

The State of Texas §
§
County of Tarrant §

COMMUNITY SUBRECIPIENT CONTRACT

1. BACKGROUND

Tarrant County, Texas ("County") has received a grant (the "Grant") from the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services to help fund the provision of HIV services in the community; and

The County Judge designated Tarrant County as the Administrative Agency in charge of distribution of Grant proceeds; and

AIDS Outreach Center ("Subrecipient", also known as "Contractor" in the Texas Health and Human Services Commission HHSC Uniform Terms and Conditions, which are attached hereto and incorporated herein) is an organization in Tarrant County, Texas, that provides HIV/AIDS community services and has requested an award of Grant proceeds from the County to support it in providing these services; and

County, acting by the Commissioners Court of Tarrant County, agrees to provide Subrecipient funds from the Grant, to the extent available, in an amount not to exceed **\$418,662.00** in exchange for Subrecipient's agreement to provide HIV/AIDS community services based upon certain terms and conditions.

Therefore, County and Subrecipient enter into the following Community Subrecipient Contract (the "Contract") based upon the following terms and conditions.

2. SCOPE OF WORK

Subrecipient will perform the Scope of Work described in **Attachment 1, A1-2020008**. On receipt of this Contract, Subrecipient will begin and complete the work within the Contract term. Subrecipient will provide services in accordance with Ryan White HIV Program Services: Eligible Individuals and Allowable Use of Funds Policy Clarification Notice #16-02. Subrecipient will also provide services in accordance with the local Standards of Care.

3. TERM

The term of this Contract is from **March 1, 2020 to February 28, 2021**.

4. AMENDMENTS

This Contract may not be amended without written agreement. However, Subrecipient may move up to 10% of allocated funds within any budget category without written approval of County, except for Equipment or Indirect Cost budget line items, if the movement is consistent with the budget in **Attachment 1**. In order to move any amount over and above a cumulative total of 10% of allocated funds within any budget category, Subrecipient will request the reallocation in writing to County.

The Subrecipient will submit a revised budget narrative to the Administrative Agency prior to the submission of the Subrecipient's first monthly billing to the County following the movement of funds between budget line items.

If the Subrecipient fails to achieve contracted outcome objectives and expenditures (see Policy

PM.001.002, Expenditure Monitoring, Units and Clients), the County may require the return of funds with reallocation or redistribution to other entities.

5. SEVERABILITY

If a court construes a provision of this Contract illegal or invalid, that construction will not affect the balance of the Contract, and the court will delete the illegal or invalid provision, with all other provisions of the Contract to remain in force and effect.

6. ASSURANCES, REPRESENTATIONS, AND COMPLIANCE

a. Subrecipient ensures that personnel paid from these funds are duly licensed, certified, registered, permitted, approved and qualified to perform contracted services. Subrecipient represents that all necessary program or facility licenses are current. Subrecipient will notify County immediately if such licenses become invalid during the term of this Contract. The Subrecipient will document these assurances in the year-end program report.

b. Subrecipient assures that funds will not be used to provide items or services for which payment has already been made or reasonably can be expected to be made by third-party payers, including Medicaid, Medicare and/or other federal, state, or local entitlement programs, prepaid health plans, private insurance, or other services provided by community-based organizations. The Subrecipient understands that if services performed under this Contract are available under the state Medicaid plan, then the Subrecipient must enter into a participation agreement under the state Medicaid plan. Subrecipient will ensure funding available through this Contract is used strictly as the payer of last resort.

c. Subrecipient assures that it will adhere to confidentiality requirements, including policies regarding the confidentiality and security of Protected Health Information, the AIDS Workplace Guidelines, the HIV Services Grant Program Rules, and Requirements for Contents of AIDS-related Written Materials. Subrecipient will not engage in activities that advocate or promote the violation of state or federal laws.

d. Subrecipient assures that it will comply with the HRSA Ryan White National Part A Programmatic, Fiscal, and Universal Monitoring Standards applicable to SubGrantees, Subrecipients and Subcontractors as implemented by Tarrant County. The Ryan White National Monitoring Standards detail the minimum acceptable standards contractors must comply with. Adherence to DSHS Standards of Care, Site Visit guidelines, Outcome Measures, Contract requirements and other requirements implemented by Tarrant County often exceed those required by the HRSA Ryan White National Monitoring Standards. Subrecipient assures that it will comply with the National, State and local requirements.

e. Subrecipient assures that it will not transfer a client or patient record through any means, including electronically, to another entity, person, or other Subrecipient without a written consent from the client or patient, or someone authorized to act on his or her behalf; however, the County, Texas Department of State Health Services (DSHS), or HRSA may require Subrecipient, or any subcontractor, to timely transfer a client or patient record to the County, DSHS, or HRSA if the transfer is necessary to protect either the confidentiality of the records or the health and welfare of the client or patient.

f. Subrecipient assures that it will not expend funds from this Grant to lobby Congress, the legislature, or any agency in connection with a particular Contract. Subrecipient assures that it will not discriminate against any person on the grounds of race, creed, color, handicap, national origin, gender, sexual orientation, political affiliation or beliefs.

- g. Subrecipient assures in its performance of this Contract that:
- (i) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, Subrecipient will not impose charges on any such individual for the provision of services under the Grant;
 - (ii) in the case of individuals with an income greater than 100 percent of the official poverty line, Subrecipient:
 - 1) will impose a charge on each such individual for the provision of such services;
 - 2) will impose the charge according to a schedule of charges that is made available to the public; and
 - 3) will make a reasonable attempt to collect;
 - (iii) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, Subrecipient will not, for any calendar year, impose charges in an amount exceeding five (5) percent of the annual gross income of the individual involved;
 - (iv) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, Subrecipient will not, for any calendar year, impose charges in an amount exceeding seven (7) percent of the annual gross income of the individual involved; and
 - (v) in the case of individuals with an income greater than 300 percent of the official poverty line, Subrecipient will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.
- h. Subrecipient assures that HIV health care and support services provided with assistance made available under this Contract will be provided without regard to the ability of the individual to pay for such services.
- i. Subrecipient assures that for any fees it charges to clients for services, Subrecipient will publicly display its fee schedule. Annual aggregate charges (including fees and co-payments) will not exceed the total allowable annual charges. The term "aggregate charges" applies to the total annual charges that may be collected from a client for all HIV services. Subrecipient will create a tracking mechanism to ensure individual client charges do not exceed the maximum allowable annual charges.
- j. Funds awarded for Emergency Financial Assistance, short-term medications, must be spent on clients who are pending approval through medication assistance programs or are ineligible for medication assistance programs.
- k. Subrecipient assures that all medical and non-medical case managers will obtain Affordable Care Act Certified Application Counselor status through the Centers for Medicaid and Medicare Services. Subrecipient assures that uninsured clients will be assisted with the process of applying for health insurance through the Marketplace and that documentation of eligibility is maintained in client charts or files. Subrecipient will enroll physicians and clinics in Qualified Health Plans.
- l. Subrecipient assures that it will comply with all requirements and guidelines outlined in the most recent HIV Services Standards of Care. Subrecipient will comply with all HRSA, DSHS, and County program policies and operating procedures including the Texas Health and Human Services Commission HHSC Uniform Terms and Conditions, **Attachment 2**.
- m. Subrecipient assures that this Contract will not be transferred, or otherwise assigned, or any interest in or any right, duty, or obligation under, or any claim arising under,

without first obtaining the prior written approval from the HIV Administrative Agency located at 2300 Circle Drive, Suite 2306; Fort Worth, Texas 76119. Any attempt to transfer, or otherwise assign, will be void and will confer no rights upon any third person or entity.

n. Subrecipient assures and represents that its receipt of funding under this Contract will not be used to supplant private, state, local, or other federal funds received by the Subrecipient.

o. Subrecipient assures that case records of patients/clients who are receiving Ryan White services will contain documentation as required by the Standards of Care.

p. Provide Enterprise is the designated client management information system for the Ryan White Program which must be utilized to document and enter all services and required data elements. Subrecipients may be required to cost-share in Provide Enterprise licensure fees of \$1,500.00 for new users and annual maintenance fees of \$730.00 per licensee. Subrecipients may utilize program income, grant funds, or other funding sources to cost-share licensure related fees.

q. Subrecipients assure that all Outpatient/Ambulatory Health Services are diagnostic and therapeutic-related activities directly to a client by a licensed healthcare provider in an outpatient medical setting. Outpatient medical settings may include: clinics, medical offices, mobile vans, using telehealth technology, and urgent care facilities for HIV-related visits.

r. Subrecipient assures and represents that the person signing this Contract on behalf of Subrecipient is authorized to execute this Contract on Subrecipient's behalf and to legally bind Subrecipient to all Contract terms.

s. Subrecipient will complete and sign **Attachment 3** in compliance with the Federal Executive Order 12549 "Debarment and Suspension".

