx.us/HFP/complain_ntc_subabuse.shtm. All other Contractors shall notify the DSHS Substance Abuse Contracts Management Unit within 24 hours that the appropriate authorities have been notified of the allegations of abuse, neglect or exploitation and shall maintain for DSHS inspection, appropriate documentation and adequate evidence demonstrating receipt of the notification by the proper authorities. Contractor shall develop and implement written policies and procedures for employees, subcontractors, employees of subcontractors, and volunteers to report actual or suspected abuse, neglect, or exploitation to an immediate supervisor (or to another supervisor if the immediate supervisor is the subject of the report) within 48 hours of becoming aware of the actual or suspected abuse, neglect or exploitation.

Section 19.05 Charitable Choice (Faith-Based Organizations). As applicable, Contractor shall comply with 42 USC § 300x-65 and 42 CFR part 54 (42 CFR §§ 54.8(c) (4) and 54.8(b)), Charitable Choice provisions and regulations. If Contractor identifies itself as a faith-based or religious organization, Contractor shall post a notice to advise all clients and potential clients (collectively, "clients") that if the client objects to the religious character of Contractor's organization, the client has the right to be referred to another DSHS-funded contractor that is not faith-based or that has a different religious orientation. Contractor shall use the model notice provided in Appendix A of 42 CFR Part 54. Within a reasonable period of time after a client's request for referral, Contractor shall make the referral to another DSHS-funded contractor, and shall ensure that the client receives the alternative services within a reasonable period of time. Contractor shall further ensure that the alternative DSHS-funded contractor is accessible to the client and has the capability to provide appropriate services, and that the services are of a value not less than the value of the services the client would have received from Contractor.

Section 19.06 Qualified Service Organization/Business Associate (QSO/BA) Agreement. For the purposes of this section, definitions of terms related to QSOs are found in 42 CFR pt 2, and for terms related to BAs, in 45 CFR pts 160 and 164. The parties agree that this Contract serves as a QSO/BA Agreement ("this Agreement") under which Contractor, as a Program, may disclose patient-identifying information as defined by 42 CFR pt 2 to

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DSHS as a QSO, and under which Contractor, as a Covered Entity, may disclose protected health information as defined by 45 CFR pt 164 (PHI) to DSHS as a BA. Contractor is disclosing the patient-identifying information and PHI to DSHS so that DSHS as QSO/BA can provide services related to payment to Contractor for client services under the Contract, and to providing an electronic clinical management system for use by Contractor to maintain and store client records.

a) Provisions Applicable to the Parties' HIPAA BA Relationship:

1) Obligations and Activities of DSHS as a BA:

- A. BA agrees to not use or disclose PHI other than as permitted or required by this Agreement or as "Required by Law."
- B. BA agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- C. BA agrees to mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement.
- D. BA agrees to report to Contractor any use or disclosure of the PHI not provided for by this Agreement of which BA becomes aware.
- E. BA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by BA on behalf of, Contractor agrees to the same restrictions and conditions that apply through this Agreement to BA with respect to such information.
- F. BA agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by BA on behalf of, Contractor available to Contractor or to the Secretary, in a time and manner to be mutually agreed to by Contractor and BA or in a time and manner designated by the Secretary for purposes of the Secretary determining Contractor's compliance with the Privacy Rule.
- G. BA agrees to document disclosures of PHI as would be required for Contractor to respond to a request by an individual for an accounting of disclosures of PHI under 45 CFR §164.528.
- H. BA agrees to provide to Contractor or an individual, in a time and manner to be mutually agreed to by BA and Contractor, information collected in accordance with paragraph G above, to permit Contractor to respond to a request by an individual for an accounting of disclosures of PHI in under 45 CFR §164.528.

2) Permitted Uses and Disclosures by the DSHS:

Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Contractor as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Contractor or the minimum necessary policies and procedures of Contractor.

3) Obligations of and Permissible Requests by Contractor:

- A. Contractor shall notify BA of any limitation(s) in Contractor's notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.
- B. Contractor shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Contractor.

4) Term and Termination of this Agreement:

- A. Term. The obligations of the Parties under this Agreement shall terminate when all of the PHI created or received by BA on behalf of Contractor is destroyed, or if it is infeasible to destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- B. Termination of this Agreement for Cause. Upon Contractor's knowledge of a material breach by BA, Contractor shall -
 - i. provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement if BA does not cure the breach or end the violation within the time specified by Contractor;

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- ii. immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or
- iii. if neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination of this Agreement.

