



Texas Department of Insurance
Business Unit # 45400
Purchase Order # 17-0468
Purchase Order Change Notice (# 1)

Payment Terms: **NET30** Freight Terms: **FOB Destination** Ship Via: **VNDR** PCC: **G** Date: **10/06/16** PO Method: **DG** Dispatch: **Dispatch Via Print** Rev Dt: **01/03/17**

PLEASE NOTE: ADDITIONAL TERMS AND CONDITIONS MAY BE LISTED AT THE END OF THE PURCHASE ORDER.

Vendor: TEXHEALTH CENTRAL TEXAS
 Suite 131
 2800 S IH 35
 Austin TX 78704-5712
 United States

Ship To: 2F0032 - Cameron Rd - Warehouse
 7915 Cameron Road
 Austin TX 78754
 United States

Vendor ID: 1264412420 3

Bill To: Attn: Acctng - Mail Code 108-3A
 P. O. Box 149104
 Austin TX 78714-9104
 United States

Purchaser: Denise Walch
Phone: 512/676-6153
Fax: 512/463-6159
Email: denise.walch@tdi.texas.gov

Fax:
Email: Invoices@tdi.texas.gov

PO Information:

12-21-16: POCN #1 to add additional funds in the amount of \$1,290,076.85, per the Program Contract Manager. Additional funds will require Commissioner approval of POCN.

10-06-16: FY167PO issued to TexHealth Central Texas, affiliated with a political subdivision of the State of Texas, in accordance with Request for Applications (RFA) 454-16-03118, for Contract No. 454-16-0165-17, which was competitively awarded in response to the RFA.

Contract Period: September 1, 2015, through August 31, 2017. There are NO RENEWAL OPTIONS on this contract, as per HB 1, of the Appropriations Act, Texas Three-Share Premium Assistance Program Grant funds must be competitively solicited every two (2) years.

Contract Services: The Grantee is awarded grant funds for the sole purpose of providing third-share premium assistance to eligible members in accordance with their approved Statement of Work and the final Budget Detail Documents approved.

Section III. of Contract (CONSIDERATION)

3.01. CONTRACT LIMIT AND FEES AND EXPENSES.

(a.) The total amount of grant funds available and awarded under this Contract are subject to section 1.1.4, Eligible Use of Funds and Amount of Available Funds, of the RFA and are dependent upon the fines, penalties, and sanctions (fines) from regulated entities except for workers compensation and this award shall not exceed fines collected in each fiscal year (FY) of the Contract Term. Fees to be paid under this Contract during the Fiscal Year 2017 shall not exceed ONE MILLION, SIX HUNDRED SEVENTY-FIVE THOUSAND SEVEN AND NO HUNDRETHS DOLLARS (\$1,675,007.00).

(b.) In the event fine collections in either fiscal year are below the possible \$1.5 million, this award will be reduced accordingly. Should a gap in funding occur as the result of lack of fines collected, grantee must suspend all new enrollment for members eligible for TDI grant funding until funds become available.

(c.) The total amount of fees to be paid under this Contract shall be in accordance with the revised Attachment 2 Budget Detail Document, submitted on August 14, 2015, and attached hereto and incorporated herein for all purposes. Monthly payments of Third-Share Premium Subsidy shall not exceed monthly amounts projected in the revised Attachment 2 Budget Detail Document, submitted on August 14, 2015. Any changes to the budget set forth in Attachment 2 Budget Detail Document, shall be submitted to TDI for review and shall be approved by amendment to this Contract.

(d.) At any time, TDI may adjust the Contract, in whole or in part, with thirty (30) days notice to Contractor. Adjustments shall be in accordance with the revised Attachment 2-Budget Detail Form, submitted on August 14, 2015, and shall be documented by amendment to this Contract.

Section 3.02 of the Contract (PAYMENTS TO CONTRACTOR).

(a.) Payments to Contractor will be made in accordance with section 2.4, Payment Requirements and Changes in Plan of Operations of Selected Respondents, section 2.5, Monthly Request for Payment, and section 2.6, Payment and Required Documentation in Support of Payment, of the RFA and in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TDI. Contractor will be paid for completion of work accepted and approved by TDI's Contract Administrator or his/her designated

Authorized Signature

01/03/2017



Texas Department of Insurance
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representative.

(b.) Contractor shall invoice TDI for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number and contract number. Address for submission is: Texas Department of Insurance, Accounting Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email: invoices@tdi.texas.gov.

Section IV of the Contract (STATE FUNDING)

4.01. STATE FUNDING. It is understood that all obligations of TDI hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated or reduced accordingly.

Additionally, in House Bill 1, the 84th Texas Legislature instructed TDI to create a competitive grant Three-Share Premium Assistance Program. A Three-Share Premium Assistance Program is an insurance or health care coverage funding program that requires coverage costs to be funded by three separate parties. Coverage costs are generally shared by an employer, an employee, and a third entity, which is often a local government organization. Chapter 75 of the Texas Health Safety Code establishes regional and local health care programs to operate the TSPAPs. The purpose of such a funding structure is to reduce the enrollees cost of insurance or health care coverage by distributing the cost among three parties rather than just the two parties (employer and employee) that traditionally pay for employment-based coverage.

Funding under this Contract is available from general appropriations and from the collection of fines, penalties, and sanctions. In creating this program, the 84th Legislature, Regular Session, specified in Rider 14 of article VIII of House Bill 1 that \$444,866 in State fiscal years (FY) 2016 and 2017, may be used for the research, planning, development, and continuation of TSPAPs, to increase access to private healthcare coverage for the uninsured and to provide technical assistance to grant recipients. The Legislature also provided that out of funds collected from regulated entities except for workers compensation for fines, penalties, and sanctions and deposited to General Revenue, the Texas Department of Insurance is appropriated, out of amounts collected in excess of those contained in the Comptroller's Biennial Revenue Estimate (estimated to be \$0), an amount not to exceed \$1,500,000 in each year of the biennium for the Three-Share Premium Assistance Program. Available funds are limited to those collected by TDI at the time selected Applicants submit any requests for reimbursement.

In addition, any unexpended and un-obligated balances of TSPAP grant funds remaining from the state fiscal year ending August 31, 2015, are available for use in FY 2016.

