INVITATION

The Harris Center for Mental Health and IDD is accepting Proposals from Vendors for:

PHARMACY RETAIL SOFTWARE SYSTEM

The Harris Center for Mental Health and IDD invites your firm to submit a Proposal. If you are interested in submitting a Proposal, please adhere to the General Instructions and Requirements as outlined in the enclosed Request for Proposal.

Vendors shall pay particular attention to all INSTRUCTIONS, REQUIREMENTS and DEADLINES indicated in the attached documents and should govern themselves accordingly.

In accepting Proposals, The Harris Center reserves the right to reject any and all Proposals, to waive formalities and reasonable irregularities in submitted documents, and to waive any requirements in order to take the action, which it deems to be in the best interest of The Harris Center, and is not obligated to accept the lowest proposal.

At the time and place established for receipt of the Proposals, The Harris Center will only release the names of the Vendors that have responded to this solicitation. No other information will be released until after The Harris Center’s Evaluation Team has evaluated the Proposals, and an award has been made and approved by Executive Staff and The Harris Center’s Board of Trustees.

We greatly appreciate your efforts and look forward to reviewing your submission.

Nina M. Cook, MBA, CTPM
Director of Purchasing
The Harris Center for Mental Health and IDD
REQUEST FOR PROPOSAL

The Harris Center for Mental Health and IDD

PHARMACY RETAIL SOFTWARE SYSTEM

Project: 19/0030

July 2019

The Harris Center for Mental Health and IDD
Purchasing Department
9401 Southwest Freeway
Houston, TX 77074
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SECTION I – OVERVIEW

Background and Objectives

It shall be the mission of The Harris Center for Mental Health and IDD, within the resources available, to provide or ensure the provision of services and supports that are as high quality, efficient, and cost effective as possible such that persons with mental disabilities may live with dignity as fully functioning, participating and contributing members of our community, regardless of their ability to pay.

Persons with severe mental illness and substance use disorders should be able to live in homes of their own, develop relationships, work, and remain out of hospitals and criminal justice facilities.

Persons with intellectual and developmental disabilities should be able to acquire the skills and access community resources to develop networks or human relationships, learn, work and live in environments of their choosing.

Children and adolescents with serious emotional disturbances should be able to live in homes with families, develop normal relationships with their peers, attend school, and remain out of hospitals, residential and juvenile justice facilities.

The Harris Center for Mental Health and IDD provides mental health and intellectual and developmental disability services to Harris County residents through four service divisions: Mental Health Outpatient Services, Mental Health Forensic Services, Intellectual and Developmental Disability Services, and the Comprehensive Psychiatric Emergency Program. As the largest provider of mental health and IDD supports in Texas, we served 57,699 individuals in Fiscal Year 2018. In addition, we served over 20,854 people at the Harris County Jail through our contract with the Harris County Sheriff’s Office.

The Harris Center is the largest community based provider of clinical services to mental health and IDD consumers in Texas. It maintains operations at over 76 locations throughout all parts of Harris County and operates on an annual budget in excess of $276 million. The Agency has fixed pricing budgets and all pricing quoted should remain fixed for the duration of contract. Our goal is to employ best practices and cost effectiveness.

The Harris Center for Mental Health and IDD invites qualified companies herein after referred to as “Vendor”, “Proponent” or “Supplier” to submit proposals for a Pharmacy Retail Software System.
SECTION I – OVERVIEW

Background and Objectives

It shall be the mission of The Harris Center for Mental Health and IDD, within the resources available, to provide or ensure the provision of services and supports that are as high quality, efficient, and cost effective as possible such that persons with mental disabilities may live with dignity as fully functioning, participating and contributing members of our community, regardless of their ability to pay.

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The Harris Center for Mental Health and IDD provides mental health and intellectual and developmental disability services to Harris County residents through four service divisions: Mental Health Outpatient Services, Mental Health Forensic Services, Intellectual and Developmental Disability Services, and the Comprehensive Psychiatric Emergency Program. As the largest provider of mental health and IDD supports in Texas, we served over 54,037 individuals in Fiscal Year 2017. In addition, we served over 20,199 individuals at the Harris County Jail through our contract with the Harris County Sheriff’s Office.

The Harris Center is the largest community based provider of clinical services to mental health and IDD consumers in Texas. It maintains operations at over 25 facilities throughout all parts of Harris County and operates on an annual budget in excess of $276 million. The Agency has fixed pricing budgets and all pricing quoted should remain fixed for the duration of contract. Our goal is to employ best practices and cost effectiveness.

The Harris Center for Mental Health and IDD invites qualified companies herein after referred to as “Vendor”, “Proponent” or “Supplier” to submit proposals for a Pharmacy Retail Software System.
SECTION II – REQUEST FOR PROPOSAL (RFP) TIMELINE AND EVENTS

Release of RFP to Prospective Vendors:Tuesday, July 16, 2019

Deadline for Questions:Tuesday, July 23, 2019 by 5 p.m.

Deadline to Respond to Questions:Tuesday, July 30, 2019 by 5 p.m.

Deadline for Submission of RFP:Tuesday, August 6, 2019 at 10:00 a.m.

Proposal Opening:Tuesday, August 6, 2019. A public Proposal Opening will be held immediately following receipt of RFPs at 10:00 a.m., 9401 Southwest Freeway, Houston, Texas 77074

Potential Web Demonstrations:Week of August 19 – August 23, 2019
Week of August 26 – August 30, 2019

Anticipated Award Date:Upon recommendation and Board approval

*All times listed in the RFP are Central Standard Time (CST)
SECTION III - GENERAL INSTRUCTIONS

A. Vendor Submitted Questions

Deadline for Questions from Vendors: Tuesday, July 23, 2019 by COB, 5 p.m.
Deadline for Response to Questions: Tuesday, July 30, 2019 by COB, 5 p.m.

All questions concerning the RFP specifications must be submitted in writing via fax or email.

Frances Otto, CTCD, Buyer II  
Ofc: (713) 970 - 7281 
Fax: (713) 970 - 7682 
E-mail: frances.otto@theharriscenter.org

Cc: 
Sharon Brauner, C.P.M., Purchasing Manager  
Ofc: (713) 970 - 7279 
Email: sharon.brauner@theharriscenter.org

B. Submittal Procedure

The Request for Proposal (RFP), subject to all conditions and specifications attached hereto, must be signed in INK by a person or officer of the company submitting the RFP that is authorized to enter into contractual agreements on behalf of the company. *RFP's received unsigned will be deemed non-responsive and therefore will not be accepted.*

Deadline to submit "Final Proposal" is Tuesday, August 6, 2019 @ 10:00 a.m. CST. The original RFP, signed in ink, five (5) additional photocopies and an electronic copy (saved as one complete pdf on a USB flash drive) should be submitted in a SEALED ENVELOPE and delivered to the attention of:

The Harris Center for Mental Health and IDD  
Purchasing Department  
Attn: Frances Otto, Buyer II  
9401 Southwest Freeway, Houston, Texas 77074 
*"PHARMACY RETAIL SOFTWARE SYSTEM - DO NOT OPEN UNTIL TUESDAY, AUGUST 6, 2019 @ 10:00 A.M."

No Response to this RFP will be accepted after the stated deadline.

Respondents may mail or personally deliver their RFP to the Purchasing Office of The Harris Center at the above address. The Harris Center will not be responsible for any Proposal(s) that is (are) lost in the mail or not delivered to the Purchasing Department by the stated deadline for any reason.

Responses shall include all documentation as requested in this Request for Proposal.
C. Request for Proposal Opening

A public Opening will be held immediately following receipt of Request for Proposal on Tuesday, August 6, 2019, at 9401 Southwest Freeway, Houston, Texas, 77074.

D. Non-Discrimination Policy Statement

The Harris Center for Mental Health and IDD does not discriminate against any individual or Contractor with respect to his/her compensation, terms, conditions, or award of contract because of race, color, religion, sex, national origin, age, disability, political affiliation, or limit segregate, or classify candidates for award of contract in any way which would deprive or tend to deprive any individual or company of business opportunities or otherwise adversely affect status as a Vendor because of race, color, religion, sex, national origin, age, disability, or political affiliation.

E. Immigration Reform and Control Act

The successful Vendor shall provide appropriate identification and employment eligibility documents and complete a W-9 form to meet requirements of the Immigration Reform and Control Act of 1986.

F. References & Experience

All interested parties are required to submit with their Proposal three (3) client references where interested party has provided services that pertain to the size and scope of this project (within the last two years). References shall include company name, address, telephone number, fax number, email address, contact person and a summary of the scope of the completed project. The interested parties must agree to authorize clients to furnish any information required by The Harris Center to verify references provided, and for determining the quality and timeliness of previous work performed.

G. RFP Guarantee/Award Procedure

It is anticipated that a recommendation for award for this RFP will be made no more than ninety (90) days after the RFP DUE DATE. All interested parties are required to guarantee their RFP response as an irrevocable offer valid for One Hundred Twenty (120) days after the RFP due date. The Harris Center for Mental Health and IDD in its sole and absolute discretion shall have the right to award for any or all items/services listed in each RFP, shall have the right to reject any and all RFPs as it deems to be in its best interests, to waive formalities and reasonable irregularities in submitted documents, shall not be bound to accept the lowest RFP and shall be allowed to accept the total RFP of any one vendor.

H. Permits

Any and all permits as required by authorities having jurisdiction; local, state, county, and/or federal, are the total responsibility of the interested parties/Vendor and must be obtained prior to commencement of any work or service. Any and all expense/cost related to obtaining required permits is the sole responsibility of the Vendor.

I. Financial Information

Vendor must submit a copy of their last AUDITED financial statement. A letter from your CPA is an acceptable alternative for Non Public companies, but must include a statement that financial solvency is adequate to meet expenditures for at least one year.
J. **Payments**

Vendor is to submit properly completed invoice(s) to the address specified in the contract. To insure prompt payment, each invoice should indicate purchase order number, description of service provided, unit and total price, any discount terms and include vendor’s name and return remittance address.

K. **Price Adjustments**

Vendor will be required to honor their Proposal prices for the term of the contract period.

L. **Historically Under-Utilized Business (HUB)**

This Agency shall make a good faith effort to utilize Historically Underutilized Businesses (HUB’s) in contracts for constructions, services (including professional and consulting services), and commodities. Please submit proof of Historically Underutilized Business “HUB” state certificate.

If your firm is not certified, please submit Attachment B, if you intend to subcontract services. If not, write “none” on Attachment B, and submit it.

M. **Minority / Women and / or Disadvantaged Business**

This Agency shall make a good faith effort to utilize Minority/Women and/or Disadvantaged Businesses (M/W/DBE’S) in contracts for constructions, services, (including professional and consulting services), and commodities. Please submit proof of City of Houston M/W/DBE certificate.

If your firm is not certified, please submit Attachment B, if you intend to subcontract services. If not, write “none” on Attachment B and submit it.

