MH/vv
10/30/14
Item #23

AN ORDINANCE 2014-10-30-0833

AUTHORIZING AGREEMENTS RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S TUBERCULOSIS PREVENTION AND CONTROL PROGRAM WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER WHICH INCLUDE TWO AGREEMENTS IN A CUMULATIVE AMOUNT OF UP TO $343,268.00 FOR PHYSICIAN SERVICES FOR THE PERIOD ENDING SEPTEMBER 30, 2015 WITH OPTIONS TO RENEW, AND AN AGREEMENT FOR CONSULTATION SERVICES FOR THE PERIOD ENDING DECEMBER 31, 2015, WITH OPTIONS TO RENEW.

* * * * *

WHEREAS, the San Antonio Metropolitan Health District (Metro Health) is charged with investigating all suspected and confirmed cases of active Tuberculosis (TB) and provides prompt diagnosis and treatment through a process of Directly Observed Therapy (DOT); and

WHEREAS, a significant component of Metro Health's TB Clinic operations is comprised of patient care that is provided to confirmed active TB patients; and

WHEREAS, the University of Texas Health Science Center at Tyler (UTHSCT) is one of five Regional Training and Medical Consultation Centers (RTMCCs) in the United States, and the only one in Texas funded by the Center for Disease Control and Prevention's Division of TB Elimination, to provide medical and technical consultation services related to various aspects of TB control; and

WHEREAS, as such, the UTHSCT is the only entity with this level of expertise available within the state; and

WHEREAS, one agreement with the UTHSCT under this ordinance will provide expert TB physician services through Drs. Barbara Seaworth and Lisa Armitage for full medical coverage for all active TB patients referred to Metro Health's TB clinic; and

WHEREAS, the second agreement under this ordinance will provide TB physician services for high risk individuals identified as having latent tuberculosis infection through increased targeted TB testing; and

WHEREAS, through the third agreement, UTHSCT staff will assist with and provide input on contact investigations upon request and will provide education to Metro Health through discussions, consultations, Cohort and Board Reviews; and

WHEREAS, Metro Health will provide for an on-site educational experience for medical and non-medical professional fellows enrolled in clinical, contact investigation and programmatic fellowships provided by UTHSCT; **NOW THEREFORE:**

MH/vv
10/30/14
Item #23

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the San Antonio Metropolitan Health District (Metro Health) or his designee is authorized to execute agreements related to the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control Program with the University of Texas Health Science Center at Tyler (UTHSCT) which include two agreements in a cumulative amount of up to $343,268.00 for physician services for the period ending September 30, 2015 with options to renew, and an agreement for consultation services for the period ending December 31, 2015, with options to renew. A copy of the agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachments I, II and III.**

SECTION 2. Funding in the amount of $50,000.00 for this ordinance is available for Fund 11001000, Cost Center 3616010003 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to UTHSCT and should be encumbered with a purchase order.

SECTION 4. The sum of $293,268.00 is appropriated in fund 2601636128 and Internal Order 136000000623 and will be disbursed from GL 5201040. Payment is authorized to UTHSCT upon issuance of a purchase order.

SECTION 5. Future funding through the renewal terms of these agreements are contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of October, 2014.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young

for Robert F. Greenblum, City Attorney

Agenda Item:	**23 (in consent vote: 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 31A, 31B)**
Date:	10/30/2014
Time:	02:38:40 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing agreements related to the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control Program with the University of Texas Health Science Center at Tyler which include two agreements in a cumulative amount of up to $343,268.00 for physician services for the period ending September 30, 2015 with options to renew, and an Agreement for consultation services for the period ending December 31, 2015, with options to renew. [Erik Walsh, Deputy City Manager; Dr. Thomas L. Schlenker, Director of Public Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x			x	
Keith Toney	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	
COUNTY OF BEXAR	§	**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as "Metro Health"), acting by and through the Director of Metro Health, pursuant to Ordinance No. _____, and The University of Texas Health Science Center at Tyler (hereinafter referred to as "CONTRACTOR"), an institution of The University of Texas System ("System") and an agency of the State of Texas, City and CONTRACTOR may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program within Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections; and

WHEREAS, Metro Health also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, CONTRACTOR is one of five regional training and medical consultation universities in the United States funded by the Center for Disease Control and Prevention's Division of TB Elimination; and

WHEREAS, CONTRACTOR provides medical consultation services related to various aspects of TB control; and

NOW THEREFORE, this Agreement defines the terms between the City and CONTRACTOR for the provision of physician medical services by CONTRACTOR for active TB cases.

I.
DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"CONTRACTOR" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

"Project or Program" shall mean the general scope of services of this Agreement.

II.
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2014 and shall terminate on September 30, 2015. This Agreement may be renewed by mutual consent of the parties for up to two (2) successive, one (1) year terms (each, a "Renewal Term"). Any renewals shall be in writing, and signed by the parties. The City Manager, her designee, or the Director of the San Antonio Metropolitan Health District shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

2.2 It is expressly understood and agreed by the City and CONTRACTOR that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither CONTRACTOR nor City shall have any further obligations hereunder.

III.
SCOPE OF SERVICES

3.1 CONTRACTOR agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 CONTRACTOR agrees to perform the following services:

3.2.1 CONTRACTOR shall provide through the services of Dr. Barbara Seaworth and Dr. Lisa Armitige professional physician medical services to include:

a. Providing clinical service coverage and patient care for the Metro Health City Chest Clinic (Clinic) for all active TB cases and active TB case contacts referred to the Clinic which includes persons identified as having exposure to known active TB cases and are at risk for being infected or developing TB disease. Active TB case contacts identified as having a latent tuberculosis infection will be referred for services and treatment and shall not be provided treatment services under this Agreement. Medical and clinical services will include but not be limited to: guiding the treatment of active tuberculosis utilizing available resources including

mycbacterial cultures, genotyping, drug susceptibility testing, radiographic facilities, first and second-line drugs. Services to be provided include organization and supervision of treatment, utilizing recommended treatment regimens, initiating treatment, conducting appropriate baseline and follow-up evaluations, identification and management of patients at increased risk of treatment failure and relapse, as well as providing treatment in special situations such as HIV infection, diabetes, children, extrapulmonary tuberculosis, pregnancy, or liver disease.

b. Providing nontreatment activities to include but not limited to, Board and Cohort review. Nontreatment activities could also include professional guidance and recommendations for the investigation of contacts or persons with infectious tuberculosis. Examples could include input on decisions to initiate or expand a contact investigation, investigating sites of transmission, assigning priorities to contacts, and conducting contact investigations in special circumstances such as outbreaks, congregate settings, correctional facilities, health-care settings, schools, or shelters.

3.4 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV.
COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR an amount not to exceed FIFTY THOUSAND 00/100THS ($50,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth in Section 4.2.