Grantee Contacts:

Mr. Jim Rodriguez, President CEO
Ph. (512) 524-2618
Email: jrodriguez@texhealthct.org

TDI Contacts:

Kim Johnson, Program Manager
Ph. 512-676-6614; Email: kim.johnson@tdi.texas.gov

Karen Sanders, Contract Monitor

Ph. 512-676-6638; Email: Karen.sanders@di.texas.gov

INVOICES: All invoices should be mailed electronically to: invoices@tdi.texas.gov

Karen Sanders and Kim Johnson should be copied on the email transmission. Kim Johnson will review invoices for accuracy, completeness of information, compliance to approved Budget Detail documents, and all necessary supporting documentation prior to approving for payment.

To ensure prompt payment, the invoice must include the above-referenced information on it::

(1). PO Number, (2). the above-referenced Vendor ID Number, and (3). any other supporting documentation requested by the Program area that will confirm that services have been performed. Failure to comply may cause a delay in the payment process or cause invoice to be returned.

NOTE: The PO Terms and Conditions in the link in this PO are null and void. The Terms and Conditions in the solicitation document (RFA No. 45416-03118) control.

Authorized Signature

01/03/2017



Texas Department of Insurance
Business Unit # 45400
Purchase Order # 17-0468
Purchase Order Change Notice (# 1)

Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
1- 1	TexHealth Central Texas Three-Share Plan for FY2017. Contact Kim Johnson or Denise Walch for details. (See PO #16-0165)	953/52	1.0000	EA	\$258,000.00000	\$258,000.00	10/06/2016
						Schedule Total	\$258,000.00
						ReqID:	
						0000015977	
						Item Total for Line # 1	\$258,000.00
2- 1	Additional funds to be added to PO #17-0468 for TexHealth Central Texas Three-Share Plan (FY2017). Contact Karen Sanders for details.	953/52	1.0000	EA	1290076.85000 \$	1290076.850 \$	12/21/2016
						Schedule Total	\$1,290,076.85
						ReqID:	
						0000017495	
See attached email for details. Approval by Cassie Brown, Deputy Commissioner for Regulatory Policy also attached.						Item Total for Line # 2	\$1,290,076.85
						Total PO Amount	\$1,548,076.85

All Shipments, Shipping papers, invoices and correspondence must be identified with our Purchase Order Number. Over shipments will not be accepted unless authorized by Purchaser prior to Shipment.

The Purchase Order Terms and Conditions can be found at:
<http://www.tdi.texas.gov/general/aspurch.html>

Authorized Signature

01/03/2017



**Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104**

REQUEST FOR APPLICATIONS

**PROVIDER ENROLLMENT FOR THE THREE-SHARE PREMIUM
ASSISTANCE PROGRAM**

RFA No. 454-16-03118

ESBD Posting Date: Tuesday, July 7, 2015

Deadline for Submission:

Monday, July 27, 2015 at 3:00 PM Central Time

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DEFINITIONS. For purposes of this RFA, the following definitions apply:

Contract means the written agreement, if any, executed by the authorized representative of the parties and the Respondent that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this RFA, of the respective parties to the arrangement for provision of services.

Contractor means the individual or entity qualified to provide the goods and/or services sought by TDI pursuant to this RFA and who is ultimately be selected to carry out the requirements stipulated in this RFA and any resulting contract.

Governing Body means (a) the commissioners courts of the counties participating in a regional health care program; (b) the commissioners court of a county participating in a local health care program; or (c) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.

Local Health Care Program means a local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B of Chapter 75 of the Texas Health and Safety Code.

Regional Health Care Program means a regional health care program operating in two or more counties and established for the benefit of the employees of small employers under Subchapter B of Chapter 75 of the Texas Health and Safety Code.

Request for Applications (RFA) means the document so titled and Exhibits and Attachments thereto, which are incorporated by reference as set forth in full in this RFA.

Respondent's Employee(s)/Respondent's Personnel means any and/or all of the following, without limitation to: employees, leased employees, agents, officers, directors, staff, independent contractors, contractors, or subcontractors, or any individuals furnished, referred, or provided by the Respondent for the purposes arising out of or related to this RFA, the Applicant's Application, and the contract, if any, that results from the award made by TDI to the Applicant.

Selected Respondent means an entity qualified to provide the services sought by TDI pursuant to this RFA and who may ultimately be selected to carry out the requirements stipulated in this RFA and any resulting contract.

Shared Service Arrangement means a group qualified applicants who chose to join together to submit a single joint Application and have a lead entity identified that is responsible for the overall management of the Three-Share Premium Assistance Program funds, upon award.

TDI means the Texas Department of Insurance and the state agency responsible for the issuance of this RFA.

Three-Share Premium Assistance Program (TSPAP) is an insurance or health care coverage funding program that requires premium coverage costs to be shared between an employer, employee, and a regional or local health care program.

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1. PART I. GENERAL INFORMATION

1.1. Introduction and Scope.

The Texas Department of Insurance (TDI) seeks Applications from qualified entities for enrollment into the Three-Share Premium Assistance Program (TSPAP). This document provides instructions and guidance for Applicants seeking funding under the TSPAP administered by TDI. Through this Request for Applications (RFA), TDI is advertising the availability of funds for the TSPAP, to be awarded under a competitive process.

By submitting an Application in response to this RFA, Respondents are bound to all requirements set forth in this RFA.

This RFA describes the requirements that must be met by the selected Respondent prior to receiving payment under any resulting TDI contract. Applicants are cautioned to carefully read the RFA in its entirety. Award will be based on Respondent's eligibility and ability to provide the services required under the TSPAP as outlined in the Statement of Work (SOW), Part II of this RFA. Failure to provide the mandatory required information with the application will automatically disqualify the Application from consideration for award in connection with this RFA. See Texas Government Code §2156.008.

1.1.1. Purchasing Authority.

This purchase is in accordance with Texas Government Code, Chapters 2155 and/or 2156 as applicable, and Rider 14 of Article VIII of House Bill 1 of the 84th Texas Legislature, Regular Session.