N. **Direct or Indirect Assignment**

The successful vendor will not be permitted to directly or indirectly assign its rights and duties under the contract without express approval by The Harris Center.

O. **Form W-9**

Vendors are to complete W-9 Form and Submit with their Proposal documents. (Attachment E)
SECTION IV – PROPOSAL STIPULATIONS AND REQUIREMENTS

A. Modification or Withdrawal of Proposals

Any RFP may be modified or withdrawn prior to the deadline, provided such modification or withdrawal is submitted prior to the deadline. Any modification received after the deadline shall be deemed late and will not be considered.

B. Offer and Acceptance Period

All RFPs must be an irrevocable offer valid for one hundred twenty (120) days after the RFP opening date.

C. Late Request for Proposal

Any RFP received after the stated deadline shall be deemed late and will not be considered. All times listed in the RFP are Central Standard Time (CST).

D. Irregularities in Request for Proposal

Except as otherwise stated in this Request for Proposal, evaluation of all responses will be based solely upon information contained in the Vendor's response to this RFP. The Harris Center shall not be held responsible for errors, omissions or oversights in any Vendor's response to this RFP. The Harris Center may waive technical irregularities, which do not alter the price or quality of the services.

The Harris Center shall have the right to reject RFPs containing a statement, representation, warranty or certification which is determined by The Harris Center and its counsel to be materially false, incorrect, misleading or incomplete. Additionally, any errors, omissions, or oversights of a material nature may constitute grounds for rejection of any RFP.

The inability of a Vendor to provide one or more of the required components or specified features or capabilities required by this RFP does not, in and of itself, preclude acceptance by The Harris Center of the RFP. All responses will be evaluated as a whole in the best interests of The Harris Center.

E. Oral or Web Presentations

Any Vendor that submits a RFP in response to this request may be required to make an oral presentation or a web presentation for further clarification upon The Harris Center's request.

F. Amendments to the RFP

If it becomes necessary to revise any part of this RFP package or if additional information is necessary to clarify any provision, the revision and/or additional information will be provided to each Vendor via faxed amendment or email.

G. Availability of the Proposal

After opening, each RFP, except those portions for which a Vendor has included a written request for confidentiality (e.g., proprietary information), shall be open to public inspection.
H. Retention of Proposals

All RFPs considered by The Harris Center shall become the property of The Harris Center and shall not be returned.

I. Notice “Not to Participate” Form

We ask that the prospective contractor(s)/vendor(s) who respond to this Request for Proposal invitation whether they can or cannot provide products, supplies and/or service(s) outline in this RFP complete the “Not to Participate” form. Vendors who respond to this RFP invitation will remain on our mailing list. Vendors making no response may be removed from our mailing list for future projects. (See Attachment D)

J. Incurred Expenses

The Harris Center shall not be responsible for expenses incurred by a Vendor in the preparation and submission of a RFP. This provision also includes any costs involved in providing an oral presentation of the RFP.

K. Deviation Form

Each proposal shall contain a Deviation Form, which also contains a vendor commitment to operate within the provisions of this Request for Proposal and Sample Contract. The purpose of the Deviation Form is to allow a prospective vendor to note any concerns relative to the form or substance of the Request for Proposal or Sample Contract. Please note that the sample and final contract have provisions that are not subject to negotiation. Those provisions are Indemnification, Jurisdiction, Venue and Damage Limitations. Note further, that the sample contract includes provisions for submitting a Certificate of Insurance. However, all RFP submittals must include an Evidence of Insurance Certificate. A Certificate of Insurance will be requested at the time of final contracting if your RFP is selected. State all deviations in a clear and concise manner. Thereafter, sign the commitment statement notwithstanding any deviations that you submit. The Commitment Statement must be signed by a duly authorized Agent. (See Attachment C)

L. Subcontractors

All provisions and/or stipulations within this RFP also apply to any authorized subcontractors.

M. Term of Contract

This Agreement initially is made effective upon date of execution until August 31, 2020, the end of the Agency fiscal year. The Agency at its option may renew contract annually for four (4) successive one year terms. Any subsequent term will begin September 1 and end August 31 of each successive year unless terminated.

N. Pricing

Each Vendor shall provide responses to “RFP Reply” page with their costs detailed as requested.

O. Licensure

The Vendors shall submit, with their RFP, a copy of any license(s), certification(s), registration(s), etc. as required by authorities having jurisdiction; local, state, county, and/or federal for the Vendors to operate.
P. Service Requirements

Work shall be completed in a coordinated manner that will be the least disruptive to the owner’s ongoing operation.

Q. Safety

Within its submission, the Vendors must document its current policies, procedures and practices regarding discharge of the safety function. This may include citing existing procedure manuals, training programs and their frequency, historical information regarding safety performance, etc.

If information, such as manuals, is too bulky to include in the submission, the Vendor should provide a copy of the front cover and table of contents and cite the availability of such information to be viewed.

If training programs are included in a current program, please identify the current provider of the service, class duration, instructor certifications and other related information.

R. Conflict of Interest Provision

The conflict of interest provision is applicable, in that contractors who develop or draft specifications, requirements, statements of work and/or RFP for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

S. Texas Public Information Act

All information contained in proposal packet is subject to the Texas Public Information Act (the Act), located in the Texas Government Code, Chapter 552. Any member of the public, including the news media and competitors, may submit an open records request for the information contained in the proposal packet. Subject to the Act, Proposers may protect trade secret and confidential information from public release. All information the proposer believes to be confidential, a trade secret or proprietary information must clearly mark such information in boldface type and include the word “CONFIDENTIAL”, “PROPRIETARY” or “TRADE SECRET” at the top of every applicable page. Proposers should consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets, proprietary information or other confidential documents.

Offerors are cautioned that once a response to a solicitation is opened, all information contained therein will be available to the PUBLIC unless the information is excepted from the requirements of Government Code Section 552 pertaining to Open Records.

The Harris Center for Mental Health and IDD cannot guarantee that it will not be compelled to disclose all or part of any proposal/RFP, since the information deemed to be confidential by the Proposer may not be considered confidential under Texas law or pursuant to a court order. In the event The Harris Center receives a request for portions or all of a proposal/RFP packet marked “confidential”, “trade secret” or “proprietary”, then The Harris Center will forward the request to the office of the Texas Attorney General. The Harris Center will notify the proposer whose proposal is subject to the request. The Harris Center for Mental Health & IDD will assume no obligation for asserting legal arguments on behalf of the Proposer. Proposers are solely responsible for submitting a brief and the documents in issue to the Texas Attorney General. At all times, The Harris Center will comply with the provisions of the Texas Public Information Act as required by State law. The Harris Center must comply with the decision of the Attorney General, including decisions to release information marked “CONFIDENTIAL”, “TRADE SECRET” or “PROPRIETARY”.

SECTION V – RFP EVALUATION CRITERIA

Evaluation Criteria
Not all evaluation factors are equal in importance and each factor is weighted in accordance with its importance to The Harris Center. Each item has been assessed a percentage upon which the final score will be determined. The following will be significant factors in evaluating proposals, but the evaluation may not be limited solely to these items when making a final recommendation:

<table>
<thead>
<tr>
<th></th>
<th>Overall Program</th>
<th>30%</th>
<th>Indication that the vendor has a well-defined concept, program structure, ability and capacity for all components of service desired by The Harris Center to handle the scope of work.</th>
</tr>
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<tbody>
<tr>
<td>B</td>
<td>Software Tool/Platform</td>
<td>30%</td>
<td>Software platform usability, completeness of design, dashboards, reporting, etc.</td>
</tr>
<tr>
<td>C</td>
<td>Methodology/Approach</td>
<td>20%</td>
<td>Proposed approach and estimated timeline for completing the scope of work in the most cost-effective and efficient manner possible. Any potential problems or obstacles perceived with the project as proposed.</td>
</tr>
<tr>
<td>D</td>
<td>History and References</td>
<td>10%</td>
<td>Provide a brief history and description of your firm, include reputation, experience, size (number of employees) and areas of specialization. References (Names and contact information of clients for whom the respondent has performed projects of a similar type, size and scope).</td>
</tr>
<tr>
<td>E</td>
<td>Cost</td>
<td>10%</td>
<td>Cost structure and level of detail provided for any variable costs as well as fixed costs of performing the evaluation. Final cost may be negotiated with the successful proposer. Cost will only become a determining factor when all other conditions are equal.</td>
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SECTION VI – SPECIALIZED SERVICES TO BE PROVIDED

SCOPE/PURPOSE

The purpose of this proposal is to upgrade system to accommodate 3rd party pharmacy prescription billing including workflow and point of sale which in turn will help The Harris Center better service our patients and add a revenue stream to pharmacy. Our current system is Cerner Etreby.

The Harris Center currently has 4 clinic pharmacies and 1 inpatient pharmacy which dispenses outpatient prescriptions regularly. The system will be used in all pharmacy locations.

Vendor must comply with Federal Regulations on privacy and confidentiality (HIPAA Regulations) regarding maintaining the privacy of agency consumers' and members' personal health information.

SCOPE OF WORK

The Harris Center is requesting a proposal, including pricing for a software tool or SaaS for a Pharmacy Retail Software System.

Specifications

Required:

1. Provide industry standard outpatient pharmacy system with real time adjudication
2. Compliant with all Texas and Federal regulations related to retail/outpatient pharmacy systems
3. Intervention documentation by pharmacists and reporting, audit trails of all clinical decision support features and transactions
4. Clinical flags requiring pharmacist initials on each fill(dosage, drug interaction) previous notes available for preview as part of the hard copy for insurance audit/prevent rescanning
5. Drug Database meets industry standard for drug classifications and clinical checks
6. Auto refill capability and patient notifications for refills
7. Text/email capability with patients for reminders
8. Ongoing support and maintenance of the system with real time support 24/7
9. Interface capability with Parata and ScriptPro Robots
10. Easy to create and run Reports
11. Inventory tracking and maintenance
12. Drug Database allows for multiple inventories for Patient Assistance Program/Bought Medications and Dispensary of Hope medications – may have same NDC numbers
13. Point of Sale System
14. Scanning of all Prescription documents
15. Workflow management of pharmacy team is easy to follow/learn
16. Audit ready for PBM (Pharmacy Benefit Manager), government audits
17. Pharmacists initial documenting verification of each fill
18. RX images available for verification at each fill, including any changes to the initial prescription
19. Weekly drug database updates
20. Scan technology for accuracy/documentation on all manual filled prescriptions
21. Ability to easily bill for Pharmacy Administration of Injections (vaccines, LAI's) or other services provided
22. Ability to fill blister packs for residential units
23. Audit trail
24. Automated reports
25. Capability to design custom reports
26. Pill images when checking Rx
27. Drug database software update from vendor for pricing and drug name supports formatting (tall man lettering)
28. Prior Authorizations communications incoming from PBM and outgoing to prescriber supports electronic notifications
29. Ability to enter drugs in site drug database by limited users set by security level
30. Ability to enter users/reset passwords by limited users set by security level
31. Advanced Practiced Nurses (APN) or Physician Assistant (PA) requires a text box for supervising physician (per Texas State Pharmacy Laws and Rules)
32. Auto Refill Request generation to physician is electronic
33. Vendor provides remote log in support

