

ATTACHMENT XX GENERAL AFFIRMATIONS

By entering into this Contract, Contractor affirms, without exception, as follows:

1. Contractor represents and warrants that these General Affirmations apply to Contractor, and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, Subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract.
2. Contractor represents and warrants that all statements and information provided to the Department of Family and Protective Services ("DFPS") are current, complete, and accurate. This includes all statements and information relating in any manner to this Contract and any solicitation resulting in this Contract. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity, including but not limited to, immediate termination of this Contract.
3. Contractor has not given, has not offered to give, and does not intend 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.
4. Under Texas Government Code Section 2155.004 (relating to financial participation in preparing solicitations), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Texas Government Code Sections 2155.006 and 2261.053 (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
6. Under Texas Family Code Section 231.006 (relating to delinquent child support), Contractor certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
7. Contractor certifies that: (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the department or agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
8. Contractor certifies that it, its principals, its Subcontractors, and any personnel designated to perform services related to this Contract are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
9. Contractor certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Contractor may review in making this certification. Contractor acknowledges that this Contract may be terminated and

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payment withheld if this certification is inaccurate. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.

10. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Contractor certifies that it (1) is not the executive head of DFPS; (2) was not at any time during the past four years the executive head of DFPS; and (3) does not employ a current or former executive head of DFPS.
11. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Texas Tax Code Chapter 171.
12. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code Sections 556.005, 556.0055, or 556.008 (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
13. Contractor represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
14. Under Texas Government Code Section 572.069, Contractor acknowledges that a former state officer or employee of DFPS who during the period of state service or employment participated on behalf of DFPS in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the contract is signed.
15. DFPS's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office (HHSC0) of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and both HHSC and DFPS' policies regarding fraud.
16. Contractor represents and warrants that it has not violated state or federal antitrust laws and has not communicated its bid for this Contract directly or indirectly to any competitor or any other person engaged in such line of business. Contractor hereby assigns to DFPS any claims for overcharges associated with this Contract under 15 U.S.C. Section 1, *et seq.*, and Texas Business and Commerce Code Section 15.01, *et seq.*

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES SPECIAL CONDITIONS FOR VENDORS

INSTRUCTIONS

- 1. SELECT FOLLOWING SPECIAL CONDITIONS THAT ARE APPLICABLE TO THIS CONTRACT & DELETE SECTIONS YOU WILL NOT USE.**
- 2. IF YOU ARE UNSURE WHAT TO DELETE, PLEASE CONTACT YOUR ASSIGNED ATTORNEY OR MAKE A REQUEST TO THE EMAIL BOX.**
- 3. IF SECTIONS ARE DELETED, RENUMBER REMAINING SECTIONS.**
- 4. ONCE DOCUMENT IS FINAL, DELETE INSTRUCTIONS IN RED BEFORE YOU SEND THIS DOCUMENT TO THE ATTORNEY FOR FINAL REVIEW.**

In addition to the DFPS Uniform Terms and Conditions for Vendors, the Contractor agrees to comply with the following DFPS Special Conditions for Vendors.

- I. Payments under State Plans approved under Title IV-E and TANF.** As applicable, Contractors must seek payment or adjustment to payments in accordance with the time limit specified in 45 CFR 95.1 (Code of Federal Regulations), which establishes a two-year (eight quarter) time limit for a State to claim Federal financial participation in expenditures under State plans approved under Title IV-E and Temporary Assistance for Needy Families (TANF).

Any bill or amended bill, which is submitted to DFPS later than seven quarters after the end of the quarter of the expense, will not be processed, unless DFPS determines that submission for payment of the bill to the federal government can be executed in a proper and timely fashion.

- II. Reporting Abuse, Neglect, or Exploitation.** Contractor will promptly report any suspected case of abuse, neglect, or exploitation to the appropriate authority as required by the Texas Family Code Chapter 261. All reports must be made within 24 hours of the discovery of the suspected abuse, neglect, or exploitation.

- III. Testimony in Proceedings.** Contractor will require its employees to testify in judicial and administrative proceedings at the request of DFPS. To the extent possible, Contractor will also assist the DFPS in locating past employees, agents, volunteers, consultants, or subcontractors when DFPS requires past employees, agents, volunteers, consultants, or subcontractors to appear and testify in accordance with this subsection.