FAILURE TO COMPLY WITH ANY OF THE ASSURANCES AND REPRESENTATIONS CONTAINED IN THIS SECTION 6 HEREIN AS WELL AS ANY OTHER TERM AND CONDITION OF THIS CONTRACT MAY BE GROUNDS FOR TERMINATION OF THIS CONTRACT AND MAY RESULT IN THE WITHHOLDING OF FUTURE AWARDS. SUBRECIPIENT UNDERSTANDS THAT BY ENTERING INTO THIS CONTRACT COUNTY WILL AUDIT SUBRECIPIENT'S PERFORMANCE OF THIS CONTRACT, INCLUDING SUBRECIPIENT'S COMPLIANCE WITH THE ASSURANCES AND REPRESENTATIONS CONTAINED IN THIS SECTION 6 OF THIS CONTRACT.

7. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

This Contract is subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy Regulations, 45 C.F.R. Parts 160 and 164 issued under said Act. The applicable parties, as defined by the HIPAA, will comply with HIPAA and the regulation issued under the HIPAA. By signing this Contract, Subrecipient will comply with **Attachment 4, Business Associate Agreement**, as if fully executed by the parties. Failure to comply with HIPAA and its applicable regulations or failure to execute any documents concerning compliance when requested by County will be a material breach of this Contract and render this Contract null and void. County will make the decision whether or not documents will be required, and the decision of County will be final.

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8. STANDARDS FOR FINANCIAL MANAGEMENT

a. In accordance with 45 CFR 75 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, Subrecipient will develop, implement and maintain financial management and control systems, which include at a minimum accurate payroll, accounting and financial reporting records, cost source documentation, effective internal and budgetary controls, and determination of reasonableness, allowability and allocability of costs, and timely and appropriate audits and resolution findings.

b. A separate cost center will be maintained within the general ledger for each Contract, including a 340b specific cost center. Multiple cost centers may be used, provided the total cost in each of the cost centers equals and supports the reimbursement amount and the total cost reported to Tarrant County. A cost center is defined as a unique series of general ledger accounts established for the purpose of accumulating and categorizing expenses related to a specific cost objective. Each cost center will have a unique revenue account(s) that captures all income generated from these activities performed under a specific cost center. The balances reflected in these accounts will be the basis for monthly reimbursement requests.

c. Subrecipient shall maintain an effective accounting system, which will:

- (i) Identify and record valid transactions
- (ii) Record transactions to the proper accounting period in which transactions occurred
- (iii) Describe transactions in sufficient detail to permit proper classification
- (iv) Maintain records that permit the tracing of funds to a level of detail that establishes that the funds have been used in compliance with Contract requirements
- (v) Adequately identify the source and application of funds of each Grant Contract
- (vi) Generate current and accurate financial reports in accordance with Contract requirements

d. Subrecipient will provide agency cost allocation plan to the Administrative Agency no later than sixty (60) days from Contract execution.

e. Subrecipient will bill third party payers for services provided under this Contract, at no cost to the client, with the exception of co-payments required by third party payers. These potential payers include private insurance carriers, Medicaid, other available federal, state, local, and private funds, etc. Subrecipient will become a Medicaid provider for applicable program activities funded in this Contract and will maximize efforts to obtain payment from Medicaid and all other available sources.

9. PROGRAM INCOME

Program income is defined as the gross income received by a recipient or subrecipient that is directly generated by a grant supported activity or earned only as a result of a federal award during a contract period. Examples of program income include:

- Funds received by billing public or private health insurance for services provided to eligible Ryan White HIV/AIDS Program (RWHAP) clients;
- Fees, payments, or reimbursement for the provision of specific services such as client care reimbursements received under Medicare, Medicaid, Children's Health Insurance Program;
- Charges imposed on clients for services, as required by RWHAP Parts A, B, and C legislation (sliding fee scale charges);

- The difference between the third-party reimbursement and the 340b drug purchase price (i.e. 340b revenue).
 - a. Subrecipient must use the 'additive' method for expending program income. Under the 'additive' method, program income must be used for the purposes for which the award was made and may only be used for allowable costs under the award.
 - b. Subrecipients will be required to have a policy and procedure in place for allocating and tracking program income, revenue, and expenditures.
 - c. Subrecipient will identify all revenues received from performing contract services as "Program Income." Subrecipient will use Program Income for allowable current costs. Subrecipient will budget and expend the Program Income during the budget period in which it is realized.
 - d. Program income may be expended on any allowable Ryan White core medical or support service category, clinical quality services, or administrative costs as part of a comprehensive system of care for individuals living with HIV. None of the funds awarded through this contract shall be used to pay the salary of an individual at a rate in excess of the Federal HHS Executive Level II.
 - e. Program income may be utilized to expand services within the allowable scope of the Ryan White grant.
 - f. Subrecipient will submit a 340b spending/allocation plan to the Administrative Agency within thirty (30) days of Contract execution.

10. PAYER OF LAST RESORT

- a. Prior to billing the County, Subrecipient will have an on-going system to verify clients' eligibility for payment by Medicaid/Medicare or private insurance. The County will have the right to withhold all or part of any payments otherwise due in order to reconcile third party, Medicaid/Medicare or insurance reimbursable expenses inappropriately billed to the County.
- b. Subrecipient will assure that reasonable efforts are made to secure non-RWHAP funds whenever possible for services to individual clients.

11. ALLOWABLE COST

Tarrant County will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Subrecipient must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. Tarrant County will determine whether costs submitted by Subrecipient are allowable and eligible for reimbursement. If Tarrant County has paid funds to Subrecipient for unallowable or ineligible costs, Tarrant County will notify Subrecipient in writing, and Subrecipient shall return the funds to Tarrant County within thirty (30) calendar days of the date of this written notice. Tarrant County may withhold all or part of any payments to Subrecipient to offset reimbursement for any unallowable or ineligible expenditure that Subrecipient has not refunded to Tarrant County, or if financial status report(s) required are not submitted by the due date(s). Tarrant County may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Subrecipient's repayment obligations.

12. OVERTIME COMPENSATION

Subrecipient may not use Grant funds provided under this Contract for payment of overtime. Subrecipient will be responsible for any overtime pay not authorized by amendment.

13. MEETING ATTENDANCE

Subrecipient will attend all required meetings, as specified by the Administrative Agency, including Quality Management, during the Contract term.