- i. Except as provided in paragraph B above (“Termination of this Agreement for Cause”), upon termination of this Agreement, for any reason, BA shall destroy all PHI received from Contractor, or created or received by BA on behalf of Contractor. This provision will apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI.
- ii. If BA determines that destroying the PHI is infeasible, BA shall provide to Contractor notification of the conditions that make destruction infeasible. If Contractor agrees that destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the destruction infeasible, for so long as BA maintains such PHI.

5) Miscellaneous Provisions:

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section in effect or as amended.
- B. Amendment. The Parties agree to amend this Agreement as necessary for Contractor to comply with the requirements of the Privacy Rule and HIPAA.
- C. Survival. The respective rights and obligations of BA in subsection a), paragraph 1. of this Agreement titled “Obligations and Activities of DSHS as BA” shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Contractor to comply with the Privacy Rule.

b) Provision Applicable to DSHS as a QSO: As a QSO, DSHS acknowledges that in receiving, storing, processing or otherwise dealing with any patient records associated with an alcohol or drug abuse treatment program, DSHS is fully bound by the 42 CFR pt 2 regulations. DSHS affirms that, if necessary, it will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Section 19.07 SAPT Grant Requirements. Contractor shall comply with the requirements of the SAPT Block Grant, including the restrictions on expenditure of grant funds, stated in 45 CFR § 96.135 and the Notice of Grant Award. Contractor shall not expend funds under this Contract on the following activities:

- a) to provide inpatient hospital services, except as provided in 45 CFR § 96.135(c);
- b) to make cash payments to intended recipients of health services;
- c) to purchase or improve land, purchase, construct or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
- d) to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e) to provide financial assistance to any entity other than a public or non-profit private entity;
- f) to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, except under a needle exchange program approved by the U.S. Surgeon General of Public Health Services; or
- g) for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or the state legislature, except in presentation to the Congress or the state legislative body itself.

Additionally, none of the funds provided under this Contract may be used to pay the salary of an individual at a rate in excess of Level I of the federal Executive Schedule.

Section 19.08 Persons on Probation or Parole. Contractor shall notify the contract manager assigned to the

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Program Attachment immediately of any of its employees, volunteers or subcontractors who are on parole or probation if the employee, volunteer or subcontractor provides or will provide direct client or participant services or who has or may have direct contact with clients or participants. Contractor shall maintain copies of all notices required under this section for DSHS review. Unless otherwise directed by the Department, Contractor shall ensure that any person who is on probation or parole is prohibited from performing direct client services or from having direct contact with clients or participants during any investigation undertaken by DSHS concerning a person who is on parole or probation.

Section 19.09 **Performance Measures Definitions.** Contractor shall comply with the performance measures definitions and minimum performance outcomes as specified by the Department. If revisions to the performance measures definitions and/or minimum performance outcomes are required as a result of elimination or modification of substance abuse service types, Contractor shall comply with the revised definitions and/or outcomes upon notice from DSHS.

ARTICLE XX This article is reserved for future use.

ARTICLE XXI SUBSTANCE ABUSE TREATMENT SERVICES

Section 21.01 **Priority Populations for Substance Abuse Treatment Programs.** The Department has established priority populations for treatment in accordance with SAPT Block Grant regulations and state designation. Treatment Contractors shall give preference for treatment services in the following order of priority:

- a) pregnant injecting drug users;
- b) pregnant substance abusers; and
- c) injecting drug users.

Contractor shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order. When space is not available in Contractor's Program Service Area, Contractor shall guarantee successful and timely referral to another suitable DSHS-funded contractor. Contractors shall accept applicants from every region in the state when space is available. If two applicants are of equal priority status, preference may be given to an applicant living in Contractor's Program Service Area. Each OSAR and treatment Contractor shall include a statement in all its brochures, and shall post a notice in its lobby, concerning the priority population admission requirements.