- IV. Removal of Access.** Contractor will immediately remove access capabilities to any DFPS automated/internet-based application(s), or immediately notify DFPS that access to such applications needs to be terminated for an employee, subcontractor, or volunteer whose employment, subcontract, or volunteer term with Contractor has ended for any reason.

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- V. **Cultural Competence.** Contractor will make reasonable efforts to provide services that meet the individual needs of the client. Contractor will develop and maintain a cultural competence plan that effectively provides services to people of various cultures, races, ethnic backgrounds and religions, in a manner that recognizes and affirms their worth, protects and preserves their dignity, and ensures equity of service delivery. Contractor will take into consideration the intellectual functioning, literacy, level of education, and comprehension ability of each client, in order to, ensure that all information is presented in a way that meets the individual needs of each client. Contractor will provide services in the client's primary language, whether provided directly by Contractor or through a translator.
- VI. **Subcontracting.** In addition to the subcontracting requirements listed in the Solicitation Document, if applicable, and DFPS Uniform Terms and Conditions, Contractor must also comply with the requirements of this Section. Contractor will be responsible to DFPS for any subcontractor's performance under this Contract. Subcontractors providing services under the Contract will meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract will relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions will apply:
- A. Contractors planning to subcontract all, or a portion, of the work to be performed will identify the proposed subcontractors.
 - B. Subcontracting will be solely at Contractor's expense.
 - C. DFPS retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
 - D. Contractor will be the sole contact for DFPS and Contractor will list a designated point of contact for all DFPS inquiries.
 - E. **Subcontracts.** Contractor will include a term in all proposed subcontracts that incorporates this Contract by reference and binds subcontractor to all the requirements, terms, and conditions of this Contract related to the service being provided by the subcontractor, as well as explicitly hold that this Contract controls in the event of any conflict with subcontract. DFPS approval of Contractor's use of any subcontractor is conditioned upon the extent that any subcontract does not conflict with any requirements of the Contract between DFPS and Contractor.
 - F. **Payment to Subcontractors.** Will be made pursuant to the Texas Prompt Payment Act (Texas Government Code Chapter 2251).
 - G. **Additional Remedies.** In addition to the contract management remedies in the DFPS Uniform Terms and Conditions, DFPS, based on information from monitoring or other verifiable sources, expressly reserves the right to remove any subcontractor or employee of the Contractor from the provision of services under this contract.
- VII. **DFPS Background Check Policy.** Contractors will submit criminal abuse and neglect history information for background checks electronically through the DFPS Automated

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Background Check System (ABCS) according to the instructions in the user guide located at http://www.dfps.state.tx.us/PCS/About_PCS/help.asp.

A. **Disclosure and Release.** Contractor will disclose and release, or cause its employees, subcontractors, and volunteers with direct client contact and/or access to client records to disclose and release, any allegation made against that employee, subcontractor, or volunteer alleging the commission of:

1. An act of abuse, neglect, or exploitation of children, the elderly, or persons with disabilities;
2. Criminal history or any current criminal indictment (for felonies) or information (for misdemeanors) involving an offense under the Texas Penal Code against:
 - a. The person;
 - b. The family;
 - c. Public order or decency;
 - d. Public health, safety, or morals; or
 - e. Property;
3. An offense under Texas Health and Safety Code Chapter 481 (Texas Controlled Substances Act); or
4. Any act or offense that can reasonably be associated with potential risk of harm or loss to DFPS and/or its clients based on the job duties or contractual role(s) of the person in question at any time during the contract period.

B. **Method of Disclosure and Release.** This disclosure and release is required of all individuals who have, or will have, direct contact with clients and/or access to client records, prior to such contact or access and will be accomplished through the use of:

1. A criminal history background check;
2. A DFPS abuse and neglect history check; and
3. A signed disclosure and release by each person attesting to this information, which will be maintained by Contractor, available for review by DFPS, and renewed at intervals not to exceed 24 months while the Contract is in effect.

C. **Direct Contact with Clients.**

1. Contractor will prevent or promptly remove any employee, subcontractor, or volunteer from direct client contact and/or from access to client records who is alleged to have committed any act listed in this Contract.
2. If it is determined with certainty that the person in question has not committed the acts or offenses alleged, that person may again be assigned to direct client contact and/or access to client records. However, the Contractor or subcontractor will notify DFPS of its intent to do so no later than ten business days of proposed reassignment. If requested, the Contractor or subcontractor must provide DFPS with further information concerning the reasons for the reassignment. Contractor must receive DFPS approval prior to the reassignment.