14. REPORTS, INSPECTIONS, AND MONITORING REVIEWS

a. Subrecipient will submit fiscal, progress, programmatic, and other reports as requested by County in the approved format. Monthly reimbursement requests are due no later than the 22nd day of the following calendar month. If the reporting due date falls on a weekend or holiday, the deadline is extended to no later than 5:00 pm Central Time the first weekday immediately following the weekend or holiday.

b. As required by the HRSA, DSHS, and the County, the Subrecipient will collect, update, maintain and report client level data in a manner consistent with the Uniform Reporting System (URS) based on reporting standards established by HRSA. Subrecipient will collect, update, maintain and report all data consistent for reporting in the annual Ryan White Services Report (RSR), as well as other demographic, medical, service, and other required data elements throughout the Contract period. Subrecipient will also enter all Ryan White eligible services in Provide Enterprise for the Ryan White program, not just funded services. Subrecipient will participate in all periodic and ongoing Data Improvement activities required by HRSA, DSHS and the County.

c. In order to protect and retain client data, Subrecipient will incorporate appropriate procedures, including the systematic creation and maintenance of end-user passwords and other security measures outlined in County policies.

d. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation of the Contract with no obligation to pay for undocumented services, or both.

e. When state or federal funds are involved, any authorized representatives of the local, state or federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed and the premises in which it is being performed. Subrecipient will participate in and provide reasonable access to facilities for assisting said representatives. All inspections and evaluations will be performed in such a manner as will not unduly delay the work.

f. County payment to Subrecipient does not stop the County from determining that certain costs were ineligible for reimbursement or that Program Income was not spent in accordance with this Contract. If the County determines that a cost the County has paid for is ineligible for reimbursement, the Subrecipient will refund the ineligible amount to the County. Additionally, the County may withhold payment to the Subrecipient in order to:

1. Recoup reimbursement for ineligible expenditures;
2. Recoup ineligible use of Program Income; and
3. Assure Subrecipient compliance with County's reporting requirements, program objectives, or other requirements relating to the Subrecipient's performance under this Contract.

The County reserves the right to redistribute and reallocate funds when necessary.

g. An audit must be completed if required by 2 CFR Part 200.500-520 and or 45 CFR Part 75.501-520. If the guidance does not require a single audit, the Subrecipient will notify County in writing.

h. The subrecipient must submit a Final FY 2020-2021 Part A Annual Progress Report no later than 90 days after the budget period end date consistent with reporting guidelines.

15. PARTICIPANT RECORDS

a. Subrecipient grants County, HRSA, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, the right of timely and unrestricted access to any books, documents, papers, or other records of Subrecipient pertinent to the Contract, in order to make audit, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access by County fiscal and program personnel for the purpose of reviewing, interviewing, evaluating and monitoring related to such documents. This right includes access to records of for-profit enterprises owned by the Subrecipient and collocated with the non-profit in the same building.

b. County retains the right of access to Subrecipient's records or the right to obtain copies of said records for audit, litigation, or other circumstances that may arise. If this Contract is terminated during the Contract term, County may provide written notice to the Subrecipient requesting that the clients receiving services under this Contract have their cases and copies of their records transferred to another Subrecipient. Upon receiving such notice from County, the Subrecipient will take all necessary and reasonable steps to obtain the written consent of the clients for transfer of their cases. The client's case and records will be transferred to another Subrecipient only with client's written consent. Any disclosure or transfer of records will conform to the confidentiality provisions of this Contract.

c. Subrecipient will have written policies and procedures that address the organization, content, compilation, storage, dissemination, transport and accessibility of client records.

d. These documents will be maintained and retained by the Subrecipient in accordance with state and federal retention schedules. If any litigation, claim, or audit involving these records begins before the retention period expires, the Subrecipient will retain the records and documents in accordance with state and federal retention schedule or until litigation, claims, or audit findings are resolved, whichever is later.

16. EQUIPMENT AND SUPPLIES

a. Subrecipient will purchase and maintain any equipment and supplies procured under this Contract in conformity with applicable federal and state laws, regulations, and rules affecting the purchase of these items with Grant funds. All equipment shall be acquired and paid for within the first ninety (90) days of the Grant start date. Failure to purchase equipment will result in loss of availability of funds for the purchase of equipment.

b. Controlled assets, according to Uniform Grants Management Standards (UGMS), generally includes electronic equipment and has a value between \$500 and <\$5,000 and must be maintained in Subrecipient's inventory system. Controlled assets are considered Supplies.

Equipment is defined as tangible personal property (including information technology systems) having a useful life of more than one year and a \$5,000 or more per unit acquisition cost, including freight and shipping costs. Equipment must be pre-authorized and received within the contract term. The Equipment budget category must be used for these transactions.

c. The Subrecipient will maintain, repair, and protect equipment in order to assure its full availability and usefulness. Subrecipient will insure all equipment at its replacement value against any loss, destruction or damage. In the event the Subrecipient is indemnified, insured, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the equipment provided under this Contract, it will use the proceeds solely for the repair or replacement of this equipment.

d. Subrecipient will attach a detailed, cumulative listing of equipment inventory to Subrecipient's final request for Grant payment. If there have never been any equipment purchases paid for by funds from the County, Subrecipient will attach a statement to that effect. Subrecipient's final billing for each Grant will not be accepted if this inventory or statement is not attached. Additionally, failure to include the inventory listing or statement may result in an audit finding on Subrecipient's monitoring review and/or delay of reimbursement. Audit findings may cause termination of Contract for cause or suspension of payment of funds.

e. The Subrecipient will execute any necessary documents to transfer title of any equipment purchased with funds from this Contract to either the County, or any other party designated by the County; provided, however, that the County may at its option and to the extent allowed by law, transfer title of such property to the Subrecipient.

17. CONFIDENTIALITY

Subrecipient will maintain a system to protect client records and other Contract records deemed confidential by law from inappropriate disclosure. This system will encompass mechanisms for the protection and confidentiality of all paper and electronic records. Any disclosure of confidential client information by the Subrecipient, including information required by Section 15, will be in accordance with applicable law.

18. QUALITY MANAGEMENT

a. The Subrecipient will implement and maintain a Quality Management program which complies with HRSA Clinical Quality Management Policy Clarification Notice #15-02. The Ryan White program requires the establishment of a clinical quality management (CQM) program that assesses the extent to which care and services provided are consistent with federal, state, and local standards of HIV/AIDS care and services, and develops strategies for ensuring that such services are consistent guidelines for improving access to, and quality of HIV Service. The Subrecipient will:

- (i) Develop a CQM program that improves patient care, health outcomes, and patient satisfaction;
- (ii) Have a CQM committee and a CQM plan;
- (iii) Utilize data and measurable outcomes to make improvements and measure progress towards improving outcomes across the HIV Continuum of Care; and review performance data at least quarterly;
- (iv) Dedicate staff responsible for carrying out CQM responsibilities;
- (v) Involve people with HIV that reflect the population that is being served;
- (vi) Focus on linkages to HIV medical care and support services;
- (vii) Track client perception/satisfaction and effectiveness of services; and

- (viii) Conduct quality management activities, including participation on a County wide CQM committee, and participation in County wide CQM initiatives.

Further, the Subrecipient will, upon request, provide evidence that the Quality Management Program is active and on-going. The County may inspect the minutes of the Quality Management Committee; documentation of quality improvement activities and outcomes; and other summary documents related to quality improvement activities.

b. All funded service categories should have two (2) identified performance measures and the corresponding performance measure data collected. Provide Enterprise is the data collection system for performance measure data to demonstrate health outcomes. The two (2) performance measures which apply to all funded service categories are annual retention in care and viral load suppression.

19. TERMS AND CONDITIONS OF PAYMENT

a. Tarrant County agrees to pay Subrecipient for reimbursable costs under the Grant only to the extent that Grant funds are available. Tarrant County will pay in accordance with the approved budget for each funded category listed in **Attachment 1**.

b. Tarrant County approves and pays reimbursement requests within thirty (30) days of receipt of a complete request. Errors in the reimbursement request, including insufficient documentation, may result in payment delays. It is the responsibility of the Subrecipient to submit a complete and accurate reimbursement request. Payment is considered made on the date postmarked.

c. Subrecipient will submit complete monthly reimbursement requests through Provide Enterprise within 22 days following the end of each month. If the 22nd falls on a weekend or holiday, the deadline for the reimbursement request is extended to no later than 5:00 pm Central Time the first weekday immediately following the weekend or holiday. A final close-out bill may be submitted no later than thirty (30) days following the end of the contract term. Reimbursement requests should be submitted in Provide, and signature pages submitted to the Administrative Agency. To be considered a complete request, the following must be included:

- Cover page signed by the Subrecipient's authorized signatory
- Provide Enterprise reimbursement requests
- Provide Enterprise activity report with monthly service utilization data

The reimbursement request must contain supporting documentation including service utilization reports. The following may be requested to substantiate a reimbursement request:

- General Ledger (monthly, generated from Subrecipient's accounting system); or other supporting documentation acceptable to the Subrecipient
- Timesheets or Payroll Report (monthly, generated from Subrecipient's payroll system)
- Cost-Based Reimbursement Monthly Expense Report
- Activity Reports

Reimbursement requests will be reviewed to assure compliance with approved budget, federal cost principles, and contract goals.

d. Subrecipient assures that if it purchases or reimburses for outpatient drugs, the Subrecipient's drug acquisition practices meet Federal requirements regarding cost-effectiveness and reasonableness, including 42 CFR Sections 50.501-50.504, 45 CFR Part 75.420-475, and other federal law to the extent applicable. If Subrecipient is a drug reimbursement agency or a medical provider that dispenses medication, Subrecipient assures that drug costs are based on

the average wholesale price ("AWP") or, when available, the Public Health Services price, whichever is less expensive. Failure to participate, or failure to plan to participate in 340B pricing within 120 days of funding will eliminate organizations from eligibility to be awarded funding in the LPAP service category.

