

STATE OF TEXAS

POLK COUNTY

CONTRACT
between the
DEEP EAST TEXAS COUNCIL OF GOVERNMENTS
and
POLK COUNTY AGING DEPARTMENT
for
OLDER AMERICAN ACT PROGRAMS

1. Parties

This Contract (Contract) is between the Deep East Texas Council of Governments (DETCOG) and the Polk County Aging Department (Contractor), collectively referred to as the “Parties.”

2. Authority to Contract

The authority on which this Contract is based derives from the Older Americans Act, as amended, and its regulations; Health and Human Services regulations on administration of grants; Title 2 Code of Federal Regulations (CFR) Part 200; 45 CFR 132F; 45 CFR 91, and 1321, et seq.; the Uniform Grant Management Standards (UGMS), Governor’s office of Budget and Planning, January 2001; and all applicable rules as published in Title 40 Texas Administrative Code (TAC) 81, 83, and 85; and all state and local laws as pertains to this contract and its attachments.

3. Contract Term

This Contract will become effective for one year on October 1, 2022, and will expire on September 30, 2023, unless terminated earlier as provided within this contract.

4. Contract Extensions

The Parties may, by mutual agreement, extend this Contract for another three years prior to the start date of FY2024 on October 1, 2023. If this contract is extended for another three years, the contract will start on October 1, 2023, for FY 2024 and end September 30, 2026 for FY 2026. Any extension shall be in writing, with specific reference to this Contract, and shall be subject to all of the terms and conditions of this Contract.

5. Contract Amendment

This Contract may be amended in writing upon mutual agreement by both Parties or when dictated by implementation of laws and rules becoming effective within the Contract term as pertains to the scope of this Contract and its attachments. Amendment to this Contract is also made upon submission to and approval by the DETCOG of an amended budget and/or scope of services.

6. Scope of Services

Contractor agrees to provide the services and activities as identified during the rate setting process and unit rate negotiations.

7. Targeting

Contractor shall, in accordance with 42 U.S. Code (U.S.C.) Section 3026, and as addressed in the approved area plan, assure it will use outreach efforts to identify individuals eligible for assistance under this Contract, with special emphasis on: (1) older individuals residing in rural areas, (2) older individuals with greatest economic need (with particular attention to low-income minority and older individuals residing in rural areas), (3) older individuals who have greatest social need (with particular attention to low-income minority individuals and residing in rural areas), (4) older individuals with severe disabilities, (5) older individuals with limited English proficiency, (6) older individuals with Alzheimer’s disease and related disorders with neurological and organic brain dysfunction and the caretakers of such individuals, (7) older individuals that are members of Native American Tribes and (8) older individuals at risk for institutional placement.

8. Funding Obligations

Contractor acknowledges the DETCOG’s obligation for payment, in consideration of full and satisfactory performance of activities described in this Contract, is limited to monies received from the Administration on Aging, the Texas Health and Human Services Commission, the State of Texas and any other originating funding source.

DETCOG shall not be liable to Contractor for costs incurred or performance rendered unless such costs and performances are strictly in accordance with the terms of this Contract, including but not limited to, terms governing Contractor’s promised performance and unit rates/or reimbursement capitations specified.

DETCOG shall not be liable to Contractor for any expenditures, which are not allowable costs under 2 CFR, Part 200, as amended, or for which expenditures have not been made in accordance with the fiscal guidelines and requirements outlined by the DETCOG.

DETCOG shall not be liable to Contractor for expenditures made in violation of regulations promulgated under the OAA, as amended, or in violation of the HHSC rules, UGGMS, or this Contract.

Contractor agrees to the de-obligation statement as follows:

De-obligation of funds may occur based on year-to-date expenses and/or contract performance at the following points:

- At six months, 50% of the projected expenses and/or contract performance must have been incurred and reported to the Area Agency on Aging; and
- At nine months, 75% of the projected expenses and/or contract performance must have been incurred and reported to the Area Agency on Aging

If the required amount of expenses and/or contract performance has not been incurred at any of the points identified above, the amount of unexpended funds may be de-obligated and made available to Contractors having met their expenditure and/or contract performance projections.

9. Compensation

DETCOG agrees to make payment to Contractor in the amounts and upon the terms and provisions as set forth in Contractor’s rate setting documents, and all attachments to this Contract, and Contractor agrees to accept such payments as full compensation for services performed under this Contract. All payments shall be based on the performance information reported in the approved rate setting and monthly reimbursement requests.