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3. If the person in question is found to have committed any of the acts or offenses listed in this Contract, that person will not be reassigned to duties involving any direct contact with clients and/or access to client records.

VIII. Limitation on Use of DFPS Seal and Name. Contractor may not use the DFPS seal in any form or manner without the prior written approval of DFPS. Contractor also may not use the name of DFPS to imply any endorsement, approval, or sponsorship of Contractor's goods or services by DFPS.

IX. Notifications. Contractor will notify DFPS immediately of any significant change affecting Contractor or this Contract, including, but not limited to, change of Contractor's name or identity, ownership, control, governing board membership, key personnel, any problem or potential problem associated with performance or services, or payee identification number. Contractor will also provide DFPS with any documentation or information related to a notification provided for under this section. Contractor will notify DFPS of any lawsuit brought against Contractor related to the services provided for in this Contract. Unless otherwise noted in this Contract, Contractor will provide all notices in writing to DFPS within ten working days.

X. Authority of DFPS Staff. DFPS staff are not authorized to sign non-DFPS forms, unless those forms have received prior approval by DFPS. DFPS is not bound by unauthorized staff actions in signing such forms.

XI. Complaint Reporting. Unless otherwise noted in this Contract, DFPS will contact Contractor when a complaint is received, and advise the Contractor whether DFPS will conduct an investigation or will coordinate with the Contractor for an investigation and a response. When DFPS requires the Contractor to conduct any part of the complaint investigation, Contractor must respond in writing to DFPS with all information and according to DFPS requirements and specified time frames. If Contractor is unwilling or unable to provide any information within the time required, Contractor will provide a written explanation for any information that Contractor does not submit, any applicable date by which Contractor will provide the information, and the detailed reasons why Contractor is unwilling or unable to provide such information.

XII. Information Security Requirements. Contractor must comply with the following:

- A. The DFPS IT Security Policy located at:
https://www.dfps.state.tx.us/PCS/About_PCS/documents/Contractor_Information_Security.pdf
- B. Upon reasonable notice, Contractor must provide, and cause its subcontractors and agents to provide, DFPS or its designee, prompt, reasonable, and adequate access to any information security records, books, documents, and papers that are directly pertinent to the performance of the Contract including, but not limited to:

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1. Contractor information security policies, procedures, standards, guidelines;
 2. Contractor security violation reports;
 3. Contractor employee security acknowledgement agreements; and
 4. Lists of Contractor's employees, subcontractors, and agents with authorized access to DFPS confidential information.
- C. The information in Subsection C above are subject to DFPS' review and approval. Neither DFPS' review or approval, nor its failure to review or approve, will relieve, waive, or satisfy any of Contractor's obligations under this Contract.
- D. Contractor will provide, and will cause its subcontractors and agents to provide, to DFPS, upon reasonable notice, written certifications of compliance with controls and provisions relating to information security, including but not limited to, those related to confidential data transfers and the handling and disposal of Personally Identifiable Information (PII). Acceptable forms of written compliance may be, but are not limited to:
1. Statement on Auditing Standards No.70, Service Organizations (SAS-70) Report;
 2. General Security Controls Audit;
 3. Application Controls Audit;
 4. Vulnerability Assessment; and
 5. Network/Systems Penetration Test.

XIII. Transition after Termination. At the end of the contract term, or other contract termination or cancellation, Contractor will in good faith and in reasonable cooperation with the DFPS, aid in the transition to any new arrangement or provider of services. The respective accrued interests or obligations incurred to date of termination must also be equitably settled. Upon termination or expiration of this Contract, DFPS will work with Contractor to transfer all services as efficiently as possible with the goal to have all necessary services transferred by the effective date of the expiration or termination of the Contract. However, in the event that a transfer of all necessary services is not possible, Contractor will continue to provide necessary services in accordance with all terms and conditions of this Contract until all necessary client services are completely transferred.

XIV. DFPS Required Conflict of Interest Certification. In accordance with Texas Human Resources Code §40.034, Contractor certifies that it did not receive assistance, either directly or indirectly, from a former DFPS employee who was directly concerned with or had administrative responsibility related to the subject of this contract and had been separated from DFPS for less than one year at the time the assistance began. If DFPS later determines that the Contractor knowingly rendered an erroneous certification, DFPS may pursue all available remedies under law.