If a Subrecipient receives 340b revenue, this is considered program income and must be spent on allowable items within the grant period. Subrecipients must create a 340b budget.

e. Subrecipient shall enter client eligibility data into Provide Enterprise within twenty-four (24) hours of conducting eligibility and enter service delivery data into Provide Enterprise within five (5) business days of providing the service.

f. Subrecipient agrees that administrative costs will not exceed the amount listed on the Scope of Work, described in **Attachment 1**.

g. For the purposes of the contract, Subrecipient may not use funds to make payments to intended recipients of service; to purchase a building or facility; or to improve a building or other facility.

h. Subrecipient understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of any county, state, or federal entity providing the funds to conduct an audit or investigation in connection with those funds. Entities with the authority to conduct an audit or investigation include, but are not limited to, the Tarrant County Auditor's Office (TCAO), the Texas State Auditor's Office (SAO), or any successor agency to these entities. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the TCAO or SAO must provide the TCAO or SAO with access to any information the TCAO or SAO considers relevant to the investigation or audit. Subrecipient agrees to cooperate fully with the TCAO, SAO, or its successor in the conduct of the audit or investigation, including providing all records requested. Subrecipient will ensure that this clause concerning the authority to audit funds received indirectly by Subrecipient through Subrecipient and the requirement to cooperate is included in any Subcontract it awards.

i. Independent Single or Program-Specific Audit. If Subrecipient within Subrecipient's fiscal year, expends a total amount of at least **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000)** in federal funds awarded, Subrecipient shall have a single audit or program-specific audit in accordance with the 2 CFR 200. The \$750,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Subrecipient, within Subrecipient's fiscal year, expends a total amount of at least \$750,000 in state funds awarded, Subrecipient must have a single audit or program-specific audit in accordance with the Uniform Grant Management Standards (UGMS), State of Texas Single Audit Circular. For-profit Subrecipient whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Subrecipient to complete the Single Audit Status Registration Form. If Subrecipient fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Subrecipient shall be subject to Tarrant County 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. Subrecipient shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

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j. Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Subrecipient shall submit copies to the following:

- (i) Tarrant County
Auditor's Office
100 E. Weatherford – RM 506A
Fort Worth, Texas 76196-0103
- (ii) Tarrant County Administrative Agency
Grants Manager at lmuttiah@tarrantcounty.com
- (iii) Federal Audit Clearinghouse at
<https://harvester.census.gov/facweb/faqs.aspx>

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

20. MINORITY AIDS INITIATIVE (MAI) AND EARLY INTERVENTION SERVICES (EIS)

MAI funds are to be used to provide core medical and related support services to improve access to care, reduce racial and ethnic disparities, and improve health outcomes. The services must be consistent with the epidemiologic data, needs of that community, and be culturally appropriate. This requires the use of population-tailored, innovative approaches or interventions that differ from usual service methodologies and that specifically address the unique needs of targeted sub-groups.

EIS funds must provide client centered services from time of diagnosis through linkage to care, retention in care, and viral load suppression. The following four (4) components must be addressed with EIS funding to remain eligible for this service category: targeted HIV testing; referral services; access and linkage to HIV care and treatment; and outreach and health education/risk reduction services. Targeted HIV testing must be coordinated with HIV prevention and other testing programs within the community.

21. MINORITY AIDS INITIATIVE (MAI) AND EARLY INTERVENTION SERVICES (EIS) SCOPE OF WORK

Subrecipient will implement a comprehensive Minority AIDS Initiative (MAI) program which includes targeted testing utilizing Social Networking Strategies; patient navigation and medical case management for Black and Hispanic populations. Outreach will be provided to clients lost to care which includes linkages into care within three business days.

A community advisory board will be implemented to assist with program design and implementation, materials review and quality improvement. Subrecipient will implement an Early Intervention Services peer navigation program to work with clients from diagnosis through viral load suppression. Focus will be on linkage to care and health education/risk reduction. Client services will include: HIV literacy education; education about the care system; referral to points of entry and support during the intake process; linking clients to a HIV medical provider; coaching/mentoring and supporting clients to overcome barriers; treatment adherence counseling; follow up to help clients keep appointments; provide risk reduction education, and coordinate with medical providers to support engagement and retention in care to include viral load suppression.

22. TERMINATION

a. Unless otherwise provided for, this Contract may be terminated by either of the parties by providing written notice to the other party at least thirty (30) days prior to the intended date of termination. Termination under these circumstances does not nullify a reimbursable cost incurred for performance prior to the date of termination.

b. This Contract may be terminated by the County in the event that federal or state laws or other requirements should be amended or judicially interpreted so as to render continued fulfillment of this Contract, on the part of either party, impossible. If the parties cannot amend the Contract to continue the services required by this Contract, then, upon written notification by the County to Subrecipient, the parties will be discharged from any further obligations created under the terms of this Contract, except for the equitable settlement of the accrued costs prior to the date of termination.

23. PERSONNEL

a. All personnel funded by this Contract must be employees of Subrecipient, which is solely responsible for the employees' direction and control. Subrecipient's staff will possess education, credentials and work experience specified within the job description, and will meet the minimum standards set forth by the local Standards of Care. Any personnel who have direct contact with clients will undergo criminal background checks prior to such direct contact. Subrecipient shall not permit any person who engaged in 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. Employee positions that become vacant and that remain vacant for ninety (90) days will result in a return of funds.

b. Each personnel file will contain the following:

- (i) A copy of the employee's completed criminal background check.
- (ii) A copy of the employee's driver's license or official state ID card.
- (iii) A signed copy of the employee's job description.
- (iv) Relevant signed confidentiality forms.
- (v) A copy of appropriate licensure (if applicable).
- (vi) Documentation of annual HIV training updates.
- (vii) Form I-9 Employment Eligibility Verification.

24. INDEPENDENT SUBRECIPIENT

Subrecipient is an independent Subrecipient under the terms of this Contract and is not an officer, agent, servant or employee of the County.

25. ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, will be strictly reserved to the parties, and nothing contained in this Contract will give or allow any claim or right of action whatsoever by any other person not a party to this Contract. This Contract shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Contract will be the Fort Worth Division of the Northern District of Texas if the lawsuit arises in Federal Court; or Tarrant County, Texas if the matter arises in State Court.

26. CONTRACT COMPLIANCE

County may withhold funds or terminate this Contract upon thirty (30) calendar days written notice to the Subrecipient for non-compliance with Contract terms. Non-compliance occurs when a discrepancy is found between the actual delivery of services and what the Contract requires, including the Contract's administrative requirements.

27. GRIEVANCE

Subrecipient agrees to maintain a client grievance procedure that delineates procedures for clients to seek redress for grievances with Subrecipient. The grievance procedure will be prominently displayed on Subrecipient's premises and will state that partial funding for the Subrecipient comes from Grants administered by Tarrant County, Texas. Subrecipient will inform clients that grievances may be presented to Tarrant County after all remedies with Subrecipient have been exhausted.

28. 1295 COMPLIANCE

Subrecipient acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295 and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as **Attachment 7**, with the Texas Ethics Commission as required by law. The electronic 1295 form can be accessed at the following: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

29. PROHIBITION ON BOYCOTT OF ISRAEL

Subrecipient verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017.