Polk County

Congregate Meals	12,505 meals x \$6.31/meal =	\$ 78,906.55
Home Delivered Meals	7,800 meals x \$5.31/meal =	\$ 41,418.00
Participant Assessment	30 intakes x \$27.45/intake =	\$ 823.50
Senior Center Operations	12 months x \$1207.28 =	<u>\$ 14,487.36 = \$135,635.41</u>

DETCOG will pay Contractor on a reimbursement basis for services identified during the rate setting negotiation process.

10. Payment Methodology

DETCOG has no obligation to remit funds under the terms of this Contract for services provided on a reimbursement basis, as defined in Section 9, Compensation, of this Contract until the Contractor has provided the service and reported such provision in an Invoice for Reimbursement.

Contractor shall report eligible units of service and actual allowable expenses to the DETCOG monthly using any and all prescribed forms as may be prescribed by the DETCOG, Area Agency on Aging.

Final payment shall be based on the information contained in the reimbursement system 60 business days following termination of this Contract. This payment provision shall apply to final payment whether at completion of the Contract period or in the event of early contract termination.

11. Reporting Requirements

Contractor agrees to submit all required fiscal and programmatic reports by the eighth (8th) day of the month following the month in which services were delivered. Contractor agrees to maintain fiscal records to support reimbursement conformity with the procedures established by the DETCOG and/or other funding agency(ies). All fiscal and programmatic reports shall continue to be due throughout the entire Contract period even though no additional services may be reimbursable under this Contract.

Contractor shall complete and submit to the DETCOG all requests for funds on a DETCOG prescribed form and in accordance with the rules and policies of the DETCOG. A final report shall be submitted to the DETCOG on or before October 15 for the previous fiscal year.

12. Match Requirements

Contractor shall provide a minimum match for activities as required by the OAA, as amended, and shall assure total match for services is sufficient to meet the requirements of the OAA, as amended.

Match shall be in accordance with 40 TAC 85.202(i). All match contributions shall be expended for goods and services necessary for and specifically identified in the rate setting negotiation process.

Match shall conform to the OAA regulations, 2 CFR Part 200 and HHSC rules regarding match requirements.

13. Program Income

Program income shall be earned and expended in accordance with 40 TAC 85.202(j), UGMS Subpart C ___, 25 and all applicable HHSC rules. Contractor shall use all program income and participant contributions collected to further eligible program outcomes. All program income and participant contributions collected and expended shall be documented and managed according to HHCS rules and regulations.

Program income received as contributions will be accounted for and deposited in accordance with the written policies and procedures established by Contractor in accordance with the HHSC rules and regulations.

Program income collected by Contractor shall consist only of those funds specifically provided by, or on behalf of, a program participant and directly attributable to the service provided.

14. Contribution Policy

Contractor shall provide a voluntary opportunity for each eligible participant to contribute to the cost of services while protecting the individual's privacy. Contractor shall safeguard and account for such contributions, and use such contributions to expand and/or enhance program outcomes.

15. Maintenance of Records

In accordance with 40 TAC 85.201(p) relating to Records, Contractor shall retain all financial records, supporting documents, statistical records, and all other records relating to its performance of this Contract (contract records). Contractor shall use any and all standard forms promulgated by the DADS and DETCOG, as applicable. All contract records shall be made available, with reasonable notice, at the Contractor's office, and shall be maintained for at least five years after the termination of this contract, or five years after any audit findings and other disputes or litigation relating to this agreement, if any, have been resolved. Multi-site Contractors may maintain all records at a designated central location for purposes of this section.

16. Accessibility of Records

Contractor shall give the DETCOG, HHSC, the ACL, the Comptroller General of the United States, and the State of Texas, through any authorized representatives, the access and right to examine all records, books, papers, contracts, or other documents related to this Contract. Such right of access shall continue as long as such records, or any of them, are in existence, but shall not be less than seven years following the end of this contract term or the resolution of any disputes relating to this Contract, whichever is later.

Contractor agrees the state auditor may conduct an audit or investigation of any entity receiving funds from the DETCOG under the Contract. Contractor understands acceptance of funds directly 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. Contractor understands under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to: (1) evaluating the entity's performance under the contract, (2) determining the state's rights or remedies under the contract, or (3) evaluating whether the entity has acted in the best interest of the state.

