

## TEXAS MEDICAID & CHIP MANDATORY ADMINISTRATIVE SERVICES ADDENDUM

This Texas Medicaid & CHIP Mandatory Administrative Services Addendum (the “Addendum”) to the [REDACTED] dated [REDACTED] (the “Services Agreement”) between Parkland Community Health Plan, Inc. (“PCHP”) and [REDACTED] collectively, “Subcontractor” or “Vendor” and collectively with PCHP, the “Parties”) supplements the terms of the Services Agreement with respect to the provision of Medicaid and TX-CHIP administrative services under the Services Agreement pursuant to the Uniform Managed Care Contract for Medicaid TX-STAR and TX-CHIP and/or the Medicaid TX-STAR Kids Managed Care Contract between HMO and the Texas Health and Human Services Commission (“HHSC”), as applicable, (collectively the “State Contract” or “Contract”). For the purposes of this Addendum “Subcontractor” means Vendor.

To the extent any provisions of this Addendum conflict with language in the body of the Services Agreement, this Addendum shall control.

### 1. Subcontractor Performance

To the extent that Subcontractor shall perform certain Services as set forth in the Services Agreement in support of the State Contract (collectively the “Applicable Services”), the Parties must comply with applicable state rules and regulations, the State Contract, the HHSC Uniform Managed Care Manual (the “UMCM”) and HHSC’s requests regarding personal and professional conduct with regards to the Applicable Services, to the extent such terms or standards have been integrated into the Services Agreement, an applicable SOW, or this Addendum. Subcontractor hereby acknowledges that HHSC reserves the right to require the removal of any subcontractor or Subcontractor if HHSC determines that the Subcontractor is not conducting itself in accordance with the State Contract or to be unacceptable and unable to meet the applicable requirements of the State Contract to the extent such terms have been integrated into the Services Agreement and this Addendum, or to object to the selection of a subcontractor or Subcontractor. Unless otherwise specified herein, the definitions in this Addendum apply to this Addendum only and not elsewhere in the Services Agreement.

Subcontractor understands and agrees that it is a “subcontractor” pursuant to the State Contract, and that this Services Agreement is a “subcontract” pursuant to the State Contract, and shall use reasonable efforts to assist HMO in the performance of HMO’s duties under the State Contract with respect to subcontracts, subcontractors, Material Subcontracts and Material Subcontractors, to the extent Subcontractor is responsible for the performance of such duties in its delivery of the Applicable Services.

Subcontractor understands and agrees that this Services Agreement will be submitted to HHSC no more than five (5) days following its Effective Date. Subcontractor agrees to incorporate any changes to this Services Agreement mandated by HHSC.

To the extent applicable to its performance of the Applicable Services, Subcontractor understands that it must receive written approval from HHSC and HMO for all written materials containing information about the HHSC Programs prior to distribution to Members, prospective Members, providers within HMO’s Provider Network, or potential providers who HMO intends to recruit as Network Providers.

Subcontractors shall comply with all Fraud, Waste, and Abuse requirements found in the U.S. Dept. of Health and Human Services Circular C-027, to the extent applicable to its performance of the Applicable Services.

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## 2. Prohibition Against Performance Outside the United States

The Parties will comply with the requirements of Section 6505 of the PPACA, entitled “Prohibition on Payments to Institutions or Entities Located Outside the United States,” to the extent applicable to the Applicable Services.

“**Confidential Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) consisting of: (1) confidential Member information, including HIPAA-defined protected health information; (2) all non-public budget, expense, payment and other financial information; (3) all Privileged Work Product; (4) all information designated by HHSC or any other State agency as confidential, and all information designated as confidential under the Texas Public Information Act; (5) information utilized, developed, received, or maintained by HHSC, HMO, or participating State agencies for the purpose of fulfilling a duty or obligation under the State Contract and that has not been disclosed publicly. All Confidential Information obtained by Subcontractor under this Addendum must be stored and maintained within the United States and Subcontractor must not allow such information to be moved outside the United States by any means (physical or electronic) at any time, for any period of time, for any reason. Subcontractor shall not perform any work or maintain any Confidential Information obtained pursuant to the performance of services under the Services Agreement related to the State Contract to occur outside of the United States, except as specifically authorized or approved by HHSC. The term “within the United States” means any location inside the territorial boundaries comprising the republic of the United States of America, including of any of the forty-eight (48) coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