**Optional Advantages:**
1. Share demographic and ADT (admission discharges and transfer) information with the electronic health record, as well as other components of the health record including lab notifications
2. Has or can interface with Split Billing Software for 340B Inventory
3. PAP application generation
4. Medication Reconciliation component that allows access to what patient has had filled in outside pharmacies
5. Direct access to PMP database for controlled substance review
6. Computer assisted ordering
7. Multiple virtual inventory capabilities for Patient Assistance Program (PAP) Stock, 340B Stock, Adult Safety Net Stock, Bought Inventory, Dispensary of Hope (DoH) stock
8. Signature Pad with Point of Sale (POS)
9. Interactive Voice Response (IVR) Capability for refills

**IT Requirements**

1. Server software/hardware must have the ability to be remotely managed and supported by vendor. Vendor will be responsible for any and all software/hardware fixes, upgrades, and support. Vendor must also have a reliable method of supporting end points for implementations, upgrades, and troubleshooting.
2. If solution is required to be hosted on premise, software must support VMWare v6.5 and above.
3. The Harris Center would prefer a cloud hosted solution to ensure Disaster Recovery and Business Continuity needs, but is not required.
SECTION VII – RFP CONTENTS

Title Page:

• Name of Vendor, local address, telephone number, fax number, e-mail address and contact name.

Table of Contents:

All Proposals must include the following information:

• Clear identification of information by section and page.
• A list of three (3) references where your firm has provided services that pertain to the size and scope of this project (within the last 2 years) including summary of the scope of the completed project.
• A current “CERTIFICATE OF INSURANCE” must accompany all Proposals. (Evidence of Insurance Certificate)

Proposal:

• Vendor must provide a brief history of company, including but not limited to ownership, date started business, mission statement, etc.
• Vendor must supply a price schedule as per the enclosed template in the section marked “RFP Reply Page”.
• Must bear the original signature of a principal or authorized officer of the interested party.
• Must be typed.
• Must make provision to meet and comply with all applicable laws and regulatory criteria.
• Interested parties are encouraged to submit along with their response any additional descriptive information about their services which they believe might be helpful.
• All Responses to this RFP must be submitted with one original and five (5) additional photocopies, and an electronic copy (USB flash drive) and mailed or delivered in a sealed envelope to The Harris Center.

Additional documents to be submitted:

• Vendor must submit a copy of their latest audited financial statement. A letter from your CPA is an acceptable alternative for Non Public companies, but must include a statement that financial solvency is adequate to meet expenditures for at least one year.
• A copy of applicable license(s), certification(s), registration(s), etc. as required by authorities having jurisdiction; local, state, county, and/or federal for the Vendors operating.
• Submit proof of Historically Underutilized Business “HUB” State Certificate and/or City of Houston M/W/DBE Certificate. (Attachment B)
• If your firm is not certified, provide a statement to the effect if you intend to subcontract or affiliate with a certified firm and what percentage of work will be given to them.
• Deviation Form (Attachment C)
• Notice “Not to Participate” Form (Attachment D)
• Signature Page

**PLEASE INCLUDE ANY ADDITIONAL DESCRIPTIVE LITERATURE, WHICH MIGHT BE OF ASSISTANCE IN THE DECISION-MAKING PROCESS**
SECTION VIII – RFP REPLY PAGE/PRICING

PHARMACY RETAIL SOFTWARE SYSTEM
PROPOSAL OPENING: TUESDAY, AUGUST 6, 2019, 10:00 A.M.

Submitted by: ___________________________

Pricing Requirements

If the Vendor becomes the Selected Vendor, The Harris Center expects that the pricing set out in the Vendor’s RFP Response will remain valid during the Timeframe for Negotiations and continuing until the execution of the Agreement. Vendors are advised that any request for modifications to the pricing made by the Vendor during this period may constitute a withdrawal by the Vendor of its RFP Response.

Respondents must describe in detail all of their assumptions in developing pricing and the impact on pricing if assumptions are not valid. The inclusion of any assumptions, constraints, or caveats as part of the Vendor’s pricing may result in the disqualification of a RFP Response or a lower number of points being awarded to the Proponent’s RFP Response.

<table>
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<tr>
<th>Item</th>
<th>Description of Rates/Cost</th>
<th>Year 1- Contract Date - 08/31/2020</th>
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<tr>
<td></td>
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<td>Cost Per Location:</td>
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<tr>
<td>1</td>
<td>Implementation and Planning</td>
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<td></td>
<td>If per location pricing, breakdown of per item cost</td>
<td>Cost</td>
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<td>Annual Maintenance/Subscription including Live Support</td>
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SECTION IX – SIGNATURE PAGE

THE HARRIS CENTER FOR MENTAL HEALTH AND IDD IN ITS SOLE AND ABSOLUTE DISCRETION SHALL HAVE THE RIGHT TO AWARD CONTRACTS FOR ANY OR ALL MATERIALS LISTED IN EACH RFP/PROPOSAL, SHALL HAVE THE RIGHT TO REJECT ANY AND ALL PROPOSALS, AND SHALL NOT BE BOUND TO ACCEPT THE LOWEST RFP/PROPOSAL AND SHALL BE ALLOWED TO ACCEPT THE TOTAL RFP/PROPOSAL OF ANY ONE VENDOR.

THIS SUBMISSION IS GUARANTEED AS AN IRREVOCABLE OFFER VALID FOR ONE HUNDRED TWENTY (120) DAYS AFTER THE RFP/PROPOSAL OPENING DATE.

______________________________________________  ________________________________________________
Authorized Signature                            Vendor’s Name

______________________________________________  ________________________________________________
Typed or Printed Name                             Number and Street Address

______________________________________________  ________________________________________________
Title                                              City, State, Zip Code

(______) ______________________________________  (_____) ______________________________________
Telephone Number                                  Fax Number

______________________________________________
Email Address

**RFPs Will Not Be Accepted If This Page Is Not Signed By An Authorized Representative.**
SECTION X - ATTACHMENTS

A. Sample Contract — A sample contract is included for your review (Attachment A). The sample contract included with this RFP is included as a form of reference only. The final contract may or may not be the same at the time of contracting. All respondents must submit an Evidence of Insurance (EOI) Certificate. Please note that the insurance standards of the sample contract reflect the minimum requirements for working with The HARRIS CENTER. The insurance requirements may vary depending on the type of services being provided. Agency shall solely determine the required policy types and limits pursuant to underwriter or state requirements. Upon award of the contract resulting from this RFP, the Contractor must be able to meet all minimum insurance requirements, and provide a Certificate of Insurance to meet the requirements of the approved and accepted contract. Additionally, The Harris Center must be listed as an Additional Insured on the Certificate of Insurance, along with the proper and required subrogation provision(s). Failure to purchase and maintain the required insurance may result in termination of the contract process. Required insurance must remain in full force and effect throughout the duration of the contract.

As an Agency of the State, The HARRIS CENTER does not indemnify or limit damages. Jurisdiction lies in Texas and venue shall be in Harris County.

B. HUB Subcontracting Plan (Historically Underutilized Business)

C. Deviation Form

D. Notice “Not to Participate” Form

E. W-9
SAMPLE CONTRACT

SAMPLE

Contract ID No. ______

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT ("Agreement") is entered into and made effective on _____ by and between The Harris Center for Mental Health and IDD, (formerly known as MHMRA of Harris County)(the "Agency" or "The HARRIS CENTER") a Community Center and an Agency of the State of Texas, with offices at 9401 Southwest Freeway, Houston, Texas 77074, under the provisions of Chapter 534 of the Texas Health and Safety Code Ann. (Vernon 1992), as amended, and ________ ("Contractor"), with offices at 0000 Drive, Houston, Texas 77000 for the purpose of providing specialized services currently not available to the Agency through its present staff of employees.

I. RECITALS

WHEREAS, Agency is the state designated Local Mental Health Authority or Community Center established to provide, arrange for, and coordinate Mental Health and Intellectual Developmental Disabilities ("IDD") services for the residents of Harris County, Texas; and
WHEREAS, the Agency is committed to providing services that are customer friendly and consumer focused; WHEREAS, Contractor desires to contract with Agency to provide Pharmacy Retail Software Services;
WHEREAS, this Agreement sets forth the terms and conditions evidencing the agreement of the parties hereto;
NOW THEREFORE, in consideration of the mutual covenants, rights, and obligations set forth herein, the benefits to be delivered therefrom, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

II. PERSONNEL

The Agency staff member authorized to approve billing is ___________ Director or Vice President of ______________. The Agency staff member responsible for overseeing this Agreement is _____ Director or Vice President of ______________.

III. INDEPENDENT CONTRACTOR RELATIONSHIP BETWEEN THE PARTIES

INDEPENDENT CONTRACTOR. The relationship between the Agency and Contractor shall be that of an Independent Contractor. It is agreed that Contractor and Contractor's personnel will not be considered an employee, agent, partner, joint venturer, ostensible or apparent agent, servant or borrowed servant of the Agency.

Contractor understands and agrees that Agency:

a) Will not withhold on behalf of Contractor any sums for income tax, unemployment insurance, social security, or any other withholding;
b) Will not give to Contractor any of the benefits given to employees of Agency.
IV. OBLIGATIONS OF CONTRACTOR

1. SERVICES. The Pharmacy Retail Software Services to be provided by Contractor Agency wide and the locations where such services shall be delivered, rendered or given by Contractor are set forth in Exhibit “A” as attached hereto and incorporated herein as if fully set out.

2. QUALIFICATIONS. Contractor will comply with relevant Texas Health and Human Services Commission (“HHSC”) rules and community standards, certifications, accreditations, and licenses and any other professional and educational qualifications.

3. AGENCY APPROVAL OF CONTRACTOR PERSONNEL. Contractor agrees not to subcontract any services until approval of such subcontractor is obtained from the Agency. Any subcontractor or employees of Contractor are the direct responsibility of Contractor.

4. REPRESENTATIONS
   (a) Contractor represents and warrants that it is not currently an employee of the Agency.
   (b) Contractor agrees that it shall comply with all applicable federal and state laws, rules and regulations including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act Of 1973, the Americans with Disabilities Act of 1990 (ADA) and the Age Discrimination in Employment Act of 1967.

5. IMMIGRATION REFORM AND CONTROL ACT. Contractor agrees to maintain appropriate identification and employment eligibility documents and complete a W-9 form to meet requirements of the Immigration Reform and Control Act of 1986.