1.1.2. Background.

In House Bill 1, the 84th Texas Legislature instructed TDI to create a competitive grant Three-Share Premium Assistance Program. A "Three-Share Premium Assistance Program" is an insurance or health care coverage funding program that requires coverage costs to be funded by three separate parties. Coverage costs are generally shared by an employer, an employee, and a third entity, which is often a local government organization. Chapter 75 of the Texas Health & Safety Code establishes regional and local health care programs to operate the TSPAPs. The purpose of such a funding structure is to reduce the enrollee's cost of insurance or health care coverage by distributing the cost among three parties rather than just the two parties (employer and employee) that traditionally pay for employment-based coverage.

1.1.3. Source of Funds.

Funding under this RFA is available from general appropriations and from the collection of fines, penalties, and sanctions.

1.1.4. Eligible Use of Funds and Amount of Available Funds.

In creating this program, the 84th Legislature, Regular Session, specified in Rider 14 of article VIII of House Bill 1 that \$444,866 in State fiscal years (FY) 2016 and 2017, may be used for the research, planning, development, and continuation of TSPAPs, to increase access to private healthcare coverage for the uninsured and to provide technical assistance to grant recipients.

The Legislature also provided that "out of funds collected from regulated entities except for workers compensation for fines, penalties, and sanctions and deposited to General Revenue, the Texas Department of Insurance is appropriated, out of amounts collected in excess of those contained in the Comptroller's Biennial Revenue Estimate (estimated to be \$0), an amount not to exceed \$1,500,000 in each year of the biennium for the Three-Share Premium Assistance Program". Available funds are limited to those collected by TDI at the time selected Applicants submit any requests for reimbursement.

In addition, any unexpended and unobligated balances of TSPAP grant funds remaining from the state fiscal year ending August 31, 2015, are available for use in FY 2016.

1.1.5. Eligible Respondents.

TSPAP grants are available to local government entities, including regional or local health care programs as defined by Chapter 75, Subchapter B, of the Texas Health and Safety Code. A local health care program is defined as one “a local health care program operating in one county and has been established for the benefit of the employees of small employers”. A regional health care program is defined as one “a regional health care program operating in two or more counties and has been established for the benefit of the employees of small employers.” In addition, Chapter 75 of the Health and Safety Code provides that a regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity under a contract with the commissioner’s court(s), or an entity in which the county or counties participate(s) or that is established or designated by the commissioner's court to operate the program.

1.1.5.1. Existing TSPAP Recipients. If Respondent is currently funded under the Three-Share Premium Assistance Program, such Respondents must complete **Attachment 3, Local or Regional Health Care Program Attestation of Current Eligibility Form**, and must attach all requested supporting documentation in the order prescribed in **Attachment 3**. Existing TSPAP recipients should not automatically assume funding at current level.

1.1.5.2. Prospective TSPAP Recipients (New Applicants). In order to receive any grant funds under this RFA, prospective Respondents (new Applicants) must provide written documentation that they are directly affiliated with a local government entity and authorized to operate a regional or local health care program under the definition of Chapter 75 Subchapter B, of the Texas Health and Safety Code. New TSPAP Applicants must submit this information as **Exhibit 1**, with their Application. **This is pass/fail element of Application/response, and failure to submit this information will render the Application nonresponsive.**

1.1.5.3. To be eligible for contract award, all Respondents (including existing TSPAP grant recipients), must have available, immediately upon award, the required qualified personnel, skills, and organization, to fulfill all of the requirements under this RFA and the resulting contract.

Any entity not meeting the definitions of a local health care program or a regional health care program, as established under Chapter 75, Subchapter B, of the Texas Health and Safety Code is not eligible to apply for TSPAP funds.

1.1.6. How to Apply and When.

Respondents interested in submitting an Application in response to this RFA must submit the application by 3:00 PM Central Time on **Monday, July 27, 2015**. Refer to Table 3.1, *Schedule of Events*, for additional due dates related to this RFA. Applications, along with all required documents must be submitted in the format prescribed in Part II, *Mandatory Application Format Requirements and Selected Respondent Reporting Requirements*. A separate grant Application must be submitted for each individual program proposed to be funded with TSPAP funds. This means that each qualifying regional or local health program must submit a separate application, unless multiple qualified applicants choose to join together to submit a single joint Application, and there is a lead entity identified for the overall management of the TSPAP funds (Shared Service Arrangement). Joint Applicants must comply with the Application submission requirements for each individual program as described in this RFA. Submitted grant applications must include all required components, be concise, but also provide a sufficient level of detail to facilitate the consideration of the proposed program.

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1.2. Contract Term.

The initial term of the contract will be from date of award, or the last signature date, whichever is later, through August 31, 2017.

1.2.1. Notwithstanding the termination or expiration of this Agreement, the provisions regarding indemnification, confidentiality, dispute resolution, audit rights, and warranties shall survive the termination and expiration dates of this Agreement.

1.3. Renewal Options.

1.3.1. No renewal options are offered under this RFA, as TDI must competitively procure for the TSPAP funds every two (2) years, per House Bill (HB) 1 of the General Appropriations Act for the 2016-2017 State Biennium.

1.4. Texas State Agency Holiday Schedule and TDI Official Business Hours.

The resulting contract will be issued in State Fiscal Year (FY) 2016. The State FY begins September 1st, and ends on August 31st. There are official State holidays recognized by Texas State agencies. On these days, the Texas Department of Insurance may not be officially opened for business or may be closed. Respondents submitting Applications in response to this RFA should refer to the Texas State Auditor's website at the following link, for a .pdf of the FY2015 State Agency Holiday schedule, which provides additional information on state agency closures: <http://www.hr.sao.state.tx.us/compensation/Holidays2015.pdf>. This Holiday schedule is updated each State FY by the Texas State Auditor's Office, and the selected Respondent should check the State Auditor's Office website at the beginning of State FY16, for an updated calendar.

For the purposes of this RFA, the official business hours of the Agency are Monday through Friday, 8:00 AM to 5:00 PM Central Time.

1.5. Protest Procedure.

Any protest shall be governed by TDI's protest rules, which are set forth in 28 TEX. ADMIN. CODE §§1.1101 – 1.1107.

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2. PART II. STATEMENT OF WORK (Mandatory Application Format Requirements and Selected Respondent Reporting Requirements)

2.1. Mandatory Application Response Requirements.

This Section describes the documentation and the order which the Respondents' Application must conform to be responsive to this RFA. The Respondent's Application must be responsive to all requirements set forth in this RFA and presented in accordance with the format described in this RFA.