## 3. HHSC Limitations of Liability

Subcontractor agrees that there is no right of subrogation, contribution, or indemnification against HHSC for any duty owed to Subcontractor by HMO pursuant to the State Contract or any judgment rendered against HMO. HHSC’s liability to HMO’s employees, agents and subcontractors, if any, and Subcontractor will be governed by the Texas Tort Claims Act, as amended or modified. Subcontractor understands that HHSC does not assume liability for the actions of, or judgments rendered against, HMO, its employees, agents, subcontractors or Subcontractor. Subcontractor agrees that it has no right to indemnification or contribution from HHSC for any such judgments rendered against HMO or its subcontractors or Subcontractor.

## 4. Fraud, Waste and Abuse

For purposes of this Addendum: “**Fraud**” means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law; “**Abuse**” means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Medicaid or CHIP Program, or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. It also includes Member practices that result in unnecessary cost to the Medicaid or CHIP Program; and “**Waste**” means practices that are not cost-efficient. Subcontractor will cooperate with HHSC or other state or federal administrative agency personnel at no charge to HHSC for purposes relating to the administration of HMO programs including, but not limited to the following purposes:

- The investigation and prosecution of Fraud, Abuse, and Waste in the HHSC programs;
- Audit, inspection, or other investigative purposes; and
- Testimony in administrative, judicial or quasi-judicial proceedings relating to the Applicable Services under the Services Agreement or other delivery of information to HHSC or other agencies’ investigators or legal staff.

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Subcontractor acknowledges and agree that it is subject to all state and federal laws and regulations relating to Fraud, Waste, and Abuse (FWA) in health care and the Medicaid and CHIP programs which are applicable to its performance of the Applicable Services.

When requested by the HMO, Subcontractor will reasonably cooperate to provide employees to participate in administrative proceedings pursued by the HHSC OIG which relate to the Applicable Services. Such employees must be knowledgeable about the subject matter on which they are called to testify and must be reasonably available for preparatory activities and for formal testimony. Subcontractor must provide the employees at no cost to the State or the HHSC OIG.

## **5. Right to Examine Subcontractor Records**

At no cost to HHSC, HHSC has the right to examine the Services Agreement between HMO and Subcontractor and all records relating to the State Contract and the provision of Applicable Services pursuant to the State Contract.

If HMO or Subcontractor receives discounts, incentives, rebates, fees, free goods, bundling arrangements, recoupments, retrocession, payments, or other consideration from a third party (including without limitation Affiliates) pursuant to or related to the Applicable Services, HHSC and the Office of Attorney General have the right to examine the Services Agreement and all records relating to such consideration.

Subcontractor shall provide, at no cost to the officials and entities identified below prompt, reasonable, and adequate access to any records that are related to its performance of the Applicable Services. Subcontractor must provide the access described herein upon HHSC's request. This request may be for, but is not limited to, the following purposes: (1) examination; (2) audit; (3) investigation; (4) inspection (5) contract administration; or (6) the making of copies, excerpts, or transcripts. The access required must be provided to the following officials and/or entities: (1) The United States Department of Health and Human Services or its designee; (2) The Comptroller General of the United States or its designee; (3) MCO Program personnel from HHSC or its designee; (4) The Office of Inspector General ("OIG"); (5) The Medicaid Fraud Control Unit of the Texas Attorney General's Office or its designee; (6) Any independent verification and validation contractor, audit firm, or quality assurance contractor acting on behalf of HHSC; (7) The Office of the State Auditor of Texas or its designee; (8) A State or Federal law enforcement agency; (9) A special or general investigating committee of the Texas Legislature or its designee; (10) the Texas Department of Insurance; and (11) Any other state or federal entity identified by HHSC, or any other entity engaged by HHSC. Subcontractor agrees to provide the access described wherever Subcontractor maintains such books, records, and supporting documentation. Subcontractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, and other conveniences deemed reasonably necessary to fulfill the purposes described herein. Subcontractor must provide copies of the information described free of charge to HHSC and the entities described herein.

