

## Department of Aging and Disability Services

### Standard Contract Terms and Conditions

*Revised September 1, 2015*

1. **Cooperation.** Contractor must interact with staff, other contractors or consultants of the Department of Aging and Disability Services (DADS) in a cooperative manner and will consult with such persons, as necessary for Contractor to perform all duties and responsibilities required under this contract.
2. **Compliance.** In addition to other statutory and regulatory requirements specifically identified in this contract, and state and federal anti-discrimination laws, the Contractor agrees to comply without limitation to the following:
  - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - b. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - c. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - d. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  - e. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - f. Food Stamp Act of 1977 (7 U.S.C. §200 *et seq.*); and
  - g. The HHS agency's administrative rules, as set forth in the Texas Administrative Code (TAC), to the extent applicable to this Agreement.
    - All amendments to the above-referenced 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 aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
    - 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 individuals in its programs, benefits, or activities on the basis of national origin. Applicable state and federal 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. The contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. The contractor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the

- United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- Upon request, the contractor will provide HHSC Civil Rights Office with copies of all of the contractor's civil rights policies and procedures. The contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office 701 W. 51st Street, Mail Code W-206 Austin, TX 78751 Toll Free Telephone: 888-388-6332 Telephone: 512-438-4313 TTY Toll Free: 877- 432-7232 Fax: 512-438-5885

- The Immigration Reform and Control Act of 1986 and Immigration Act of 1990 regarding employment verification and retention of verification forms for any individual(s) hired on or after Nov. 6, 1986, who will perform any labor or services under this contract.
  - All other applicable federal laws and regulations, as well as local and state laws and regulations now in effect or that become effective during the term of this contract.
  - ICF/IID Standards. Contractor must provide all program care services consistent with the standards set by the Centers for Medicare and Medicaid Services for intermediate care facilities for individuals with an intellectual disability or related condition.
  - Title 40, TAC, Part 1, Chapter 7, Subchapter B, relating to Contracts Management.
3. **Texas Products.** Contractor must buy Texas products and materials when they are available at a comparable price and in a comparable period of time.
  4. **Recycled, Remanufactured and Environmentally Sensitive Products.** Contractor is encouraged to use recycled, remanufactured, and environmentally sensitive products in the delivery of services provided for under this contract.
  5. **Substitutions.** No substitutions or cancellations permitted without written approval of DADS prior to substitution or cancellation.
  6. **Delivery Requirement.** Goods and services shall be provided during the hours specified by DADS.
  7. **Travel Reimbursement.** When the reimbursement of travel expenses is authorized by the contract, all such expenses shall be reimbursed in accordance with the rates set by the State of Texas Travel Regulations (Appropriations Act, Article IX).
  8. **Delays.** If delay is foreseen, the contractor shall give written notice to DADS. DADS has the right to extend the delivery date if reasons appear valid. The contractor must keep DADS advised at all times of status of delivery. Default in promised delivery, without DADS approval, or failure to meet other contract requirements, authorizes DADS to purchase goods and services elsewhere and charge full increase in costs, if any, to the defaulting contractor.

**9. Meetings.** Contractor must ensure that appropriate representatives attend meetings relevant to this contract, as required by DADS. The cost of attending the meetings shall be Contractor's sole responsibility.

**10. Data Use Agreement.** Unless one of the exceptions below applies, the Texas Health and Human Services (HHS) Data Use Agreement (the "DUA") is incorporated into this contract. Contractor can access the DUA at: [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/BO\\_home.shtml](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml). The DUA describes Contractor's rights and obligations with respect to Confidential Information and the limited purposes for which Contractor may create, receive, maintain, use, disclose or have access to Confidential Information.

**Exceptions to the HHS Data Use Agreement.**

The DUA is not required to be incorporated into this contract because:

- Contractor does not access Confidential Information;
- Contractor may access Confidential Information as member of DADS workforce, but is not construed to be an employee of DADS;
- Contractor is a licensed medical professional providing only clinical services; or
- Other: \_\_\_\_\_.