Respondents submitting an Application in response to this RFA must demonstrate an understanding of the services and deliverables required under this RFA and the resulting contract. The Respondent's Application must thoroughly detail how the Respondent intends to successfully provide the services/deliverables required under this RFA, and include **all** of the requested detailed information necessary to specifically address each Section below (See Section 2.2.1).

2.2. Application Format.

Components of the Application, all of which must be submitted, should be assembled in the following order:

1. Cover Page
2. Table of Contents
3. Grant Application as outlined in Section 2.2.1
4. Grant Budget Proposal as outlined in Section, and
5. any Appendices, which must be **labeled and identified in the body** of the Application.

The grant Application must be:

1. clearly legible
2. sequentially page-numbered and include the Respondent's name at the top of each page
3. organized in the sequence set forth above with each separate section of the Application identified by a section heading
4. bound in a notebook, or binder;
5. typed on 8½ by 11" paper; and
6. be in single-spaced standard 12 point font, except for the Program Work Plan, which may be no less than 10-point font.

2.2.1. Order of the Grant Application.

The Grant Application must include the following Sections. Failure to include all of the following Sections may cause the Application to be deemed nonresponsive and disqualified for further review.

- a. Section 1 – Cover Letter and Executive Summary
- b. Section 2 – Statement of Eligibility
- c. Section 3 – Program Abstract
- d. Section 4 – Community Impact
- e. Section 5 – Program Description
- f. Section 6 – Program Staffing

2.2.2. Section 1 – Cover Letter and Executive Summary (One (1) page limit)

In this Section, Respondent must submit a one-page Cover letter from the lead organization or entity, which summarizes the content of the Grant Application to provide TDI with a broad understanding of the Respondent's Application, to meet the requirements described in this RFA. The letter must include, but is not limited to, all of the following:

- a. relevant information for the Respondent's principal contact person;
- b. whether the program currently has enrolled members;

- c. the amount of grant funds that are being requested for administration;
- d. the per member premium subsidy amount for eligible members;
- e. the number of subsidy-eligible members enrolled at the time of application, and
- f. projected monthly enrollment of eligible employers and subsidy-eligible members during the 2-year grant term (09/2015 through 08/31/2017).

2.2.3. Section 2 – Statement of Eligibility (One (1) page limit)

In this Section, Respondent must describe the entity that is applying for TSPAP funds, and how that entity is eligible to apply for funding under this RFA, as described in Section 1.1.5.

In accordance with Section 1.1.5.1 of this RFA, Respondents currently funded under TSPAP must complete **Attachment 3**, *Local or Regional Health Care Program Attestation of Current Eligibility Form*, and must attach all requested supporting documentation in the order prescribed in **Attachment 3**.

In accordance with Section 1.1.5.2 of this RFA, **all new** Respondents must provide a written explanation of:

- a. how their structure and governance complies with Chapter 75, Subchapter B, Texas Health and Safety Code and
- b. clearly specify under which sections of Chapter 75 of the Health and Safety Code (§§ 75.102, 75.103 or 75.104), the programs have structured the health benefit plan coverage or health care services provided.

In addition to describing the information above, **all new** Respondents must provide written documentation that shows how the program is directly affiliated with a local government entity and authorized to operate a regional or local health care program as defined under Chapter 75 of the Health and Safety Code, in each county of the program's service area. Such documentation includes Commissioners' Court orders or agreements providing approval for Respondent to operate a Three-Share Premium Assistance Program in the counties within the program's service area. **For new Applicants only**, this documentation is the same as that which must be submitted as **Exhibit 1** in Section 1.1.5.2 above.

2.2.4. Section 3 – Program Abstract (Three (3) page limit); for Joint Applications from multiple three-share programs, each individual program is allowed a limit of three (3) pages each.

In this Section, Respondent must briefly describe each of the following:

- a. an overview of the uninsured population within each programs' service area including:
 - i. the most recent number and percentage of the population without insurance
 - ii. trends or changes in the uninsured population in recent years
 - iii. an analysis of the impact of the major provisions of the Patient Protection and Affordable Care Act (PPACA) that took effect January 1, 2014
 - iv. an explanation of how the coverage provided under the program relates to the requirements of PPACA.
- b. the proposed grant activities and how the Respondent anticipates those activities impact the target population,
- c. the lead entity and any other partners collaborating in the program, if any, and
- d. a description of any significant changes in operational structure or operations, including any termination or suspension of coverage since program inception and the reason for these changes (**for existing TSPAP recipients only**).

2.2.5. Section 4 – Community Impact (Two (2) page limit); for Joint Applications from multiple three-share programs, each individual program is allowed a limit of two (2) pages each.

In this Section, Respondent must describe the impact its program has made on local conditions with regard to the area's uninsured population. There should be a particular focus on the population targeted for the TSPAP, which includes taking into account the implementation of PPACA. To the extent such information is available, this Section must include at a minimum, but is not limited to, the following:

- a. any changes in uninsured statistical data from before the program was established
- b. information on the small business community, the prevalence of health insurance, and any changes in the prevalence of health insurance since the three-share program was established
- c. availability of preventative health services for uninsured residents and the impact of the uninsured on the local healthcare delivery system prior to and after the program was established, and
- d. a description of health outcomes such as impact on uncompensated care in the community and impact on chronic health conditions through management of these conditions.

If Respondent is a new Applicant for TSPAP funds, this Section must include a statement on the new programs' impact that expected for items (a) through (d) above.

2.2.6. Section 5 – Program Description (Twenty (20) page limit; for joint Applications from multiple three-share programs, each individual program is allowed a limit of twenty (20) pages each)

- A. Respondent must describe the health care benefit plan, or plans, that will be offered during the grant period and provide details on covered benefits, plan limits, and any exclusions. The description must include:
1. the eligibility criteria for groups and members to qualify for coverage and to qualify for the third-share premium subsidy
 2. how the benefit plan fits into the post-PPACA market and whether benefits are sufficient as "minimum essential coverage" as defined under 26 CFR 1.5000A-2 to allow members to avoid penalties on federal tax returns. Respondents must reference any Federal guidance or other information used to support its explanation, and
 3. a description of verbal communications and examples of written communications for members that the program has provided or plans to provide about the its role in the post-PPACA market and the minimum essential coverage requirement.