Section 21.02 **Texas Department of Family and Protective Services (DFPS).** Contractors funded to provide youth and adult treatment services shall serve financially eligible clients referred by the DFPS. Such referrals shall receive priority admission behind the priority populations listed in the Priority Populations for Treatment Programs section. When space is not available, Contractor shall guarantee successful and timely referral of financially eligible clients referred by DFPS to another suitable DSHS-funded treatment or OSAR contractor.

Section 21.03 **Licensing.** Contractors that provide chemical dependency treatment as defined by Tex. Health and Safety Code Chapter 464 shall hold an active treatment license issued by the Department or be exempt from licensure. The failure to obtain a required license, or revocation, surrender or suspension of Contractor's license, or Contractor's ceasing to provide services, shall constitute grounds for termination of the Contract or other remedies the Department deems appropriate. To add a newly licensed site to the Contract, Contractor must submit a request to the contract manager assigned to the Program Attachment for a clinic number after a treatment license has been issued. Contractor shall use the clinic number request form located on the DSHS website at <http://www.dshs.state.tx.us/sa/forms/default.shtm>. Contractor shall not provide services under the Contract until the licensed site has been approved by DSHS and an amendment to the Contract has been executed.

Section 21.04 **Youth Treatment.** Treatment Contractors that provide youth treatment services shall comply with

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the Rule regarding Financial Eligibility and Third Party Payment. If services for a client are covered by private insurance or a third party payor, but Contractor is not eligible for reimbursement by a client's private insurance or third party payor, Contractor shall refer the client to a treatment program that is approved by the client's private insurance or third party payor for services and reimbursement.

- a) If the approved treatment program refuses treatment services to the client and documents that refusal, Contractor may provide treatment services and bill the Department provided-
 - 1) the refusal, including insurance or third party payor and approved treatment program, is documented in the client file;
 - 2) the client meets the Diagnostic Statistical Manual IV diagnostic criteria for substance abuse/dependence; and
 - 3) the client's treatment for residential care is approved by the designated OSAR contractor, if applicable.
- b) If client's private insurance or third party payor would cover or approves partial or full payment for treatment services, Contractor may bill the Department for the non-reimbursed costs, including the deductible, provided -
 - 1) the client's parent refuses to file a claim with the private insurance or third party payor, or refuses to pay either the deductible or the non-reimbursed portion of the cost of treatment, and Contractor has obtained a signed statement from the parent that the parent refuses to pay, and Contractor has received approval from the DSHS substance abuse program services clinical coordinator to bill for the deductible or non-reimbursed portion of the cost;
 - 2) the client's parent cannot afford to pay the deductible and/or the non-reimbursed portion of the cost of treatment; or
 - 3) the family has an adjusted income at or below 200% of the Federal poverty guidelines.If a client has exhausted all insurance coverage and requires continued treatment, Contractor may provide the continued treatment services and bill the Department as long as the client meets b)1) or b)2) above.
- c) If a client's parent, who does not have insurance or other third party coverage for the client's treatment services, can afford, but refuses, to pay for those services, Contractor may bill the Department for the cost of the client's treatment, if Contractor has obtained a signed statement from the parent that the parent refuses to pay and Contractor has received approval from DSHS to bill for the cost of the services.

Section 21.05 Client Placement Criteria. OSAR Contractors and treatment Contractors shall use Department client placement criteria as a guide for directing clients to the appropriate services and for authorization of residential treatment admissions. Contractor shall comply with the Client Placement Criteria Guidelines established by the Department.

Section 21.06 Treatment Services Provided by Electronic Means. Contractor shall ensure that if treatment services are provided by electronic means under Rule § 448.911, the services are delivered in accordance with the Telemedicine Medical Services provision of these General Provisions, except that approval and oversight responsibilities attributed to a contractor's medical director shall instead be attributed to Contractor's Licensed Chemical Dependency Counselor or Qualified Credentialed Counselor who is responsible for treatment program oversight.

Section 21.07 Waiting Lists. For all individuals who cannot be immediately admitted to treatment services, treatment Contractor shall make a waiting list entry in CMBHS that details the service type the individual is waiting for and the priority population designation of the individual. Upon admission, treatment Contractor shall close the waiting list entry, indicating the date of admission as the waiting list end date. Treatment Contractor shall ensure, either directly or through referral, that individuals waiting for admission receive interim services. Treatment Contractor shall document weekly contact with all individuals on its waiting list. Treatment Contractor shall have a written policy on waiting list management that defines why and how individuals are removed from the

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waiting list for any purpose other than admission to treatment.

