

**FISCAL YEAR 2008 PERFORMANCE CONTRACT  
GENERAL PROVISIONS (PROFESSIONAL SERVICES)**

**TABLE OF CONTENTS**

<b>ARTICLE I</b>	<b>COMPLIANCE AND REPORTING</b>	<b>1</b>
1.01	Legal Authority	1
1.02	Compliance with Statutes and Rules	1
1.03	Compliance with Requirements of Solicitation Document	1
1.04	Reporting	1
1.05	Immunization Reporting	1
1.06	Client Eligibility Verification	1
1.07	Applicable Contracts Law and Venue for Disputes	2
1.08	Statutes and Standards of General Applicability	2
1.09	Joint Commission of Accreditation of Health Care Organizations (JCAHO) Standards	3
<b>ARTICLE II</b>	<b>SERVICES</b>	<b>3</b>
2.01	Performance of Professional Services	3
2.02	Contractor Qualifications	3
2.03	Disaster Services	3
2.04	Consent to Medical Care	4
2.05	Telemedicine Medical Services	4
<b>ARTICLE III</b>	<b>FUNDING</b>	<b>4</b>
3.01	Debt to State and Corporate Status	4
3.02	Application of Payment Due	5
<b>ARTICLE IV</b>	<b>PAYMENT METHODS AND RESTRICTIONS</b>	<b>5</b>
4.01	Payment Methods	5
4.02	Billing Submission	5
4.03	Third Party Payors	5
<b>ARTICLE V</b>	<b>TERMS AND CONDITIONS OF PAYMENT</b>	<b>5</b>
5.01	Prompt Payment	5
5.02	Withholding Payments	6
5.03	Acceptance as Payment in Full	6
<b>ARTICLE VI</b>	<b>CONFIDENTIALITY</b>	<b>6</b>
6.01	Maintenance of Confidentiality	6
6.02	Use of PHI	6
6.03	Disclosure to Department	6
6.04	Department Access to PHI	6
6.05	Exchange of Client-Identifying Information	7
6.06	Security of Patient or Client Records	7
6.07	HIV/AIDS Model Workplace Guidelines	7

<b>ARTICLE VII</b>	<b>RECORDS RETENTION</b>	<b>7</b>
7.01	Retention	7
<b>ARTICLE VIII</b>	<b>ACCESS AND INSPECTION</b>	<b>8</b>
8.01	Access	8
8.02	State Auditor's Office	8
8.03	Responding to Deficiencies	8
<b>ARTICLE IX</b>	<b>NOTICE REQUIREMENTS</b>	<b>8</b>
9.01	Child Abuse Reporting Requirement	8
9.02	Significant Incidents	9
9.03	Litigation	9
9.04	Action Against Contractor	9
9.05	Insolvency	9
9.06	Misuse of Funds	9
9.07	Criminal Activity and Disciplinary Action	9
9.08	Retaliation Prohibited	10
9.09	Documentation	10
<b>ARTICLE X</b>	<b>ASSURANCES AND CERTIFICATIONS</b>	<b>10</b>
10.01	Certification	10
10.02	Child Support Delinquencies	10
10.03	Authorization	11
10.04	Gifts and Benefits Prohibited	11
10.05	Ineligibility to Receive the Contract	11
10.06	Antitrust	11
<b>ARTICLE XI</b>	<b>GEN. BUS. OPERATIONS OF CONTRACTOR</b>	<b>11</b>
11.01	Program Site	11
11.02	Buy Texas	11
11.03	Independent Contractor	11
11.04	Authority to Bind	12
11.05	Tax Liability	12
11.06	Notice of Organizational Change	12
<b>ARTICLE XII</b>	<b>GENERAL TERMS</b>	<b>12</b>
12.01	Assignment	12
12.02	Lobbying	12
12.03	Conflict of Interest	13
12.04	Intellectual Property	13
12.05	Severability and Ambiguity	14
12.06	Legal Notice	14
12.07	Successors	14
12.08	Headings	14
12.09	Parties	14
12.10	Survivability of Terms	14
12.11	Customer Service Information	15