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES VENDOR UNIFORM TERMS AND CONDITIONS

ARTICLE I CONSIDERATION

1.1 PROMPT PAYMENT.

DFPS will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code Chapter 2251.

1.2 EXPENSES.

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 DFPS. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

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 Textravel.

ARTICLE II STATE AND FEDERAL FUNDING

2.1 AVAILABILITY OF STATE AND FEDERAL FUNDING.

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, DFPS may restrict, reduce, or terminate funding under this Contract.

This Contract is also subject to immediate cancellation or termination, without penalty to DFPS, if sufficient and adequate funds are not available.

Contractor will have no right of action against DFPS if it cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract.

In the event of cancellation or termination under this Section, DFPS will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

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2.2 NO DEBT AGAINST THE STATE.

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

2.3 DEBT TO STATE.

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges DFPS' 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.

2.4 RECAPTURE OF FUNDS.

DFPS may withhold all or part of any payments to Contractor to offset overpayments made to Contractor. Overpayments, as used in this Section, include payments made by DFPS that exceed the maximum allowable rates, not allowed under applicable laws, rules, or regulations or that are otherwise inconsistent with this Contract, including any unapproved expenditures.

Contractor understands and agrees that it will be liable to DFPS 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 will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE III WARRANTY

3.1 WARRANTY.

Contractor warrants that all services, deliverables and work under this Contract will be completed in a manner consistent with standards in the applicable trade, profession, or industry, conform to or exceed the specifications set forth in the Contract and be; fit for ordinary use, of good quality, and with no material defects.

If Contractor fails to complete any services deliverables or work timely, or to perform satisfactorily under conditions required by this Contract DFPS may require Contractor, at its sole expense, to repair or replace all defective or damaged services, or refund any payment received for all defective or damaged services, deliverables or work and require Contractor to accept the return of such, as applicable to the Contract.

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ARTICLE IV OWNERSHIP AND INTELLECTUAL PROPERTY

4.1 OWNERSHIP.

DFPS will own and Contractor will assign to DFPS, all right, title, and interest in all services, deliverables and work performed by Contractor under this Contract.

4.2 INTELLECTUAL PROPERTY.

To the extent any services, deliverables or work performed by Contractor results in the creation of intellectual property, all right, title, and interest in, and to such Intellectual Property, will vest in DFPS upon creation and will 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 Intellectual Property may not by law vest in DFPS, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to DFPS. DFPS will have the right to obtain and to hold in its name, any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.

Contractor must give DFPS and the State of Texas, as well as, any person designated by DFPS or the State of Texas, all assistance required to perfect the rights defined herein, without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

ARTICLE V RECORDS, AUDIT, CONFIDENTIAL INFORMATION AND PUBLIC INFORMATION ACT

5.1 BOOKS AND RECORDS.

Contractor will keep and maintain under Generally Accepted Accounting Principles (GAAP) or Generally Accounting Standards Board (GASB), as applicable, full, true, and complete records necessary to fully disclose to DFPS, 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. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven years after the termination of the contract period, or seven years after the completion of any litigation or dispute involving the Contract, whichever is later.

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5.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS.

Contractor will keep and maintain under Generally Accepted Accounting Principles (GAAP) or Generally Accounting Standards Board (GASB), as applicable, full, true, and complete records necessary to fully disclose to DFPS, 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. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven years after the termination of the contract period or seven years after the completion of any litigation or dispute involving the Contract, whichever is later.

5.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS.

Contractor (and their Subcontractors) will ensure 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 goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of DFPS.

Contractor must provide at DFPS' request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to this Contract.

5.4 SAO AUDIT.

Contractor understands that acceptance of funds directly under the Contract or indirectly through a subcontract acts as acceptance of the authority of the SAO or any successor agency to it, 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 SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO, 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 Subcontract it awards.

5.5 CONFIDENTIAL INFORMATION.

A. Contractor agrees to only use DFPS confidential information for the purpose of this Contract and comply with all applicable state and federal law when it receives and stores DFPS confidential information, including, but not limited to, the following enumerated. This includes any communication or record (whether

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oral, written, electronically stored or transmitted, or in any other form) provided or made available to them electronically or through any other means and includes records or information that identifies DFPS children or clients.