Upon reasonable notice from HHSC, Subcontractor shall provide, such auditors and inspectors as HHSC may from time to time designate, with access to: (1) service locations, facilities, or installations; (2) records; and (3) Software and Equipment. Reasonable notice may include time-limited or immediate requests for information. The access described herein will be for the purpose of examining, auditing, or investigating: (1) HMO's or Subcontractor's capacity to bear the risk of potential financial losses; (2) the Applicable Services; (3) a determination of the amounts payable under the State Contract; (4) a determination of the allowability of costs reported under the State Contract; (5) an examination of this Services Agreement, its terms and/or transactions; (6) an assessment of financial results under the State Contract; (7) detection of Fraud, Waste, or Abuse; or (8) other purposes HHSC deems necessary to perform its oversight function and/or enforce the provisions of the State Contract. Subcontractor shall provide any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

All audits conducted pursuant to this Section 5 shall be subject to Subcontractor's reasonable security procedures, and Subcontractor's provision of any third-party findings or reports or cooperation with any

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audit shall not be deemed to waive any legal privilege to which Subcontractor is entitled under the law.

## **6. Record retention**

Subcontractor understands and agrees as follows:

The State, CMS, the OIG, the Comptroller, the Attorney General and their designees have the right to audit records or documents, related to Subcontractor's work regarding the State Contract for ten years from the final date of the Services Agreement or from the date of any government audit, whichever is later. Subcontractor shall maintain, records, books, documents, and information (collectively "records") that are adequate to ensure that the Applicable Services are provided and payments are made in accordance with the applicable requirements of the State Contract, including UMCM Chapter 18 and applicable Federal and State requirements. Such records must be retained by Subcontractor for a period of ten years after the Services Agreement's expiration date or until the resolution of all litigation, claim, financial management review or government audit pertaining to the Services Agreement, whichever is longer. Subcontractor shall retain, as applicable to its delivery of the Applicable Services, enrollee grievance and appeal records under 42 C.F.R. § 438.16, base data in 42 C.F.R. § 438.5(c), MLR reports under 42 C.F.R. § 438.8(k), and the data, information, and documentation specified under 42 C.F.R. § 438.604, § 438.606, § 438.608, and § 438.610 for a period no less than ten years from the expiration date of the Services Agreement or from the date of the completion of any government audit, whichever is later. Additionally, Subcontractor shall retain all records in accordance with any litigation hold that is provided to them by HHSC and actively participate in the discovery process if required to do so, at no additional charge to HHSC. Litigation holds may require the Subcontractor to keep the records longer than other records retention schedules. Subcontractor will be required to retain all records subject to the litigation hold until notified by HHSC when the litigation hold ends and then other approved records retention schedule(s) may resume.

HMO shall promptly notify Subcontractor: (a) to the extent HMO reasonably believes that the State Contract will expire; and (b) upon the conclusion of such litigation, claim, financial management review or government audit pertaining to the Services Agreement; provided, however, before destroying or otherwise disposing of any records, Subcontractor will provide HMO with sixty (60) days' prior written notice and offer HMO the opportunity to recover such records or to request Supplier to deliver such records to HMO, with HMO paying Supplier's Out-of-Pocket Expenses.

## **7. SAO Audit.**

Subcontractor understands that acceptance of funds under the Services Agreement acts as acceptance of the authority of the State Auditor's Office ("SAO"), or any successor agency, to conduct an investigation in connection with those funds. Subcontractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested at no cost.

## **8. Monitoring and Corrective Action Plans**

Pursuant to the State Contract, the HMO must actively monitor the quality of Applicable Services, as well as the quality of any reporting data, provided under the Services Agreement. Subcontractor agrees to provide the HMO reasonable access to such books, records, and supporting documentation regarding the delivery of the Applicable Services,.

## **9. Confidentiality**

Subcontractor shall treat all information that is obtained through performance of the Applicable Services relating to the State Contract, including, but not limited to, information relating to applicants or recipients of HHSC Programs, as Confidential Information to the extent that confidential treatment is provided under state and federal law, rules, and regulations.

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Subcontractor may not use any information obtained through performance of the Applicable Services relating to State Contract in any manner except as is necessary for the proper discharge of obligations and securing of rights of the Applicable Services relating to the State Contract.

Subcontractor shall have a system in effect designed to protect Confidential Information. Any disclosure or transfer of Confidential Information by Subcontractor, including information required by HHSC, must be in accordance with applicable law.

In performing the Applicable Services, Subcontractor shall comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to Members, HMO's operations or HMO's performance of the State Contract.