17. Contractor Review

In accordance with HHSC rules, Contractor agrees to comply with the DETCOG review of Contractor programmatic and fiscal activities on a regular and systematic basis to ensure compliance with established policies and procedures.

18. Audit Requirements

IF APPLICABLE –

Contractor shall submit a copy of an annual audit of Contractor, performed by an independent certified public accounting firm within nine months after the end of the Contractor's fiscal year to the DETCOG. The audit shall cover Contractor's entire organization and be conducted in accordance with generally accepted auditing standards. Audits performed under this Section are subject to review and resolution by the DETCOG and HHSC or their authorized representative(s).

The audit shall be conducted and submitted in accordance with the standards for financial and compliance audits contained in the Standards for Audits of Governmental Organizations, Programs, Activities and Functions, issued by the U. S. General Accounting Office; the Single Audit Act of 1984; Title 2 CFR, Part 200 and Nonprofit Organizations and UGMS.

Contractor understands and agrees that Contractor shall be liable to the DETCOG for any costs disallowed as a result of unresolved questioned costs revealed during the audit. All questioned costs relating to a DETCOG and/or HHSC program shall be resolved within 180 calendar days following receipt of Contractor's audit by the DETCOG, otherwise disallowance of questioned costs shall be implemented, and Contractor shall be liable to the Department for such disallowed costs.

Contractor shall have the right to appeal any such disallowance of costs in accordance with 40 TAC 81.15, Appeal Procedures for Area Agency on Aging Contractors.

Contractor shall procure audit services no less frequently than every five years. In the event the same audit firm is utilized for more than five consecutive years, Contractor shall request the audit firm assign a different audit manager to the project. The ability to assign a different audit manager shall be a consideration in the procurement for audit services.

19. Identification of High Risk

The DETCOG may identify a Contractor as high risk in accordance with the UGMS, Grant Administration, Section III, Subpart B; 2 CFR Part 200; and HHSC and/or DETCOG policies.

DETCOG may inform Contractor of the identification as high risk in writing. DETCOG may state the effective date of the identification as high risk, the nature of the issues that led to the identification as high risk, and any special conditions or restrictions. The identification as high risk may remain in effect until the DETCOG determines Contractor has taken corrective action sufficient to resolve the issues that led to the identification as high risk.

20. Payment Suspension, Penalties, and Contract Termination

In the event monitoring/evaluation activities by the DETCOG or its agents disclose deficiencies in the operation of Contractor under provisions of this contract, the DETCOG shall take appropriate remedial steps that may include the issuance of sanctions and/or penalties in accordance with 40 TAC 81.13.

The DETCOG or Contractor may elect to terminate this Contract upon ten-calendar days written notice from the terminating party to the other party. Contractor, upon notification of termination, shall have the right to appeal such termination following procedures outlined in HHSC rules. This contract also may be terminated upon the occurrence of any of the following events:

- Discontinuance of funding to the DETCOG from HHSC, the Federal Government or the State of Texas;
- Failure of Contractor to comply with any or all of the terms and conditions of this contract and any attachments thereto; or
- Mutual agreement between the DETCOG and Contractor.

In the event of termination, Contractor shall submit final billings for units of service delivered pursuant to the Contract. Final billings will be submitted to the DETCOG within 15 calendar days after date of termination. The DETCOG shall reimburse those units of service, delivered in accordance with the contract, prior to termination.

At the date of termination, the DETCOG may require the Contractor to transfer title and deliver to the DETCOG or to another authorized Contractor any property acquired by federal or state funds or assigned to Contractor by the DETCOG for the purpose of this contract.

Contractor may dispose of property having a current value, at the time of termination, of less than \$500, in any manner, and the DETCOG shall make no recovery. The DETCOG shall provide instructions to Contractor regarding disposition of all property having a current value, at the time of termination, of \$500 or more, within 15 business days following notice of termination.

DETCOG shall take remedial steps to resolve Contractor's non-compliance with the contract. Contractor agrees that its continued non-compliance or identification of unallowable or disallowable activities or actions or processes will result in sanctions or penalties or both in accordance with 40 TAC 81.13.