30. MISCELLANEOUS PROVISIONS

a. Force Majeure

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

b. No Waiver of Sovereign Immunity

Nothing in the Contract will be construed as a waiver of sovereign immunity by the County.

c. Entire Contract and Modification

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any

additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the County.

d. Proper Authority

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Subrecipient before this Contract is effective or after it ceases to be effective are performed at the sole risk of Subrecipient with respect to compensation.

31. CONTRACT ATTACHMENTS

- a. Attachment 1: **A1-2020008**
- b. Attachment 2: HHSC Uniform Terms and Conditions
- c. Attachment 3: Debarment and Suspension Certification
- d. Attachment 4: Business Associate Agreement
- e. Attachment 5: Pilot Program for Enhancement of Employee Whistleblower Protection
- f. Attachment 6: Federal Award Identification Checklist
- g. Attachment 7: 1295 Compliance Form

32. NOTICES

All written notices required under this Contract, including proposed amendments, will be addressed and sent to:

COUNTY:

Tarrant County

Address: Tarrant County Administrative Agency
2300 Circle Drive, Suite 2306
Fort Worth, TX 76119
Attn: Grants Manager

SUBRECIPIENT:

AIDS OUTREACH CENTER
400 N. Beach St., Suite 100
Fort Worth, TX 76111
Attn: Larry Ellis

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth below.

SIGNED AND EXECUTED this _____ day of _____, 2020.

AIDS OUTREACH CENTER
400 N. Beach St., Suite 100
Fort Worth, TX 76111
Attn: Mellisand LeRoy

By:  _____

Title: Associate Executive Director


Date: 3/06/20

COUNTY OF TARRANT

STATE OF TEXAS

B. Glen Whitley
County Judge

APPROVED AS TO FORM:



Criminal District Attorney's Office*

CERTIFICATION OF
AVAILABLE FUNDS: \$418,662.00

Tarrant County Auditor

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

**ATTACHMENT 1, A1-2020008
SCOPE OF WORK**

1. Performance Measures

PART A FY20-21 (03/01/2020 – 02/28/2021)

Service Categories	\$ Amount	# Clients	# Units
Early Intervention Services	\$53,536.00	55	1,409
Health Insurance Premium & Cost Sharing Assistance	\$165,348.00	115	1,425
Medical Case Management	\$30,872.00	71	571
Medical Nutrition Therapy	\$9,952.00	32	221
Oral Health Care	\$67,136.00	75	306
Psychosocial Support Services	\$7,898.00	46	877
Referral for Health Care & Support Services	\$10,768.00	44	207

PART A FY20-21 MINORITY AIDS INITIATIVE (03/01/2020 – 02/28/2021)

Service Categories	\$ Amount	# Clients	# Units
MAI Early Intervention Services (Black)	\$27,582.00	75	75
MAI Early Intervention Services (Hispanic)	\$12,392.00	44	44
MAI Medical Case Management (Black)	\$14,990.00	20	277
MAI Referral for Health Care & Support Services (Black)	\$12,550.00	20	241
MAI Referral for Health Care & Support Services (Hispanic)	\$5,638.00	9	108

AIDS Outreach Center will provide services listed above that meet or exceed the performance goals found at <http://hab.hrsa.gov/deliverhivaidscares/habperformmeasures.html>, including the number of clients to be served and units of service to be performed for each service category.

2. Special Provisions

Funding under the Contract for the following budgetary items is contingent upon County receiving the funds through the Health Resources and Services Administration (HRSA) Grant.

PART A FY20-21 (03/01/2020 – 02/28/2021)

Personnel	\$113,252.65
Fringe	\$24,012.00
Travel	\$72.00
Equipment	\$0.00
Supplies	\$6,889.00
Contractual	\$48,782.00
Other	\$152,502.35
Subtotal Part A FY20-21 Budget	\$345,510.00

Remainder of page intentionally left blank

PART A FY20-21 MINORITY AIDS INITIATIVE (03/01/2020 – 02/28/2021)

Personnel	\$39,346.98
Fringe	\$8,931.00
Travel	\$228.00
Equipment	\$0.00
Supplies	\$198.00
Contractual	\$1,387.00
Other	\$23,061.02
Subtotal Part A FY20-21 MAI Budget	\$73,152.00
 TOTAL Part A FY20-21 BUDGET	 \$418,662.00

Total reimbursements will not exceed \$418,662.00, of which \$41,866.20 may be used for administrative costs.

3. Conditions of Award

- a. In accordance with the RWHAP client eligibility determination and recertification requirements (Policy 13-02), HRSA expects clients' eligibility be assessed during the initial eligibility determination, at least every six months, and at least once a year (whether defined as a 12-month period or calendar year) to ensure that the program only serves eligible clients, and that the RWHAP is the payer of last resort.
- b. The following goals are applicable to this Contract for medical providers:

Description	Standard
Viral Load Suppression	90%
Retention in Care	90%
Rapid Start Protocol	Progress towards same-day medication initiation

- c. EO 13166, August 11, 2000, requires recipients receiving Federal financial assistance to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html>.
- d. This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to: <https://www.hrsa.gov/sites/default/files/hrsa/grants/manage/traffickinginpersons.pdf>. If you are unable to access this link, please contact the Administrative Agency to obtain a copy.
- e. This award is subject to the requirements of Section 11 of the DSHS Monitoring Policy 530.001, Reporting Suspected Abuse and Neglect of Children. For the full text, go to: <https://www.dshs.texas.gov/hivstd/policy/policies/530-001.shtm?terms=child%20abuse%20reporting>. If you are unable to access this link, please contact the Administrative Agency to obtain a copy.

- f. To serve persons most in need and to comply with Federal law, services must be widely accessible. Services must not discriminate on the basis of age, disability, sex, race, color, national origin or religion. The HHS Office for Civil Rights provides guidance to grant and cooperative agreement recipients on complying with civil rights laws that prohibit discrimination on these bases. Please see <http://www.hhs.gov/civilrights/forindividuals/index.html>.
- g. Subrecipient will maintain referral relationships to facilitate individuals' access to HIV-related health services. These referral relationships include public health departments, emergency rooms, substance abuse and mental health treatment programs, detoxification centers, detention facilities, clinics regarding sexually transmitted diseases, homeless shelters, HIV/AIDS counseling and testing sites, health care points of entry specified by eligible areas, federally qualified health centers, immunization centers, Tuberculosis treatment facilities, and other entities constituting points of access to services described in Section 2652(a) of the Ryan White HIV/AIDS Treatment Modernization Act of 2006.
- h. The County will review Subrecipient's performance of this Contract. Subrecipient's compliance with the obligations and duties imposed by this Contract will be a factor in any future allocation of Ryan White Grant funds during this Contract Term.
- i. Subrecipient will submit an end-of-year program report within sixty (60) days following the close of the contract year, April 29, 2021.

4. Counties to be Served

Erath, Hood, Johnson, Palo Pinto, Parker, Somervell, Tarrant and Wise.



TEXAS

Health and Human Services

Health and Human Services (HHS)

Uniform Terms and Conditions - Vendor

Version 3.0

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

“Attachment” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference and made a part of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, or Work Orders that may be issued by the System Agency, to be incorporated by reference for all purposes.

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

“Deliverable” means a Work Product(s), including all reports and project documentation, prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code, or its designee.

“Health and Human Services” or “HHS” includes the Department of State Health Services (DSHS), in addition to the Health and Human Services Commission.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;

- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“[Parties](#)” means the System Agency and Contractor, collectively.

“[Party](#)” means either the System Agency or Contractor, individually.

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract and as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document issued by the System Agency (including any published addenda, exhibits, and Attachments) under which the goods or Services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

“[Solicitation Response](#)” means Contractor’s full and complete response (including any Attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under state law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a Subcontractor.

“Work” means all Services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Contractor in connection with Contractor’s performance of its duties under the Contract or through use of any funding provided under this Contract.