6. REQUIRED REPORTING REGARDING LICENSURE. Contractor shall report to Agency any allegation that a professional licensed or certified by the State of Texas and employed by the Contractor has committed an action that constitutes grounds for the denial or revocation of the certification or license. Contractor will further report to Agency if any professional has had his/her professional license revoked. If Contractor's employee has such a denial or revocation, and Contractor fails to remove such employee, then this Agreement may be terminated without prior notice.

7. CONTRACTOR'S GOVERNING BODY. Contractor agrees to provide Agency with a list of the members of Contractor's governing body, if applicable.

8. INVOICE REQUIREMENTS
   Invoices or claim forms for payment must be submitted by the fifth (5th) calendar day of the month following the month in which the services were rendered. All invoices or claim forms must be received no later than forty-five (45) calendar days after the end of the month in which services were rendered. Invoices or claim forms that are received later than forty-five (45) days after the end of the month in which the services were rendered will not be paid. Invoices or claims must be submitted in the following manner:

   (a) Invoice(s) must be submitted in DUPLICATE;
   (b) Invoice(s) must include a purchase order number. The PO number will be forwarded to Contractor upon full execution of the contract.
   (c) Send original invoice(s) to the Agency staff member authorized to approve billing.
   (d) Mark the second copy as DUPLICATE and send to Accounts Payable at the following address or by

       The HARRIS CENTER for Mental Health and IDD
       P.O. BOX 25381
       Houston, Texas 77265
       Attention: Accounts Payable
9. CONTRACTUAL ABYANCE OR BAR AND DISCLOSURE
Contractor certifies that the Contractor and all Subcontractors are not held in abeyance or barred from an award of federal or state contracts at the time of executing this Agreement. Contractor must notify Agency if Contractor is now or later held in abeyance or barred from an award of a federal or state contract during the term of this Agreement.

V. RECORDS, CONFIDENTIALITY AND ACCESS

1. DISCLOSURE UNDER THE PUBLIC INFORMATION ACT
The HARRIS CENTER is an Agency of the State and a unit of government and is subject to the Texas Open Record Act, Chapter 552 of the Texas Government Code. The Agency operating under the Public Information Act is required upon written request to release information regarding Contractor which may include Contractor information or other documents. Information deemed confidential and proprietary by Contractor must be clearly indicated as such and may still be subject to disclosure depending on a ruling from the Texas Attorney General's Office. Contractor shall be solely responsible for the contesting or defending the release of any information it deems to be proprietary and hereby releases the Agency from any duty, responsibility, or liability with regard to the release of any information delivered to the Agency by Contractor.

2. RECEIPTS AND RECORDS
Contractor must retain all financial records, supporting documents, statistical records, and any documents pertinent to the Agreement until seven (7) years after termination of this contract or until any audits, in progress at the end of the seven (7) year period, are complete, whichever is later. Contractor agrees to provide the Agency, upon request, with original receipts for the purchase of all goods and services involving the use of Agency funds as well as any other financial and/or supporting documents or statistical records.

3. CONFIDENTIALITY OF RECORDS OF INDIVIDUALS SERVED BY THIS AGREEMENT
Contractor agrees to comply with all applicable State Confidentiality laws, Health Insurance Portability and Accountability Act regulations including the Business Associate Attachment (Exhibit ___) and Date Use Agreement Attachment (Exhibit ___), if applicable to services provided, incorporated by reference to this Agreement.

In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Security and Privacy Rule (45 CFR Parts 160 and 164) and HITECH ACT, Public Law 111,005, and Substance Abuse 42 CRF Part II as outlined below:

(a) Contractor agrees and acknowledges that in receiving, storing, processing, or otherwise dealing with client information, if any, accessed or generated during services as a Contractor for the Agency that Contractor and its officers, employees, agents and subcontractors are bound by the provisions of laws, statutes, and regulations protecting the confidentiality of this information.

(b) Contractor agrees and acknowledges that in receiving, storing, processing or otherwise dealing with information, if any, pertaining to or about a person with respect to alcohol or drug abuse, Contractor and its officers, employees and agents are bound by the provisions of 42 C.F.R. Part 2.

(c) Contractor agrees to follow, undertake, or institute appropriate procedures of safeguarding client information, if any, with particular reference to client identifying information or protected health information. The term “client identifying information” and/or “protected health information” includes, but is not limited to, a client’s medical record, graphs, or charts; statements made by the client, either orally or in writing, while receiving services; photographs, videotapes, etc., and any acknowledgment that a person is or has received services at the facility, center, or other designated Contractor.

(d) Contractor agrees to resist in judicial proceedings any efforts to obtain access to information pertaining to clients except as expressly stated in applicable laws, rules and regulations. Contractor agrees to inform the Agency of any attempts to gain access to information pertaining to clients.
Contractor agrees to report to Agency any use or disclosure of protected health information not provided for by this agreement of which it becomes aware. As well as to mitigate, to the extent practicable, any harmful effect that it is aware of that results from a use or disclosure of protected health information by it in violation of the requirements of this Agreement.

(f) Contractor agrees to make available to the Secretary of State or its designee its internal practices, books, and records and policies and procedures or those of Agency used by Contractor related to the use and disclosure of protected health information for the purpose of determining Contractor’s compliance with the Privacy Rule.

(g) Contractor agrees to maintain documentation of and information related to its uses and disclosures of protected health information to permit Agency to provide an accounting of disclosures as prescribed by 45 CFR §164.528.

(h) Contractor acknowledges that Agency is not permitted to enter into any agreement with a Contractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of Agency without requiring that Contractor to first execute the Subcontractor Agreement Form (Exhibit __), which ensures that the Contractor (Subcontractor) will comply with the identical terms, conditions, safeguards and restrictions as contained in the Data Use Agreement for PHI executed between the Agency and HHSC. A copy of the executed DUA is available upon request.

4. CONTRACTOR MONITORING AND ACCESS. Contractor agrees, pursuant to Texas Health and Safety Code, Section 534.061(a), that the Agency and its representatives, including independent financial auditors, shall have unrestricted access to all facilities, service providers, records, data, and other information under the control of the contracting entity or its Contractors/subcontractors as necessary to enable the HHSC or the Agency to audit, monitor, and review all financial or programmatic activities and services associated with this Agreement.

5. STATE AUDIT. In compliance with Section 2262.154, Texas Government Code, as amended by House Bill 905 of the 79th Regular Session of the Texas Legislature, effective on June 18, 2005, and hereinafter amended; Agency and the Contractor do hereby agree that:

(a) The Comptroller’s office may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract;

(b) Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

(c) Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the state auditor with access to any information the state auditor considers relevant to the audit or investigation.

VI. INDEMNIFICATION

Contractor hereby agrees to indemnify and hold harmless the Agency and all of its Directors, Officers, Employees and Agents from all suits, actions, claims or cost of any character, type or description brought or made on account of any injuries, death or damage received or sustained by any person or persons or property, including but not limited to clients, arising out of or occasioned by any acts or negligence of Contractor or Contractor’s personnel, if any, or its agents or employees whether occurring during the performance of the services hereunder or in the execution of the performance of any of its duties pursuant to this Agreement.
VII. OBLIGATIONS OF THE AGENCY

1. PAYMENT
   (a) In consideration of the obligations undertaken by Contractor, the Agency agrees to pay Contractor in accordance with the fee schedule attached as Exhibit A in an amount not to exceed ___________________________00/100 (${---NTE Amount---}) for the Agency fiscal year 2020.
   (b) Payment amount will be based on a monthly invoice, which shall reflect a detailed description of services provided by the Contractor and as approved by the Agency employee authorized to approve billing(s) as set forth above. Payment shall be made forty-five (45) days after receipt of goods, services, or invoice, whichever is latest. Payment may be delayed, adjusted or withheld, where a deficiency is noted in goods, services, or invoices received. The HARRIS CENTER retains the right to offset payments for prior invoices that were paid and later found to be deficient in any manner.
   (c) This Agreement is at all times contingent upon the approval of the Agency’s Board of Trustees or HHSC and the availability and receipt of state or federal funds, and if funds for this Agreement become unavailable during any budget period, this Agreement may be immediately terminated or reduced at the discretion of the Agency.

2. FRANCHISE TAX. If Contractor is a corporation and is at the time of contracting or later becomes delinquent in the payment of its Texas franchise tax, then payments to the Contractor due under this Agreement may be withheld until such delinquency is remedied.

3. CONTRACT RATE CHANGE. If Contractor’s contracted rates change during the period of the Agreement, the Contractor will be notified in writing and the Agreement will be amended to reflect such changes.

4. OVERPAYMENT. IN THE EVENT CONTRACTOR RECEIVES OVERPAYMENT FOR SERVICES PROVIDED. CONTRACTOR AND AGENCY AUTHORITY MUTUALLY AGREE THAT SUCH IDENTIFIED OVERPAYMENT WILL BE DEDUCTED IN TOTAL FROM THE NEXT MONTH’S REIMBURSEMENT UNLESS OTHERWISE AGREED UPON IN WRITING BY THE AGENCY.

VIII. INSURANCE

(1) POLICIES, COVERAGES, AND ENDORSEMENTS

Contractor agrees to maintain, or to cause its personnel providing services under this Agreement to maintain, at its sole cost and expense or the cost and expense of his personnel, the following insurance policies, with IT’S specified coverage and limits, as required by the Agency at the time of executing the agreement, to protect and insure the Agency and Contractor against any claim for damages arising in connection with Contractor’s responsibilities or the responsibilities of Contractor’s personnel under this Agreement and all extensions and amendments thereto.

The limits represent the minimum required coverage limits for this type of contract but if either party later determines that an increase in coverage is required, the parties agree to provide with written notice to the other party to request a revised Certificate of Insurance.

(a) Commercial General Liability
General Aggregate $2,000,000
Each Occurrence $1,000,000

(b) Professional Liability

General Aggregate $3,000,000
Each Occurrence $1,000,000

(c) Business Automobile if transporting our consumers.

Combined Single Limit Bodily Injury and Property Damage $1,000,000

(d) Workers' Compensation & Employers' Liability if applicable

Medical & Indemnity Statutory WC - Statutory
Employers' Liability - $500,000

(e) Cyber Privacy Liability
General Aggregate $2,000,000
Each Occurrence $2,000,000

(2) INSURED PARTIES

All policies excluding professional liability, employer's liability and worker's compensation shall contain a provision naming the Agency as Additional Insured on the original policy and all renewals or replacements during the term of this Agreement.

(3) SUBROGATION

All policies must contain a Waiver of Subrogation endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the Agency, its officers, agents or employees.

(4) PRIMARY AND NON-CONTRIBUTORY WORDING

All policies will provide the Primary and Non-Contributory Wording. This wording will be included on the Certificate of Liability Insurance.