- In the event monitoring or evaluation activities by the DETCOG or its agents disclose deficiencies in Contractor's performance supported under provisions of this Contract, DETCOG shall take appropriate remedial steps to resolve such non-compliance. Remedies such as a corrective action plan, training or other actions based on the identified risk may be

required of Contractor by the department. Continued non-compliance or identification of unallowable or disallowable activities or actions or processes will result in sanctions or penalties or both in accordance with 40 TAC 81.13.

- The DETCOG or Contractor may elect to terminate this Contract upon ten-calendar days written notice from the terminating party to the other party. Contractor, upon notification of termination, shall have the right to appeal such termination following procedures outlined in HHSC rules.

21. Recapture of Payments

If Contractor has failed to comply with the terms of this Contract that govern the use of monies pursuant to this Contract, or if Contractor has received funds in excess of those actually earned, the DETCOG may take appropriate action including the recapture of payment and/or withholding of funds.

22. Data Usage Agreement (Attachment A)

- The Contractor agrees to abide by the terms and conditions as previously agreed and signed in the HHS Data Usage Agreement V.8.3. (DUA) and HHS Information and Privacy Initial Inquiry (SPI) which is attached to this contract and on file at HHSC and DETCOG.
- The Contractor will agree to provide a representative to any training provided by DETCOG related to the DUA.

23. Assurances and Certifications (Attachment B)

Contractor hereby provides all assurances required by law as set forth in Attachment B of this Contract. All assurances and certifications contained in Attachment B are hereby incorporated by reference into this Contract. Contractor must certify compliance with assurances and certifications will be accomplished.

Contractor shall use due diligence to ensure reasonable steps have been taken to meet the criteria or standards within each assurance. Failure to comply with an assurance shall subject the Contractor to penalties, disallowance of funds, and other action, up to and including termination.

24. Debarment and Suspension (Attachment C)

As required by Federal Executive Order 12549, Debarment and Suspension and implemented at 2 CFR Part 200, for prospective participants in Federal assistance programs:

- Contractor certifies Attachment C to the best of Contractor’s knowledge and belief, on behalf of the organization, defined as the primary participant in accordance with 45 CFR Part 76, and its principals.
- Contractor also agrees by signing and submitting Attachment B, that it will include, without modification, the clause titled “Certification Regarding Debarment, Suspension, in eligibility, and Voluntary Exclusion-Lowe Tier Covered Transactions” in all lower tier covered transactions (i.e., transactions with sub-grantees and/or Contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

25. Liability to Third Parties

DETCOG does not assume any liability to third persons, nor will the DETCOG reimburse Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this Contract.

Contractor shall give the DETCOG or its representative immediate notice of any suit or action filed or prompt notice of any action of any claim made against Contractor arising out of the performance of this contract. For the purpose of this section, "representative" is defined under 40 TAC 85.401(r).

Contractor shall furnish immediately to DETCOG copies of all pertinent papers received by Contractor in connection with any such suit, action or claim. DETCOG shall have the option to intervene in such actions to represent DETCOG's interest.

26. Code of Conduct

Contractor shall maintain a written code or standards of conduct, which shall govern the performance of its officers, employees or agents engaged in the award and administration of this contract supported by federal funds if a conflict of interest, real or apparent, arises. Such a conflict would arise when: the employee, officer or agent; any member of her/his immediate family; his/her partner; or an organization which employs, or is about to employ any of the above, has a financial or other interest in the entity selected for award.

Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value for any purpose that is or gives appearance of being motivated by a desire for private gain of favorable treatment for themselves or others, particularly those with whom they have family, business, or other personal ties.

No officer or member of Contractor and no other public official or officer or member of the Board of Contractor who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal or pecuniary interest, direct or indirect, to the Contract or the proceeds thereof.

27. Governance

A. Criterion

Contractor shall be an eligible organization and shall be governed by a board, which represents the planning and service area (PSA) served. The board, if not otherwise covered by statutes, law or regulations, shall consist of members pursuant to rules established by the DADS and DETCOG regarding such matters. The board shall function fully and effectively in its fiduciary role.

B. Requirements

1. Eligibility

Contractor will be designated by the DETCOG in accordance with the requirements of the OAA, as amended. If Contractor is a private nonprofit entity, it shall apply for and maintain exemption from tax under 501(c)(3) or 501(c)(4) of the U.S. Tax Code.