The obligations in this Section 9 must not restrict any disclosure by the Subcontractor pursuant to any applicable law, or by order of any court or government agency, provided that the Subcontractor must provide notice in accordance with the terms of the Services Agreement, if applicable.

With the exception of Confidential Information related to a Member (meaning (1) is entitled to benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the STAR or STAR+PLUS Program, and is enrolled in the STAR or STAR+PLUS Program and the MCO's STAR or STAR+PLUS MCO; (2) is entitled to benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included as a voluntary participant in the STAR or STAR+PLUS Program, and is enrolled in the STAR or STAR+PLUS Program and the MCO's STAR or STAR+PLUS MCO; (3) has met CHIP eligibility criteria and is enrolled in the MCO's CHIP MCO; or (4) has met CHIP Perinatal Program eligibility criteria and is enrolled in the MCO's CHIP Perinatal Program), Confidential Information must not be afforded the protection of the Contract if such data was:

- Already know to the receiving Party without restrictions at the time of its disclosure by the furnishing Party;
- independently developed by the receiving Party without reference to the furnishing Party's Confidential Information;
- rightfully obtained by the other Party without restriction from a third party after its disclosure by the furnishing Party; or
- lawfully released without restriction to anyone.

#### **10. Disclosure of HHSC's Confidential Information**

In order for HMO to fulfill its obligation to report to HHSC, Subcontractor shall immediately report to HMO any and all unauthorized disclosures or uses of Confidential Information of which it or its subcontractors, consultants, or agents is aware or has knowledge. Subcontractor acknowledges that any publication or disclosure of Confidential Information to others may cause immediate and irreparable harm to HHSC and may constitute a violation of State or federal laws. If Subcontractors, its consultants, or agents should publish or disclose such Confidential Information to others without authorization, Subcontractor hereby acknowledges and agrees that HHSC and/or HMO will immediately be entitled to seek injunctive relief or any other remedies to which they may be entitled under law or equity against Subcontractor. In accordance with the terms of the Services Agreement, HMO will have the right to seek to recover from Subcontractor all damages and liabilities caused by or arising from Subcontractor, its subcontractors', consultants', or agents' failure to protect Confidential Information.

#### **11. Breach Notice Requirements**

In addition to the requirements under the Business Associate Services Agreement between the Parties, Subcontractor will comply with the breach notice requirements and other similar data breach requirements that are applicable to Subcontractor as required in Section 11.09.01 of the State Contract.

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## **12. Organizational Conflicts of Interest**

**Definition.** An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which Subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: impairs or diminishes HMO's or Subcontractor's ability to render impartial or objective assistance or advice to HHSC; or provides HMO or Subcontractor an unfair competitive advantage in future HHSC procurements (excluding the award of the State Contract).

**Warranty.** Subcontractor affirms that to the best of its knowledge and belief it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant of the state of Texas or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant state and federal law.

**Continuing duty to disclose.** Subcontractor agrees that, if after the Addendum effective date, Subcontractor discovers or is made aware of an organizational conflict of interest, Subcontractor will immediately and fully disclose such interest in writing to the HMO and the HHSC project manager.

The disclosure will include a description of the actions that Subcontractor has taken or proposes to take to avoid or mitigate such conflicts.

**Remedy.** If HHSC determines that an organizational conflict of interest exists, HHSC may, at its discretion, terminate this Addendum. If Subcontractor was aware of an organizational conflict of interest before the award of this Addendum and did not disclose the conflict to the contracting officer, such nondisclosure may be submitted to the Texas Office of the Attorney General, Texas Ethics Commission, or appropriate State or Federal law enforcement officials for further action if required by the State Contract or applicable Law.

## **13. Termination**

HHSC has the right to require termination of this Addendum and require replacement of Subcontractor found by HHSC to be unacceptable and unable to meet the requirements of the State Contract relating to the Applicable Services.

HHSC may terminate this Addendum at any time following the determination by a competent judicial or quasi-judicial authority and Subcontractor's exhaustion of all legal remedies that Subcontractor, its employees, agents or representatives have either offered or given anything of value to an officer or employee of HHSC or the State of Texas in violation of state law, whether or not the offer or gift was in HMO's behalf.

For purposes of this Section, a "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with state and/or federal law.