4.2 City agrees to pay CONTRACTOR upon receipt of an invoice submitted in accordance with this section. CONTRACTOR shall submit invoices monthly in the amount of $4,166.67 throughout the term of this Agreement. Each invoice shall outline the work completed during the previous period in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. City shall pay the invoice from CONTRACTOR within 30 days after the date on which City receives the invoice with appropriate documentation as required by City, which may include a narrative describing in detail the activities that CONTRACTOR staff performed, copies of sign in sheets, and anything else City may require in documenting reimbursed activities. The total payments hereunder shall not exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

4.3 Invoices shall be submitted to: City of San Antonio, San Antonio Metropolitan Health District P.O. Box 839966, San Antonio, TX 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City, as determined by the Director as the City's approval official. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 All services required under this Agreement will be performed to City's satisfaction, and City will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the City, as determined by the Director as the City's approval official.

V.
OWNERSHIP OF DOCUMENTS

5.1 Ownership of Intellectual Property. CONTRACTOR and City agree that any and all writings, documents, maps or information in whatsoever form and character produced by CONTRACTOR pursuant to the provisions of this Agreement (the "Project") shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. CONTRACTOR hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. As owner of the tangible and intangible intellectual property, City shall have the right to reproduce, publish, authorize others to reproduce or publish, or otherwise use such material. CONTRACTOR agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure CONTRACTOR's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, CONTRACTOR hereby irrevocably designates and appoints City and its duly authorized officers and agents as CONTRACTOR's agent and attorney-in-fact, to act for and in CONTRACTOR's behalf and

stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by CONTRACTOR. Provided, however, nothing herein contained is intended nor shall it be construed to require CONTRACTOR to transfer any ownership interest in CONTRACTOR's best practice and benchmarking information to the City.

5.2 In the event that CONTRACTOR desires to copyright material or to permit any third-party to do so, CONTRACTOR must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.

5.3 CONTRACTOR shall not use any City data or information collected, or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from the City.

5.4 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CONTRACTOR.

VI.
REQUESTS FOR and RETENTION of RECORDS

6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CONTRACTOR to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make

public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

VII.
TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required;

7.4.4 Performing unsatisfactorily as determined by City;

7.4.5 The failure to meet reporting requirements as set out and determined by City;

7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, CONTRACTOR shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested.

7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CONTRACTOR for any default hereunder or other action.

VIII.
NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

AND

City of San Antonio
Director, San Antonio Metropolitan Health District
332 W. Commerce, Suite 307
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Jeff Levin, MD
Vice President for Clinical and Academic Affairs
2303 SE Military Drive
San Antonio, Texas 78223

IX.
RESERVED

X.
AUDIT

10.2 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as deemed necessary by City, not to exceed two times per 12 month period. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.3 CONTRACTOR shall during normal business hours with advance written notice, and not to exceed two times per twelve month period by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the CONTRACTOR shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by CONTRACTOR in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.4 When an audit or examination determines that the CONTRACTOR has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the CONTRACTOR shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.5 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will promptly refund such amount to the City no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such undisputed claims from subsequent reimbursements under this Agreement; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, deduct such undisputed claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

10.6 CONTRACTOR agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by CONTRACTOR shall be the sole responsibility of the CONTRACTOR and shall not be paid from any Project funds received by the CONTRACTOR under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

XI.
ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS

11.1 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, CONTRACTOR agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR shall furnish to Metro Health and the Grantor of the Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the CONTRACTOR of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.2 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall, where possible, give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR certifies that it has established specific procedures designed to meet the obligations of this Article, including, but not limited to execution of agreements regarding the treatment of Confidential Information with CONTRACTOR's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement for the period noted above. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

(i) is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;

(ii) is already in the recipient party's possession at the time of disclosure as evidenced by written records in the possession of the receiving party prior to such time;

(iii) is or later becomes part of the public domain through no fault of the recipient

party;

(iv) is received from a third party having no obligations of confidentiality to the disclosing party;

(v) is independently developed by the recipient party by its personnel having no access to the Confidential Information.

CONTRACTOR shall comply with standard practices of confidentiality of patient information as required by Metro Health and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. CONTRACTOR will enter into a Business Associate Agreement with the City which is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

City policies regarding authorization for access to confidential information and review of medical records will be followed by CONTRACTOR. CONTRACTOR assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

11.3 Prohibited Political Activity. CONTRACTOR agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.4 CONTRACTOR agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.5 The prohibitions set forth in Sections 11.3 and 11.4 above include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.6 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, fees paid to the CONTRACTOR under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the CONTRACTOR's personnel is terminated.

11.7 Sections 11.4 through 11.8 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, CONTRACTOR and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.8 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

XII.
INSURANCE

12.1 CONTRACTOR and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

12.2 With respect to CONTRACTOR, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of $250,000.00 for each person and $500,000.00 for each single occurrence for bodily injury or death and $100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XIII.
INDEMNIFICATION

13.1 CONTRACTOR and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims

Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. CONTRACTOR and City shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

XIV.
SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

14.1 CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that it will adhere to its established policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts.

14.2 In the event that the CONTRACTOR utilizes subcontractors to perform any part of this agreement the CONTRACTOR will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

XV.
ASSIGNMENT AND SUBCONTRACTING

15.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 It is City's understanding that this Agreement is made in reliance thereon that CONTRACTOR does not intend to use subcontractors in the performance of this Agreement.

15.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

15.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted,

CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

XVI.
INDEPENDENT CONTRACTOR

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between City and CONTRACTOR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

XVII.
NONDISCRIMINATION POLICY

17.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. CONTRACTOR agrees that CONTRACTOR shall not discriminate against any individual or group on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

17.2 The CONTRACTOR shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect

of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONTRACTOR agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

a) Title VII of the Civil Rights Act of 1964, as amended;

b) Section 504 of the Rehabilitation Act of 1973, as amended;

c) The Age Discrimination Act of 1975, as amended;

d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);

e) Fair Labor Standards Act of 1938, as amended;

f) Equal Pay Act of 1963, P.L. 88-38; and

g) All applicable regulations implementing the above laws.

XVIII.
CONFLICT OF INTEREST

18.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX.
AMENDMENTS

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and CONTRACTOR

XX.
SEVERABILITY

20.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI.
LICENSES/CERTIFICATIONS

21.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.
COMPLIANCE

22.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXIII.
NONWAIVER OF PERFORMANCE

23.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver

or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV.
LAW APPLICABLE

24.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXV.
LEGAL AUTHORITY

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions and obligations herein contained.

XXVI.
PARTIES BOUND

26.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXVII.
CAPTIONS

27.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVIII.
DEBARMENT

28.1 CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

28.2 CONTRACTOR shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXIX.
ENTIRE AGREEMENT

29.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and **AGREED** to this the _____ day of _____, 2014.

CITY OF SAN ANTONIO

By: _____
Name: Thomas Schlenker, M.D., M.P.H.
Title: Director of Health

Date: _____

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER

By: _____
Name: Jeff Levin, MD.
Title: Vice President for Clinical and Academic Affairs

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

Attachment I

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and the University of Texas Health Science Center at Tyler, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract to provide physician services ("Service Contract"), effective October 1, 2014, whereby BA provides health care services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.
Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of July 1, 2014, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on

behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION. BA acknowledges that it is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2014 as signed by the parties below.