If the health benefit plan is not "minimum essential coverage" as defined under 26 CFR 1.5000A-2, Selected Respondents must agree to disclose to enrolled and potential members that the coverage is not minimum essential coverage and those covered by Respondent's plan could be subject to federal tax penalties as a result. Selected Respondents must distribute the disclosure to existing members (if applicable) and to potential members prior to enrollment in the plan, no later than October 31, 2015, or upon receipt from TDI, if contract is executed after that date.

- B. Respondents must submit their most recent comprehensive Business Plan that has been approved by its governing Board or body, that outlines the approach for achieving program goals. Draft versions of business plans will not be accepted. Upon grant award, Respondent must provide TDI with any updates or changes to the Business plan within thirty (30) calendar days of finalization by its governing Board or body. The Business Plan must include, but not limited to, all of the following components:
1. a list of their program's stated goals, objectives, and anticipated outcomes
 2. plans or strategies with detailed steps and timelines for achieving those goals, including, but not limited to:
 - a) marketing and outreach
 - b) financial management, and

- c) provision of health care services
 3. any performance metrics used by the program to measure progress in achieving those goals and outcomes;
 4. the program's most recent scores for those performance metrics, and
 5. a plan for ongoing evaluation of its efficacy in reaching its stated goals.
- C. Respondents must also describe the program's:
1. quality of care standards
 2. a process to assure continuity of care
 3. methods for evaluating health care outcomes
 4. methods for the ongoing monitoring of quality, and
 5. procedures for handling consumer and provider complaints.
- D. Respondents must submit enrollment data for the two (2) calendar years prior to the date of application, which includes the number of groups enrolled, the number of covered lives, and the number of third-share subsidy eligible lives.

If Respondent is a new TSPAP applicant, Respondent must outline when the program plans to begin enrollment.

For existing TSPAP recipients: If a Respondent's *existing* program has experienced any gaps in enrollment, such as a temporary suspension of coverage for enrolled members, describe the following:

1. the circumstances surrounding the gap in enrollment
 2. steps taken to assist members during the gap
 3. plans to prevent future gaps in coverage, and
 4. detailed steps taken or planned to begin enrollment after a gap.
- E. **All** Respondents must also include enrollment projections for the next five (50 years, beginning the month of this Application. The projections must include the number of groups, covered lives, and subsidy eligible lives.

For existing TSPAP recipients: Respondents with existing members must describe the successes and challenges in achieving enrollment goals along with approaches for overcoming challenges. If Respondent is a new TSPAP Applicant, Respondent must describe its strategies for meeting its enrollment goals.

- F. If the program was operating prior to the submission of an Application in response to this RFA, Respondent must state how long the program has been in existence and provide the following information:
1. highlights of its services
 2. a detailed description of identified areas of improvement and action steps being taken with timelines
 3. an evaluation of how the program has improved the existing health care delivery system and increased access to care, and
 4. a summary of local community and government support for involvement in the program.

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2.2.7. Section 6 – Program Staffing (Six (6) page limit; for joint Applications from multiple three-share programs, each individual program is allowed a limit of two (2) pages each)

In this section, Respondents currently funded under TSPAP must complete **Attachment 3, Local or Regional Health Care Program Attestation of Current Eligibility Form**, and must attach all requested supporting documentation, if applicable to **Attachment 3**.

All new Respondents must describe the Management and Governance structure of the proposed TSPAP. New Respondents must also include a brief description of the accounting procedures they follow.

Documentation on the organizational structure and management and governance structure must include:

A. Founding Documents (for New TSPAP Applicants only)

Respondent must submit its official founding documents, court orders from county Commissioners' Courts for all counties in which the Respondent is providing services, organizational charter or constitution, and other documentation that describes:

1. the organizational purpose;
2. the organizational structure;
3. methods for selecting and removing board members and appointing leaders;
4. board term limits;
5. bylaws and internal procedural guidelines;
6. authority for handling finances, and
7. conflict of interest policies.

B. Board and Key Staff

Respondent must provide a list of:

1. all board members (including a biography for each member)
2. an Organizational Chart, and
3. key staff, the position held, definition of role and annual salary (whether or not the salary is supported by TDI TSPAP grant funds).

Selected Respondents, including existing TSPAP recipients, must immediately notify TDI of any changes in the organizational structure, Board makeup, key staff or roles previously defined throughout the term of this grant. Such changes must be reported to TDI no later than thirty (30) calendar days after such change. TDI reserves the right to include Board members on communications related to the contract resulting from this RFA.

2.3. Grant Budget Proposal (Three (3) page limit for joint Applications from multiple three-share programs, each individual program is allowed a limit of three (3) pages each, in addition to the budget tables (Excel document)).

Any TSPAP grant funds provided for the Respondent's program must primarily be used for **program expenses directly related to providing premium assistance** to low wage workers of businesses enrolled in the three-share program. Respondents must submit an itemized budget proposal clearly indicating the amount of grant funds requested for Program Administration in FY 2016 and FY 2017 and a narrative explanation that justifies the line items and amounts requested for administration. TDI retains final authority to determine the amount of any grant funds that may be awarded under this RFA.

Respondents must describe how grant funds will be managed and the oversight process in place (fiscal management and internal controls) to ensure grant funds are used appropriately and for the purpose they were granted. TDI will evaluate each budget proposal in its entirety to ensure that the proposed use of funds align with the primary goal of providing premium assistance.

A. Mandatory Third-Share Subsidy Budget Information (Attachment 2),

For third-share premium subsidy, Respondents must provide enrollment projections for the two (2)-year grant term that includes the following projected information:

1. number of covered businesses each month;
2. number of covered lives each month,
3. number of subsidy-eligible members each month,
4. per-member monthly subsidy amount requested from this grant for third share premium subsidy, and
5. the total projected monthly premium subsidy amount (subsidy eligible members X per-member monthly subsidy amount).

If Respondent has members enrolled in the program at the time of Application, it must include the per-member monthly amount of premium subsidy provided to eligible members and the count of subsidy eligible members enrolled at the time of application.

If Respondent provides varied subsidy amounts dependent upon income, Respondent must also provide the income range and maximum subsidy amount provided for each income range. An average per-member subsidy amount based on the projected enrollment distribution by income is acceptable for the “per-member monthly subsidy amount” in **bullet 4** above.