(5) PROOF OF INSURANCE

The policies, coverage and endorsements required by this provision shall be shown on a Certificate of Insurance on which the Agency must be listed as an Additional Insured party (excluding professional liability or employer's liability) and the Certificate Holder and which should be furnished to the Agency prior to the commencement of this Agreement. All such insurance shall be secured and maintained with an insurance company, or companies, licensed to do business in the State of Texas. The Agency may withhold payments under the terms of this Agreement until the Contractor furnishes the Agency copies of all Certificates of Insurance from the insurance carrier, or carriers, showing that such insurance is in full force and effect.

(6) CANCELLATION
New Certificates of Insurance shall be furnished to the Agency at the renewal date of all policies named on these Certificates. Contractor shall give the Agency thirty (30) days prior written notice of any proposed cancellation of any of the above described insurance policies.

IX. NOTICES

Any required notice shall be in writing and shall be sent, postage prepaid, by certified mail, return receipt requested, to Agency or Contractor at the address below. The notice shall be effective on the date of delivery indicated on the return receipt.

If to the Agency:

Chief Executive Officer
The HARRIS CENTER for MH and IDD
PO Box 25381
Houston, Texas 77265-5381

If to Contractor:

Contact Name
Title
Company Name
Street, Suite
City, State/Province 00000

With a copy to:

Director of Contracts, Contracts Dept.
The HARRIS CENTER for MH and IDD
PO Box 25381
Houston, Texas 77265-5381

X. TERM AND TERMINATION

(1) TERM. This Agreement is made effective from DATE, 2019 until August 31, 2020, the end of the Agency fiscal year. In the event the Agency and Contractor are still negotiating, preparing, and/or reviewing the services or Contractor for renewal on the August 31, 2020 termination date, this Agreement shall automatically extend for ninety (90) days or until such time as a renewal agreement is approved by the Agency’s Board of Trustees whichever comes first.

(2) IMEDIATE TERMINATION. Agency may terminate this Agreement immediately if:

(a) Agency has cause to believe that termination of the Agreement is in the best interests of the health and safety of the mentally disabled persons served under this Agreement, if applicable;
(b) Contractor has become ineligible to receive Agency funds;
(c) Contractor has its Texas license or certification suspended or revoked; if applicable
(d) In the case of the Contractor providing direct services to clients, failure to disclose a criminal conviction;
(e) If the Contractor submits falsified documents or fraudulent billings, or if the Contractor makes false statements.
(f) If the Contractor is noncompliant pursuant to Access, Program Standards, Insurance and/or Financial requirements of this Agreement.

(3) TERMINATION UPON DEFAULT. Either party may terminate this Agreement after sixty (60) days written notice if the other party is in default of any of the provisions herein and/or any of the provisions in the bid
forms or specifications, which are attached hereto and incorporated herein by reference as if set out in full. Such termination shall be ineffective if within said sixty (60) day period Contractor cures such default to the satisfaction of the Agency. The Agency at its sole discretion may extend the period to cure the default for a reasonable time if the Agency determines that the Contractor has initiated action to cure the default within the sixty (60) day period. The Agency reserves the right to suspend services provided by the Contractor and payment for services not authorized during the sixty (60) day cure period, if at the Agency’s sole discretion it is determined that suspension is in the best interest of the Agency and/or its consumers.

(4) **TERMINATION WITHOUT CAUSE.** This Agreement may be terminated by either party, without cause, after thirty (30) days written notice to the other party.

(5) **TERMINATION BY MUTUAL CONSENT.** This Agreement may be terminated by the mutual consent of both parties after thirty (30) days written notice to the other party.

(6) **TERMINATION DUE TO BREACH OF CONFIDENTIALITY STATE AND FEDERAL RULES AND LAWS.** The Agency shall have the right to terminate this Agreement in the event that it becomes aware of a material breach by Contractor of the Agency’s Privacy Policy, Procedures, and/or Practices or becomes aware that Contractor has violated a material provision of the HIPAA Privacy Rule.

(7) **RENEWAL OPTIONS.** The Agency at its option may renew contract annually for four (4) successive one year terms at rate fees specified in Exhibit A attached herein and incorporated by reference as if fully set out. Any subsequent term will begin September 1 and end August 31 of each successive year unless terminated as stated hereunder; subject to annual appropriation.

**XI. MISCELLANEOUS PROVISIONS**

(a) **NONDISCRIMINATION.** Each party to this Agreement agrees that no person, on the basis of race, color, national origin, religion, sex, age, handicap, or political affiliation, will be excluded from participation, be denied the benefits of, or be subject to discrimination in the provision of any services hereunder. The parties hereto agree to comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991 and all amendments to each and all requirements imposed by the regulations issued pursuant to these acts.

(b) **BUSINESS ETHICS.** During the course of pursuing contracts, and the course of contract performance, the Agency will maintain business ethics standards aimed at avoiding real or apparent impropriety, abuse, fraud, waste, or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any employees or officials of Contractor by Agency employees, directors, officers and agents. At any time Contractor believes there may have been a violation of this obligation or any business ethics standard, Contractor shall notify the Agency of the possible violation.

(c) **CHILD SUPPORT.** Contractor shall certify that contractor or offeror is not more than thirty (30) days delinquent in child support payments and eligible to receive payments from state funds as required by the Texas Family Code Section 231.006. This provision also applies to a business entity in which such a person is the sole proprietor, partner, shareholder or owner with an ownership interest in at least 25%.

(d) **CERTIFICATION OF NON-VIOLATION.** Under Texas Government Code §2261.053, Contractor certifies that Contractor has not been convicted of violating federal law in connection with contracts relating to relief, recovery, or reconstruction as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005.
(e) CERTIFICATE/DISCLOSURE OF INTERESTED PARTIES. Effective as of January 1, 2016, as hereinafter modified pursuant to Texas Government Code §2252.908, a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least $1 million. This applies to any Agency contract with a “Not to Exceed” value of $50,000 or more. Interested party means a person who has a controlling interest in a business entity with whom the Agency contracts with or who actively participates in facilitating the contract, or negotiating the terms of the contract, including a broker, intermediary, advisor, or attorney for the business entity. This provision does not apply to an institution of higher education. For more information see https://www.ethics.state.tx.us/whatsnew/elf_info_form_1295.htm.

(f) LOBBYING AND POLITICAL ACTIVITY. Contractor shall not use funds received under this Agreement to pay any person for influence or attempting to influence an officer or employee or any agency, federal or state, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract or grant or the extension, continuation, renewal, amendment, or modification of any contract or grant.

(g) REMEDIES. All rights, powers, and remedies granted either party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers, or remedies which it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise, and all such rights, powers, and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either party. No delay or omission by either party to exercise any right, power, or remedy shall impair such right, power, or remedy or be construed to be a waiver of any breach or default or an acquiescence therein. A waiver by either party of any breach or default thereunder shall not constitute a waiver of any subsequent breach or default.

(h) AMENDMENT. Unless otherwise specifically provided herein, this Agreement may be amended or changed only by mutual written consent of an authorized representative of the Agency and Contractor.

(i) SEVERABILITY. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term (s) or provision (s).

(j) DISPUTE RESOLUTION. In the event a dispute arises between the parties involving the provisions or interpretation of any term or condition of the Agreement, and if both parties desire to attempt to resolve the dispute prior to termination or expiration of the Agreement, or withholding payments, then the parties may refer the issue to a mutually agreeable dispute resolution process in accordance with Chapter 10, Texas Government Code §2260.

(k) EXHIBITS. All Exhibits attached hereto are incorporated herein by reference as if fully set out.

(l) ELECTRONIC OR FACSIMILE SIGNATURES AND DUPLICATE ORIGINALS. Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S. C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

(m) GOVERNING LAW AND VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, and venue shall lie in Harris County, Texas.
(n) ENTIRE AGREEMENT. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, written or oral agreement between the parties respecting the subject matter herein.
THE CONTRACTOR WARRANTS AND ASSURES THE HARRIS CENTER THAT IT POSSESSES ADEQUATE LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT. THE CONTRACTOR’S GOVERNING BODY, WHERE APPLICABLE HAS AUTHORIZED THE SIGNATORY OFFICIAL(S) TO ENTER INTO THIS AGREEMENT AND BIND THE CONTRACTOR AND REPRESENTATIVE ENTITY TO THE TERMS OF THIS AGREEMENT AND ANY SUBSEQUENT AMENDMENTS HERETO.

COMPANY NAME

Printed/Typed Name
Title

THE HARRIS CENTER FOR MENTAL HEALTH AND IDD

Wayne Young, MBA, LPC, FACHE
Chief Executive Officer

REVIEWED:

Silvia Tiller Esq. Director of Contracts

Chief/Vice President, Title

APPROVED AS TO FORM:

Kendra Thomas, General Counsel
EXHIBIT A

CONTRACTOR:  
Company Name

CONTRACT ID:  
Contract ID ####

CONTRACT PERIOD:  
Effective Date, 2019 – August 31, 2020  
With four (4) one-year renewal options remaining.

SERVICE:  
Pharmacy Retail Software Services

SERVICE DESCRIPTION:  
Contractor will provide pharmacy retail software services to the Agency to help manage daily operations and inventory needs across pharmacy sites.

PERFORMANCE:  
Contractor will help provide value-added pharmacy management outcomes. Services include streamlined and automated communications, workflows, processing, fulfillment, tracking, accurate reporting, data security and confidentiality. Services should be provided in a timely and efficient manner.

Pharmacy Point of Sale System: Transactions in real time defined in minutes and seconds.

Implementation and Account Services: All services will be implemented as proposed within the specified timeframe. Inquiries from Agency/pharmacy staff resolved within twenty four (24) hours. Text/Email and Interface capability.

Ongoing Support and Maintenance: Support and training requests handled as needed. Inventory tracking and easy report generation.

Processing Accuracy: Very low to no percentage errors. Scan technology for all prescription documents.

Processing Time: Easy billing for pharmacy services.

Pharmacy Management: Pharmacies prepared for any annual on-site audits. Clinical flags requiring pharmacy approval via initials for drug fills. Pharmacist approvals via initials on every drug fill. Collection and access of all notes—electronic and hard copy as needed.

TARGETS:  
Target: Must provide electronic/web options and dependable pricing structure.
Outcome: Nurses and Pharmacists have access to efficient medication billing services resulting in improved patient care and pharmacy administration.