<b>12.12 Amendment</b>	<b>15</b>
<b>12.13 Contractor's Notification of Change to Certain Contract Provisions</b>	<b>15</b>
<b>12.14 Immunity Not Waived</b>	<b>15</b>
<b>12.15 Hold Harmless</b>	<b>15</b>
<b>12.16 Waiver</b>	<b>16</b>
<b>12.17 Travel Reimbursements</b>	<b>16</b>
<b>12.18 Meetings and Training</b>	<b>16</b>
<b>ARTICLE XIII BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE</b>	<b>16</b>
<b>13.01 Actions Constituting Breach of Contract</b>	<b>16</b>
<b>13.02 General Remedies and Sanctions</b>	<b>16</b>
<b>13.03 Notice of Remedies and Sanctions</b>	<b>18</b>
<b>13.04 Emergency Action</b>	<b>18</b>
<b>ARTICLE XIV CLAIMS AGAINST THE DEPARTMENT</b>	<b>18</b>
<b>14.01 Breach of Contract Claim</b>	<b>18</b>
<b>14.02 Notice</b>	<b>19</b>
<b>14.03 Sole Remedy</b>	<b>19</b>
<b>14.04 Condition Precedent to Suit</b>	<b>19</b>
<b>14.05 Performance Not Suspended</b>	<b>19</b>
<b>ARTICLE XV TERMINATION</b>	<b>19</b>
<b>15.01 Expiration of Contract or Program Attachment(s)</b>	<b>19</b>
<b>15.02 Effect of Termination</b>	<b>19</b>
<b>15.03 Acts Not Constituting Termination</b>	<b>19</b>
<b>15.04 Termination Without Cause</b>	<b>20</b>
<b>15.05 Termination For Cause</b>	<b>20</b>
<b>15.06 Notice of Termination</b>	<b>21</b>
<b>ARTICLE XVI VOID, SUSPENDED AND TERMINATED CONTRACTS</b>	<b>21</b>
<b>16.01 Void Contracts</b>	<b>21</b>
<b>16.02 Effect of Void, Suspended or Involuntarily Terminated Contract</b>	<b>22</b>
<b>16.03 Appeals Rights</b>	<b>22</b>
<b>ARTICLE XVII CLOSEOUT AND CONTRACT RECONCILIATION</b>	<b>22</b>
<b>17.01 Cessation of Services at Closeout</b>	<b>22</b>
<b>17.02 Administrative Offset</b>	<b>22</b>
<b>17.03 Deadline for Closeout</b>	<b>22</b>
<b>17.04 Payment of Refunds</b>	<b>22</b>
<b>17.05 Disallowances and Adjustments</b>	<b>22</b>

## Fiscal Year 2008 Performance Contract

### General Provisions

#### (Professional Services)

**Note: these General Provisions are for use only for contracts with an individual professional or with a group or association made up exclusively of similar professionals, in which case the word “Contractor” shall be construed to include “each individual member of Contractor,” or “all members of Contractor,” as the context requires**

### ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Legal Authority.** This Contract is entered into pursuant to the provisions of, and shall be governed by the Professional Services Procurement Act, TEX. GOV'T. CODE §§2254.001 – 2254.006, TEX. HEALTH & SAFETY CODE §12.0121 and 25 Texas Administrative Code §1.181.

Section 1.02 **Compliance with Statutes and Rules.** Contractor shall comply with the requirements set forth in the Department's rules of general applicability and other applicable state and federal statutes, regulations and rules as such statutes and rules currently exist and as they may be lawfully amended. The Department rules are set forth 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 or the Rules, the terms of the Contract shall control.

Section 1.03 **Compliance with Requirements of Solicitation Document.** If this Contract is awarded as a result of a solicitation, Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon the Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in the Contractor's response to the Solicitation Document shall constitute a breach of this Contract.