**11. Confidentiality.** This section applies if an HHS Data Use Agreement is not part of the Contract.

- (a). Contractor will not at any time, except as necessary to perform this contract or as authorized in writing by DADS, use or disclose any information that Contractor may acquire in performing this contract and that is made confidential by law. This includes any client information, protected health information, sensitive personal information defined by Texas Business and Commerce Code Ch. 521, federal tax information, personally identifiable information, Social Security Administration data, all privileged work product, and all information designated as confidential under the constitution and laws of the state of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552. ("Confidential Information"). DADS will have the right to audit and otherwise verify the security of Confidential Information in the possession of or being managed by Contractor.
- (b). Contractor will have a system in effect to protect all records, documents, or Confidential Information under the contract that is obtained or maintained in connection with the activities funded under the contract. Any disclosure or transfer of Confidential Information by Contractor, including information required by DADS, will be in accordance with the contract. If Contractor receives a request for Confidential Information under the contract, Contractor will immediately notify DADS of the request, and will make reasonable efforts to protect the information from public disclosure until further instructed by DADS.
- (c). Contractor will immediately report to DADS any and all unauthorized disclosures or uses of Confidential Information upon it or any of its subcontractors, consultants, or agents becoming aware or acquiring knowledge of the disclosure. Contractor acknowledges that any publication or disclosure of Confidential Information may cause immediate and irreparable harm to DADS and may constitute a violation of State or federal laws. If Contractor, its subcontractors, consultants, or agents should publish or disclose such Confidential Information to others without authorization, DADS will immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. If Contractor experiences a breach for which notification to individuals is required, Contractor must either do the notification or pay the expenses associated with DADS doing the notification. DADS will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor's, its

subcontractors', consultants', or agents' failure to protect DADS Confidential Information. ***Contractor will indemnify DADS against any losses and liabilities, including reasonable attorneys' fees, caused by or arising from contractors' or its subcontractors', consultants' or agents' failure to protect confidential information. Contractor shall coordinate with the Office of the Attorney General the defense of any suit against DADS for contractors' or its subcontractors', consultants' or agents' failure to protect confidential information. Contractor may not agree to settle such a suit without the concurrence of the Office of the Attorney General.***

(d). Contractor will require its subcontractors, consultants, and agents to comply with the terms of this Section 11. Upon request, Contractor will provide to DADS proof that it requires subcontractors, consultants, and agents to comply with the terms of Section 11.

**12. Requests for Information.** Contractor shall not use or provide to any party other than DADS or its authorized agents information generated or otherwise obtained in the performance of its responsibilities under this contract except as provided by this contract or after obtaining written permission of DADS.

**13. Public Information.** This contract, all data and other information developed pursuant to this contract shall be subject to the Texas Public Information Act.

**14. Gender and Number.** Words of any gender in this contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the contract clearly requires otherwise.

**15. Record Retention.** Contractor must retain all invoices, records and other documents pertinent to this contract until five (5) years following the expiration or termination of this contract, until any audits in progress at the end of the five (5) year period are completed, or until any lawsuits relating to this contract are resolved, whichever date is later.

**16. Access.** Contractor must permit representatives and agents of DADS, or authorized state and federal agencies, to have unrestricted access to all facilities, records, data and other information under the control of Contractor as necessary to enable DADS to audit, monitor and review all financial activities and services associated with DADS funds. Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the Texas State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the state auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontractor awards.

**17. Independent Contractor/No Agency or Partnership.** It is the intent of DADS and Contractor that Contractor is an independent contractor and not an employee of DADS for any purpose. Contractor and DADS understand and agree that (a) DADS will not withhold or pay on behalf of Contractor any sums for income tax, unemployment insurance, social security or any other withholding, or make available to Contractor any of the benefits, including workers' compensation insurance coverage and health and retirement benefits, afforded to employees of DADS; (b) all such withholdings, payments and benefits, if any, are the sole responsibility of Contractor; and (c) Contractor must indemnify and hold harmless DADS from any damages or liability, including attorneys' fees and legal expenses, incurred by DADS with respect to such payments, withholdings and benefits. It is expressly acknowledged and agreed by and between

DADS and contractor that nothing in this contract is intended to create a joint venture relationship, a partnership relationship or a principal/agent relationship.