RATE AND DESCRIPTION:  
See Attached Exhibit A1.
NOT TO EXCEED: To be determined

UNIT(S) INVOLVED: 0000 - 000000

PAYMENT DOCUMENTATION: Contractor will submit invoices for services, due by 5th working day of each month, for previous month in accordance with § 9 a, b, c and d for approval.
EXHIBIT
BUSINESS ASSOCIATE AGREEMENT UNDER THE HIPAA OMNIBUS RULE

This Business Associate Agreement ("BAA") between {---Company Name---} ("BUSINESS ASSOCIATE") and THE HARRIS CENTER FOR MENTAL HEALTH AND IDD (formerly known as MHMRA of HARRIS COUNTY), ("The HARRIS CENTER") a Community Center and an Agency of the State of Texas, with offices at 9401 Southwest Freeway, Houston, Texas 77074, under the provisions of Chapter 534 of the Texas Health and Safety Code Ann. (Vernon 1992), as amended, establishes specific legal obligations regarding the terms of the relationship between the BUSINESS ASSOCIATE and The HARRIS CENTER, as it relates to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HITECH Act of American Recovery and Reinvestment Act of 2009, the Office of the Secretary of the Department of Health and Human Services has issued regulations governing the Standards for Privacy, Security and Breach Notification of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 ("Privacy Rule", "Security", "Breach Notification" Rules) collectively the ("HIPAA Omnibus Rule") and

The HARRIS CENTER and BUSINESS ASSOCIATE each may be referred to as a “Party” and together may be referred to as the “Parties” to the BAA. Both Parties agree that there shall be no third party beneficiaries to this Agreement, including but not limited to individuals whose protected health information is created, received, used, and/or disclosed by BUSINESS ASSOCIATE in its role as Business Associate.

WHEREAS, BUSINESS ASSOCIATE and The HARRIS CENTER are Parties to the BAA pursuant to which BUSINESS ASSOCIATE provide certain computer software and related support services to The HARRIS CENTER as outlined in the original Contract, between The HARRIS CENTER and BUSINESS ASSOCIATE in connection with the provision of those support services, The HARRIS CENTER discloses to BUSINESS ASSOCIATE certain Protected Health information ("PHI") (as defined in 45 C.F.R. § 164), that is subject to protection under HIPAA and the HIPAA Omnibus Rule;

WHEREAS, the Office of the Secretary of the Department of Health and Human Services has issued regulations requiring certain transmissions of electronic data be conducted in specified standardized formats at 45 CFR Parts 160 and 162 ("Electronic Transactions Rule"); and

WHEREAS, {---Company Name---} as a recipient of PHI which receives under a BAA from The HARRIS CENTER, a Covered Entity, and therefore, is a "Business Associate" as that term is defined in the Privacy Rule;

WHEREAS, pursuant to the Privacy Rule, all Business Associates must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

WHEREAS, the purpose of this BAA is to comply with the requirements of the Privacy Rule, including, but not limited to, the BAA requirements at 45 C.F.R. §160.103.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

DEFINITIONS. Unless otherwise provided in this BAA, the terms used in this BAA shall have the same meanings as set forth in HIPAA, the HITECH Act, and the HIPAA Rules including, but not limited to the following: Availability, Confidentiality, Data Aggregation, Designated Record Set, Health Care Operations, Integrity, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, and Subcontractor. Specific definitions are as follows:

1. "Breach" shall have the same meaning as the term "breach" at 45 CFR 164.402.

2. "Business Associate" shall have the same meaning as the term "business associate" at 45 CFR 160.103 and in reference to the party to this BAA, shall mean the first party listed in the first paragraph of this BAA.
3. "Compliance Date" shall mean, in each case, the date by which compliance is required under the referenced provision of the HIPAA, the HITECH Act or the HIPAA Rules, as applicable; provided that, in any case for which that date occurs prior to the effective date of this BAA, the Compliance Date shall mean the effective date of this BAA.

4. "Electronic Protected Health Information" ("Electronic PHI") shall have the same meaning as the term "electronic protected health information" at 45 CFR 160.103.


6. "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" at 45 CFR 160.103.


8. "Security Incident" shall have the same meaning as the term "security incident" at 45 CFR 164.304.


10. "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" at 45 CFR 164.402.

11. "Services" shall mean the services to be provided by BUSINESS ASSOCIATE which are identified in the Underlying Contract and its Exhibits.

SECTION I
SCOPE OF USE AND DISCLOSURE

1.01 Contractual Obligations: BUSINESS ASSOCIATE shall be permitted to use and disclose PHI that is disclosed to it by The HARRIS CENTER as necessary to perform its obligations under the Underlying Contract.

1.02 Proper Management and Administration: Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this BAA or required by law, BUSINESS ASSOCIATE may:

(a) BUSINESS ASSOCIATE/MITIGATION Use. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of BUSINESS ASSOCIATE;

(b) Disclosure to Third Party. Disclose the PHI in its possession to a third party for the purpose of BUSINESS ASSOCIATE'S proper management and administration or to fulfill any legal responsibilities of BUSINESS ASSOCIATE; provided, however, that the disclosures are required by law or BUSINESS ASSOCIATE has received from the third party written assurances that:

(1) the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and

(2) the third party will notify the BUSINESS ASSOCIATE
of any instances of which it becomes aware in which the confidentiality of the information has been breached

SECTION 2

OBLIGATIONS OF BUSINESS ASSOCIATE

In connection with its use and disclosure of PHI, BUSINESS ASSOCIATE agrees to comply with the following standards:

2.01 Limited Disclosure: Use or further disclose PHI only as permitted or required by this Business Associate BAA and agrees to make uses and disclosures and requests for PHI consistent with the or as required by law.

2.02 Required Safeguards: Use reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 64 with respect to Electronic Protected Health Information to prevent use or disclosure of PHI received from or created or received on behalf of, other than as provided for by this Business Associate BAA or as required by law. These safeguards will include but not limited to:

- Create a training plan that includes HIPAA and internal policies and procedures pertaining to HIPAA;
- Provide training to all employees, contractors and subcontractors on HIPAA and how the regulations help prevent the improper use or disclosure of PHI;
- Document training completion and testing outcomes. Retain all training records;
- Update and repeat training on a regular (annual) basis;
- Adopting policies and procedures regarding the safeguarding of PHI, including a Risk Analysis; and
- Enforcing those policies and procedures including sanctions for everyone found not in compliant in accordance to the Privacy Rule.

2.03 Mitigation of Improper Uses or Disclosures: To the extent practicable, mitigate any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of PHI by BUSINESS ASSOCIATE in violation of this Business Associate Agreement.

2.04 Report Unauthorized Disclosures: Promptly report in writing but no later than forty eight (48) hours to The HARRIS CENTER of first learning of any use or disclosure of PHI not provided for by this BAA of which BUSINESS ASSOCIATE becomes aware as required by 45 CFR 164.410.

2.05 Contracts With Contractors and or Subcontractors: Require contractors, subcontractors and or agents to whom BUSINESS ASSOCIATE provides PHI to agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE pursuant to this BAA.

2.06 HHS Access: Make available to the Secretary of Health and Human Services ("HHS") BUSINESS ASSOCIATE'S internal practices, books and records relating to the use and disclosure of PHI for purposes of determining The HARRIS CENTER'S compliance with the Privacy Rule, subject to any applicable legal privileges.

2.07 Accounting of Disclosures: Upon notice by The HARRIS CENTER that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, but not for information created prior to April 14, 2003, BUSINESS ASSOCIATE shall make available to The HARRIS CENTER such information then currently in BUSINESS ASSOCIATE'S possession, custody or control (including such information, if any, in the possession, custody or control of BUSINESS ASSOCIATE'S subcontractors) that is required for The HARRIS CENTER to make the accounting required by 45 C.F.R. Section 164.528. The HARRIS CENTER shall reimburse BUSINESS ASSOCIATE for all time and costs incurred to comply with any such requests made under this section.

2.08 Designated Record Set: To the extent that The HARRIS CENTER does not already have in its possession the Consumer's PHI in a Designated Record Set, BUSINESS ASSOCIATE shall provide copies to The HARRIS CENTER of all or a portion of the PHI in the Designated Record Set then currently in BUSINESS
ASSOCIATE’S possession within a reasonable time after The HARRIS CENTER’s request in order for The HARRIS CENTER to:

(a) make the PHI in the Designated Record Set available in accordance with 45 C.F.R. Part 164.524; and

(b) amend the PHI in the Designated Record Set in accordance with 45 C.F.R. Part 164.526. In the event an individual requests access to, or an amendment of, the PHI in a Designated Record Set, and any covered entity informs The HARRIS CENTER of an amendment, The HARRIS CENTER shall inform BUSINESS ASSOCIATE of the amendment. Upon receipt of such amendment, BUSINESS ASSOCIATE shall be responsible for making any changes in the Designated Record Set maintained by BUSINESS ASSOCIATE to reflect the amendment. The HARRIS CENTER shall reimburse BUSINESS ASSOCIATE for all time and costs incurred to comply with any request made under this section.

2.09 Compliance With Security Regulations: BUSINESS ASSOCIATE shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains or transmits on behalf of The HARRIS CENTER as required to comply with the HIPAA Security Regulation. Upon written request from The HARRIS CENTER, BUSINESS ASSOCIATE shall make available during normal business hours at BUSINESS ASSOCIATE’S offices, all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to The HARRIS CENTER within three (3) business days for purposes of enabling The HARRIS CENTER to determine BUSINESS ASSOCIATE’S compliance with the terms of this BAA.

2.10 Compliance with Security Audit: In compliance with HIPAA’S Security Audit Regulations, BUSINESS ASSOCIATE shall allow The HARRIS CENTER the ability to audit and review the security controls and policies that BUSINESS ASSOCIATE has in place for the locations housing The HARRIS CENTER’s electronic protected health information, including providing The HARRIS CENTER copies of the reports for any standard security audits that BUSINESS ASSOCIATE performs annually such as 3rd party HIPAA Security Audit reports etc.

SECTION 3
OBLIGATIONS OF THE HARRIS CENTER

The HARRIS CENTER agrees that it will comply with the following standards:

3.01 Notice of Privacy Practices: To inform BUSINESS ASSOCIATE of any changes in the form of notice of privacy practices that is forwarded by a Covered Entity to The HARRIS CENTER.

3.02 Restrictions on PHI: Will promptly notify BUSINESS ASSOCIATE in writing of any restrictions on the use and disclosure of PHI about Individuals that The HARRIS CENTER is required under the terms of its BAA with any Covered Entity to implement that may affect BUSINESS ASSOCIATE’S ability to perform its obligations under the Underlying Contract or this BAA.

3.03 Notice of Revocation: Will promptly notify BUSINESS ASSOCIATE in writing of any changes any changes in, or revocation of, permission by an Individual to use or disclose PHI which is received by The HARRIS CENTER from any Covered Entity, if such changes or revocation may affect BUSINESS ASSOCIATE’S ability to perform its obligations under the Underlying Contract or this BAA.
SECTION 4
TERM AND TERMINATION

4.01 Terms: This Contract is effective from and after the date of its execution until terminated as detailed in this Section 4 of the BAA.

4.02 Termination for Breach: In the event that BUSINESS ASSOCIATE materially breach a material term of this BAA, The HARRIS CENTER must provide BUSINESS ASSOCIATE with notice of the existence of the alleged material breach and afford BUSINESS ASSOCIATE an opportunity to cure the alleged material breach. In the event BUSINESS ASSOCIATE fails to cure the breach in a reasonable period of time to the satisfaction of The HARRIS CENTER, The HARRIS CENTER may terminate this BAA.