COVERED ENTITY
By City of San Antonio

By: _____
Name: Thomas Schlenker, M.D., M.P.H.
Title: Director, San Antonio Metropolitan Health District

BUSINESS ASSOCIATE:

By: _____
Name: Jeff Levin, MD
Title: Vice President for Clinical and Academic Affairs

APPROVED AS TO FORM:

_____
City Attorney

Attachment II

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	
COUNTY OF BEXAR	§	**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as "Metro Health"), acting by and through the Director of Metro Health, pursuant to Ordinance No. _____, and The University of Texas Health Science Center at Tyler (hereinafter referred to as "CONTRACTOR"), an institution of The University of Texas System ("System") and an agency of the State of Texas, City and CONTRACTOR may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program within Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections (LTBI); and

WHEREAS, Metro Health has received funding from the Texas Department of State Health Services (DSHS) in order to provide support services for the DSHS' Health Services Region 8 TB Waiver Project for the prevention and control of TB; and

WHEREAS, CONTRACTOR is one of five regional training and medical consultation universities in the United States funded by the Center for Disease Control and Prevention's Division of TB Elimination; and

WHEREAS, CONTRACTOR provides medical and technical consultation services related to various aspects of TB control; and

NOW THEREFORE, this Agreement defines the terms between the City and CONTRACTOR for the provision of services by CONTRACTOR related to LTBI associated with the DSHS' Health Services Region 8 TB Waiver Project.

I.
DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"CGUS," shall be defined as the Comptroller General of the United States.

"CONTRACTOR" is defined in the preamble of this Agreement and has an address of 2303 SE Military Drive, San Antonio, Texas 78223 and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

"DSHS" shall be defined as the Texas Department of State Health Services, the agency that funds and oversees the Health Services Region 8 TB Waiver Project.

"Project or Program" shall mean the general scope of services of this Agreement.

"SAO," shall be defined as the Texas State Auditor's Office.

"TB Waiver Project Grant" shall be defined as the DSHS' Health Services Region 8 TB Waiver Project which is the funding source for this contract.

II.
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2014 and shall terminate on September 30, 2015. This Agreement may be renewed by mutual consent of the parties for an additional one (1) year term. Any renewals shall be in writing, and signed by the parties. The City Manager, her designee, or the Director of the San Antonio Metropolitan Health District shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

2.2 It is expressly understood and agreed by the City and CONTRACTOR that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither CONTRACTOR nor City shall have any further obligations hereunder.

2.3 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the TB Waiver Project Grant. Accordingly, if TB Waiver Project Grant funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

III.

SCOPE OF SERVICES

3.1 CONTRACTOR agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 CONTRACTOR agrees to perform the following specific services:

3.2.1 CONTRACTOR shall provide through the services of Dr. Barbara Seaworth and Dr. Lisa Armitige the following services to include:

a. Performing clinical evaluation to determine latent TB infection (LTBI) among persons screened and found to have a positive interferon gamma release assay (IGRA) result.

b. Providing routine treatment for LTBI through a 12 dose, 12 week regimen administered by directly observed therapy (DOT) to improve patient adherence and completion of treatment.

c. Providing alternate recognized treatment regimens for treating LTBI may be used if the 12 dose, 12 week regimen is not appropriate.

d. Providing review and input related to policy development utilizing an Isoniazid-Rifapentine Regimen for 3 months (3HP) with weekly Direct Observation Therapy (DOT) to treat latent Mycobacterium tuberculosis infections to improve patient adherence and completion of LTBI therapy.

e. Providing recommendations for protocols to increase targeted testing in homeless, refugee, diabetic, substance-abuse user, and other high-risk populations.

f. Providing LTBI activities associated with the TB Waiver Project Grant to include meeting and consulting with local outside collaborating agencies as needed in order to 1) address referrals being made to the City's TB Prevention and Control Program 2) promote a change in screening tests from tuberculin skin testing (TST) to IGRA testing, and 3) assist in strategically enhancing Metro Health's TB services with local agencies.

3.3 CONTRACTOR agrees to perform all activities in accordance with the DSHS Contract Statement of Work and General Provisions for the TB Waiver Project Grant which are attached hereto and incorporated herein for all purposes as **Attachment I**.

3.4 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should

CONTRACTOR's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV.
COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR an amount not to exceed TWO HUNDRED NINETY THREE THOUSAND TWO HUNDRED SIXTY EIGHT DOLLARS ($293,268.00) as total compensation, which is budgeted for such payment, as set forth in a comprehensive budget which is affixed hereto and incorporated herein for all purposes as **Attachment II**, and compensated according to the terms of this Agreement.

4.2 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in section 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.4 CONTRACTOR agrees to submit invoices each month showing documented itemized costs. Reimbursement of eligible expenses, as determined by the City, shall be made monthly according to standard procedures followed by City, as requested upon receipt of billing invoices from CONTRACTOR. Invoices shall be due on a monthly basis eight (8) calendar days after the end of each monthly reporting period.

4.4.1 With every invoice submitted, CONTRACTOR shall attach a brief monthly summary describing the activities being reimbursed in relation to the funding:

A. The name and location where CONRACTOR's activities take place as a result of City funding,

B. Activities that CONTRACTOR's staff are performing in those locations,

C. The names of staff directly involved in these activities,

D. Attach copies of sign in sheets and/or agenda of any and all meetings or presentations associated with this funding,

E. Attach anything else CONTRACTOR or City believes will be helpful in documenting reimbursed activities.

4.4.2 CONTRACTOR understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the monthly reporting period may be rejected by City or the Funder and not be subject to reimbursement.

4.5 Due to the requirements of the funding agency, an invoice documenting final expenses associated with the Agreement shall be submitted to the City by no later than October 9, 2015, or October 9, 2016 if this Agreement is renewed for an additional one year term. Additional documentation requirements of costs associated with this Agreement may be amended by City as needed. CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the TB Waiver Project Grant. All services required under this Agreement shall be performed to City's satisfaction, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder shall not be paid until required reports, data, and documentation have been received and approved by the City.

V.
OWNERSHIP OF DOCUMENTS

5.1 Ownership of Intellectual Property. CONTRACTOR and City agree that any and all writings, documents, maps or information in whatsoever form and character produced by CONTRACTOR pursuant to the provisions of this Agreement (the "Project") shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. CONTRACTOR hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. As owner of the tangible and intangible intellectual property, City shall have the right to reproduce, publish, authorize others to reproduce or publish, or otherwise use such material. CONTRACTOR agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure CONTRACTOR's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, CONTRACTOR hereby irrevocably designates and appoints City and its duly authorized officers and agents as CONTRACTOR's agent and attorney-in-fact, to act for and in CONTRACTOR's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by

CONTRACTOR. Provided, however, nothing herein contained is intended nor shall it be construed to require CONTRACTOR to transfer any ownership interest in CONTRACTOR's best practice and benchmarking information to the City.