Section 1.04 **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 a format required by DSHS. Failure to submit a required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment, and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.05 **Immunization Reporting.** If Contractor provides immunizations, Contractor shall comply with all immunization reporting guidelines and requirements set forth in Health and Safety Code, Chapter 161, Subchapter A.

Section 1.06 **Client Eligibility Verification.** Where applicable, Contractor shall verify

client eligibility to receive services under this Contract.

Section 1.07 **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, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.

Section 1.08 **Statutes and Standards of General Applicability.** It is Contractor's responsibility to review and comply with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor agrees to comply with the following:

- a) the following statutes, requirements and DSHS policy that collectively prohibit discrimination on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse or religion: 1) Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794(a); 4) the Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 U.S.C.A. §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 U.S.C.A. § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) TEX. LAB. CODE. ch. 21; 9) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246, as amended and supplemented; and 10) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b) Drug Abuse Office and Treatment Act of 1972, 21 U.S.C.A. §§ 1101 et seq., relating to drug abuse;
- c) Public Health Service Act of 1912, §§ 523 and 527, 42 U.S.C.A. § 290dd-2, and 42 C.F.R. pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
- d) Immigration Reform and Control Act of 1986, 8 U.S.C.A. § 1324a, regarding employment verification;
- e) Pro-Children Act of 1994, 20 U.S.C.A. §§ 6081-6084, regarding the non-use of all tobacco products;
- f) National Research Service Award Act of 1971, 42 U.S.C.A. §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding human subjects involved in research;
- g) Hatch Political Activity Act, 5 U.S.C.A. §§ 1501-1508, 7321-26, which limits the political activity of employees whose employment is funded with federal funds;

- h) Fair Labor Standards Act, 29 U.S.C.A. §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 U.S.C.A. §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
- i) TEX. GOV'T CODE ch. 469 (Supp. 2004), pertaining to eliminating architectural barriers for persons with disabilities;
- j) Texas Workers' Compensation Act, TEX. LABOR CODE, chs. 401-406 28 TEX. ADMIN. CODE pt. 2, regarding compensation for employees' injuries;
- k) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- l) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code ch. 96 regarding safety standards for handling blood borne pathogens;
- m) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- n) applicable environmental standards; and
- o) requirements of any other applicable statutes, executive orders, regulations and policies.

If this Contract is funded by a grant, additional requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference.

Section 1.09 **Joint Commission on Accreditation of Health Care Organizations (JCAHO) Standards.** Contractor shall provide all patient care services, if any, consistent with the standards set by JCAHO.

## **ARTICLE II SERVICES**

Section 2.01 **Performance of Professional Services.** Contractor shall perform "professional services" (within the meaning of that term as defined in the authority cited in the Legal Authority section) within the scope of the individual's license, certification, registration or other legal authority, at the locations(s) and in the manner specified in the Program Attachment(s).

Section 2.02 **Contractor Qualifications.** Contractor currently has the requisite professional and educational qualifications and certifications, registrations, credentials and licenses. Contractor shall maintain, and ensure appropriate employees have and maintain, all certifications, registrations, or licenses required by law to remain in good standing in his/her profession during the term of this Contract. In addition, Contractor shall inform DSHS immediately of any changes to such certifications, registrations or licenses during the term of this Contract. Contractor is responsible for services provided by Contractor's employees.

Section 2.03 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the

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

Section 2.04 **Consent to Medical Care.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, the treatment of a minor shall be provided only if consent to treatment is obtained pursuant to TEX. FAM. CODE, Chapter 32 relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with TEX. FAM. CODE, Chapter 32, federal law shall supersede state law.

Section 2.05 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or an employee of Contractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and protocol and utilizing equipment that complies with the equipment standards as required by the Department. Procedures of telemedicine service provision must include the following requirements:

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

Telemedicine does not include treatment services provided by electronic means under Rule §448.911.