## **14. Terrorist Financing - Executive Order 13224**

Subcontractor will adhere to Executive Order 13224, "Terrorist Financing – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", effective September 24, 2004, as amended.

## **15. Former Employees of a State Agency**

To the extent Laws (including, for clarity, the Laws of Texas) relating to the hiring of former state employees apply to Subcontractor, Subcontractor has furnished, to the extent required by Laws, to HMO

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all subcontractor personnel who have worked for HHSC or another health and human services agency in the past two years.

**16. Debarment Certification**

Subcontractor will complete the required Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts, the form of which as of the Effective Date is attached hereto.

**17. Employment Verification**

Subcontractor certifies and ensures that it will confirm the eligibility of all persons employed by Subcontractor to perform duties pursuant to the State Contract, including confirmation through the U.S. Department of Homeland Security’s E-Verify system where applicable, as required by the State Contract.

**18. Federal Lobbying Certification**

Subcontractor will complete the required Certification Regarding Federal Lobbying, in the form of which as of the Effective Date is attached hereto.

**19. Amendment**

This Addendum may be amended from time to time to reflect HHSC or CMS requirements per the State Contract or applicable state or federal statute, regulation, or guidance.

**20. Term and Termination**

Subcontractor acknowledges and agrees that this Addendum shall remain in effect for the duration of the term of the Services Agreement to the extent Subcontractor is performing Applicable Services during such term. Furthermore, Subcontractor acknowledges and agrees that this Addendum is conditioned upon continuation of the State Contract and shall terminate automatically upon termination of same. Except in the event of such automatic termination, this Addendum shall terminate upon termination of the Services Agreement.

**Parkland Community Health Plan, Inc.**

**Subcontractor:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Required Certifications Follow*

**CERTIFICATION**  
 REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
 AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS  
**Must be completed by all subcontractors.**

Federal Executive Orders 12549 and 12689 require the Texas Health and Human Services Commission (HHSC) to screen each covered potential contractor to determine whether each has a right to obtain a contract in accordance with federal regulations on debarment, suspension, ineligibility, and voluntary exclusion. Each covered contractor must also screen each of its covered subcontractors.

In this certification "contractor" refers to both contractor and subcontractor; "contract" refers to both contract and subcontract.

By signing and submitting this certification the potential contractor accepts the following terms:

1. The certification herein below is a material representation of fact upon which reliance was placed when this contract was entered into. If it is later determined that the potential contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Department of Health and Human Services, United States Department of Agriculture or other federal department or agency, or the HHSC may pursue available remedies, including suspension and/or debarment.
2. The potential contractor will provide immediate written notice to the person to which this certification is submitted if at any time the potential contractor learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The words "covered contract", "debarred", "suspended", "ineligible", "participant", "person", "principal", "proposal", and "voluntarily excluded", as used in this certification have meanings based upon materials in the Definitions and Coverage sections of federal rules implementing Executive Order 12549. Usage is as defined in the attachment.
4. The potential contractor agrees by submitting this certification that, should the proposed covered contract be entered into, it will not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department of Health and Human Services, United States Department of Agriculture or other federal department or agency, and/or the HHSC, as applicable.

Do you have or do you anticipate having subcontractors under this proposed contract? ..... Yes  No

5. The potential contractor further agrees by submitting this certification that it will include this certification titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts" without modification, in all covered subcontracts and solicitations for all covered subcontracts.
6. A contractor may rely upon a certification of a potential subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous. A contractor must, at a minimum, obtain certifications from its covered subcontractors upon each subcontract's initiation and upon each renewal.
7. Nothing contained in all the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this certification document. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for contracts authorized under paragraph 4 of these terms, if a contractor in a covered contract knowingly enters into a covered subcontract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, Department of Health and Human Services, United States Department of Agriculture, or other federal department or agency, as applicable, and/or the HHSC may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS

Indicate in the appropriate box which statement applies to the covered potential contractor:

The potential contractor certifies, by submission of this certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency or by the State of Texas.

The potential contractor is unable to certify to one or more of the terms in this certification. In this instance, the potential contractor must attach an explanation for each of the above terms to which he is unable to make certification. Attach the explanation(s) to this certification.

Name of Potential Contractor	Vendor ID No. or Social Security No.	HHSC Contract No. (if applicable)
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Printed/Typed Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorize Representative

\_\_\_\_\_  
Date

**CERTIFICATION**  
REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS

DEFINITIONS

Covered Contracts/Subcontract.