**18. Indemnification and Hold Harmless.** Contractor, unless a physician, must indemnify and hold harmless the state of Texas, all of its officers, its agents and employees and DADS, its employees and agents from all suits, actions, demands, proceedings costs, damages, and claims, costs or liability of any character, type or description, including attorneys' fees and legal expenses, brought, made for or on account of any death, injury or damage received or sustained by any person or property arising out of or occasioned by the acts or omissions, including the negligence, of Contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.

**19. Physicians and Psychiatrists.** If Contractor is a physician, DADS shall indemnify Contractor for actual damages, court costs and attorney's fees adjudged against Contractor, as required by and subject to the limitations set forth in the Civil Practice and Remedies Code, Chapter 104.

If Contractor is a physician or psychiatrist, Contractor shall indemnify and hold harmless DADS, and its employees and agents, only when actual damages, court costs, and attorney's fees are adjudged against DADS due to Contractor's willful or wrongful acts or acts of gross negligence or when the court in its judgment or the jury in its verdict finds that Contractor acted in bad faith, with conscious indifference or reckless disregard.

**20. Contract Management and Administration.** DADS will name a contract manager for this contract. The agency-designated contract manager will act as the point of contact between the agency and the contractor. The contract manager has neither expressed nor implied authority to authorize or approve any changes to the terms and conditions of this contract.

**21. Contract Amendments.** This contract may only be amended through the execution of a formal amendment to this contract.

**22. Default.** Contractor shall comply with and act in good faith in the performance of all provisions of this contract and any amendments. Contractor acknowledges that the following actions by Contractor will be considered a default(s) under this contract subjecting Contractor to the remedies and sanctions described in Section 23:

- a. Submitting falsified documents or fraudulent invoicing or making false representations or certifications relating to this contract;
- b. Endangering the life, health, welfare or safety of individuals served under this Contract;
- c. Failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the contract, including but not limited to the following:
  - i. failing to abide by applicable federal and state statutes, such as those regarding handicapped persons and civil rights;
  - ii. failing to meet standards that are required by state or federal law or DADS rule;
  - iii. failing to notify and reimburse DADS for services DADS paid for when the contractor received reimbursement from a liable third party;

- iv. failing to disclose or make available, upon demand, to DADS or its representatives, including appropriate federal and state agencies and their representatives, including independent financial auditors, any records the contractor is required to maintain;
  - v. violating the Texas Health and Safety Code, Title 7 provisions applicable to the contract or any rule or regulation issued under this title;
  - vi. failing to correct contract performance deficiencies after receiving written notice about them from DADS; and
  - vii. failing to repay or make and follow through with arrangements satisfactory to DADS to repay identified overpayment or other erroneous payments.
- d. Failing to perform or comply with any other covenant, term or condition of this contract.

**23. Remedies and Sanctions.** DADS may impose remedies and sanctions as described in this section for Contractor's default under this contract. DADS at its own discretion may impose as many remedies and sanctions as appropriate on a case-by-case basis.

**Informal Remedies:**

- Requesting Contractor to respond in writing to identified problems;
- Increasing the frequency or extensiveness of monitoring of Contractor;
- Requiring Contractor to obtain additional training or technical assistance; or
- Requiring Contractor to submit additional or more detailed financial or programmatic reports or both.

**Sanctions:**

- Terminating contract;
- Withholding contract payments;
- Recouping contract payments from Contractor; or
- Reducing the contract not-to-exceed amount.