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas *Travel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

2.3 NO QUANTITY GUARANTEES

The System Agency makes no guarantee of volume or usage of work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

2.4 TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. System Agency shall not be liable for any taxes resulting from the contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Contractor for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

3.2 NO DEBT AGAINST THE STATE

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBT AND DELINQUENCIES

Contractor agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

3.4 REFUNDS AND OVERPAYMENTS

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
 - ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
 - ii. that are not allowed under applicable laws, rules, or regulations; or,
 - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

Contractor warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Contractor received from System Agency for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and,
- iii. Take necessary action to ensure that Contractor's future performance and Work conform to the Contract requirements.

4.2 GENERAL AFFIRMATIONS

Contractor certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the Contractor has reviewed the General Affirmations and that Contractor is in compliance with all requirements.

4.3 FEDERAL ASSURANCES

Contractor certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal assurances and that Contractor is in compliance with all requirements.

4.4 FEDERAL CERTIFICATIONS

Contractor certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal certifications and that Contractor is in compliance with all requirements. In addition, Contractor certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

5.2 CONTRACTOR'S PRE-EXISTING WORKS

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective

Date of this Contract (“**Incorporated Pre-existing Works**”), Contractor retains ownership of such Incorporated Pre-existing Works.

- B. Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency’s internal business purposes only,
 - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
 - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency’s advance written approval prior to incorporating any Third Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor’s compliance with this **Section 5.3**, including without limitation documentation indicating a third party’s written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Contractor shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Contractor’s compliance with Contractor’s obligations under this **Article V**.

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency’s request, Contractor shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Contractor’s failure to timely deliver such Work Product is a material breach of the Contract. Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor’s activities under the Contract without the prior written consent of System Agency.

5.6 SURVIVAL

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

5.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Contractor by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Contractor shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Contractor's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Contractor's performance of its obligations hereunder.

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such Services.
- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
 - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 DAMAGE TO GOVERNMENT PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Contractor shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Contractor's receipt of System Agency's notice of amount due.

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

If the Contract is for indefinite quantities of Services, as specified in the Signature Document, all Work will be performed in accordance with properly executed Work Orders.

7.2 PROPOSALS

For Work Order contracts, the Contractor shall submit to System Agency separate proposals, including pricing and a project plan, for each Project.

7.3 RESPONSIBILITY

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and any other information or special conditions as may be necessary for the Work assigned.

7.4 TERMINATION

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

- A. Contractor shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives

sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

- B. Contractor shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Contractor for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

8.2 AGENCY'S RIGHT TO AUDIT

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. 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 System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. 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.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.

- B. As part of the Services, Contractor must provide to System Agency upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

8.4 STATE AUDITOR'S RIGHT TO AUDIT

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Contractor shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

8.5 CONFIDENTIALITY

Contractor shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Contractor under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Contractor.

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of

the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

9.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

i. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the System for Award Management (SAM) will also constitute a material breach of the Contract.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Contract for cause, the Contractor shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

- A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES**

RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.

- C. For the avoidance of doubt, System Agency shall not indemnify Contractor or any other entity under the Contract.**

10.2 INTELLECTUAL PROPERTY

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

10.3 ADDITIONAL INDEMNITY PROVISIONS

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

11.3 LIMITATION ON AUTHORITY

- A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.
- B. Contractor shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Contractor may not rely upon implied authority and is not granted authority under the Contract to:
 - i. Make public policy on behalf of the System Agency;
 - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
 - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

11.4 LEGAL OBLIGATIONS

Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use

of information and communication technology. Contractor shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.6 E-VERIFY PROGRAM

Contractor certifies that for Contracts for Services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Contractor to perform Work pursuant to the Contract within the United States of America.

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

11.8 SUBCONTRACTORS

Contractor may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor Subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

11.9 INDEPENDENT CONTRACTOR

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee

benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

11.10 GOVERNING LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

11.11 SEVERABILITY

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

11.12 SURVIVABILITY

Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

11.13 FORCE MAJEURE

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.14 DISPUTE RESOLUTION

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas

Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

11.15 NO IMPLIED WAIVER OF PROVISIONS

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

11.16 MEDIA RELEASES

- A. Contractor shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

11.17 NO MARKETING ACTIVITIES

Contractor is prohibited from using the Work for any Contractor or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Contractor shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

11.19 SOVEREIGN IMMUNITY

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

11.20 ENTIRE CONTRACT AND MODIFICATION

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

11.21 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

11.22 CIVIL RIGHTS

- A. Contractor shall comply with all applicable state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Contractor shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor shall take reasonable steps to provide services

and information, both orally and in writing and electronically, 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 post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at:

<http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- D. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring contractor to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the contractor can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- E. Contractor shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Contractor shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor shall provide the HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:
HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885.

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Contractor shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.24 DISCLOSURE OF LITIGATION

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any

development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.25 NO THIRD-PARTY BENEFICIARIES

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

11.26 BINDING EFFECT

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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**Debarment/suspension certification indicating that you are in compliance
with the below Federal Executive Order.**

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all subrecipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name: Mellisand LeRoy

Company: AIDS Outreach Center

Street Address: 400 N. Beach St., Suite 100

City, State, Zip: Fort Worth, TX 76111

Phone: (817) 916-5215

Fax: (817) 916-4611

Email: mell@aoc.org

Signature: 

Date: 3/10/20

STATE OF TEXAS §

§

BUSINESS ASSOCIATE AGREEMENT

COUNTY OF TARRANT §

This Business Associate Agreement (“BA Agreement”) is between Tarrant County, Texas, (“COUNTY”), and **AIDS Outreach Center** (“Business Associate”), for the purpose of complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”), and the Standards for Security of Electronic Protected Health Information (the “Security Rule”) promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5) (the “HITECH Act”), and the regulations implementing the HITECH Act and other applicable law with regard to the provision of services to Tarrant County.

Business Associate and COUNTY are engaged in a business relationship whereby Business Associate provides certain services to COUNTY (“Business Relationship”).

As part of this Business Relationship, Business Associate performs or assists in performing a function or activity on behalf of COUNTY that involves the use and/or disclosure of Protected Health Information (as defined in 45 CFR § 164.501).

1. Definitions

“Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this agreement shall mean the COUNTY.

“Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean **AIDS Outreach Center**.

Terms used but not otherwise defined in the BA Agreement shall have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule.

2. Purpose

Business Associate has a legal and ethical responsibility to safeguard the privacy of individuals and protect the confidentiality of their health information. Business Associate may hear things that relate to Protected Health Information, or read or see computer or paper files containing confidential or Protected Health Information, even though Business Associate may not be directly involved in providing services. Business Associate may create documents containing Protected Health Information if directed to do so by COUNTY. Because Business Associate may have contact with Protected Health Information, COUNTY requests that Business Associate agrees to the following as a condition of Business Associate’s assignment.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in the Business Relationship or this BA Agreement, Business Associate may:

- 3.1 use and/or disclose Protected Health Information to perform functions, activities, or services for or on behalf of COUNTY, provided that such use and/or disclosure,
 - (a) would not violate the Privacy Rule if done by COUNTY;
 - (b) is reasonably limited to the minimum necessary information to accomplish the intended purpose of the use or disclosure;
 - (c) is in compliance with each applicable requirement of 45 CFR § 164.504(e);
 - (d) is in compliance with the HITECH Act and its implementing regulations;
- 3.2 use or disclose Protected Health Information as required by law;
- 3.3 use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- 3.4 use Protected Health Information to provide Data Aggregation services relating to the health care operations of COUNTY.

All other uses and/or disclosures not authorized by the Business Relationship or this BA Agreement are prohibited.

- 3.5 Business Associate agrees to use and disclose confidential information only in the following manner:

Hosting a care management system and providing technical assistance to Tarrant County and its subrecipients for HIV/AIDS services.