### **ARTICLE III FUNDING**

Section 3.01 **Debt to State and Corporate Status.** Pursuant to TEX. GOV'T. 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 (Texas Tax Code §§171.001 *et seq.*, as amended). 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, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

#### **ARTICLE IV      PAYMENT METHODS AND RESTRICTIONS.**

Section 4.01      **Payment Methods.** Except as otherwise provided by the Special Provisions of this Contract, the payment method for each program shall be one of the following methods:

- (a)      unit rate. This payment method is based on the set unit rate stated in the Program Attachment(s) and successful submission of all required forms; or
- (b)      fee-for-service. This payment method is based on the agreed fee stated in the Program Attachment(s) and successful submission of all required forms.

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), Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill.

Section 4.03      **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in the 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 Plan and Medicaid if providing approved services authorized under the Contract that may be covered by those programs, and bill those plans for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients that are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

#### **ARTICLE 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 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 the Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (TEX. GOV'T. CODE, Chapter 2251). Payment of invoices by the Department shall not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance is subject to audit by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset overpayments that Contractor has not refunded to Department. Department may take repayment from funds available under this Contract, active or expired, in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Acceptance as Payment in Full.** Contractor shall accept payment from DSHS as payment in full for services or goods provided to clients. Contractor agrees to not seek additional payment for services or goods from clients.

## **ARTICLE VI CONFIDENTIALITY.**

Section 6.01 **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 law and Rules, including but not limited to 7 CFR Part 246; 42 CFR Part 2, 45 CFR Parts 160 and 164; Health and Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Occupations Code, Chapters 56 and 159 and all applicable Rules.

Section 6.02 **Use of PHI.** If Contractor is subject to HIPAA privacy regulations at 45 CFR Parts 160 and 164, Contractor may receive, use and disclose PHI, as defined in 45 CFR §164.501, only to carry out Contractor's duties under this Contract in accordance with the regulations. When using or disclosing PHI or when requesting PHI from another entity, Contractor must make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

Section 6.03 **Disclosure to Department.** Contractor is required to disclose PHI of patients or clients provided services funded through this Contract and other confidential information to Department upon request, or as otherwise required in other contract provisions or laws governing the release of client records or other confidential information.

Section 6.04 **Department Access to PHI.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI 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, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 C.F.R. pts. 160 and 164, at §

164.512, and TEX. OCC. CODE ch. 159, at §§ 159.003 and 159.004.

Section 6.05      **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), Health and Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable law or rules. Contractor shall disclose information described in Health and Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Health and Safety Code §614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 6.06      **Security of Patient or Client Records.** Contractor must ensure that patient and client records are managed in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient 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 6.07      **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 on the at <http://www.dshs.state.tx.us/hivstd/policy/pdf/090021.pdf>.

## **ARTICLE VII   RECORDS RETENTION.**

Section 7.01      **Retention.** Contractor shall retain records in accordance with the Department's State of Texas Records Retention Schedule, located at <http://www.dshs.state.tx.us/records/schedules.shtm>, Department Rules and other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information. At a minimum Contractor shall retain and preserve all 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 the Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, shall apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex Admin Code Title 22, Part 9, §165.1(b) and (c) or other applicable statutes and regulations

governing medical information. If Contractor ceases business operations, Contractor shall ensure that records relating to the Contract are securely stored and are accessible by the Department upon Department's request for at least four years from the date Contractor ceases business or from the termination date of the Contract, whichever is sooner. Contractor shall provide the name and address of the party responsible for storage of records to the Division Contract Management Unit assigned to the Contract or Program Attachment, as applicable.

## **ARTICLE VIII ACCESS AND INSPECTION.**

Section 8.01 **Access.** In addition to any right of access arising by operation of law, Contractor 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, Office of the Inspector General at HHSC (OIG), and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted and all records (including client and patient records, if any), books, papers or documents related to the Contract. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to the Contract. Further, Contractor will ensure that information collected, assembled or maintained by the Contractor relative to this Contract is available to the Department for the Department to respond to requests that it receives under the Public Information Act. The Department and HHSC will have the right to audit billings both before and after payment. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments.

Section 8.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. The Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit.