ARTICLE XXII PREVENTION AND INTERVENTION SERVICES

Section 22.01 **Prevention and Rural Border Intervention Program Requirements.** Prevention and Rural Border Intervention Contractors shall use the curriculum designated in the Program Attachment. Any adjustment to the provision of services, including a change in curriculum or county in which it is delivered, requires written amendment of the Contract.

Section 22.02 **Indicated Prevention.** Contractors that provide indicated prevention program services shall provide services to individuals who are showing warning signs of substance abuse and/or high risk problem behaviors. Indicated prevention services include -

- a) indicated prevention screening;
- b) indicated prevention assessment;
- c) indicated prevention service plan; and
- d) indicated prevention counseling.

Indicated Prevention Contractors shall use forms approved by DSHS to collect information and shall comply with requirements of Rules § 447.110 (e) and § 447.113 related to documentation of each indicated prevention screening, assessment, referral and follow-up.

Section 22.03 **Curriculum-Based Prevention Programs.** Contractors providing prevention services shall administer Department-approved pre- and post-tests to program participants. Outcomes must be reported in CMBHS in accordance with Article XXIII below.

Section 22.04 **Application of Chapter 448 Rules to Prevention and Intervention Contractors.** Contractors providing prevention and intervention services shall comply, as applicable, with the Rules § 448.504 relating to Quality Management and § 448.509 (d-f) relating to Incident Reporting. Contractors providing prevention and intervention services shall comply with DSHS Rules § 448.510 governing client transportation and § 448.603 governing training. Any reference to clients in these sections of the Rules also means prevention/intervention program participants. Additionally, any reference to facilities in these sections of the Rules also means prevention/intervention programs.

Section 22.05 **Confidentiality.** Prevention and intervention Contractors shall securely store, and maintain privacy and confidentiality of, information and records concerning participants and their family members that identify any individual as a person with a substance abuse problem or that relate to referrals for medical, health, or other DSHS-funded services, in accordance with Article VII (Confidentiality) of these General Provisions, and Rule § 448.210 (Confidentiality). Contractor shall ensure that all its employees and volunteers are aware of the requirements under this section.

Section 22.06 **Policies and Procedures.** Contractor shall maintain the additional policies and procedures as required by Rule § 444.303 and make them available for inspection by DSHS. Each Contractor shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families and adults participating in a prevention or intervention program. All participants have the right to be free from abuse, neglect and exploitation; be treated with dignity and respect; and make a complaint to Contractor or the Department at any time. Participants receiving individualized services in an intervention or indicated prevention program also have the right to refuse or accept services after being informed of services and responsibilities, including program goals and objectives, rules and regulations, and participants' rights. Contractor shall maintain documentation showing that participants receiving individualized services in an intervention or indicated prevention program have received the required information and agreed to participate in the program. Each Contractor shall establish and demonstrate

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active use of written agreements (memoranda of understanding) with available substance abuse providers and other mental health, health care, and social services providers to meet the needs of the clients/participants and family members. Agreements to coordinate services must be established in writing, be renewed annually (through signature or other documented contact), include names of the organizations entering into the agreement, services or activities each organization will provide, signatures of authorized representatives, and dates of action and expiration.

**ARTICLE XXIII CLINICAL MANAGEMENT FOR BEHAVIORAL HEALTH
SERVICES (CMBHS) SYSTEM**

Section 23.01 **CMBHS.** The CMBHS is considered the official record of documentation by the Department. Contractor shall use the CMBHS time frames specified by the Department. Contractor shall use the Department-specified functionality of the CMBHS in its entirety. Contractor shall submit all bills and reports to the Department through the CMBHS, unless otherwise instructed.

Section 23.02 **Resources.** Contractor shall ensure that Contractor has appropriate Internet access and an adequate number of computers of sufficient capabilities to use the CMBHS. Equipment purchased with Department funds must be inventoried, maintained in working order, and secured.

Section 23.03 **Security Administrator.** Contractor shall designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all the CMBHS user accounts are current. Contractor shall have a security policy that ensures adequate system security and protection of confidential information. Contractor shall notify the CMBHS Help-desk within 10 business days of any change to the designated Security Administrator or the back-up Security Administrator.