4. Responsibilities of Business Associate

With regard to the use and/or disclosure of Protected Health Information, Business Associate agrees:

- 4.1 not to use and/or disclose Protected Health Information other than as permitted or required by the Business Relationship or this BA Agreement or as Required by Law;
- 4.2 to use appropriate safeguards to prevent the use and/or disclosure of Protected Health Information other than as provided for by the Business Relationship or this BA Agreement;
- 4.3 to protect any Protected Health Information taken off-site from COUNTY from disclosure to others, and to return all Protected Health Information in any form to COUNTY or destroy such Protected Health Information in a manner that renders it unreadable and unusable by anyone else, if COUNTY agrees to the destruction;

- 4.4** to comply with the Security Rule provisions set forth in 45 CFR Part 164, Subpart C, including provisions relating to Security Standards General Rules (45 CFR § 164.306), Administrative Safeguards (45 CFR § 164.308), Physical Safeguards (45 CFR § 164.310), Technical Safeguards (45 CFR § 164.312), Organizational Requirements (45 CFR § 164.314) and Policies and Documentation (45 CFR § 164.316), and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information Business Associate creates, receives, maintains, or transmits on behalf of COUNTY.
- 4.5** to report to COUNTY any Security Incident of which it becomes aware within 2 business days, and to report any potential Breach of Unsecured Protected Health Information within 2 business days of discovery. Any such report shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during any such Security Incident or potential Breach. Any such report shall also include all other information known to Business Associate at the time of the report (such as the type of Protected Health Information involved in the event, the nature of the information, etc.) or promptly thereafter as such other information becomes available;
- 4.6** to notify COUNTY in writing within 2 business days of any use and/or disclosure of Protected Health Information that is not provided for by the Business Relationship or this BA Agreement;
- 4.7** to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement, or as the result of any Security Incident or potential Breach, using mitigation actions that are disclosed to COUNTY in advance and authorized by COUNTY, all at the sole cost and expense of Business Associate;
- 4.8** to work cooperatively with COUNTY in connection with COUNTY's investigation of any potential Breach and in connection with any notices COUNTY determines are required as a result, and to refrain from giving any notice itself unless COUNTY expressly agrees in advance and in writing to Business Associate giving notice and to the form, content and method of delivery of such notice, all at the sole cost and expense of Business Associate;
- 4.9** to ensure that all agents and/or subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information;
- 4.10** to provide access (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set to COUNTY or, as directed by COUNTY, to an Individual in order to meet the

requirements under 45 CFR § 164.524 and to notify COUNTY of any requests for access it receives from an individual within 2 business days of receipt;

- 4.11** to make any amendment(s) (at the request of, and in the time and manner designated by COUNTY) to Protected Health Information in a Designated Record Set that COUNTY directs pursuant to 45 CFR § 164.526 and to notify COUNTY of any amendment requests it receives from an individual within 2 business days of receipt;
- 4.12** to document such disclosures of Protected Health Information and information related to such disclosures as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528;
- 4.13** to provide to COUNTY, in a time and manner designated by COUNTY, information collected in accordance with 4.12 of this BA Agreement, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 (and HITECH Act § 13405(c) when such requirements are effective as to COUNTY;
- 4.14** to the extent Business Associate is to carry out an obligation of COUNTY under the Privacy Rule provisions set forth at 45 CFR Part 164, Subpart E (any such obligation to be carried out only when so directed by COUNTY pursuant to the Business Relationship or this BA Agreement), to comply with the requirements of the Privacy Rule that apply to COUNTY in the performance of such obligation;
- 4.15** to make its internal practices, books, and records relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of COUNTY available to COUNTY;
- 4.16** to cooperate with any investigation by the Secretary of Health and Human Services, or his agent, or an oversight agency, in a time and manner designated by COUNTY or the Secretary, for purposes of determining if COUNTY or Business Associate is in compliance with the Privacy Rule;
- 4.17** if Business Associate is aware of a pattern of activity or practice by COUNTY that constitutes a material breach or violation of COUNTY's obligations under this BA Agreement,
 - (a)** to give written notice of such pattern or practice to COUNTY within 2 business days of its discovery and to take reasonable steps to cure the breach or end the violation,
 - (b)** if Business Associate determines that such steps appear to have been unsuccessful, to give COUNTY written notice of such determination and to report the problem to the Secretary and provide COUNTY with a copy of any such report at least 2 business days in advance of its submission to the Secretary.

5. Responsibilities of COUNTY with Respect to Protected Health Information

If deemed applicable by COUNTY, COUNTY shall:

- 5.1 provide Business Associate with the notice of privacy practices that COUNTY produces in accordance with 45 CFR §164.520 as well as any changes to such notice;
- 5.2 provide Business Associate with any changes in, or revocation of, permission by Individual to the use and/or disclosure of Protected Health Information, if such changes affect Business Associate's permitted or required uses and/or disclosures;
- 5.3 notify Business Associate of any restriction to the use and/or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR § 164.522.

6. Sanctions

Business Associate understands that violation of this agreement may result in sanctions, including, but not limited to, termination of the ability to perform services on behalf of COUNTY.

7. Disclosures Required by Law

Nothing in this agreement prevents Business Associate from making a disclosure of Protected Health Information, if required by law to make such a disclosure.

8. Term and Termination

8.1 Term. This agreement will begin on **March 1, 2020** and will terminate when all of the Protected Health Information provided by COUNTY to Business Associate or created or received by Business Associate on behalf of COUNTY is destroyed or returned to COUNTY, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information, in accordance with 8.3 below, or at termination of the Business Relationship between COUNTY and Business Associate.

8.2 Termination for Cause. COUNTY may immediately terminate the Business Relationship and/or this BA Agreement if COUNTY determines that Business Associate has breached a material term of this BA Agreement.

8.3 Effect of Termination. Upon termination of the Business Relationship and/or this BA Agreement, for any reason, Business Associate agrees to return or destroy all Protected Health Information received from COUNTY, or created or received by Business Associate on behalf of COUNTY. If permitted by COUNTY, Protected Health Information shall be destroyed in a manner that renders it unreadable and unusable by anyone else. Discharge or termination, whether voluntary or not, shall not affect Business Associate's ongoing obligation to safeguard the confidentiality of Protected Health Information and to return or destroy any such information in Business Associate's possession.

This Section 8.3 shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide in writing to COUNTY notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information for as long as Business Associate maintains such Protected Health Information.

9. Miscellaneous

9.1 INDEMNIFICATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE UNDERLYING AGREEMENT(S), AT BUSINESS ASSOCIATE'S EXPENSE, BUSINESS ASSOCIATE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COVERED ENTITY AND COVERED ENTITY'S EMPLOYEES (THE "INDEMNITEES") AGAINST ALL DAMAGES, FINES, PENALTIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES OF ATTORNEYS AND EXPERTS) AND ALL LIABILITY TO THIRD PARTIES ARISING FROM ANY MATERIAL BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF BUSINESS ASSOCIATE'S WORKFORCE. BUSINESS ASSOCIATE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

COUNTY MAY EMPLOY ATTORNEYS SELECTED BY IT TO DEFEND ANY SUCH ACTION, THE COSTS AND EXPENSES OF WHICH WILL REMAIN THE RESPONSIBILITY OF BUSINESS ASSOCIATE. COUNTY WILL PROVIDE BUSINESS ASSOCIATE WITH TIMELY NOTICE OF THE EXISTENCE OF SUCH PROCEEDINGS AND SUCH INFORMATION, DOCUMENTS AND OTHER COOPERATION AS REASONABLY NECESSARY TO ASSIST BUSINESS ASSOCIATE IN ESTABLISHING A DEFENSE TO SUCH ACTION.

THESE INDEMNITIES SURVIVE TERMINATION OF THIS BA AGREEMENT, AND COUNTY RESERVES THE RIGHT, AT ITS OPTION AND EXPENSE, TO PARTICIPATE IN THE DEFENSE OF ANY SUIT OR PROCEEDING THROUGH COUNSEL OF ITS OWN CHOOSING.

9.2 Survival. The respective rights and obligations of Business Associate survive the termination of the Business Relationship and/or this BA Agreement.

9.3 Notices. Any notices pertaining to this BA Agreement must be given in writing and will be deemed duly given when personally delivered to a Party or a Party's authorized representative, as listed below, or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid.