**24. Sanction Notification and Review.** DADS will formally notify Contractor in writing when a sanction is imposed, stating the nature of the sanction, the reasons for proposing or imposing the sanction, any corrective action that must be taken before the sanction will be removed and the time allowed for completing the corrective action. If Contractor believes DADS's imposition of the sanction is in error, it may submit to DADS a written request for a review of the imposition of the sanction within 10 days from the date of notification. Contractor's request shall contain the following:

- A copy of the letter from DADS notifying Contractor of the sanction
- A description of each act that is the basis for the sanction
- The basis for Contractor's belief that DADS' imposition of the sanction is in error

- Any documentation in support of Contractor's position
- A statement and authorities in support of Contractor's position

On or before 10 days following receipt of the Contractor's request for review, DADS will appoint a reviewer(s), who will review the Contractor's request, who may permit or require additional information and who may uphold or overturn the imposition of the sanction. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final.

## 25. Termination

- a. **Without Cause.** This contract may be terminated by DADS upon 30 days written notice to the Contractor of its intent to terminate this contract.
- b. **By Mutual Agreement.** DADS and Contractor may mutually agree to termination of this contract at any time.
- c. **Funds.** This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human service agency consolidations, or any other disruption of current appropriations, this contract will be terminated immediately.

**26. Responsibilities Prior to Termination.** Following written notification of intent to terminate and until the agreed upon date of termination, Contractor will continue to have the responsibility to provide services under this contract, and DADS will continue to have the responsibility to pay for the services provided according to this contract.

**27. Effect of Termination.** Upon termination of this contract, Contractor and DADS will be discharged from any further obligation created under the terms of this contract, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this contract. In addition, the obligations of Contractor to retain records and maintain the confidentiality of information shall survive this contract.

**28. Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by DADS and the contractor to attempt to resolve any claim made by the contractor that DADS has breached a term or condition of this contract:

A contractor's claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided for in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, the contractor shall submit written notice, as provided in the notice provision of the contract. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of DADS and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

- The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of

contract by DADS if the parties are unable to resolve their disputes under subparagraph (A) of this subchapter.

- Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by DADS nor any other conduct of any representative of DADS relating to the contract shall be considered a waiver of sovereign immunity to suit.
- Neither the occurrence of an event, nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.
- Imposition of sanctions under this contract does not authorize the use of the Dispute Resolution process under Chapter 2260.

**29. Renegotiation.** In the event Contractor is required to comply with an addition to or a change in any law, rule, regulation, directive, standard, settlement or resolution pursuant to this contract, and the addition or change results in a material change in Contractor's rights or obligations under this contract or places a significant financial burden on Contractor, Contractor and DADS may renegotiate the terms of this contract.

**30. Severability.** In the event any provision of this contract becomes unenforceable or void, all other provisions of this contract will remain in effect.

**31. Antitrust.** Contractor hereby assigns to DADS any and all claims for overcharges associated with this contract arising under the anti-trust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the anti-trust laws of the state of Texas, Business and Commerce Code Ann. Sec 15.01, et seq (1967).

**32. Assignability.** This contract may be assigned to DADS's successor state agency or agencies. No assignment of this contract or the rights and obligations hereunder will be valid without the written consent of the non-assigning party.

**33. Entire Agreement.** This contract constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between DADS and Contractor on the matters contained herein. No modification, alteration or waiver of any term, covenant, or condition of this contract and any attachments shall be valid unless in writing and executed by the parties hereto.

**34. Waiver.** In no event shall any payment by DADS to Contractor or any act or omission of DADS constitute or be construed in any way to be a waiver by DADS of any breach or default of this contract that may then or subsequently be committed by Contractor. Neither shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to DADS to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of DADS may waive the effect of this provision.

**35. Governing Law.** This contract is being executed and delivered in the state of Texas. This contract is intended to be performed in the state of Texas and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this contract. Proper venue for any litigation arising from this contract shall be in a court of competent jurisdiction in Travis County, Texas.

**36. Captions.** The captions contained within this Contract are for reference purposes only and do not affect the meaning of this contract.