Section 23.04 **Security Violations and Accounts Updates.** Contractor shall notify the contract manager assigned to the Program Attachment immediately if a security violation is detected, or if Contractor has any reason to suspect that the security or integrity of the CMBHS data has been or may be compromised in any way. Contractor shall immediately block access to CMBHS of any person who should no longer have access to CMBHS, due to severance of employment with Contractor or otherwise, or immediately modify access when there is a change in a user's job responsibilities that affects the user's need for access to CMBHS, and update records on a daily basis to reflect any changes in account status.

Section 23.05 **Electronic Transfer of Information.** Contractor shall establish and maintain adequate internal controls, security, and oversight for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor certifies that the electronic payment requests and reports transmitted will contain true, accurate, and complete information.

Section 23.06 **Access.** The Department reserves the right to limit or deny access to the CMBHS by Contractor at any time for any reason deemed appropriate by the Department.

Section 23.07 **Components.** If required by the Program Attachment to use the CMBHS, Contractor shall use the CMBHS components/functionality specified below, in accordance with the Department's instructions. DSHS anticipates making updates to the current CMBHS components/functionality, and Contractor shall use the updated components/functionality when directed by DSHS to do so.

All Contractors:

- a) Add/Update Staff
- b) Document/Maintain Credentials

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- c) Assign Roles
- d) Provider/Location Details

Treatment Contractors:

- a) Client Profile
- b) Screening
- c) Financial Eligibility Assessment
- d) Assessment (Initial, Update, Service End, and Discharge)
- e) Admission and Discharge
- f) Request for Authorization
- g) Service Begin
- h) Treatment Plan/Treatment Plan Review
- i) Detoxification Intake Report
- j) Detoxification Service End Report
- k) Detoxification Discharge Report
- l) Detoxification Plan
- m) Discharge Plan
- n) Discharge Summary
- o) Discharge Follow-up
- p) Consent/Revoke Consent
- q) Referral and Referral Follow-up
- r) Referral List
- s) Day Rate Attendance Record
- t) Progress Note
- u) Psycho-educational Note
- v) Administrative Note
- w) Medication Order, Medication List, and Medication Service
- x) Provider Census
- y) Wait List
- z) Setup Residential Services
- aa) Daily Capacity Report
- bb) Service End
- cc) Lab Results (Drug Screen)
- dd) Client Payments
- ee) Contracts
- ff) Financial Status Report (if applicable)
- gg) Invoice (if applicable)
- hh) Advance (if applicable)
- ii) Pending Claims
- jj) Submitted Claims
- kk) Services Offered
- ll) Administrative Action List
- mm) Client Reservations
- nn) Consent Release Request List
- oo) Assign/Reassign Clinician

OSAR Contractors:

- a) Client Profile
- b) Screening
- c) Assessment (Initial, Update)
- d) Referral and Referral Follow-up
- e) Referral List

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- f) Consent/Revoke Consent
- g) Daily Capacity Report
- h) Financial Status Report
- i) Invoices
- j) Advance (if applicable)
- k) Service Plan
- l) Administrative Notes
- m) Authorization Approval
- n) Regional Provider Census
- o) Wait List
- p) Financial Eligibility Assessment
- q) Progress Note
- r) Contracts
- s) Client Reservations
- t) Administrative Action List
- u) Measures
- v) Consent Release Request List
- w) Reassign Case Manager
- x) Open Case
- y) Close Case

HEI Contractors:

- a) Client Profile
- b) HEI Screening
- c) Assessment (Case Management)
- d) Service Plan & Service Plan Review
- e) Open Case
- f) Progress Note (HEI Case Management Note, Case Management Note)
- g) Psycho-educational Note
- h) Referral and Referral Follow-up
- i) Referral List
- j) Consent/Revoke Consent
- k) Measures
- l) Financial Status Report
- m) Invoices
- n) Advances (if applicable)
- o) Lab Results
- p) Services Offered
- q) Close Case
- r) Consent Release Request List
- s) Reassign Case Manager

HIV Contractors:

- a) Client Profile
- b) Clinician's Notes
- c) Referral
- d) Referral Follow-up
- e) Consent/Revoke Consent
- f) Measures
- g) Invoices

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- h) Advance (if applicable)
- i) Financial Status Report
- j) Service Offered
- k) Consent Release Request List

COPSD Contractors:

- a) Client Profile
- b) Screening
- c) Financial Eligibility Assessment
- d) Assessment (Initial, Update, Service End, and Discharge)
- e) Admission and Discharge
- f) Service Begin
- g) Treatment Plan and Treatment Plan Reviews
- h) Discharge Plan
- i) Discharge Summary
- j) Discharge Follow-up
- k) Referral and Referral Follow-up
- l) Referral List
- m) Consent/Revoke Consent
- n) Progress Notes
- o) Psycho-educational Note
- p) Administrative Note
- q) Pending Claims
- r) Submitted Claims
- s) Service End
- t) Client Payments
- u) Contracts
- v) Services Offered
- w) Administrative Action List
- x) Consent Release Request List
- y) Assign/Reassign Clinician

PPI Contractors:

- a) Client Profile
- b) PPI Screening
- c) Open Case
- d) Service Plan & Service Plan Review
- e) Administrative Note
- f) Progress Note
- g) Psycho-educational Note (if applicable)
- h) Referral
- i) Referral Follow-up
- j) Referral List
- k) Consent/Revoke Consent
- l) Measures
- m) Financial Status Report
- n) Invoice
- o) Advances (if applicable)

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- p) Curriculum Measures (if applicable)
- q) Close Case
- r) Services Offered
- s) Consent Release Request List
- t) Reassign Case Manager

YPU, YPS, YPI Contractors:

- a) Measures
- b) Financial Status Reports
- c) Invoice
- d) Advances (if applicable)
- f) Curriculum Measures
- g) Services Offered

RBI Contractors

- a) Intervention Performance Measures
- b) Financial Status Report
- c) Invoice
- d) Referral
- e) Referral Follow-up
- f) Client Profile
- g) Demographics of Participants Receiving Prevention Education
- h) Client Consent for Intervention Strategies

Other Contractors. Unless otherwise specified in this Contract, all other Contractors shall use the following additional CMBHS components/functionality:

- a) Measures
- b) Financial Status Report
- c) Invoice
- d) Advance
- e) Referral
- f) Referral Follow-up
- f) Curriculum Measures (if applicable)

Section 23.08 **Drug Courts.** Treatment Contractors in jurisdictions with drug courts as defined by Tex. Health and Safety Code Chapter 469 will be monitored based on referral sources in the CMBHS for effectiveness of collaboration with drug courts.

Section 23.09 **Youth Services.** Youth treatment Contractors will be monitored through the CMBHS on efforts to obtain referrals of adolescents before the adolescents reach the juvenile justice system with the goal of increasing the proportion of juvenile clients not involved in the juvenile justice system.

Section 23.10 **OSAR Contractor Referrals.** OSAR Contractors will be monitored through the CMBHS on the effectiveness of outreach efforts as measured by the diversity of the sources that refer clients to each OSAR Contractor.

Section 23.11 **General Network Monitoring.** The Department and Contractor shall participate in network monitoring of their respective networks.

Section 23.12 **Contractor Network Responsibilities.** Contractor's network monitoring must include troubleshooting or assistance with Contractor-owned Wide Area Networks (WANs), Local Area Networks

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(LANs), router switches, network hubs or other equipment and Contractor's Internet Service Provider (ISP). Contractor shall maintain responsibility for local server/network hardware. Contractor shall communicate and enforce network security policies and procedures to end-users and be responsible for data backup, restore, and contingency planning functions for all local data. Contractor shall -

- a) create, delete, and modify end-user LAN-based accounts;
- b) change/reset user local passwords as necessary;
- c) administer security adds/changes and deletes for the CMBHS;
- d) install, maintain, monitor, and support Contractor LANs and WANs; and
- e) select, purchase service from, and monitor performance of ISP.

Section 23.13 **Customer Support and Training.** The Department will provide support for the CMBHS, including problem tracking and problem resolution. The Department will provide telephone numbers for Contractors to obtain access to expert assistance for CMBHS-related problem resolution. The Department will provide initial CMBHS training. Contractor shall provide subsequent ongoing end-user training.