2. Governing Body

a. Functions and Responsibilities

Contractor's board shall describe its functions in bylaws and carry them out as indicated so as to respond to the overall environment, the planning and service area, and intervention for problems.

o Meetings, Records, and Activity

The board shall hold regular meetings and keep adequate records that indicate active participation by all or most members in the full range of functions and a fair and equitable decision-making process.

o General Policies

The board shall establish general policies, including human resources such as probationary periods and job descriptions, programmatic and fiscal policies, for the conduct of the Contractor.

o Financial Viability

The board shall control major resource decisions and monitor financial viability by requiring regularly submitted financial reports that also indicate whether there exists a variance from revenue and expenditure projections.

o Retention, Recruitment, and Plan Update

The board shall establish a long-term plan to ensure a high quality Contractor staff. The board shall also ensure that there exists a process for monitoring and updating the plan.

b. Selection of Membership

Contractor's bylaws shall specify and board shall carry out a process for board member appointments and a process that provides for turnover among members, yet maintains sufficient continuity to ensure familiarity with issues and effective participation. The bylaws shall also provide for regular changes in leadership positions.

c. Conflict of Interest

The bylaws or written corporate policies shall implement provisions that prohibit conflict of interest or the appearance of conflict of interest by personnel, board members, consultants, volunteers and those who provide services or furnish goods to Contractor. No board member shall be an employee of Contractor or be an immediate family member of an employee.

d. Fiscal Management

Contractor shall have appropriate leadership and management structure to enable it to operate efficiently and effectively. Contractor shall also have financial systems to maintain internal controls, ensure proper management of federal funds, maximize non-federal resources and maintain solvency.

Contractor shall have accounting and internal control systems appropriate to the size of the organization. The accounting system should consist of source documents, a chart of accounts, journals, ledgers and routine financial reports. The internal controls system shall safeguard Contractor's assets, produce accurate accounting data, promote efficient operations and encourage adherence to prescribed accounting policies and procedures. Effective internal control shall involve a division of responsibility among different employees for a sequence of related functions, clear establishment of each employee's responsibilities and duties, and use of standards such as procurement policies, proofs, checks, electronic fund transfers, and other security measures.

e. Management Process

Contractor shall have procedures in place to ensure communication internally between the Director, key staff and the governing board and externally with local, regional and state leaders and public officials. Management shall establish and implement a process for decision-making and priority setting, efficient and effective oversight of operations and evaluation of staff and programs administered and correction of deficiencies in both areas.

f. Data Systems

Contractor shall be supported by data systems that provide adequate information for operational efficiency and decision-making. **Contractor shall have financial data systems and appropriate software capable of producing expenditure reports, cost center analyses, budget formats and automated reports as required by, and without additional support from, DETCOG.** The data system shall be able to provide program performance and financial information to reflect the operation and status of the organization to assist Contractor in conducting regular data assessment and analysis to determine if Contractor is meeting its performance as required under this contract. **Contractor shall have in place adequate electronic virus protection software to prevent the loss or corruption of any and all client, program, and financial data. Contractor shall implement the security features of all existing software.**

Contractor shall develop and implement security systems and procedures to safeguard the privacy of all clients. Contractor shall provide the necessary hardware to carry out the provisions of this contract.

Contractor shall comply with all requirements related to handling individually identifiable health information as described in this Contract.

Contractor shall also monitor providers for whom its purchases a license or for whom it requests access to the system to ensure such providers comply with licensing and handling individually identifiable health information.

Contractor agrees to use its best efforts to safeguard the confidential information and to prevent its unauthorized use, dissemination, or disclosure, both during the term of this

Contract and thereafter, unless otherwise required by law or court order. Contractor shall not disclose or make available the confidential information to any person or entity other than to DETCOG and Contractor's employees, and then only to the extent that such disclosure is reasonable and necessary to Contractor's performance of its obligations under this Contract. Contractor shall require its employees to sign non-disclosure agreements with provisions at least as stringent as to those contained in this Contract.

28. Force Majeure

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the terms of any obligation or duty placed on such party be reason of or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge, or civil authority, and act of God, or any cause reasonably beyond the party's control and not attributable to its neglect, that in such event the time for the performance of such obligations or duty shall be suspended until such disability to perform is removed.

29. Contract Notices

Any notice required to be given pursuant to the provisions of this Contract shall be sent by certified mail, postage prepaid, to the addresses of the parties hereto as set out below until due notice has been given of a change of address.