4.03 Automatic Termination: This BAA will automatically terminate upon the termination or expiration of the Underlying Contract, except where otherwise agreed.

4.04 Effect of Termination:

(a) Termination of this BAA will result in termination of the Contract;

(b) Upon termination of this BAA or the underlying Contract, BUSINESS ASSOCIATE will return or destroy all PHI received from The HARRIS CENTER or created or received by BUSINESS ASSOCIATE on behalf of The HARRIS CENTER that BUSINESS ASSOCIATE still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible as determined solely by The HARRIS CENTER, BUSINESS ASSOCIATE will continue to protect the PHI pursuant to the terms of this BAA and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(c) BUSINESS ASSOCIATE shall be responsible for all time and costs incurred as a result of identifying and destroying PHI as may be required under this section.

SECTION 5
GENERAL TERMS AND CONDITIONS

5.01 Amendment: BUSINESS ASSOCIATE and The HARRIS CENTER agree to amend this BAA from time to time as is necessary for The HARRIS CENTER to comply with the requirements of the Privacy Rule and its BAA(s) with Covered Entities.

5.02 Survival: The respective rights and obligations of the Parties under this Business Associate Contract shall survive the termination of this BAA.

5.03 No Third Party Beneficiaries: Nothing expressed or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.04 Entire Contract: This Contract contains the entire Contract between the Parties with respect to the subject matter hereof and supersedes any previous or contemporaneous proposals, understandings, commitments or representations whatsoever oral or written. The Parties may only modify or change the terms of this Contract by a written document signed by duly authorized representatives of both Parties.

5.05 Governing Law; Jurisdiction: This Contract shall be governed by and construed in accordance
with the laws of the state of Texas without regard to Texas's conflict of law principles. The Parties agree that Harris County, Texas shall be the sole proper venue regarding any dispute relating to or arising out of this Contract.

5.06 **Term:** The Term of this Contract shall commence on and this Contract shall be effective as of the date of the Contract. This Contract shall terminate in accordance with the terminations provisions of this Contract.

(Signature page to follow)

In witness whereof, each Party has caused this BAA to be executed and delivered by its duly authorized representative as of the date first listed above.

**The HARRIS CENTER**

By: __________________________
Name: Wayne Young, MBA, LPC & FACHE
Title: Chief Executive Officer

**BUSINESS ASSOCIATE**

By: __________________________
Name: __________________________
Title: __________________________
DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE
AND
THE HARRIS CENTER FOR MENTAL HEALTH AND IDD ("CONTRACTOR")

This Data Use Agreement ("DUA"), effective as of the date signed below ("Effective Date"), is entered into by and between the Texas Health and Human Services Enterprise agency DEPARTMENT OF STATE HEALTH SERVICES ("HHS") and THE HARRIS CENTER FOR MENTAL HEALTH AND IDD ("CONTRACTOR"), and incorporated into the terms of HHS Contract No. 537-17-0127-00024, in Travis County, Texas (the "Base Contract").

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

ATTACHMENT 1. The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. 45 CFR 164.504(a)(1)-(3) This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the followings: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, et seq.) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereunder; The Social Security Act, including Section 1117 (42 U.S.C. §§ 1320a-7); Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

"Authorized Purpose" means the specific purpose or purposes described in the Scope of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

"Authorized Use" means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

HHS Data Use Agreement V.8.3, HIPAA Omnibus Compliant June 19, 2015
Community Center and Local Health Department GOVERNMENTAL ENTITY VERSION
(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

(1) Client Information;

(2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;

(3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;

(4) Federal Tax Information;

(5) Personally Identifiable Information;

(6) Social Security Administration Data, including, without limitation, Medicaid information;

(7) All privileged work product;

(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

"Legal Representative" of the Individual, as defined by Texas law, including as provided in 45 CFR 435.922 (Medicaid), 45 CFR 164.502[a](1) (HIPAA); Tex. Occ. Code § 151.002[3]; Tex. H. & S. Code § 166.164; Estates Code Ch. 732 and Texas Prob. Code § 3.

**ARTICLE 3. CONTRACTOR’S DUTIES REGARDING CONFIDENTIAL INFORMATION**

Section 3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. 45 CFR 164.502[a](3); 45 CFR 164.514[0]

(B) CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User’s Workforce or Subcontractors of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of proper reporting any event or breach to CONTRACTOR’s management, to carry out the Authorized Purposes or as Required by Law.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. 45 C.F.R. 160.500(a)(3)(iii); Texas Health & Safety Code §181.101
(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. 45 C.F.R. 164.530(a)(1)(ii), (iii)(ii), (iv)(ii), (v)(ii)(B)

(D) CONTRACTOR will not disclose or provide access to any Confidential Information on the basis that such act is Required by Law, without notifying either HHS or CONTRACTOR’s own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS’ request. 45 CFR 164.504(d)(2)(ii)(A)

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-Identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. 45 CFR 164.502(e)(1)(ii) and (iii); 45 CFR 164.501, 164.506 (a)(8) and (i); Texas Health & Safety Code Ch. 181.902

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of CONTRACTOR without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and 45 CFR 164.503(a)(1)(ii); 164.504(a)(1)(i) and (ii)

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. 45 CFR 164.504(a)(5); 45 CFR 431.508, et seq.

(H) If CONTRACTOR maintains PHI in a Designated Record Set, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an individual, or Lawfully Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR’s possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS request. 45 CFR 164.534 and 164.504(a)(2)(ii)(E)

(I) CONTRACTOR will make PHI as required by HIPAA available to HHS for amendment and incorporate any amendments to this information that HHS directs or agrees to pursuant to the HIPAA. 45 CFR 164.504(a)(2)(ii)(E) and (F)

(J) CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. 45 CFR 164.504(a)(2)(ii)(C) and 164.528

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(C) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right to access or to obtain an accounting of transactions subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendments of PHI and will provide it to HHS within 60 days of receipt of such request. 45 CFR 164.504(q)(2)

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. 45 CFR 164.502; 164.510(a); 1 TAC 202

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR’s legal responsibilities in: 45 CFR 164.504(e)(9)(ii)(C)

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D);

(2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purposes for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. 45 CFR 164.504(e)(9)(ii)(B)

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. 45 CFR 164.504(g)(3)(ii)(B)

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS’s election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR’s agents or Subcontractors on HHS’s behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. 45 CFR 164.504(g)(2)(ii)(D)

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threat or hazards to the security or integrity of such information or unauthorized uses. 45 CFR 164.504; 164.530(c)
(Q) IF CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosec@hsph.harvard.edu the HHS Information Security and Privacy Initial Inquiry (SPI) at Attachment 3. The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-33. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. 45 CFR 164.306

(Q) CONTRACTOR will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HHS Privacy and Security Regulations, or other applicable laws or regulations related to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. 45 CFR 164.306 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards)

(Q) CONTRACTOR will designate and identify, subject to HHS approval, a Person or Persons, as Privacy Officer 45 CFR 164.309(a)(2) and Information Security Officer, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide the name and current address, phone number and e-mail address for each designated official to HHS upon execution of this DUA and prior to any change. 45 CFR 164.506(a)(2)

(Q) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. 45 CFR 164.502; 164.514(d)

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. 45 CFR 164.300; 164.310; 164.312(d); 164.530(d)(7)

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. 45 CFR 164.308; 164.514(d)

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(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. 45 CFR 164.504(e)(2)(ii)(D)

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in section includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. 45 CFR 164.512; 164.530(q)

(Z) CONTRACTOR will comply with the following laws and standards if applicable to the type of Confidential Information and Contractor's Authorized Purposes:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1071 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.
ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Breach or Event Notification to HHS. 45 CFR 164.400-414

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR’s obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS’s satisfaction (the “incident response period”). 45 CFR 164.404

(C) Breach Notice:

1. Initial Notice.

   a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS’s Privacy and Security Officers via email at: privacy@HHS.gov and to the HHS division responsible for this DUA and HHS Publication 1875; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHS-CMS Contracts for Information Exchange.

   b. Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. 45 CFR 164.400

   c. Name, and provide contact information to HHS for, CONTRACTOR’s single point of contact who will communicate with HHS both on and off business hours during the incident response period.

2. 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by CONTRACTOR of an Event or Breach of Confidential Information, provide formal notification to the State, including all reasonably available information about the Event or Breach, and CONTRACTOR’s investigation, including without limitation and to the extent available: For (a) - (e) below: 45 CFR 164.400-414

   a. The date the Event or Breach occurred;

   b. The date of CONTRACTOR’s and, if applicable, Subcontractor’s Discovery;

   c. A brief description of the Event or Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);

   d. A brief description of CONTRACTOR’s investigation and the status of the investigation;

   e. A description of the types and amount of Confidential Information involved;

   f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

   g. CONTRACTOR’s initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval,
including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

h. CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

i. The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

j. The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

k. Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

l. A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

m. Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

Section 4.03 Investigation, Response and Mitigation. For A-F below: 45 CFR 164.408, 310 and 312; 184.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expediently respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §321.033; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.
(B) CONTRACTOR must obtain HHS's prior written approval of the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5. SCOPE OF WORK

Scope of Work means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Scope of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

Section 6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

SECTION 6.02 HHS COMMITMENT AND OBLIGATIONS

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permitted under applicable law if done by HHS.

Section 6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

Section 6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.
(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(D) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

1. Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or

2. Require CONTRACTOR to submit to a corrective action plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or

3. Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or

4. Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation and the action it intends to take.

(E) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary.

(F) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 6.05. Governing Law, Venue and Litigation

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

Section 6.06. Injunctive Relief

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 6.07. Limitation of Liability

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To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR will defend and hold harmless HHS and its Workforce against all actual and direct losses suffered by HHS and its Workforce arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce, including, but not limited to, the costs of required notices and mitigation of a breach and any fines or penalties imposed on HHS by any regulatory authority.

Section 6.09 Insurance

(A) As a governmental entity, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR’s liability arising under this DUA and under which policy HHS is added as an additional insured. HHS reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR’s financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 6.02 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, including but not limited to requirements to insure and/or indemnify HHS, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear its own legal expenses and the other cost incurred in that action or proceeding.

Section 6.10 Extent of the Contract

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 6.11 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any other law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.
ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM

HHS CONTRACT NUMBER 537-17-0127-00024

The DUA between HHS and CONTRACTOR establishes the permitted and required uses and disclosures of Confidential Information by CONTRACTOR.

CONTRACTOR has subcontracted with (SUBCONTRACTOR) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBCONTRACTOR acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to CONTRACTOR under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. CONTRACTOR and SUBCONTRACTOR agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

CONTRACTOR and SUBCONTRACTOR assure HHS that any Breach or Event as defined by the DUA that SUBCONTRACTOR Discovers will be reported to HHS by CONTRACTOR in the time, manner and content required by the DUA.