ARTICLE XXIV MISCELLANEOUS FINANCIAL REQUIREMENTS FOR SUBSTANCE ABUSE CONTRACTS

Section 24.01 **Match and Program Income.** Unless waived in writing by the Department or unless the Program Attachment specifically states otherwise, Contractor shall contribute as match an amount equal to at least the percentage stated in the Program Attachment. Contractor shall report match on each Financial Status Report or as directed by DSHS. If the match ratio requirement is not met by the beginning of the last three months of the term of the Program Attachment, DSHS may withhold or reduce payments to satisfy match insufficiency or demand a refund of the amount of the match insufficiency. In accordance with Section 3.05 of these General Provisions (Program Income), Contractor shall report program income. Contractor shall not use program income as match without prior approval of the contract manager assigned to the Program Attachment.

Section 24.02 **Administrative Discharge.** The Department may administratively discharge any active treatment client for which fifty (50) calendar days have elapsed since the last billing end date for the client.

Section 24.03 **Billing for Treatment and Payment Restrictions.** Treatment Contractors shall bill for treatment services pursuant to Rules governing billing for treatment services. Treatment Contractors may bill for only one intensity of service and service type (either outpatient or residential) per client per day, and a treatment Contractor shall not bill for an intensity of service and service type if another DSHS-funded treatment contractor is providing and billing DSHS for another intensity of service and service type; except that Contractor may provide and bill the Department for pharmacotherapy or co-occurring psychiatric and substance use disorder services, or ambulatory detoxification for a client at the same time Contractor or another DSHS-funded contractor provides and bills the Department for outpatient or residential services. If two contractors provide services to the same client under this exception, the contractors must coordinate services and both contractors must document the service coordination.

Section 24.04 **Financial Status Reports for Substance Abuse Contracts.** For contracts with categorical budgets, Contractor shall submit quarterly FSRs through the CMBHS by the [last working day of the month following the quarter being reported for Department review and financial assessment. All other requirements of the Financial Status Reports section of these General Provisions apply.

Section 24.05 **NorthSTAR.** If Contractor is also a NorthSTAR-contracted provider, Contractor shall bill only NorthSTAR for any covered services delivered to NorthSTAR-eligible individuals, subject to its NorthSTAR contract and NorthSTAR provider manual. All Contractors that are not NorthSTAR-contracted providers shall

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refer all NorthSTAR financially eligible individuals to the NorthSTAR Behavioral Health Organization (BHO) at (888) 800-6799 or an appropriate NorthSTAR-contracted provider. Contractors may obtain information on NorthSTAR at <http://www.dshs.state.tx.us/mhsa/northstar/northstar.shtm>. For emergency services needed by NorthSTAR-eligible clients outside of the NorthSTAR service area, Contractors shall facilitate referral to an appropriate emergency care provider. If the client is eligible or enrolled in NorthSTAR, the emergency care provider must be instructed by Contractor to notify the NorthSTAR BHO within twenty-four (24) hours of admission, as a condition of reimbursement from the NorthSTAR BHO.

Section 24.06 Moving Funds Between Program Attachments. Contractor shall not expend funds from one Program Attachment to provide and bill DSHS for services in another Program Attachment without DSHS approval and a written contract amendment.

Section 24.07 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 contract manager assigned to the Program Attachment all financial and reconciliation reports required by Department in forms as determined by Department.

Section 24.08 Interpreter Services for Hearing Impaired Persons. When interpreter services for a hearing impaired person are needed, Contractor shall notify the contact manager assigned to the Program Attachment prior to submitting the Request for Interpreter Services Form (Form). Contractor shall follow the instructions for completing the Form when making a request for interpreter services. Contractor shall request interpreter services for actual hours, days, and times necessary for effective communication only during delivery of client services. To avoid incurring unnecessary interpreter fees and expenses, Contractor shall notify the interpreter services contractor immediately if interpreting services will not be needed due to appointment cancellation or otherwise. Failure to provide notification to the interpreter services contractor that interpreter services will not be needed less than 48 hours before the scheduled interpreter services session will result in costs to DSHS for billings by the interpreter services contractor for the unused services, travel expenses, etc. Contractor may be required to submit to DSHS a percentage of the costs incurred by DSHS if the Contractor failed to immediately notify the interpreter services contractor that the client's appointment had been cancelled or because Contractor failed to cancel interpreter services that could reasonably be expected to be unnecessary; for example, Contractor scheduled multiple interpreter sessions, but when the client failed to keep the initial appointment, Contractor did not cancel the multiple interpreter sessions.