5.2 In the event that CONTRACTOR desires to copyright material or to permit any third-party to do so, CONTRACTOR must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.

5.3 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CONTRACTOR.

VI.
REQUESTS FOR and RETENTION of RECORDS

6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CONTRACTOR to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential

pursuant to state or federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

VII.
TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required;

7.4.4 Performing unsatisfactorily as determined by City;

7.4.5 The failure to meet reporting requirements of the TB Waiver Project Grant as set out and determined by City;

7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, CONTRACTOR shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested.

7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CONTRACTOR for any default hereunder or other action.

VIII.
NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and

deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

AND

City of San Antonio
Director, San Antonio Metropolitan Health District
332 W. Commerce, Suite 307
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Jeff Levin, MD
Vice President for Clinical and Academic Affairs
2303 SE Military Drive
San Antonio, Texas 78223

IX. CONTRACT PROVISIONS REQUIRED BY DSHS

CONTRACTOR acknowledges that funds for this Agreement come from the DSHS TB Waiver Project Grant. As such, CONTRACTOR agrees to comply with all terms and conditions associated with said funds as directed by the City or as required by this Agreement, to include but not limited to:

Retention

9.1 Retention. Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.l(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the DSHS upon DSHS' request for at least four (4) years from the date

Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

Access and Inspection

9.2 Access. In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the DSHS or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the DSHS or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The DSHS and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of DSHS and HHSC to recover excessive or illegal payments. Contractor shall make available to the DSHS information collected, assembled or maintained by Contractor relative to this Contract for the DSHS to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

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

Assurances and Certifications

9.3 Contractor certifies by execution of this Agreement to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;

b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any

federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;

d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;

e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;

f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;

g) neither it, nor its principals have within the three(3)-year period preceding this Agreement, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;

h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and

i) neither it, nor its principals within a three (3) year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Child Support Delinquencies. As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Authorization. Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and to provide such additional information as may be required.

Gifts and Benefits Prohibited. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Ineligibility to Receive the Contract. (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Antitrust. Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Initiation and Completion of Work. Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

Status of Contractor

9.4 Status of Subcontractors. Contractor certifies that it is not delinquent on any repayment agreements; has not had a required license or certification revoked; and has not had a contract terminated by the DSHS. Contractor further certifies that they have not voluntarily surrendered within the past three (3) years any license issued by the DSHS.

Conflict of Interest

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

Transactions Between Related Parties

9.6 Transactions Between Related Parties. Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the DSHS is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. *A* related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the DSHS under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional

information requested by the DSHS, regarding a transaction between related parties, needed to enable the DSHS to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR§ 215.42, and UGMS.

Lobbying

9.7 Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Agreement, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Agreement, a certification that none of the funds provided by DSHS have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Compliance and Reporting

9.8 Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the DSHS' rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The DSHS rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes,

regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

X.
AUDIT

10.1 As an agency of the State of Texas, CONTRACTOR is subject to the auditing requirements of the State of Texas including Statewide Single Audit, a copy of which is available through the http://www.sao.state.tx.us/reports/Default.aspx

10.2 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as deemed necessary by City, not to exceed two times per 12 month period. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.3 CONTRACTOR shall during normal business hours with advance written notice, and not to exceed two times per twelve month period by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the CONTRACTOR shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by CONTRACTOR in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.4 When an audit or examination determines that the CONTRACTOR has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the CONTRACTOR shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.5 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) business days from the date of notification of

such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such undisputed claims from subsequent reimbursements under this Agreement; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashiers check or money order. Should the City, at its sole discretion, deduct such undisputed claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

10.6 CONTRACTOR agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by CONTRACTOR shall be the sole responsibility of the CONTRACTOR and shall not be paid from any Project funds received by the CONTRACTOR under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

XI.
ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS

11.1 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, CONTRACTOR agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR shall furnish to Metro Health and the Grantor of the Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the CONTRACTOR of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.2 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall, where possible, give the Director of Metro Health prior written notice

that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR certifies that it has established specific procedures designed to meet the obligations of this Article, including, but not limited to execution of agreements regarding the treatment of Confidential Information with CONTRACTOR's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement for the period noted above. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

(i) is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;
(ii) is already in the recipient party's possession at the time of disclosure as evidenced by written records in the possession of the receiving party prior to such time;
(iii) is or later becomes part of the public domain through no fault of the recipient party;
(iv) is received from a third party having no obligations of confidentiality to the disclosing party;
(v) is independently developed by the recipient party by its personnel having no access to the Confidential Information.

CONTRACTOR shall comply with standard practices of confidentiality of patient information as required by Metro Health and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. CONTRACTOR will enter into a Business Associate Agreement with the City which is attached hereto as **Attachment III** and incorporated herein as a part of this Agreement for all purposes.

City policies regarding authorization for access to confidential information and review of medical records will be followed by CONTRACTOR. CONTRACTOR assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

11.3 Prohibited Political Activity. CONTRACTOR agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.4 CONTRACTOR agrees that no funds provided under this Agreement may be used in any

way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.5 The prohibitions set forth in Sections 11.3 and 11.4 above include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.6 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, fees paid to the CONTRACTOR under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the CONTRACTOR's personnel is terminated.

11.7 Sections 11.4 through 11.8 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, CONTRACTOR and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.8 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

XII.
INSURANCE

12.1 CONTRACTOR and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

12.2 With respect to CONTRACTOR, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of $250,000.00 for each person and $500,000.00 for each single occurrence for bodily injury or death and $100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XIII.
INDEMNIFICATION

13.1 CONTRACTOR and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. CONTRACTOR and City shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

XIV.
SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

14.1 CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that it will adhere to its established policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts.

14.2 In the event that the CONTRACTOR utilizes subcontractors to perform any part of this agreement the CONTRACTOR will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

XV.
ASSIGNMENT AND SUBCONTRACTING

15.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 It is City's understanding that this Agreement is made in reliance thereon that CONTRACTOR does not intend to use subcontractors in the performance of this Agreement.

15.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

15.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

XVI.
INDEPENDENT CONTRACTOR

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between

City and CONTRACTOR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

XVII.
NONDISCRIMINATION POLICY

17.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. CONTRACTOR agrees that CONTRACTOR shall not discriminate against any individual or group on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

17.2 The CONTRACTOR shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONTRACTOR agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

a) Title VII of the Civil Rights Act of 1964, as amended;

b) Section 504 of the Rehabilitation Act of 1973, as amended;

c) The Age Discrimination Act of 1975, as amended;

d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);

e) Fair Labor Standards Act of 1938, as amended;

f) Equal Pay Act of 1963, P.L. 88-38; and

g) All applicable regulations implementing the above laws.

XVIII.
CONFLICT OF INTEREST

18.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX.
AMENDMENTS

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and CONTRACTOR

XX.
SEVERABILITY

20.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI.
LICENSES/CERTIFICATIONS

21.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.
COMPLIANCE

22.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXIII.
NONWAIVER OF PERFORMANCE

23.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV.
LAW APPLICABLE

24.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXV.