If the per-member monthly subsidy amount differs from the current per-member monthly subsidy amounts, Respondent must also include a justification for the change.

TSPAP funds awarded to Selected Respondents shall not exceed monthly totals provided in **tab A** of the Third-Share Subsidy Budget Information document (**Attachment 2**), unless combined grant requests from all selected Respondents exceed the funding that is available under this RFA. TDI reserves the right, in any case, to award amounts less than requested. To be eligible for reimbursement, the per-member monthly subsidy amount” described in the Respondent’s Application in response to this RFA, cannot be changed without TDI approval in advance of any such change.

B. Itemized Administrative Budget Information Document (Attachment 2).

Respondents must include an itemized Administrative Budget that includes the total projected administrative expenses for the three-share program for each fiscal year of the grant. Respondents must also provide expenses budgeted to be covered with local matching funds that are not from this TDI grant. If a Respondent is not requesting TDI grant funds for any portion of its administrative expenses, it may leave the “Grant Budget Request” columns in **tab B** of the Budget Information Document (**Attachment 2**), and complete only the local matching funds columns.

In the case of a joint Application (Shared Service Arrangement), Respondents must include a separate itemized Administrative Budget Proposal for each program, and one for the lead organization showing only administrative expenses related to grant management. Respondents in a joint Application must also provide a combined Itemized Administrative Budget showing the combined total requested for administration by the participating programs and grant manager for the two (2)-year grant period.

Projected expenses must list:

1. the program administration expenses attributed to TSPAP grant funds for each fiscal year (FY2016 and FY2017) and a combined two (2)-year total
2. the Program Administration expenses attributed to local Matching funds for each fiscal year of the grant period
3. the total program budget for the two (2)-year grant period (funds from the TSPAP grant two (2)-year total **plus** the two (2)-year total from all other funding sources)
4. the percentage of total expenses for the two (2)-year grant period requested from TSPAP funds, and

5. the percentage of expenses budgeted from local Matching funds for the two (2)-year grant period.

In addition, the proposed budget must include projected Revenues for each year of the grant period, generated from:

- a. premium revenues (excluding third-share subsidy from any source);
- b. TSPAP grant funds;
- c. other grants;
- d. local contributions, and
- e. other revenue streams.

C. Budget Detail Information Document (Attachment 2).

Along with the proposed budget, each TSPAP must report proposed Administrative expenses for each Administrative budget category, in detail. A Budget Detail tab has been included in the **Attachment 2** document. **Travel and supply expenditures are not allowed.** These detail sheets will also be used for reporting actual expenses on a monthly basis. If a Respondent is not requesting Administrative expenses under the TSPAP grant funds, the Budget Detail tab is not required.

1. **Salary expenditures** must list the:
 - a. name and title of each staff person
 - b. percentage of their time spent on three-share duties
 - c. percentage of salary to be paid with grant funds, and
 - d. monthly amount of grant funds to be allocated for each salary.
2. **Contract expenditures** must list the
 - a. list each contract
 - b. provide a budget for that contract
 - c. copies of each contract
 - d. amount budgeted, and
 - e. description of the purpose of each contract.
3. **Other expenditures** must list any items requested under this grant in the "Other Expenses" line item in the Itemized Administrative Budget in tab **B.** of the Budget Proposal Template, and the amount of each item listed.

Any costs that do not fit into previous categories must be listed as "Other" costs and Respondent must include an explanation of each cost. Respondent must provide a Budget Narrative, which details how the rates for Indirect Costs and Fringe Benefits were arrived at for each program.

2.4. Payment Requirements and Changes in Plan of Operations for Selected Respondents.

2.4.1. Allowable Costs.

- 2.4.1.1. Payments from TDI to the Selected Respondent(s) will be only for allowable costs, as itemized in the Selected Respondent's Budget information that must be submitted as **Attachment 2**, with the Respondent's Application.
- 2.4.1.2. Allowable TSPAP grant costs include reasonable and necessary direct and indirect costs that are primarily used for program expenses directly related to providing premium assistance to low wage workers of businesses enrolled in the TSPAP.
- 2.4.1.3. Allowable costs are those deemed allowable by TDI in accordance with the requirements of this RFA and any resulting contract.

2.4.2. Payment for Eligible Expenses.

- 2.4.2.1. TDI will provide monthly payment from available funds to the Selected Respondent(s) to be used for those costs eligible for payment in accordance with this RFA and any resulting grant agreement.
- 2.4.2.2. Payment from fines, penalties, and sanctions revenue will not exceed the amount collected by the Department at the time of the invoice.
- 2.4.2.3. Costs eligible for payment include those expenses that are reasonable, necessary, actual, and allowable costs of implementing the services as outlined in the Selected Respondent budget documents submitted to and approved by TDI.
- 2.4.2.4. All claims, suits, obligations, and reimbursement requests arising under or related to any resulting grant agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for the purposes of this RFA and any resulting contract, or for the respective claim, suit, or obligation, as applicable.

2.4.3. Prohibited Payments of Unallowable and Ineligible Expenses and Taxes.

- 2.4.3.1. Unallowable and Ineligible Expenses. Any payment reimbursement request that is submitted with unallowable or ineligible expenses shall not be paid. Instead, the request for reimbursement shall be returned to the selected Respondent for correction and removal of the ineligible or unallowable expenses. Upon receipt of a valid Request for Reimbursement, which includes the submission of all required supporting documentation, complete and correct information, TDI will make payment in accordance with the Prompt Payment Act.
 - a) TDI shall apply the Cost Principles of the Office of Management and Budget (OMB) Circulars with regard to the disallowance of unallowable or ineligible expenses. This means that any expenses that are deemed as unallowable and ineligible under Federal Cost Principles, shall also be deemed as unallowable and ineligible under the TSPAP grant.
 - b) Request for reimbursement of any expenses for travel (mileage, per diem, hotel/motel stays, and food) are unallowable under the terms of this RFA and will not be reimbursed.
 - c) Expenses for supplies are unallowable under the terms of this RFA and will not be reimbursed.
- 2.4.3.2. Taxes. TDI is exempt from state taxes. Selected Respondent shall not invoice TDI for state taxes on work performed. Selected Respondent may be separately liable for certain taxes in the course of performing services under any resulting grant agreement. Where applicable, Selected Respondent shall pay all sales, consumer, use, and other taxes required to be paid by Selected Respondent under the laws and regulations in connection with the services required under any resulting grant agreement.