- 37. Copyright Infringement.** Contractor warrants and represents that no property protected by copyright will be reproduced or used in performance of this contract unless Contractor has previously obtained written permission from the copyright holder(s).
- 38. Patent Infringement.** Contractor agrees to protect DADS from claims involving infringement of patents relating to the performance of this contract.
- 39. Work Made for Hire.** All work performed pursuant to this contract, developed or prepared for DADS, is the exclusive property of DADS. All right, title and interest in and to said property shall vest in DADS upon creation and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this contract. To the extent that title to any such work may not, by operation of law, vest in the department, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to DADS. DADS shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give DADS and the state of Texas, as well as any person designated by DADS and the state of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this contract.
- 40. Debt to the State.** If a payment law prohibits the Comptroller of the State of Texas from making a payment, the Contractor acknowledges the DADS' payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.
- 41. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense.**
- a. In accordance with Texas Government Code, Section 572.054, the following former DADS employees may not represent Contractor or receive compensation for services rendered on behalf of Contractor regarding a particular matter in which the employee participated during his or her period of DADS employment, either through personal involvement or because the matter was within the employee's official responsibilities: Employees who ceased employment with DADS on or after January 1, 1992, who were compensated as of the last date of DADS employment at or above the amount prescribed by the General Appropriations Act for salary group 17, Schedule A or salary group 9, Schedule B, of the position classification salary schedule.
  - b. Any entity that is represented by or that compensates a former DADS employee described in Section A is not eligible to be awarded this Contract. Contractor certifies that it is not ineligible to be awarded this Contract under this Section B.
- 42. Return of Confidential Materials.** Contractor shall return to DADS upon completion of the services under this Contract, or upon request, all confidential materials made available to Contractor, including copies.
- 43. Certifications.** Contractor certifies that the following statements are true:
- a. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

- b. Neither Contractor nor the firm, corporation, partnership or institution represented by Contractor, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of this state or the federal antitrust laws.
- c. Contractor has not participated in or received compensation for: a) the preparation of the service description, b) development of evaluation criteria, c) terms and conditions for this contract, or d) the selection of the successful contractor for this contract.
- d. Contractor has not retained or promised to retain an entity that has participated in the development of the request for proposal or that participated in the selection of the Contractor.
- e. Contractor owes no funds to DADS, the Health and Human Services Commission, the Department of State Health Services or the state of Texas for unresolved audit exceptions. An unresolved audit exception is an exception for which the Contractor has exhausted all administrative and judicial remedies and has failed to comply with any resulting demand for payment.
- f. Neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by any federal or state department or agency. Contractor shall notify DADS immediately in the event that Contractor or its principals is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by any federal or state department or agency.
- g. Contractor's license, permit, or certificate has not been revoked by any health and human services agency or public safety and criminal justice agency.
- h. None of the funds paid by DADS pursuant to this contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a member, officer or employee of Congress or the state legislature or for obtaining any federal or state contract.
- i. No employee, officer or director of Contractor has been convicted of any crime related to any state or federally funded program.
- j. As required by Texas Government Code §2252.901, Contractor has not been an employee or officer of DADS within one year of the execution of this contract.
- k. As required by Texas Family Code §231.006, a child support obligor who is more than 30 calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials or services, or receive a state-funded grant or loan. Contractor agrees to maintain its eligibility to receive payments under this contract, certifies that it is not ineligible to receive the payments specified in this contract, and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- l. As required by Texas Government Code §2155.006, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita,

Hurricane Katrina or any other disaster occurring after Sept. 24, 2005. Under §2155.006, Texas Government Code, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

#### **44. HHSC Uniform Electronic and Information Resources (EIR) Accessibility Clause.**

- a. Applicability.** This clause applies if the contract requires the Contractor to procure or develop EIR for DADS, or to change any of DADS' EIR. This clause also applies if the contract requires the Contractor to perform a service or supply goods that include EIR that: (i) employees are required or permitted to access; or (ii) members of the public are required or permitted to access.

This clause does not apply to incidental uses of EIR in the performance of a contract, unless the parties agree that the EIR will become property of the state or will be used by the HHS agency's individual/recipient after completion of the contract.