LEGAL AUTHORITY

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions and obligations herein contained.

XXVI.
PARTIES BOUND

26.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXVII.
CAPTIONS

27.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVIII.
DEBARMENT

28.1 CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

28.2 CONTRACTOR shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXIX.
ENTIRE AGREEMENT

29.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and **AGREED** to this the _____ day of _____, 2014.

CITY OF SAN ANTONIO	**UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER** [vendor identification number: _____]
_____	_____
Thomas L. Schlenker M.D., M.P.H.	Jeff Levin, M.D.
Title: **Director, San Antonio Metropolitan Health District**	Title: **Vice President for Clinical and Academic Affairs**
Date: _____	Date: _____

Approved as to Form:

_____
City Attorney

DOCUMENT NO. 2014-045668
PROGRAM ATTACHMENT NO.
PURCHASE ORDER NO.

CONTRACTOR: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

DSHS PROGRAM: Health Service Region 8-TB Waiver Project

TERM: 07/01/2014THRU: 09/30/2015

SECTION I. STATEMENT OF WORK:

A. Contractor will complete activities that support the 1115 Waiver Project initiative by developing and providing services and associated activities for the prevention and control of tuberculosis (TB) in accordance with Center for Medicare and Medicaid Services (CMS) funding requirements.

B. Contractor will focus will be on expanding Tuberculosis TB screenings, with a special focus on high risk targeted populations in Bexar County in order to reduce the spread of TB. The Contractor will:

1. Increase targeted testing for tuberculosis in high-risk populations provided for in Subsection C below;
2. Provide routine screening for TB using interferon gamma release assay (IGRAs) tests to minimize false positive results in Bacillus Calmette–Guérin (BCG) vaccinated patients. Tuberculin skin testing may be used for patients not eligible for IGRA testing.
3. Perform clinical evaluation to determine latent TB infection (LTBI) or active TB disease among persons screened and found to have a positive IGRA result.
4. Provide routine treatment for LTBI through a 12 dose, 12 week regimen administered by directly observed therapy (DOT) to improve patient adherence and completion of treatment.
5. Provide alternate recognized treatment regimens for treating LTBI may be used if the 12 dose, 12 week regimen is not appropriate.
6. Refer clients with active TB that cannot be successfully treated as an outpatient to DSHS for hospitalization.

C. The targeted population will include a population that lives in congregate settings such as homeless shelters and drug rehabilitation centers. In addition, under this contract individuals living with HIV and diabetes will be targeted. Targeted testing and treatment will focus on the homeless, refugee, HIV and diabetic populations.

D. Contractor will not exceed the total amount of this Contract without DSHS prior approval and the Parties executing a written amendment.

E. Contractor will comply with all applicable federal and state laws, rules, and regulations including, but not limited to, the following:

1. Texas Tuberculosis Code, Health and Safety Code, Chapter 13, Subchapter B;
2. Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Chapter 81; and
3. Texas Administrative Code TAC, Title 25, Part 1, Chapter 97, Subchapter A, Control of Communicable Diseases;

F. Contractor will comply with all applicable regulations, standards and guidelines in effect on the beginning date of the Term of this Contract. Contractor will provide the services outlined above in compliance with the following:

1. DSHS Standards of Performance for the Prevention and Control of Tuberculosis, http://www.dshs.state.tx.us/IDCU/disease/tb/publications/SOP-2008-final.doc;
2. DSHS Standards for Public Health Clinic Services, http://www.dshs.state.tx.us/qmb/dshsstndrds4clinicservs.pdf;
3. DSHS TB Policy and Procedures Manual, http://www.dshs.state.tx.us/idcu/disease/tb/publications/;
4. American Thoracic Society (ATS) and Centers for Disease Control and Prevention (CDC) joint statements on diagnosis, treatment and control of TB, http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5211a1.htm;
5. Diagnostic Standards and Classification of Tuberculosis in Adults and Children, (American Journal of Respiratory and Critical Care Medicine), Vol. 161, pp. 1376-1395, 2000) http://ajrccm.atsjournals.org/cgi/reprint/161/4/1376;
6. Treatment of Tuberculosis, (ATS/CDC/IDSA), 2003, http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5211a1.htm;
7. Targeted Tuberculin Testing and Treatment of Latent TB Infection (LTBI), Morbidity and Mortality Weekly Report, Vol. 49, No. RR-6, 2000, http://www.cdc.gov/mmwr/PDF/rr/rr4906.pdf;
8. Updated: Adverse Event Data and Revised ATS/CDC Recommendations Against the Use of Rifampin and Pyrazinamide for Treatment of Latent Tuberculosis Infection – United States, 2003, MMWR 52 (No. 31), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5231a4.htm;
9. Controlling Tuberculosis in the United States, MMWR, Vol. 54, No. RR-12, 2005 http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5412a1.htm; and
10. Guidelines for the Prevention and Treatment of Opportunistic Infections Among HIV-Exposed and HIV-Infected Children, http://www.cdc.gov/mmwr/pdf/rr/rr58e0826.pdf.

G. Contractor must receive written approval from DSHS before varying from the procedures outlined in Section F and must update its implementation documentation within forty-eight (48) hours of making approved changes so that staff working on activities under this contract knows of the change(s).

H. The Contractor will submit to the Assigned Contract Manager and to Health Service Region 8 designee:
1. By the 10th of every month report the activities/ progress completed along with the number of clients screened, started on treatment for LTBI and completed treatment for LTBI each month.
2. A mid-year and end of year performance report reporting milestones to DSHS in a format specified by DSHS;
3. Other programmatic reports as directed by DSHS in a format specified by DSHS. Contractor will provide DSHS other reports, including financial reports, and any other reports that DSHS determines necessary to accomplish the objectives of this contract and to monitor compliance; and
4. Reports as requested by DSHS to satisfy information-sharing Requirements set forth in Texas Government Code, Sections 421.071 and 421.072 (b) and (c).

I. Contractor will adhere to reporting requirements documented in the CDC Tuberculosis Surveillance Data Training Report of Verified Case of Tuberculosis (RVCT) Instruction Manual available at, http://www.cdc.gov/tb/programs/rvct/InstructionManual.pdf.

J. If Contractor is legally prohibited from providing such reports, Contractor will immediately notify DSHS in writing.

K. Contractor will inform DSHS in writing if Contractor will not continue performance under this Program Attachment within thirty days of receipt of an amended standard(s) or guideline(s). DSHS may terminate this Contract immediately or within a reasonable period of time as determined by DSHS.

L. Contractor will develop, implement and maintain a timekeeping system for accurately documenting staff time and salary expenditures for all staff funded through this Contract, including partial full-time employees and temporary staff.