2.4.4. Pre-approval of Unexpected Costs and Budget Changes.

- 2.4.4.1. Unexpected costs and budget changes. Selected Respondent may transfer funds among direct cost budget categories without prior approval by TDI unless the amount of the transfer exceeds fifteen percent (15%) of the approved budget in any line item. The Selected Respondent must clearly reference all approved reallocation(s) in the Selected Respondent's next scheduled monthly report and invoice to TDI.
- 2.4.4.2. If selected Respondent(s) chooses to change the per member monthly amount for third-share premium subsidy, adds new costs in budget categories not itemized in the Selected Respondent's approved budget, or if transfers exceed fifteen percent (15%) of each line item in the approved

budget, the Selected Respondent must submit a request in writing in advance to TDI detailing the amount and purpose of the reallocation. The Selected Respondent must also provide a revised budget at the time of the request.

2.4.4.3. Requests to change third-share premium subsidy amount, add new costs, or transfer funds exceeding fifteen percent (15%) of the affected budget categories must be made as soon as the need is known to the Selected Respondent. Requests must be submitted at least 15 calendar days prior to the end of the month in which the requested changes will occur. Requests submitted after that will not be considered and will automatically be denied. The Selected Respondent must not incur any costs related to the requested transfer prior to receiving written approval by TDI. TDI reserves the right to reject such requests.

2.4.4.4. In the case of a joint Application (Shared Service Arrangement), this Section applies to unexpected costs or budget changes within the budget for each separate program that is part of the joint Application. See **Section 2.4.5** for the process to propose budget changes that transfer funds from one program to another for joint Applications.

2.4.5. Change in Plan of Operations for Joint Applications (Shared Service Arrangement).

2.4.5.1. Change of Plan of Operations Shared Service Arrangements. Respondents who have Budget changes that propose the transfer of funds between programs that are part of a joint application are considered a change of Plan of Operations, and require prior approval from TDI.

- a) The Selected Respondent that is part of a Shared Service Arrangement must submit a change of scope request to transfer funds from one program to another, in writing to TDI in advance of any proposed transfer.
- b) The Selected Respondent must not incur any costs related to the requested transfer prior to receiving written approval by TDI.
- c) The written request must detail the amount and purpose of the reallocation, clearly identify the programs involved in the reallocation and clearly reference any such reallocation(s) in the Selected Respondent's next scheduled monthly report (the fifteenth (15th) day of the month following the date this change was effective) to TDI.
- d) Change of Plan of Operations requests must be submitted as a separate document, at the same time as the monthly Budget Report and invoice.
- e) The Change of Plan of Operations request must reflect budget changes planned for the following month in which the proposed change is to take effect, and should not be reflected in the invoice which covers expenses from the previous month.
- f) TDI will not consider any Change of Plan of Operations submitted at any other times, and not conforming to the requirements listed in this Section.

2.5. Monthly Request for Payment.

Selected Respondent must submit to TDI a fully completed and legible Budget Report with each Monthly invoice for payment. The monthly budget report shall contain sufficient information concerning the budgeted expenses so as to enable TDI to ascertain the eligibility of a particular expenditure and to enable an audit or examination by TDI. The expenses shall be identified with respect to the major cost categories, tasks or objectives required by the awarded grant agreement that such expenditures support or satisfy.

2.5.1. Monthly Budget Reports and Invoice. The Monthly Budget Report is provided as an Excel Workbook and consists of an invoice of expenses for that month and shall be submitted using a monthly invoice template that will be provided by TDI to Selected Respondent(s). A Monthly Budget Report must be submitted, even if no expenses were incurred during the reporting period or month for which the report relates.

- 2.5.1.1. The Monthly Budget Report must be submitted by the fifteenth (15th) day of the following month, or the next business day, if the 15th falls on a weekend or holiday. The Monthly Budget Report must be submitted by the fifteenth (15th) day of the following month, or the next business day, if the 15th falls on a weekend or holiday.
- 2.5.1.2. Each filed Monthly Budget Report and invoice shall indicate for each budget category for the Selected Respondent's program expenditures for the period, the cumulative expenditures (with respect to each budget category), and the balance remaining in each budget category.
- 2.5.1.3. The invoice must include the following information, in addition to the information required for Invoicing per Section 4.2.21 of this RFA:
- a) the original budget for TDI grant funds
 - b) expenses from TDI grant funds for current month
 - c) a total of TDI grant funds expended in previous months, and
 - d) the amount remaining in the budget after expenses.
- 2.5.1.4. In addition, Selected Respondent(s) must submit a Monthly Expenditure Report that shows TSPAP grant expenses by month, in addition to monthly expenses attributed to all other revenues and a total expended year-to-date from all other revenues.
- a) The Monthly Expenditure Report must also include the projected revenues year-to-date and actual revenues year-to-date and show the difference between the two. Revenues should be divided into:
 1. TDI grants
 2. other grants
 3. local contributions, and
 4. other revenues.
- 2.5.1.5. In addition to the Monthly Budget Report (invoice) and Expenditure Report, Selected Respondent(s) must provide a detailed expense report (on the detail sheets in the templates to be provided by TDI to the Selected Respondent) for:
- a) salaries
 - b) contract expenses, and
 - c) third-share subsidy expenses.

For salaries, the expense report must be in the same detail as the budget description.

- 2.5.1.6. The detail on Contract expenses must include:
- a) name of the contractor;
 - b) activity performed by the contractor;
 - c) program area for contracted services;
 - d) any deliverables under the contract;
 - e) contract start and end dates;
 - f) hourly rates (if applicable);
 - g) total hours (if applicable), and
 - h) total cost.
- 2.5.1.7. The third-share subsidy expense detail must include:
- a) the number of enrolled groups;
 - b) total enrolled members;
 - c) the number of subsidy eligible members, and

- d) a report supporting the third-share subsidy amount included in the monthly invoice with the subsidy eligible member first and last names; group name; the city, zip code, and county of the group; and the monthly subsidy amount for each member.