If CONTRACTOR knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBCONTRACTOR that constitutes a material breach or violation of the DUA or the SUBCONTRACTOR’s obligations CONTRACTOR will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBCONTRACTOR, if feasible;
3. Notify HHS immediately upon discovery of the pattern of activity or practice of SUBCONTRACTOR that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps CONTRACTOR is taking to cure or end the violation or terminate SUBCONTRACTOR’s contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

BY: ________________________________
NAME: Wayne Young, MBA, LPC, FACHE
TITLE: Chief Executive Officer
DATE: ___________ 201__

SUBCONTRACTOR

BY: ________________________________
NAME: ________________________________
TITLE: ________________________________
DATE: ________________________________

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# Certificate of Interested Parties

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

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

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

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

<table>
<thead>
<tr>
<th>Name of Interested Party</th>
<th>City, State, Country (place of business)</th>
<th>Nature of Interest (check applicable)</th>
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<td>Intermediary</td>
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5. Check only if there is NO Interested Party. □

6. **AFFIDAVIT**
   
   I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

   Signature of authorized agent of contracting business entity

   AFFIX NOTARY STAMP / SEAL ABOVE

   Sworn to and subscribed before me, by the said ____________________________________________________________________________, this the __________ day of __________________, 20 __________, to certify which, witness my hand and seal of office.

   Signature of officer administering oath
   Printed name of officer administering oath
   Title of officer administering oath

---

ADD ADDITIONAL PAGES AS NECESSARY

Form provided by Texas Ethics Commission www.ethics.state.tx.us Adopted 10/5/2015
ATTACHMENT B

HUB SUBCONTRACTING PLAN
HISTORICALLY UNDERUTILIZED BUSINESS

(HUB-LOI IS USED BY POTENTIAL CONTRACTOR/VENDOR TO IDENTIFY SUBCONTRACTORS SELECTED FOR WORK ON THE CONTRACT)

Contractor: __________________ Vendor Identification Number: __________________
Address: ________________________________________________________________

Phone: _____-____-____ Proposal Number: ___________ Contract Amount: _________

Description of commodities/specifications: _______________________________________

Duration of Contract: _______________________________________________________

Name of Subcontractor/Supplier: ______________________________________________
Address: _________________________________________________________________

Phone: _____-____-____ Is the subcontractor a certified HUB? _____Yes_____No

If yes, enter the GSC Certificate (VID) number: ________________________________

Dollar amount of contract with subcontractor/supplier: $_______________________

Percentage amount of contract with subcontractor/supplier: %__________________

Description of materials/services performed under agreement with the subcontractor for amount indicated above:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

PLEASE SUBMIT A SEPARATE FORM FOR EACH SUBCONTRACTOR/SUPPLIER
**ATTACHMENT C**

**DEVIATION FORM**

Commitment Statement

As a prospective contractor and representative Agent of ________________ (Company Name) I hereby state my commitment to comply with all the Contract terms, conditions or specifications contained in the RFP and proposed Contract. (ATTACHMENT C)

*THIS COMMITMENT STATEMENT MUST BE SIGNED BY THE PROSPECTIVE CONTRACTOR WHETHER THERE ARE DEVIATIONS LIST OR NOT, AND SUBMITTED WITH THIS RESPONSE*

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<th>Company Name</th>
<th>Authorized Signature</th>
<th>Date</th>
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ATTACHMENT D

NOTICE “NOT TO PARTICIPATE” FORM

Dear Supplier

Please check the appropriate box below, complete the remainder of this form and return it PRIOR to the scheduled Date and Time:

☐ Our company cannot provide the products, supplies and/or services listed in this request. Please MOVE our name and address to the following category(ies) so that we may Proposal at a later date:

Category(ies):

☐ We have chosen NOT to submit a Proposal at this time, but would like to remain on your list for this Proposal category. We did not submit a Proposal because:

Reason(s):

☐ Please REMOVE our name from all The Harris Center lists until further notice.

Reason(s):

Company Name:

Representative:

Please Print

Address: Phone ( )

E-mail: Fax ( )

PLEASE RETURN THIS FORM ONLY TO:

The Harris Center for Mental Health and IDD
Purchasing Department
Notice “Not to Participate”–PHARMACY RETAIL SOFTWARE SYSTEM
9401 Southwest Freeway
Houston, Texas 77074

Authorized Signature: 

Title: Date:

SUPPLIERS WHO RESPOND TO THIS INVITATION WITH A COMPLETED PROPOSAL FORM WILL REMAIN ON OUR MAILING LIST. SUPPLIERS MAKING NO RESPONSE MAY BE REMOVED FROM THAT LISTING.

Thank you for your time and assistance.
ATTACHMENT E

FORM W-9, Rev. October 2018, REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Form W-9, Pages 1 – 6
Attached

Suppliers are to complete this form and submit with their Proposal documents. Go to attached link for W-9, if Solicitation was emailed.

W-9
Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

1. Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2. Business name/disregarded entity name, if different from above.

3. Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

   - Individual/sole proprietor or single-member LLC
   - C Corporation
   - S Corporation
   - Partnership
   - Trust/estate
   - Limited liability company
   - Other (see instructions)

4. Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

   - Exempt payee code (if any)
   - Exemption from FATCA reporting code (if any)

   (Applicable to accounts maintained outside the U.S.)

5. Address (number, street, and apt. or suite no. See instructions).

6. City, state, and ZIP code

   Requester's name and address (optional)

7. List account number(s) here (optional).

Part I
Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II
Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

3. I am a U.S. citizen or other U.S. person (defined below); and

4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Signature of U.S. person

Date

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.
By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners’ share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See What is FATCA reporting, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester’s form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- an individual who is a U.S. citizen or U.S. resident alien;
- a partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- an estate other than a foreign estate; or
- a domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners’ share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax on scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See Exempt payee code, later, and the separate instructions for the Requester of Form W-9 for more information.

Also see Special rules for partnerships, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See Exemption from FATCA reporting code, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.
Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1
You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. Individual. Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name shown on your social security card, and your new last name.

Note: TIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. Sole proprietor or single-member LLC. Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation. Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. Other entities. Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

a. Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the same as the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2
If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3
Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

<table>
<thead>
<tr>
<th>IF the entity/person on line 1 is</th>
<th>THEN check the box for...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>Corporation</td>
</tr>
<tr>
<td>Individual</td>
<td>Individual/sole proprietor or single-member LLC</td>
</tr>
<tr>
<td>Sole proprietorship, or</td>
<td></td>
</tr>
<tr>
<td>Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.</td>
<td></td>
</tr>
<tr>
<td>LLC treated as a partnership for U.S. federal tax purposes.</td>
<td></td>
</tr>
<tr>
<td>LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or</td>
<td></td>
</tr>
<tr>
<td>LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.</td>
<td></td>
</tr>
<tr>
<td>Partnership</td>
<td>Partnership</td>
</tr>
<tr>
<td>Trust/estate</td>
<td>Trust/estate</td>
</tr>
</tbody>
</table>

Line 4, Exemptions
If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC. The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.
  1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
  2—The United States or any of its agencies or instrumentalities
  3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of its political subdivisions or instrumentalities
  4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
  5—A corporation
  6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
  7—A futures commission merchant registered with the Commodity Futures Trading Commission
  8—A real estate investment trust
  9—An entity registered at all times during the tax year under the Investment Company Act of 1940
  10—A common trust fund operated by a bank under section 594(a)
  11—A financial institution
  12—A middleman known in the investment community as a nominee or custodian
  13—A trust exempt from tax under section 664 or described in section 4947
### Table: Types of Payments Exempt from Backup Withholding

<table>
<thead>
<tr>
<th>Payment Type</th>
<th>Exempt Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest and dividend payments</td>
<td>All exempt payees except for 7</td>
</tr>
<tr>
<td>Broker transactions</td>
<td>Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.</td>
</tr>
<tr>
<td>Barter exchange transactions and patronage dividends</td>
<td>Exempt payees 1 through 4</td>
</tr>
<tr>
<td>Payments over $600 required to be reported and direct sales over $5,000</td>
<td>Generally, exempt payees 1 through 5</td>
</tr>
<tr>
<td>Payments made in settlement of payment card or third party network transactions</td>
<td>Exempt payees 1 through 4</td>
</tr>
</tbody>
</table>

1. See Form 1099-MISC, Miscellaneous Income, and its instructions.
2. However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys’ fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

### Exemption from FATCA Reporting Code

The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by a certain foreign financial institution. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

- **A**—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
- **B**—The United States or any of its agencies or instrumentalities
- **C**—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- **D**—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)
- **E**—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)
- **F**—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
- **G**—A real estate investment trust
- **H**—A regulated investment company as defined in section 851 or an estate registered at all times during the tax year under the Investment Company Act of 1940
- **I**—A common trust fund as defined in section 584(a)
- **J**—A bank as defined in section 581
- **K**—A broker
- **L**—A trust exempt from tax under section 584 or described in section 4947(a)(1)

### Note

- **M**—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

### Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

### Line 6

Enter your city, state, and ZIP code.

### Part I. Taxpayer Identification Number (TIN)

#### Enter your TIN in the appropriate box.

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner’s SSN (or EIN, if the owner has one). Do not enter the disregarded entity’s EIN. If the LLC is classified as a corporation or partnership, enter the entity’s EIN.

**Note:** See What Name and Number To Give the Requester, later, for further clarification of name and TIN combinations.

#### How to get a TIN.

If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

#### Caution:

A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

### Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see Exempt payee code, earlier.

#### Signature requirements.

Complete the certification as indicated in items 1 through 5 below.
1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester’s trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition payment (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

<table>
<thead>
<tr>
<th>For this type of account:</th>
<th>Give name and SSN of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Individual</td>
<td>The individual</td>
</tr>
<tr>
<td>2. Two or more individuals (joint account) other than an account maintained by an FFI</td>
<td>The actual owner of the account or, if combined funds, the first individual on the account¹</td>
</tr>
<tr>
<td>3. Two or more U.S. persons (joint account maintained by an FFI)</td>
<td>Each holder of the account¹</td>
</tr>
<tr>
<td>4. Custodial account of a minor (Uniform Gift to Minors Act)</td>
<td>The minor²</td>
</tr>
<tr>
<td>5. a. The usual revocable savings trust (grantor is also trustee)</td>
<td>The grantor-trustee¹</td>
</tr>
<tr>
<td>b. So-called trust account that is not a legal or valid trust under state law</td>
<td>The actual owner¹</td>
</tr>
<tr>
<td>6. Sole proprietorship or disregarded entity owned by an individual</td>
<td>The owner³</td>
</tr>
<tr>
<td>7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(ii)(A))</td>
<td>The grantor⁴</td>
</tr>
</tbody>
</table>

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:
- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.
The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@federaltrade.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.