M. Contractor will not use DSHS funds for:

1. Food;
2. Entertainment; or
3. Sectarian worship, instruction, or proselytization.

DSHS reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS will monitor Contractor's expenditures on a quarterly basis. If expenditures are below that projected in Contractor's total Contract amount, Contractor's budget may be subject to a decrease for the remainder of the Term of the Contract. If applicable, vacant positions existing after ninety days may result in a decrease in funds.

SECTION II. PERFORMANCE MEASURES:

A. Contractor will meet and report performance measures based on milestones that are developed in coordination with DSHS for the Contractor's project as provided in the Section I.

B. Contractor will report monthly progress of activities on the 10th of every month. The first report will be due on August 10th to report the first month. Contractor will submit the Monthly Project Report to the assigned contract manager and to the Health Service Region 8 designee.

In addition, the mid-year report will be submitted on March 15, 2015 and the end-of-year report will be submitted by October 15, 2015 to DSHS.

Contractor will provide services in the following counties :

BexarSOLICITATION DOCUMENT:

Exempt - Governmental Entity

SECTION IV. RENEWALS:

DSHS may renew this Contract by executing a written amendment renewing this Contract.

SECTION V. PAYMENT METHOD:

A. DSHS will pay the Contractor on a cost reimbursement basis as provided for in the attached Categorical Budget and, if applicable to this project, Equipment List.

B. DSHS will make payments for services it receives under this Contract to the Contractor from its current revenues.

SECTION VI. BILLING INSTRUCTIONS:

Contractor will request payment using the State of Texas Purchase Voucher (Form B-13) on a monthly basis and acceptable supporting documentation for reimbursement of the required services/deliverables. Additionally, the Contractor will submit the Financial Status Report (FSR-269A) on a quarterly basis. Vouchers, supporting documentation and the Financial Status Report should be mailed or submitted by fax or email to the addresses/number below.

Claims Processing Unit, MC1940
Texas Department of State Health Services
1100 West 49th Street
PO Box 149347
Austin, TX 78714-9347
Fax: (512) 458-7442
Email: invoices@dshs.state.tx.us

SECTION VII. BUDGET:

SOURCE OF FUNDS: CFDA #

SECTION VIII. SPECIAL PROVISIONS:

A. As provided for in Section 6 of the Contract, the following Fiscal Year 2014 Department of State of Health Services General Provisions (Core/Sub Recipient) are amended.

1. Section 4.02 (Billing Submission) is modified by adding the following language "DSHS will monitor Contractor's billing activity and expenditure reporting on a quarterly basis. Based on these reviews, DSHS may reallocate funding between contracts to maximize use of available funding."
2. Section 13.15 (Amendment) is modified by adding the following language "Contractor must submit all amendment and revision requests in writing to the Division Contract Management Unit at least 90 days prior to the end of the term of this Program Attachment."
3. Section 13.16 (Contractor's Notification of Change to Certain Contract Provisions) is modified by deleting in its entirety Subsection (d) of this Section.

Fiscal Year 2014 Department of State Health Services Contract
General Provisions
(Core/Subrecipient)

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ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2 of the Code of Federal Regulations), the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 **Statutes and Standards of General Applicability.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC § § 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC § § 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2)

Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;"
r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

Section 1.08 **Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
    1) Hold Harmless and Indemnification, Section 13.19;
    2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
    3) Insurance, Section 12.03;
    4) Liability Coverage, Section 12.05;
    5) Fidelity Bond, Section 12.04;

6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
7) Debt to State and Corporate Status, Section 3.01;
8) Application of Payment Due, Section 3.02; and
9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).

b) The following additional provisions will apply to interagency contracts:
   1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
   2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
   3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.

c) The following additional provisions will apply to interlocal contracts:
   1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
   2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
   3) Each Party represents that it has been authorized to enter into this Contract.

d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 **Civil Rights Policies and Complaints.** Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

Civil Rights Office
Health and Human Services Commission
701 W. 51st St., Mail Code W206
Austin, Texas 78751
(888) 388-6332 or (512) 438-4313
TTY Toll-free (877) 432-7232
HHSCivilRightsOffice@hhsc.state.tx.us

Section 1.10 **Licenses, Certifications, Permits, Registrations and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract

and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

Section 1.11 **Funding Obligation.** This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment of the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce or terminate funding under this Contract. Notice of any restriction or reduction will include instructions and detailed information on how DSHS will fund the services and/or goods to be procured with the restricted or reduced funds.

ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor's primary services.

Section 2.03 **Consent to Medical Care of a Minor.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
b) contraindication considerations for telemedicine use;
c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
e) use by credentialed licensed providers providing clinical care within the scope of their licenses;

f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
g) priority in scheduling the system for clinical care of individuals;
h) quality oversight and monitoring of satisfaction of the individuals served; and
i) management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites.

Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

Section 2.05 **Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay. Any charges assessed to individuals for screenings must be accounted for as Program Income in accordance with the DSHS Contractor's Financial Procedure Manual. The Contractor shall not charge for screening if an individual becomes a DSHS client.

Section 2.06 **Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 **Services and Information for Persons with Limited English Proficiency.** Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 **Use of Funds.** Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly by the last business day of the month following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60)

calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 4.05 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220)	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards	OMB Circular A-133 and UGMS	UGMS and applicable Federal awarding agency common rule

	that comply with cost principles acceptable to the federal or state awarding agency		

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 **Independent Single or Program-Specific Audit**. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The $500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Status Registration Form. If Contractor fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every six (6) years.

Section 6.03 **Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347

Health and Human Services Commission
Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

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

ARTICLE VII CONFIDENTIALITY

Section 7.01 **Maintenance of Confidentiality.** Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and

client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

Section 7.02 **Department Access to PHI and Other Confidential Information.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 **Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 **Security of Patient or Client Records.** Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 **HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code §□□ 85.112-114. A link to the Model Workplace Guidelines can be found at http://www.dshs.state.tx.us/hivstd/policy/policies.shtm.

ARTICLE VIII RECORDS RETENTION

Section 8.01 **Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin.

Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program or management review or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures

related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the SAO at http://sao.fraud.state.tx.us, and to the HHS Office of Inspector General at http://www.oig.hhs.gov/fraud/hotline/ no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 **Criminal Activity and Disciplinary Action.** Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 10.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 **Certification.** Contractor certifies by execution of this Contract to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;

f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g) neither it, nor its principals have within the three(3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 11.02 **Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 11.03 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and to provide such additional information as may be required.

Section 11.04 **Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 11.05 **Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications,

requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees.** Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems**. Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: http://www.dshs.state.tx.us/contracts/cfpm.shtm. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications

are met during the term of the contract through the completion of the closeout procedures. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond**. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to $100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any

compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 **Program Site.** Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 **Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mailto:coscap@dshs.state.tx.us no later than the 60th calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as the plan previously submitted to DSHS, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as the plan previously submitted. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

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

Section 12.10 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.10 et seq. Contractors may obtain a list of HUBs at http://www.window.state.tx.us/procurement/prog/hub. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(b).

Section 12.11 **Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

Section 12.12 **Contracts with Subrecipient and Vendor Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding $100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan.

Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

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

a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
b) a detailed description of the services to be provided;
c) measurable method and rate of payment and total not-to-exceed amount of the contract;
d) clearly defined and executable termination clause; and
e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

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

Section 12.13 **Status of Subcontractors.** Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 12.14 **Incorporation of Terms in Subrecipient Subcontracts.** Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor. If a subcontractor is unable to certify to any of the statements in Section 12.13 or any of the certifications stated in the Assurances and Certifications Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If the subcontractor's status with respect to the items certified in Section 12.13 or the assurances stated in the Assurances and Certifications Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 12.15 **Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture

participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of $5,000 or more. Contractors shall inventory all equipment, and report the inventory on the Contractors Property Inventory Form or Form GC-11 as required under Section 12.23Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Tangible personal property includes controlled assets, including firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more, but less than $5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment are also considered Supplies. Prior approval by DSHS of the purchase of controlled assets is not required, but such purchases must be reported on the Contractors Property Inventory Form or Form GC-11 as detailed under Section 12.23.

Section 12.22 **Changes to Equipment List.** All items of equipment to be purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will

acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate; or, in the case of minor changes to Contractor's approved equipment list, by email in accordance with the Contractor's Financial Procedures Manual.

Section 12.23 **Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment,supplies defined as controlled assets, and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at http://www.dshs.state.tx.us/contracts/forms.shtm. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 **Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 **Title to Property.** At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 **Property Acquisitions.** Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 **Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than $5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than $5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than $5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall

ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.28 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All

equipment purchased with Department funds must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

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

subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 13.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 **Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

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

authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

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

Section 13.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses with a value of $500 or more, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

Section 13.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 13.09 **Successors.** This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 **Headings.** The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 **Parties.** The Parties represent to each other that they are entities fully familiar with transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 **Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

Section 13.14 **Customer Service Information.** If requested, Contractor shall supply such information as

required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 **Amendment.** The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

a) contractor's contact person and contact information;
b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
c) cumulative budget transfers that exceed 25% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments <u>of less than $100,000</u>, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section, but the contract will not be amended. The notification may be by letter, fax or email. Except for contracts funded by funding sources that have different percentage requirements, cumulative budget line item transfers of 25% or less among direct cost categories, other than equipment, of cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 25% of Program Attachments <u>of $100,000 or more</u>, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
c) change in clinic hours or location;

d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
e) changes in the equipment category of a previously approved equipment budget;
f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees; and
g) cumulative budget transfers into or out of the equipment category that do not exceed 10% of any Program Attachment, provided that the total budget amount is unchanged (cumulative transfers from or to the equipment category that equal or exceed 10% of any Program Attachment require an amendment to this Contract as described in the Amendment section of this Article).

In order to request a revision of any of the enumerated provisions, Contractor shall request the change in writing from their assigned contract manager. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 **Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 13.19 **Hold Harmless and Indemnification.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 13.20 **Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 **Electronic and Information Resources Accessibility and Security Standards.** As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

Section 13.22 **Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the

cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 13.23 **Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

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

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

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

Section 14.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will

determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
c) deny additional or future contracts with Contractor;
d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;
f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more

frequent or more extensive monitoring will be performed by Department than would routinely be conducted;

l) require Contractor to obtain technical or managerial assistance;
m) establish additional prior approvals for expenditure of funds by Contractor;
n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
p) pursue a claim for damages as a result of breach of contract;
q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
s) reduce the Contract term;
t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
u) assess liquidated damages;
v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
w) impose other remedies, sanctions or penalties permitted by statute.

Section 14.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or

delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
b) Contractor is expending funds inappropriately.

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

ARTICLE XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI TERMINATION AND TEMPORARY SUSPENSION

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs

resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

Section 16.03 **Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 **Termination or Temporary Suspension Without Cause.**

a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.
b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;

d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    1) Contractor fails to make payments for debts;
    2) Contractor makes an assignment for the benefit of its creditors;
    3) Contractor admits in writing its inability to pay its debts generally as they become due;
    4) if judgment for the payment of money in excess of $50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under Generally Accepted Accounting Principles;
    5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
    6) Contractor is adjudicated bankrupt or insolvent;
    7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
    8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;
    9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
    10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;
h) Contractor's management system does not meet the UGMS management standards; or
i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

ATTACHMENT II

Regional Training and Medical Consultation Center	Medical Consultant – Barbara Seaworth, MD	$110,502
Regional Training and Medical Consultation Center	Medical Consultant – Lisa Armitige, MD	$112,000
UT Tyler Subcontract	Travel for all staff	$9,000
UT Tyler Subcontract	Supplies for all staff	$2,875
UT Tyler Subcontract	Indirect Costs	$58,891
	Total Costs	**$293,268**

ATTACHMENT III

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and the University of Texas Health Science Center at Tyler, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract to provide physician services ("Service Contract"), effective October 1, 2014, whereby BA provides health care services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.
Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of July 1, 2014, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION. BA acknowledges that it is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2014 as signed by the parties below.

COVERED ENTITY
By City of San Antonio

By: _____
Print Name: Thomas Schlenker, M.D., M.P.H.
Print Title: Director, San Antonio Metropolitan Health District

BUSINESS ASSOCIATE:

By: _____
Print Name: Jeff Levin, MD
Print Title: Vice President for Clinical and Academic Affairs

APPROVED AS TO FORM:

_____
City Attorney

Attachment III

MEMORANDUM OF AGREEMENT

BETWEEN

THE CITY OF SAN ANTONIO ON BEHALF OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER

This Memorandum of Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "SAMHD"), and the University of Texas Health Science Center at Tyler (hereinafter referred to as "Center").

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program (hereinafter referred to as the "Program") within the SAMHD provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease; and

WHEREAS, the Program also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, the Center is one of five Regional Training and Medical Consultation Centers in the United States funded by the Centers for Disease Control and Prevention's Division of TB Elimination; and

WHEREAS, the Center provides medical and technical consultation related to various aspects of TB control; and

WHEREAS, the Center also provides for on-site educational experiences for medical and nonmedical professionals ("fellows") enrolled in the Center's fellowships for which such learning experiences can be obtained through the SAMHD within the City; and

WHEREAS, this Memorandum of Agreement defines the terms between the City and the Center for the provision of medical consultation services by the Center and meeting the educational objectives of the Center's fellowship program which will contribute to the educational preparation of future public health specialists; and

NOW THEREFORE this Memorandum of Agreement delineates the Parties' responsibilities in meeting the anticipated needs of the Center and the City's TB Prevention and Control Program.

Term: The term of this Memorandum of Agreement ("Agreement") shall begin on October 1, 2014, and terminate on December 31, 2015 unless sooner terminated as hereinafter provided. The Parties hereby agree that, notwithstanding any other language to the contrary, either Party may terminate this Agreement with or without cause with sixty (60) days written notice to the other Party. The Parties may renew the Agreement for two additional one year terms thereafter, in writing, executed by the City acting by and through the Director of the San Antonio Metropolitan Health District, and by the Center through its designated agent.