Section 8.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records will be conveyed in writing to Contractor. Contractor will submit, by the date prescribed by DSHS, a resolution to the deficiency in a program review or management or financial audit to the satisfaction of DSHS. 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 IX NOTICE REQUIREMENTS.**

Section 9.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: HIV/STD; Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and WIC Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in TEX. FAM. CODE ch. 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 Checklist for Monitoring located at [www.dshs.state.tx.us/childabusereporting](http://www.dshs.state.tx.us/childabusereporting) as required by the Department. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 9.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the Division Contract Management Unit assigned to the Program Attachment significant incidents involving substantial disruption of program operation or potentially affecting Department funded clients or participants within seventy-two (72) hours of discovery.

Section 9.03 **Litigation.** Contractor shall notify the Division Contract Management Unit assigned to the Program Attachment of litigation related to the Contract to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. Notification shall include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 9.04 **Action Against the Contractor.** Contractor shall notify Division Contract Management Unit assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity. Such notification shall include the reason for such action that includes 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.

Section 9.05 **Insolvency.** Contractor shall notify in writing Division Contract Management Unit assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of determination that Contractor is insolvent, incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify immediately in writing the Division Contract Management Unit assigned to the Program Attachment of Contractor's plan to seek bankruptcy protection.

Section 9.06 **Misuse of Funds.** Contractor shall report to the Division Contract Management Unit assigned to the Program Attachment and to the SAO, any knowledge of debarment, suspected fraud, program abuse, or unlawful activity related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that the Contractor has knowledge or reason to believe such activity has taken place. Contractor shall make the report to the SAO at (800) TX-AUDIT, or by Internet at <http://www.sao.state.tx.us>.

Section 9.07 **Criminal Activity and Disciplinary Action.** Contractor shall notify in writing the Division Contract Management Unit assigned to the Program Attachment if Contractor has, or has reason to believe an employee of Contractor 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 convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that the Contractor has knowledge or reason to believe such activity has taken place.

Section 9.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, or standard to the SAO, the Department, another state agency, or any federal, state or local law enforcement official.

Section 9.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices.

## **ARTICLE X ASSURANCES AND CERTIFICATIONS.**

Section 10.01 **Certification.** Contractor certifies by execution of this Contract that the Contractor:

- a) is not ineligible for participation in federal or state assistance programs;
- b) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency;
- c) has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor; and
- f) has not been convicted, nor have any of Contractor's employees been convicted, of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant.

Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the Division Contract Management Unit assigned to the Program Attachment. If Contractor's status with respect to the items certified above changes during the Contract, Contractor shall immediately notify Division Contract Management Unit assigned to the Program Attachment.

Section 10.02 **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 is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor agrees to maintain eligibility to receive payments under this Contract, certifies that Contractor 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 10.03 **Authorization.** Contractor certifies that Contractor possesses legal authority to contract for the services set forth in this Contract.

Section 10.04 **Gifts and Benefits Prohibited.** Contractor certifies that Contractor has not given, offered to give, nor intends to give at anytime 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 10.05 **Ineligibility to Receive the Contract.** Pursuant to TEX. GOV'T. CODE Section § 2155.004, and federal law. Contractor is ineligible to receive this Contract if the 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 Contractor's employees, nor anyone acting for the Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based. Contractor further certifies that Contractor is not ineligible to receive the specified Contract. Contractor acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 10.06 **Antitrust.** Pursuant to 15 U.S.C.A. Sec. 1, et seq. and TEX. BUS. & COMM. CODE Section § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for the Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding the bid made to any competitor or any other person engaged in such line of business for the purpose of substantially lessening competition in such line of business.

## **ARTICLE XI GENERAL BUSINESS OPERATIONS OF CONTRACTOR.**

Section 11.01 **Program Site.** All Contractors shall ensure that the location where services are provided is in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 11.02 **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'T CODE § 2155.4441.