A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Business Associate:

AIDS Outreach Center
400 North Beach Street, Suite 100
Fort Worth, TX 76111
Attn: Mellisand LeRoy

If to Covered Entity:

Tarrant County
2300 Circle Drive, Suite 2306
Fort Worth, TX 76119
Attn: Grants Manager

9.4 Amendments. This BA Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow COUNTY to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and its implementing regulations.

9.5 Interpretation. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits COUNTY to comply with the Privacy Rule.

9.6 Third Parties. Nothing in this BA Agreement is intended, not shall be deemed, to confer any benefits on any third party.

9.7 Assignments. Neither Party may assign its rights or obligations under this BA Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.

9.8 Independent Contractor. This BA Agreement does not create any relationship between the Parties other than that of independent parties contracting with each other for the sole purpose of effecting the provisions of this BA Agreement and any other agreements between them evidencing their Business Relationship.

9.9 Governing Law and Venue. This BA Agreement will be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this BA Agreement will be the Fort Worth Division of the Northern District of Texas, if the lawsuit arises in Federal Court, or Tarrant County, Texas, if the matter arises in State Court.

9.10 Third Party Interpretation. This agreement shall not be interpreted to inure to the benefit of a third party not a party to this contract. This agreement may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, responsibility, or damage to any Party to this contract, Party's agent, or Party's employee, otherwise provided by law.

9.11 Form 1295 Compliance. The **AIDS Outreach Center** acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295, and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

9.12 Required Attachments. This BA Agreement will be considered incomplete without the submission of the completed Form 1295 as referenced in section 9.11.

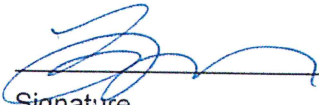
COUNTY shall be responsible to include Form 1295, attached as Exhibit A, to this BA Agreement prior to Business Associate review and execution. For the purposes of this BA Agreement, the following statement applies in regard to Form 1295:

- ☒ Exhibit A is a required component of this BA Agreement. Form 1295 is attached and must be completed prior to approval of this BA Agreement by COUNTY.
- ☐ The Parties involved in this BA Agreement are governmental entities and are not required by the Texas Ethics Commission to complete their Form 1295.

Approved on this _____ day of _____, 2020, by Commissioners Court Order
No. _____.

SIGNED AND EXECUTED this _____ day of _____, 2020.

BUSINESS ASSOCIATE



Signature

Mellisand LeRoy
Printed Name

Associate Executive Director
Title

3/06/20
Date

**COUNTY OF TARRANT
STATE of TEXAS**

B. Glen Whitley
County Judge

APPROVED AS TO FORM:



Criminal District Attorney's Office*

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services
Administration

Office of Federal Assistance Management

Rockville, MD 20857

DEC 23 2013

TO: HRSA Grantees

FROM: Chief Grants Management Officer, HRSA
Associate Administrator, OFAM

SUBJECT: Pilot Program for Enhancement of Employee Whistleblower Protection

Congress has enacted many whistleblower protection statutes to encourage employees to report fraud, waste, and abuse. You should be aware that the latest whistleblower protection statutes went into effect on July 1, 2013. The statute, 41 U.S.C. § 4712, applies to all employees working for contractors, grantees, subcontractors, and subgrantees on federal grants and contracts. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) mandates a pilot program entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections." This program requires all grantees, their subgrantees, and subcontractors to:

1. Inform their employees working on any federal award they are subject to the whistleblower rights and remedies of the pilot program;
2. Inform their employees in writing of employee whistleblower protections under 41 U.S.C. § 4712 in the predominant native language of the workforce; and,
3. Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

The statute (41 U.S.C. § 4712) states that an "employee of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;

- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress, or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

The requirement to comply with, and inform all employees of, the "Pilot Program for Enhancement of Contract Employee Whistleblower Protections" is in effect for all grants, contracts, subgrants, and subcontracts issued beginning July 1, 2013 through January 1, 2017.



Michael J. Nelson

Federal Award Identification Checklist
(Grants Awarded After 12/26/2014)

	Part A	Part B	Part C	Part D	State Services	HOPWA
1. Subrecipient Name	AIDS Outreach Center (AOC)	AIDS Outreach Center (AOC)	AIDS Outreach Center (AOC)	AIDS Outreach Center (AOC)	AIDS Outreach Center (AOC)	AIDS Outreach Center (AOC)
2. Subrecipient DUNS Number	781414842	781414842	781414842	781414842	781414842	781414842
3. Federal Award Identification Number (FAIN)	2 H89HA00047-25-00	Contract # 537-17-0161-00001	5 H76HA00123-28-00	H12HA24819-08-00	Contract # 537-18-0013-00001 (State Funds)	Contract # 537-16-0511-00001
4. Federal Award Date	Original Award: January 2020	Original Award: January 2019 (Subject to #2 CFR 200)	Original Award: November 29, 2017 Award amendment: 6/19/15 (Subject to #2 CFR 200)	July 2015	July 2015	February 2019
5. Subaward Period of Performance Start and End Date	March 1, 2020 - February 28, 2021	April 1, 2019 - March 31, 2020	January 1, 2020 - December 31, 2020	August 1, 2019 - July 31, 2020	September 1, 2019 - August 31, 2020	February 1, 2019 - August 31, 2020
6. Amount of Federal Funds Obligated by This Action	\$418,662	(\$15,000)	\$25,000	\$71,450	N/A (State Funds)	\$29,000
7. Total Amount of Federal Funds Obligated to the Subrecipient	\$418,662	\$477,220	\$25,000	\$71,450	N/A (State Funds)	\$198,000
8. Total Amount of the Federal Award	\$979,447	\$1,758,694	\$201,301	\$512,635	N/A (State Funds)	\$385,853
9. Federal Award Project Description, as required by FFATA	HIV Emergency Relief Project Grants	Pass-through Grant from HRSA through DSHS for HIV & AIDS Services	Ryan White Part C Outpatient EIS Program	Ryan White Part D Women, Infants, Children, Youth and Affected Family Members	N/A (State Funds)	Provide short term emergency (STMRU), long term (TBRA), short term Supportive Housing (STSH) and Permanent Housing Placemenet (PHP) for housing assistance to clients that are HIV positive
10. Name of Federal Awarding Agency	Health Resources & Service Administration (HRSA)	Pass-through from HRSA to Texas Department of State Health Services (DSHS)	Health Resources & Service Administration (HRSA)	Health Resources & Service Administration (HRSA)	N/A (State Funds)	Pass-Through from Housing and Urban Development (HUD) to Texas Department of State Health Services (DSHS)
11. Pass-Through Entity	Tarrant County	Tarrant County	Tarrant County	Tarrant County	Tarrant County	Tarrant County
12. Contact Information for Awarding Official	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001	Tarrant County 100 E. Weatherford Street Fort Worth, TX 76196-0001
13. CFDA Number and Name	93.914 HIV Emergency Relief Project Grants	93.917 HIV Care Formula Grants	93.918 Grants to Provide Outpatient Early Intervention Services with Respect to HIV Disease	93.153 Ryan White Part D Provides HIV/AIDS Services to Women, Infants, Children, Youth and Affected Family Members	HIV/SRVS HIV/STD Prevention and Care Branch State Services	14.241 Housing Opportunities for Persons with AIDS
14. Identification if the Award is R&D	N/A	N/A	N/A	N/A	N/A	N/A
15. Indirect Cost Rate	N/A	N/A	N/A	N/A	N/A	N/A

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2020-580686

Date Filed:
01/24/2020

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

AIDS Outreach Center, Inc.
Fort Worth, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

AIDS Outreach Center, Inc.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

H89HA00047

Food Bank, Health Insurance Premium & Cost Sharing, Medical Case Management, Mental Health, Oral Health, Outreach, Psychosocial, and MAI Support Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is Stephanie Cage, and my date of birth is 2/3/1986.

My address is 400 N. Beach St. #100, Fat Worth, TX, 76111, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 24 day of January, 2020.
(month) (year)

Stephanie Cage

Signature of authorized agent of contracting business entity
(Declarant)