Center's Responsibilities:

1. Center staff shall assist with and provide input on contact investigations, if requested, to the SAMHD Contact Investigation team and shall provide education to SAMHD staff through discussions, consultations, Cohort and Board Reviews.

2. Center agrees and understands Dr. Seaworth and Dr. Armitige shall not provide any direct patient care (i.e. active TB or LTBI treatment) activities or services pursuant to this Agreement. Any direct patient care services to be conducted by Dr. Seaworth and Dr. Armitige shall be detailed in a separate Agreement(s).

3. The Center shall comply with standard practices of confidentiality of patient information as required by the SAMHD and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. Center will enter into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

4. The Center shall perform duties and services under this Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and the SAMHD.

5. All Center staff/fellows performing services or activities under this Agreement shall have undergone a criminal background check, the results of which upon request shall be available to the City prior to the Center staff/fellows performing any services or activities under this Agreement, subject to any confidentiality requirements of the Center. If a criminal background check is not available for Center staff/fellows, the City will arrange for this to be done at no cost to the Center.

6. The Center shall provide to City satisfactory evidence that each staff/fellow is free from contagious disease and does not otherwise present a health hazard to the SAMHD TB Prevention and Control Program clinic patients, employees, volunteers or guests prior to his or her participation under this Agreement. Such evidence shall include, without limitation, the results of recent tuberculin skin test or IGRA blood tests. The Center shall also be responsible for arranging for participating staff/fellow's medical care and/or treatment, if necessary, to include transportation in case of illness or injury while performing services under this Agreement. In no event shall the City be responsible for the Center staff/fellow's medical care or treatment.

7. The Center agrees that any persons, wherever located, while engaged in the performance of any activities agreed to by the Center for the City under this Agreement shall be considered employees of the Center only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Center.

8. The Center will provide evidence that Center staff/fellows have such licenses, permits or certificates as may be required by law.

9. City policies regarding authorization for access to confidential information and review of medical records will be followed by the Center staff/fellows. Center assumes full responsibility for any breach of confidence by its staff or its participating fellows with regard to activities under this Agreement.

10. Subject to any confidentiality requirements of the Center, prior to Program participation and upon request by the City, the Center shall provide City access to documentation of Center's compliance with requirements set forth in this Agreement to include, but not limited to, TB Skin Testing or IGRA blood testing, and Confidentiality of Information, criminal background check, and required insurance coverages. The Center shall furnish City with documentation acceptable to City evidencing the required insurance coverage prior to participating in any activities under this Agreement. A written notice of cancellation, non-renewal or any material changes in such coverage will be given to City at least ten (10) days in advance of any such action.

11. Center shall not use any City data or information collected, obtained or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from

the City.

12. The Center warrants and ensures that all Center staff providing services and fellows participating in fellowships at the SAMHD TB Prevention and Control Program have complied with the requirements set forth in this Agreement prior to providing services or activities.

City Responsibilities:

1. City will provide for an on-site educational experience for Center staff and medical and non-medical professional fellows enrolled in clinical, contact investigation and programmatic fellowships provided by the Center which can be obtained through the SAMHD. It is to the benefit of Center staff and participants accepted into fellowships to obtain a part of their experience with the City. Center staff and fellow(s) will meet the educational objectives of the Program by obtaining instruction through observation in the City Chest Clinic. The Center is not required to provide a specified number of staff or medical/non-medical fellows to the Program, and City is not required to accept into the Program any specified number of staff or medical/non-medical fellows. The number of staff and fellows to participate in this Program shall be demonstrated by need and shall be mutually determined by City and Center.

2. SAMHD will provide ongoing communication with the Center regarding any changes, difficulties or problems that may arise related to the Center staff or fellows and their performance while on assignment at the SAMHD TB Program.

3. Upon request by the Center, subject to City staff availability, the City may assist with local TB health education presentations in the community.

Confidentiality: The Center acknowledges that in connection with the services to be performed under this Agreement by the Center, the Center and its staff/fellows may be acquiring and making use of certain confidential information of the City and the SAMHD which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, the Center and its staff/fellows shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event the Center receives a request or demand for the disclosure of Confidential Information, the Center shall promptly provide written notice to the City of such request or demand, including a copy of any written element of such request or demand.

The Center agrees to adequately instruct its staff/fellows, and all personnel that may provide services pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the Center and with all federal and state laws and regulations regarding patient and medical record confidentiality. The Center assumes full responsibility for any breach of confidence by its staff/fellows or its staff/fellows with regard to the provision of services under this Agreement.

Compensation: No fees or expenses shall be exchanged between the City and the Center for the activities set out under this Agreement. The City will not be charged for any services performed by the Center in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any Center personnel.

Insurance: Center and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

Indemnification: Center and the City acknowledge they are political subdivisions of the State of Texas

and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

City:	**Center:**
City of San Antonio	University of Texas Health Science at Tyler
San Antonio Metropolitan Health District	c/o Heartland National TB Training Center
Attn: Thomas L. Schlenker, MD, Director	Attn: Jeff Levin, M.D., Vice President
332 W. Commerce, Suite 307	2303 SE Military Dr
San Antonio, TX 78205	San Antonio, TX 78223

Independent Contractor: The Center is an independent contractor, and neither the Center nor any of its agents, representatives, staff, or employees shall be considered agents, representatives, or employees of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. The Center shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide the Center staff/fellows any salaries, insurance or other benefits.

Amendments: Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and the Center.

Licenses/Certifications: The Center warrants and certifies that the Center and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

Compliance: The Center shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

Assignment: This Agreement is not assignable by either party without the prior written consent of the other party. Any assignment without such written consent shall be void.

Captions: The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

Texas Law to Apply/Venue: This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas.

Legal Construction: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Entire Agreement: The final and entire Memorandum of Agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties hereto unless same

be in writing, dated subsequent to the date hereof, and duly executed by the parties.

By signing below, the representatives agree they are duly authorized by their respective agencies to enter into this Agreement.

WITNESS OF WHICH, this Agreement has been executed on this the_____day of _____, 2014.

City of San Antonio

_____

Thomas L. Schlenker M.D., M.P.H.
Director, San Antonio Metropolitan
Health District

_____

Date

University of Texas Health Science Center at Tyler

_____

Jeff Levin, MD, Vice President
for Clinical and Academic Affairs

_____

Date

APPROVED AS TO FORM:

_____

Robbie F. Greenblum
City Attorney

Attachment I

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and The University Health Science Center at Tyler, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an Agreement to provide medical consultation services ("Service Contract"), effective October 1, 2014; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be

permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2014, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION.*** *Center and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.*

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2014, as signed by the parties below.

COVERED ENTITY **By City of San Antonio**	**BUSINESS ASSOCIATE:**
By: _____	By: _____
Print Name: Thomas L. Schlenker, M.D., M.P.H.	Print Name: Jeff Levin, M.D.

Print Title: Director, San Antonio Metropolitan Health District

Print Title: Vice President for Clinical and Academic Affairs

APPROVED AS TO FORM:

_____

Robert F. Greenblum
City Attorney