Section 11.03 **Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of Contractor's employees. 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 Contractor and Contractor's employees will not be eligible for unemployment compensation from the Department or the State of Texas. Contractor and DSHS understand and agree that a) DSHS will not withhold or pay on behalf of Contractor or Contractor's employees any sums for income tax, unemployment insurance, social security or any other withholding pursuant to

any law or requirement of any governmental body, or make available to Contractor or Contractor's employees any benefits, including worker's compensation insurance coverage, afforded to employees of DSHS; b) all such withholdings, payments and benefits, if any, are the sole responsibility of Contractor; and c) Contractor will indemnify and hold harmless DSHS from any damages or liability, including attorneys' fees and legal expenses, incurred by DSHS with respect to such payments, withholdings, and benefits. Contractor will be free from DSHS control in the manner and method of providing services as long as such services are provided in accordance accepted procedures of Contractor's profession, DSHS Rules and applicable procedures of accrediting or certifying agencies.

Section 11.04 **Authority to Bind.** The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing 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 11.05 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. In the event that the Department discovers that Contractor has a delinquent liability or has failed to remain current on a delinquent liability to the IRS, the Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. In the event of Contract termination under this section, the Department will not enter into a Contract with Contractor for three (3) years from the date of termination.

Section 11.06 **Notice of Organizational Change.** Contractor shall submit written notice to the Division Contract Management Unit assigned to the Program Attachment within ten business days of any change to the following: Contractor's name; contact information; key personnel, or partner; organizational structure; legal standing; or authority to do business in Texas. A change in Contractor's name requires an amendment to the Contract in accordance with the Amendments section of these General Provisions..

## **ARTICLE XII GENERAL TERMS.**

Section 12.01 **Assignment.** Contractor will not transfer, assign, or sell Contractor's interest, in whole or in part, in this Contract, without the prior written consent of the Department.

Section 12.02 **Lobbying.** Contractor shall comply with GOV. CODE §556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract to pay any person for influencing or attempting to influence an officer or employee of any agency, federal or state, 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 U.S.C.A. § 1352, as amended). If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the Division Contract Management Unit assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with the 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 the Contract; upon execution of the Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed.

Section 12.03 **Conflict of Interest.** Contractor represents to the Department that Contractor does not have nor shall Contractor knowingly acquire any financial or other interest that would conflict in any manner with the performance of Contractor's 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 a member of Contractor's immediate family) and Department or HHSC, their commissioners, officers or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

Section 12.04 **Intellectual Property.** Texas Health and Safety Code §12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

- (a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
- (b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS shall have the right to obtain and hold in its name any and all patents, copyright, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
- (c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect



that “This publication was made possible by grant number \_\_\_\_\_ from (federal awarding agency)” or “The project described was supported by grant number \_\_\_\_\_ from (federal awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency).”

(d) In the event the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

(e) If the results of the contract performance are subject to copyright law, the Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the Division Contract Management Unit assigned to the Program Attachment.

Section 12.05 **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. Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 12.06 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address first given above (or at such other address as the Party shall specify to the other Party in writing) or, if sent by certified mail, on the date of receipt.

Section 12.07 **Successors.** The Contract shall be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 12.08 **Headings.** The articles and section headings used in the Contract are for convenience of reference only and shall not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 12.09 **Parties.** The Parties represent to each other that they are persons or entities fully familiar with transactions of the kind reflected by this document, and are capable of understanding the terminology and meaning of its terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 12.10 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason shall not release either party from any liabilities or obligations set forth in this Contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would

be intended to be applicable following any such termination or expiration.

Section 12.11 **Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of TEX. GOV'T CODE ch. 2114 regarding Customer Service surveys.

Section 12.12 **Amendment.** Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without written agreement of Contractor. All 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 of these General Provisions. Contractor's request for amendments must be submitted in writing, including a justification for the request, to the Division Contract Management Unit assigned to the Program Attachment; and if an 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. Amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform, and DSHS shall not pay, for the performance of different or additional services except pursuant to an amendment of this Contract that is executed in compliance with this Section; and DSHS may not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Section.