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

**b. Definitions.**

- 1. Accessibility Standards** means the Electronic and Information Resources Accessibility Standards and the Website Accessibility Standards/Specifications.
- 2. Electronic and Information Resources** means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes, but is not limited to, telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.
- 3. Electronic and Information Resources Accessibility Standards** means the accessibility standards for electronic and information resources contained in 1 TAC Chapter 213.
- 4. Website Accessibility Standards/Specifications** means standards contained in 1 TAC Chapter 206.
- 5. Products** means information resources technologies that are, or are related to, EIR.

**c. Accessibility Requirements.**

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, DADS must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, the Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

**d. Evaluation, Testing and Monitoring.**

- 1.** DADS may review, test, evaluate and monitor the Contractor's Products and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and

monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

2. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Contractor's assertion of compliance with the Accessibility Standards.
3. Contractor agrees to cooperate fully and provide DADS and its representative's timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing and monitoring.

**e. Representations and Warranties.**

1. Contractor represents and warrants that (i) as of the effective date of the contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's individual or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless DADS or individual/recipient, as applicable, uses the Products in a manner that renders it noncompliant.
2. In the event the Contractor should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, the Contractor represents and warrants that it will, in a timely manner and at no cost to DADS, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.
3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which DADS relies in awarding this contract.
4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

**f. Remedies.**

1. Pursuant to Texas Government Code Sec. 2054.465, neither the Contractor nor any other person has cause of action against DADS for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of the Contractor's representations and warranties, the Contractor will be liable for direct and consequential damages and any other remedies to which DADS may be entitled. This remedy is cumulative of any and all other remedies to which DADS may be entitled under this contract and other applicable law.

**45. Secure Erasure of Hard Disk Products and Services.** Vendor agrees that all products and services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and services, either at the end of the Customer's Managed Services product's

useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

- 46. Screening Excluded Parties.** Vendor agrees to screen it's employees and contractors to determine whether they have been excluded from participation in Medicare, Medicaid, the State Children's Health Insurance Program and all federal and state health care programs. The Contractor agrees to search monthly the HHS-Office of the Inspector General (OIG) and HHSC-OIG List of Excluded Individuals/Entities (LEIE) websites to capture exclusions and reinstatements that have occurred since the last search and to immediately report to HHSC-OIG any exclusion information the contractor discovers. Exclusionary searches for prospective employees or contractors shall be performed prior to employment or contracting.
- 47.** The Contractor also acknowledges and agrees that no Medicaid payments can be made for any items or services directed or prescribed by an excluded physician or other authorized person when the individual or entity furnishing the items or services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier that is not excluded.
- 48. Certification Regarding Purchases and Leases of Network Hardware and Network Software.** Vendor hereby certifies that the network hardware or software, as applicable, procured or leased under this contract, has undergone independent certification testing for known and relevant vulnerabilities in accordance with Section 2059.060, Texas Government Code.

**49. Publicity**

- (a) Except as provided in the paragraphs below, Contractor must not use DADS name or logo, the State of Texas or refer to DADS or the State directly or indirectly in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including, but not limited to, in any promotional or marketing materials, customer lists or business presentations (other than those submitted to DADS, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the Federal Government).
- (b) Contractor may publish, at its sole expense, results of Contractor performance under the Contract with DADS prior review and approval, which DADS may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from DADS and any Federal agency, as appropriate. Contractor will provide DADS at least three copies of such publication prior to public release. Contractor will provide additional copies at the request of DADS.
- (c) Contractor may include information concerning the Contracts' terms, subject matter, and estimated value in any report to a governmental body to which the Contractor is required by law to report such information.

**49. Suspension of Medicaid Payments.** Contractor acknowledges that in accordance with 42 CFR §455.23, the Department shall suspend all Medicaid payments to the Contractor upon notification by Health and Human Services Commission-Office of Inspector General that a credible allegation of fraud under the Medicaid program is pending against the Contractor, unless the Department has good cause not to suspend the payments or to suspend the payments only in part.