1. Section 106 of the Child Abuse Prevention and Treatment Act (CAPTA), codified at 42 U.S.C. 5106a;
 2. Section 471 of Title IV-E of the Social Security Act, codified at 42 U.S.C. 671(a)(8), and related federal rules at 45 CFR 1355.30 & 45 CFR 205.50;
 3. Social Security Administration Data, including, without limitation, Medicaid information (The Social Security Act, 42 U.S.C. Chapter 7);
 4. Family Educational Rights and Privacy Act, (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99;
 5. Protected Health Information, including Electronic Protected Health Information or Unsecured Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C; 45 CFR Parts 160 and 164;
 6. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 U.S.C. §290dd-2; 42 CFR Part 2;
 7. Federal Tax Information, Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
 8. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
 9. Personal Identifying Information defined by Texas Business and Commerce Code Ch. 521, and OMB Memorandum 07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information;
 10. Texas Family Code §261.201 and related provisions in Chapters 261 and 264;
 11. Texas Health and Safety Code Section §81.046 and Chapters 181 and 611;
 12. Texas Human Resources Code §12.003, §40.005, and Chapter 48;
 13. Texas Public Information Act, Texas Government Code, Chapter 552;
 14. 19 TAC Chapter 702 Subchapter F (Child Protective Services), and Chapter 705 Subchapter M (Adult Protective Services); and
 15. Criminal History Record Information guidelines in the FBI's Criminal Justice Information Services (CJIS) Security Policy.
- B. Contractor will notify DFPS immediately, but not later than 24 hours, after Contractor discovers any suspected or actual unauthorized disclosure, breach or use of DFPS confidential information. Furthermore, Contractor will fully cooperate with DFPS in investigating, mitigating to the extent practicable and issuing notifications directed by DFPS in the manner determined by DFPS.
- C. Contractor agrees to only disclose this information in accordance with the applicable law and to notify DFPS as required by the applicable law, when it makes a disclosure under it.
- D. If Contractor receives any request or demand for disclosure of confidential information by oral questions, documents, subpoenas, civil investigative demand,

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interrogatories, requests for information, or other similar legal process, Contractor will provide DFPS with prompt notice of such request (no later than two business days) so that DFPS may determine whether to seek an appropriate protective order and/or consent to Contractor's disclosure of the requested records. This subsection does not preclude the Contractor from asserting its own privileges or objections against release of confidential information to a third-party based on applicable law.

- E. The Section will remain in full force and effect following termination or cessation of the services performed under this Contract.

5.6 PUBLIC INFORMATION ACT.

Information related to the performance of this Contract may be subject to the Public Information Act (PIA) (Texas Government Code Chapter 552) and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format, or any other format agreed between the Parties.

ARTICLE VI CONTRACT MANAGEMENT AND EARLY TERMINATION

6.1 CONTRACT MANAGEMENT.

To ensure full performance of the Contract and compliance with applicable law, DFPS may take actions including:

- A. Suspending all or part of the Contract;
- B. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- C. Recouping payments made to the Contractor found to be in error;
- D. Suspending, limiting, or placing conditions on the continued performance of Work;
- E. Imposing any other remedies authorized under this Contract; and
- F. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

6.2 TERMINATION FOR CONVENIENCE.

DFPS may terminate the Contract, in whole or in part, at any time when, in its sole discretion, DFPS determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in DFPS's notice of termination.

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6.3 TERMINATION FOR CAUSE.

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

- a. **Material Breach.** DFPS will have the right to terminate the Contract in whole or in part if DFPS determines, at 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 Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.
- b. **Failure to Maintain Financial Viability.** DFPS may terminate the Contract if, in its sole discretion, DFPS has a good faith belief that Contractor no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

6.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.

If DFPS terminates the Contract for cause, the Contractor will be responsible to DFPS for all costs incurred by DFPS 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 that is reasonably attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

6.5 EQUITABLE SETTLEMENT.

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 AMENDMENT.