Section 12.13 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to the Contract without a written amendment or the Department's prior approval:

- 1) Contractor's contact person and contact information.
- 2) Contact information for key personnel, as stated in the application.
- 3) Minor corrections or clarifications to the Contract language that in no way alter the Contract scope of work, objectives or performance measures.

Contractor within ten days shall notify in writing the Division Contract Management Unit assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email.

Section 12.14 **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 12.15 **Hold Harmless.** Unless Contractor is a physician or psychiatrist, 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, Contractor's employees or agents under this Contract. If Contractor is a physician or psychiatrist, the State of Texas shall indemnify Contractor in accordance with TEX. CIV PRACT & REM. CODE Chapter 104; and, Contractor shall indemnify and hold harmless DSHS, its employees and agents, only when actual damages,

and/or court costs and attorneys' fees are adjudged against DSHS due to Contractor's willful or wrongful act or acts of gross negligence or when the court in its judgment or a jury in its verdict finds that the Contractor acted in bad faith, with conscious indifference or reckless disregard.

Section 12.16 **Waiver.** Acceptance by either party of partial performance or failure to complain of any action, non-action or default under this Contract shall not constitute a waiver of either party's rights under the Contract.

Section 12.17 **Travel Reimbursements.** When reimbursement of travel expenses is authorized by the Contract, all such expenses shall be reimbursed in accordance with the rates set by the State of Texas Travel Regulations in the Appropriations Act.

Section 12.18 **Meetings and Training.** Contractor shall ensure that appropriate representatives attend meetings and training relevant to the Contract, as required by DSHS. The cost of attending the meetings or training shall be Contractor's sole responsibility.

### **ARTICLE XIII BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE.**

Section 13.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

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

Section 13.02 **General Remedies and Sanctions.** The Department will monitor Contractor for programmatic compliance. The remedies set forth below are available to the Department against Contractor. HHSC OIG may investigate, audit and impose or recommend imposition of sanctions to Department for any breach of this Contract. The Department may impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies listed below does not relieve Contractor of any obligations under the Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or

guideline can be read together with the provision(s) of this Article to give effect to both. If the Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the actions listed below:

- a) terminate the Contract or a Program Attachment of the 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-one (31) calendar days before the effective date of the termination in a notice of termination. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert the Contractor of the opportunity to request a hearing on the termination pursuant to TEX. GOV'T CODE ch. 2105 regarding administration of Block Grants. The Contractor agrees that Contractor shall not make any claim for payment for services provided from the effective date of termination;
- b) suspend all or part of this Contract. Suspension is an action taken by a suspending official in accordance with Department rules to immediately exclude a person from participating in contract transactions for a period of time, pending completion of an investigation and such legal or debarment proceedings as may ensue. Contractor may not bill DSHS for services performed during a suspension unless expressly authorized by the notice of suspension unless expressly authorized by the notice of suspension;
- c) deny additional or future contracts or renewals with Contractor;
- d) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of 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;
- e) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) 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;
- f) declare the Contract void upon the Department's determination that the Contract was obtained fraudulently or upon the Department's determination that the Contract was illegal or invalid from the Contract's inception and demand repayment of funds under the Contract;
- g) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and bar Contractor from participating in future contracting opportunities with the State of Texas;
- h) delay contract execution with Contractor while other imposed or proposed sanctions are pending resolution;
- i) demand repayment from Contractor;
- j) pursue a claim for damages as a result of breach of contract;
- k) require removal of any employee of the Contractor who has been convicted of the misuse of state or federal funds, fraud or illegal acts that are in

contraindication to continued obligations under this Contract, as determined by DSHS;

- l) withhold any payments to Contractor to satisfy any recoupment or penalty imposed by DSHS, and take repayment from funds available under this Contract, active or expired, in amounts necessary to fulfill Contractor's repayment obligations;
- m) reduce the Contract term;
- n) recoup improper payments when Contractor has been overpaid because of improper billing or accounting practices or failure to comply with Contract terms;
- or
- o) impose other remedies provided by law.