For the DETCOG
Holly Anderson
Director
Area Agency on Aging
1405 Kurth Drive
Lufkin, Texas 75904

For Contractor
Polk County Aging Department
602 E Church Street Suite 152
Livingston, TX 77351

30. Political Activity

No funds under this Contract may be used in any way to attempt to pay any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of a federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Contractor, if a recipient of federal assistance exceeding \$100,000.00 through the DETCOG, will comply with 31 U.S.C. 1352.

31. Sectarian Involvement

Contractor shall ensure that no funds under this Contract are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction. This clause shall be interpreted in respect of 40 TAC 69.16 and 2 CFR Part 200.

32. Right to Appeal

Any applicant to provide services whose application is denied or whose Contract is terminated or not renewed (except as provided in 2 CFR Part 200), has a right to appeal such action. The applicant shall give notice of appeal to the DETCOG within ten (10) calendar days after it

receives the DETCOG's action letter. Appeals Procedures adopted by the DETCOG and codified in 40 TAC 81.15 will be used as the appeals process.

33. Independent Contractor

In performance of obligations under this Contract, Contractor shall act as an independent Contractor and not as an agent, representative or employee of the DETCOG. No employee, agent or representative of Contractor shall be considered an employee of the DETCOG nor be eligible for any benefits, rights or privileges afforded to DETCOG employees.

Both parties agree that the DETCOG shall not be liable for any costs incurred by Contractor except to the extent provided in this contract. When 45 CFR, or its appendices, provide that a cost is allowable only when authorized in writing, the cost will not be allowable unless written approval from the DETCOG is obtained prior to the expenditure.

34. Oral and Written Agreement

All oral or written agreements made prior to this Contract have been reduced to writing and are contained herein by the execution of this Contract including any proposals submitted by Contractor.

35. Severability

The invalidity or unenforceability of any provision of this Contract will not affect the validity or enforceability of any other provision of this Contract.

36. Dispute Resolution

Contractor agrees to:

- The dispute resolution process provided for in Chapter 2260 of the Government Code should be used as further described by the Parties to attempt to resolve any claim for breach of contract made by Contractor.
- A Contractor's claim for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to the Executive Director, Deep East Texas Council of Governments. The notice shall specifically state that the provisions of Chapter 2260, subchapter B are being invoked. A copy of the notice shall be given to the Director, Area Agency on Aging and the DETCOG's General Counsel, and any other person or entity otherwise entitled to notice under the Parties' Contract.
- The submission, process and resolution of Contractor's claim is governed by the published rules adopted by the DETCOG pursuant to Government Code, Chapter 2260, as currently effective, herein enacted or subsequently amended.
- Neither the occurrence of an event nor the dependency of a claim constitute grounds for suspension of performance by Contractor, in whole or in part, or in suspension of payment for those services in accordance with the contract and as allowed by law.

37. Application of Law & Venue

This Contract is governed by and shall be construed in accordance with the laws of the State of Texas. Venue for suit of any kind shall be filed in a court of competent jurisdiction in Jasper County, Texas.

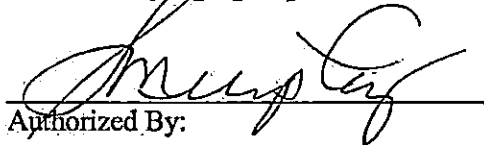
38. Survival of Terms

The following portions of this Contract shall survive termination: 6, 10, 11, 16, 18, 20, 21, 24, 28, and 33 to 37.

39. Acceptance of Contract

The Parties acknowledge that their respective representatives have read this Contract and understand its terms. The Parties further acknowledge that the representatives below are authorized to sign and agree to this Contract on behalf of their respective Party.

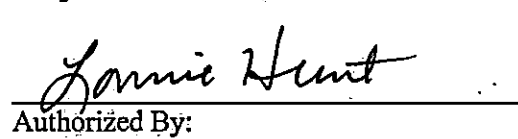
Polk County Aging Department


Authorized By:

Name: Sydney Murphy
Title: County Judge

October 25, 2022
Date

Deep East Texas Council of Governments


Authorized By:

Name: Lonnie Hunt
Title: Executive Director

10-26-2022
Date

**DATA USE AGREEMENT
BETWEEN THE
DEEP EAST TEXAS COUNCIL OF GOVERNMENTS
AND
POLK COUNTY**

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 Commission (HHSC) and Deep East Texas Council of Governments (DETCOG) and Polk County, and incorporated into the terms of Contract No. 23-1000824-1.