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

7.2 UNILATERAL AMENDMENT.

- A. In conformance with federal and state law, DFPS may issue instructions, clarifications, or interpretations as may be required during this Contract in the form of a Unilateral Amendment, which will be incorporated as part of this Contract. DFPS has sole discretion as to whether a modification or change to the Contract will require an Amendment as provided for in Section 7.1 DFPS may issue a Unilateral Amendment to:

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1. Correct an obvious clerical error;
 2. Change Contract number;
 3. Incorporate new or revised state or federal laws, regulations, rules or policies;
 4. Comply with court order or judgment;
 5. Update service level description or daily rates;
 6. Update Contractor's name as recorded by the Secretary of State, as required law or as authorized by DFPS;
 7. Change either Party's contract manager or legal notice designee and if applicable, their contact information; and
 8. Change any recorded license number to reflect a change to license number by the agency or entity issuing the license.
- B. Unilateral Amendment will be effective 10 days from the date that DFPS issues the Unilateral Amendment to the Contractor.

7.3 INSURANCE.

Unless otherwise specified in this Contract, Contractor will 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 DFPS. Contractor will provide evidence of insurance, as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of DFPS the nature and extent of coverage granted by each such policy, upon request by DFPS. In the event that any policy is determined by DFPS to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as DFPS 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.

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.

7.4 E-VERIFY.

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of all persons employed during the contract term to perform duties within Texas and all persons (including subcontractors) assigned by the contractor to perform services, deliverables and work pursuant to the Contract.

7.5 PERMITTING AND LICENSURE.

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At Contractor's sole expense, Contractor will 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 will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

7.6 INDEMNITY.

To the extent allowed by law, Contractor will defend, Indemnify, and hold harmless the State of Texas and its officers and employees, and DFPS and its officers and employees, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including attorneys' fees and court costs arising out of, or connected with, or resulting from:

- A. Contractor's performance of the Contract, including any negligent acts or omissions of Contractor, or any agent, employee, subcontractor, or supplier of Contractor, or any third party under the control or supervision of Contractor, in the execution or performance of this Contract; or
- B. any breach or violation of a statute, ordinance, governmental regulation, standard, rule, or breach of Contract by Contractor, any agent, employee, subcontractor, or supplier of Contractor, or any third party under the control or supervision of Contractor, in the execution or performance of this Contract; or
- C. employment or alleged employment, including claims of discrimination against Contractor, its officers, or its agents; or
- D. Work under this Contract that infringes or misappropriates any right of any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.

Contractor will coordinate its defense with DFPS and its counsel. This paragraph is not intended to and will not be construed to require Contractor to indemnify or hold harmless the State or DFPS for any claims or liabilities resulting solely from the gross negligence of DFPS or its employees.

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

7.7 ASSIGNMENTS.

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of DFPS, which may be withheld or granted at the sole discretion of DFPS. Except where otherwise agreed in

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writing by DFPS, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees DFPS may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

7.8 HUB/MENTOR PROTÉGÉ.

In accordance with State law, it is DFPS's policy to assist HUBs whenever possible in providing goods and services to DFPS. DFPS encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with DFPS. In addition to information required by this Contract, the contracting Party will provide the procurement department of DFPS with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder. DFPS encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

7.9 RELATIONSHIP OF THE PARTIES.

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for DFPS any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

7.10 GOVERNING LAW AND VENUE.

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by DFPS. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

7.11 SEVERABILITY.

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

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7.12 SURVIVABILITY.

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

7.13 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.

7.14 DISPUTE RESOLUTION.

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within 14 days of the written notification, the Parties must use the dispute resolution process provided for in Texas Government Code Chapter 2260 to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

7.15 NO WAIVER OF PROVISIONS.

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

7.16. PUBLICITY.

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, DFPS, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with DFPS's prior review and approval, which DFPS may exercise at

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its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from DFPS and any Federal agency, as appropriate.

7.17 PROHIBITION ON NON-COMPETE RESTRICTIONS.

Contractor will 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.

7.18 CIVIL RIGHTS.

A. Contractor agrees to comply with state and federal anti-discrimination laws, including:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
2. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
3. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
4. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
7. DFPS's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Contract.

B. Contractor agrees to 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 agrees to 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 agrees to 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.

D. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for

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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>

- E. Contractor agrees to comply with Executive Orders 13279 and 13559, and their 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 discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor will provide 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 Agreement. This notice must be delivered no more than ten 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
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

7.19 NOTICE OF LEGAL MATTER OR LITIGATION.

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

7.20 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL.

If the Contractor is a "Company" under Texas Government Code § 808.001, the Contractor certifies that at the time of executing this Contract, that it is not boycotting Israel and will not boycott Israel during the term of this Contract.