- (1) Any nonprocurement transaction which involves federal funds (regardless of amount and including such arrangements as subgrant and are between HHSC or its agents and another entity.
- (2) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a grant or subgrant.
- (3) Any procurement contract for goods or services between a participant and a person under a covered grant, subgrant, contract or subcontract, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction:
  - a. Principal investigators.
  - b. Providers of audit services required by the HHSC or federal funding source.
  - c. Researchers.

Debarment. An action taken by a debaring official in accordance with 45 CFR Part 76 (or comparable federal regulations) to exclude a person from participating in covered contracts. A person so excluded is "debarred".

Grant. An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the federal government to an eligible grantee.

Ineligible. Excluded from participation in federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implement regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered contract. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered contract as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government, or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered contract whether or not the person is employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

- (1) Principal investigators.
- (2) Providers of audit services required by the HHSC or federal funding source.
- (3) Researchers.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to receive a covered contract.

Suspension. An action taken by a suspending official in accordance with 45 CFR Part 76 (or comparable federal regulations) that immediately excludes a person from participating in covered contracts for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended".

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

**CERTIFICATION REGARDING FEDERAL LOBBYING**  
 (Certification for Contracts, Grants, Loans, and Cooperative Agreements)  
**Must be completed by all subcontractors.**

PREAMBLE

Federal legislation, Section 319 of Public Law 101-121 generally prohibits entities from using federally appropriated funds to lobby the executive or legislative branches of the federal government. Section 319 specifically requires disclosure of certain lobbying activities. A federal government-wide rule, "New Restrictions on Lobbying", published in the Federal Register, February 26, 1990, requires certification and disclosure in specific instances and defines terms:

Covered Awards and Subawards--Contracts, grants, and cooperative agreements over the \$100,000 threshold need (1) certifications, and (2) disclosures, if required. (See certification term number 2 concerning disclosure.)

Lobbying--To lobby means "to influence or attempt to influence an officer or employee of any agency (federal), a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered federal actions:

- the awarding of any federal contract,
- the making of any federal grant,
- the making of any federal loan,
- the entering into of any cooperative agreement, and
- the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement".

Limited Use of Appropriated Funds Not Prohibited--The prohibition on using appropriated funds does not apply to activities by one's own employees with respect to:

- liaison activities with federal agencies and Congress not directly related to a covered federal action;
- providing any information specifically requested by a federal agency or Congress;
- discussion and/or demonstration or products or services if not related to a specific solicitation or a covered action; or
- professional and technical services in preparing, submitting or negotiating any bid, proposal or application for a federal contract, grant loan or cooperative agreement or for meeting legal requirements conditional to receipt of any federal contact, grant, loan or cooperative agreement. (The prohibition also does not apply to such services provided by nonemployees for the same purposes.)

Professional and Technical Services--Professional and technical services shall be advice and analysis directly applying any professional or technical expertise. Note that the professional and technical services exemption is specifically limited to the merits of the matter.

Other Allowable Activities--The prohibition on use of federally appropriated funds does not apply to influencing activities not in connection with a specific covered federal action. These activities include those related to legislation and regulations for a program versus a specific covered federal action.

Funds Other Than Federal Appropriations--There is no federal restriction on the use of nonfederal funds to lobby the federal government for contracts, grants, and cooperative agreements.

Applicability of Other State and Federal Requirements--Neither the government-wide rule nor the law affect either (1) the applicability of cost principles in OMB circulars A-87 and A-122, or (2) riders to the Texas State Appropriations Acts which disallow use of state funds for lobbying.

TERMS OF CERTIFICATION

This certification applies only to the instant federal action for which the certification is being obtained and is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with these federally funded contract, subcontract, subgrant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. (If needed, contact your Health and Human Services Commission procurement officer or contract manager to obtain a copy of Standard Form-LLL.)
3. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all covered subrecipients will certify and disclose accordingly.

Do you have or do you anticipate having covered subawards under this transaction? .....  Yes  No

Name of Contractor/Potential Contractor	Vendor ID No. or Social Security No.	HHSC Contract No. (if applicable)
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Name of Authorized Representative (type or print)	Title
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Signature--Authorize Representative

\_\_\_\_\_  
Date