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/PROVIDER (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(e)(1)-(3)* This DUA also describes remedies in the event of CONTRACTOR’s/PROVIDER’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 DETCOG, 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 following:** 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 thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-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/PROVIDER to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by DETCOG in writing in advance.

“**Authorized User**” 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;
- (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.

“Legally Authorized Representative” of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; Estates Code Ch. 752 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(b)(1); 45 CFR 164.514(d)*

(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 promptly reporting any Event or Breach to CONTRACTOR's management, to carry out the Authorized Purpose 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. 164.308(a)(5)(i); 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. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)*

(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(e)(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(d)(2)(i) and (ii)* CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. *45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002*

(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 164.502(e)(1)(1)(ii); 164.504(e)(1)(i) and (2)*

(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(e)(5); 42 CFR 431.300, 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 Legally 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 164.524 and 164.504(e)(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(e)(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(e)(2)(ii)(G) and 164.528*

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information 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 amendment of PHI and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(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 164.308; 164.530(c); 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 if: *45 CFR 164.504(e) (4) (A)*

(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 Purpose 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)(4)(ii)(B)*

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by DETCOG to comply with law, use PHI to provide data aggregation services to DETCOG, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. *45 CFR 164.504(e)(2)(i)(B)*

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to DETCOG or Destroy, at DETCOG's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from DETCOG or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on DETCOG's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to DETCOG that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to DETCOG, 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 DETCOG 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(e)(2)(ii)(J)*

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. *45 CFR 164.306; 164.530(c)*

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to DETCOG the HHSC information security and privacy initial inquiry (SPI) at Attachment 2 . 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 800-53. 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*

(R) CONTRACTOR will establish, implement and maintain 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 HIPAA Privacy

and Security Regulations, or other applicable laws or regulations relating 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 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c) (privacy safeguards)**

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, 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 name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon DETCOG request. **45 CFR 164.308(a)(2)**

(T) 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 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 Scope of Work of this DUA. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1)**

(V) 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)**

(W) CONTRACTOR will make available to DETCOG any information required to fulfill DETCOG'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)(i)(I)**

(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 motion 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 164.312; 164.530(d)**

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

- 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 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- 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:

I. 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@HHSC.state.tx.us and to the HHS division responsible for this DUA; and **IRS Publication 1075; 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 HHSC-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 164.410**

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 privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: *For (a) - (m) 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 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 4.02 Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 164.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously 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 §521.053; 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, if required by applicable law, rule, or regulation, 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 permissible 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 shall be extended or amended 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.

(C) 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.

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

(E) 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 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*

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, without limitation the costs of required notices and mitigation of a breach and any fines or penalties imposed on HHS by any regulatory authority.

Section 6.08 *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 a beneficiary. 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 6.09 *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 their own legal expenses and the other cost incurred in that action or proceeding.

Section 6.10 *Entirety 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.

ARTICLE 7. AUTHORITY TO EXECUTE

The Parties have executed this DUA in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

IN WITNESS HEREOF, HHS and CONTRACTOR have each caused this DUA to be signed and delivered by its duly authorized representative:

TEXAS HEALTH AND HUMAN SERVICES

BY: 

NAME: SYDNEY MURPHY

TITLE: POLK COUNTY JUDGE

DATE: OCTOBER 25, 2022

CONTRACTOR

BY: 

NAME: LONNIE HUNT

TITLE: EXECUTIVE DIRECTOR

DATE: 10-26-2022

ATTACHMENT 1. Subcontractor Agreement Form

HHS CONTRACT NUMBER 539-11-0014-00001

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

CONTRACTOR has subcontracted with Polk County (SUBCONTRACTOR) for performance of duties on behalf of CONTACTOR 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

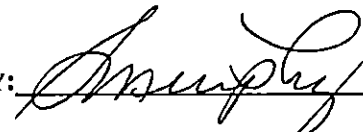
SUBCONTRACTOR

BY: _____

NAME: _____

TITLE: _____

DATE _____, 201 .

BY:  _____

NAME: SYDNEY MURPHY

TITLE: POLK COUNTY JUDGE

DATE: OCTOBER 25, 2022