Section 13.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed, 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 or sanctions imposed. Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response shall state how Contractor shall correct the noncompliance or demonstrate in writing that the findings on which the remedies or sanctions are based are either invalid or do not warrant the remedies or 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 or guideline, Department's decision is final. Department shall provide written notice to Contractor of Department's final decision. If required by the Department, Contractor shall take corrective action.

Section 13.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny contract renewal or 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 Contractor is noncompliant and the noncompliance has a direct adverse impact on the public or client health, welfare or safety. The direct adverse impact may be programmatic and may include failing to provide services; providing inadequate services; or providing unnecessary services.

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

#### **ARTICLE XIV CLAIMS AGAINST THE DEPARTMENT.**

Section 14.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 14.02 **Notice.** Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, Texas Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, Texas Government Code.

Section 14.03 **Sole Remedy.** The contested case process provided in Chapter 2260, subchapter C, Texas Government Code, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the parties are unable to resolve their disputes under this Article.

Section 14.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Chapter 2260, subchapter C, Texas Government Code, is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract shall be considered a waiver of sovereign immunity to suit.

Section 14.05 **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 XV TERMINATION.**

Section 15.01 **Expiration of Contract or Program Attachment(s).** Contractor's service obligations set forth in each Program Attachment shall end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause as set forth below.

Section 15.02 **Effect 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 the Contract to DSHS or other entity designated by DSHS. Upon termination of all or part of this Contract or Program Attachment, as applicable, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or Program Attachment, as applicable except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information shall survive this Contract.

Section 15.03 **Acts Not Constituting Termination.** Termination does not include: (1) withdrawal of funds awarded on the basis of the Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the

expiration of the term of a Program Attachment; (3) refusal to extend a Program Attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 15.04 **Termination Without Cause.**

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

Section 15.05 **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) a court of competent jurisdiction finds that 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 Contractor's employees to communicate with Department as necessary to the performance 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;
- (e) Department determines that Contractor, or Contractor's 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 the 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 Gov. Code §2155.004; or

(g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:

1. Contractor fails to make payments;
2. Contractor makes an assignment for the benefit of Contractor's creditors;
3. Contractor admits in writing Contractor's inability to pay debts generally as they become due;
4. if judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, and within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under generally accepted accounting principles;
5. Contractor is adjudicated bankrupt or insolvent;
6. Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against Contractor under any such law;
7. any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge thereof;
8. a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) calendar days; or
9. Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of Contractor's property.

Section 15.06 **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 will attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

## **ARTICLE XVI VOID, SUSPENDED, AND TERMINATED CONTRACTS.**

Section 16.01 **Void Contracts.** Department may hold this Contract void upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its



inception.

Section 16.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, suspended, or terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to refund.

Section 16.03 **Appeals Rights.** Pursuant to 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 Gov. Code Chapter 2001.

## **ARTICLE XVII CLOSEOUT AND CONTRACT RECONCILIATION**

Section 17.01 **Cessation of Services At Closeout.** Upon expiration of the Contract or Program Attachment, as applicable (and any renewals of the Contract or Program Attachment) on its own terms, Contractor shall cease services under the Contract or Program Attachment and shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under the Contract to DSHS or other entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, the Contractor agrees to immediately begin to transition recipients of services to alternative service providers, as needed. Contractor also agrees to completely cease providing services under the Contract by the date specified in the Contract or Program Attachment termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of the Contract or Program Attachment. Upon termination, expiration or non-renewal of this Contract or Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 17.02 **Administrative Offset.** The Department shall have the right to administratively offset amounts owed by Contractor against billings.

Section 17.03 **Deadline for Closeout.** Contractor shall submit all performance, and other Closeout reports required under the Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the 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 end date of the Contract or Program Attachment, as applicable.

Section 17.04 **Payment of Refunds.** Any funds paid to the Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the Contract constitute a debt to the Department and will result in a refund due. Contractor shall pay any refund amount due within the time period established by the Department.

Section 17.05 **Disallowances and Adjustments.** The Closeout of the Contract or Program Attachment does not affect the Department's right to recover funds on the basis of a later audit or other review or the Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.