2.6. Payment and Required Documentation in Support of Payment.

2.6.1. Payment.

- 2.6.1.1. All requests for payment for services rendered pursuant to a contract resulting from this RFA, shall be submitted in accordance with the requirements set forth in this RFA. Such submittals shall contain sufficient detail for audit by TDI or the State of Texas.
- 2.6.1.2. TDI is not obligated to make payment until the request for payment is approved by TDI. TDI reserves the right to suspend, withhold, or revoke all or part of a payment or all payments for noncompliance with the terms and conditions of the resulting contract.
- 2.6.1.3. TDI, at its sole discretion, at any time before or after payment, and as determined necessary, may request additional evidence concerning any costs for each TSPAP.
- 2.6.1.4. Selected Respondent must submit the invoice for payment and any required Budget reports no later than fifteenth day of the following month in which the invoice is related. The Monthly invoice and budget Report will be due on the next business day, if the 15th falls on a weekend or holiday. Expenses must be reflected in the month in which they were incurred, not invoiced or paid.
- 2.6.1.5. The initial invoice and Budget Report, may be submitted more than fifteen (15) calendar days after the last day of the initial month of services, in the event that the contract was executed after September 15, 2015.
- 2.6.1.6. The Final Request for Payment must be submitted no later than **September 30th**, of each fiscal year in the 2016-2017 Biennium.
- 2.6.1.7. Final payment under any contract resulting from this RFA, or settlement upon termination shall not constitute a waiver of any claims TDI may file against the Selected Respondent(s). TDI may refuse to reimburse expenditures for which the Selected Respondent(s) submits an invoice or expenditure report more than sixty (60) calendar days after the termination date of the awarded grant agreement.

2.6.2. Required Documentation in Support of Payment.

- 2.6.2.1. Upon request from TDI, and in order to confirm that TSPAP grant funds are used for purposes approved under the TSPAP grant, Selected Respondent(s) shall be required to provide source documentation for expenses incurred under the contract resulting from this RFA.
- 2.6.2.2. Source documentation may include, but is not limited to: receipts, cancelled checks, accounting ledgers (payroll and general), subcontract agreements, packing slips, purchase orders, and budget or expense detail sheets, etc.
- 2.6.2.3. The requested source documentation must be (a) legible; (b) identify the specific goods received or the services provided; (c) clearly identify the vendor or subcontractor who provided the goods or services; and (d) reflect the unit cost and total cost listed on the form.

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2.7. Quarterly Status Reports and Board Minutes.

Each three-share program must submit a Quarterly Status Report with information on current enrollment, Premiums and Claims for the Quarter. In the case of a joint Application (Shared Service Arrangement), the **lead** organization shall compile this information from each program that is part of the joint Application. TDI will provide selected Respondents with a “Quarterly Status Report” template, upon contract award.

2.7.1.1. Current enrollment numbers must include:

- a) the number of covered businesses enrolled
- b) the number of covered employees, and
- c) the number of individuals receiving premium subsidies.

For Enrollment Numbers: The Selected Respondent must ensure stable or improving enrollment numbers among all participating three-share programs. With each Quarterly Status Report, Selected Respondent must provide TDI with a written explanation for any significant decline of total individual enrollees and must also include a detailed description of all outreach and marketing efforts in the Quarter in which the decline occurred. The explanation must include information on any outside factors such as economic circumstances or major disasters that might influence enrollment. Such an explanation must be included in the program’s quarterly report.

2.7.1.2. The Premium and Claims report must include:

- a) average monthly premium
- b) average claims per enrollee
- c) total claims paid
- d) premiums received, and
- e) Administrative expenses.

This report must also indicate the employer contribution, employee contribution and subsidy contribution to the average monthly premium.

2.7.1.3. Quarterly Board-approved Minutes. Each program must provide Board-approved Minutes for all Board meetings that occurred during the quarter along with a schedule of meetings in the next quarter. The minutes must clearly state the details of any major decisions that occurred within the meeting.

2.8. Fiscal Monitoring.

2.8.1. Pursuant to any desk review, onsite monitoring, audit, or investigation of current or previous TSPAP funds, TDI shall issue a report of any observations, concerns, and findings.

2.8.2. Upon receipt of such report, Respondent shall have a specified time frame to respond to the report.

2.8.3. The selected Respondent shall submit a Corrective Action Plan (CAP) that summarizes any concerns and findings and the CAP must also include a timeline for resolution of the concerns and findings.

2.8.4. TDI shall not close out such report until the selected Respondent has satisfactorily addressed the concerns and findings to come into compliance with the requirements of this RFA and any resulting contract, as determined by TDI.

2.8.5. In addition to the requirements set forth in this Section, Selected Respondents must also adhere to the requirements set forth in Section 4.2.66, *Supporting Documents, Retention, Right to Audit and Independent Audits*.

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2.9. Close-Out.

- 2.9.1. When TDI has determined that all applicable administrative activities and all required work has been completed pursuant to the requirements of this RFA and the resulting contract, TDI shall close out the contracts awarded under this RFA.
- 2.9.2. The Selected Respondent(s) must submit all Financial and Programmatic reports, and outstanding documentation associated with payment reimbursement or any fiscal desk review or audit, as required, prior to TDI formally closing out the contract.
- 2.9.3. TDI will make timely payment to the Selected Respondent(s) as specified in this RFA. Closeout of the contracts awarded under this RFA does not affect:
- TDI's right to disallow costs and recover funds on the basis of a later audit or other review;
 - the Selected Respondent's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
 - records retention requirements, as required by this RFA;
 - the Right to Audit requirements set forth in this RFA, and
 - any other terms and conditions herein that may affect the final close-out of the contracts awarded under this RFA.
- 2.9.4. The Selected Respondent(s) must immediately refund and return to TDI any balance of unobligated cash advanced, that is not authorized to be retained for use. Where TDI has approved the payment of funds to a Selected Respondent(s) based on the monthly Budget Report (invoice) submitted to, but the Selected Respondent(s) ceases program operations or implementation, the Selected Respondent(s) must immediately refund and return such approved, but unspent funds to TDI.
- 2.9.5. The Selected Respondent(s) must provide to TDI all documentation showing all tasks that have been completed by the Selected Respondent. The Selected Respondent agrees that the determination of satisfactory completion of any and all work or other services performed or furnished under any resulting contract will be based on the judgment of the staff of TDI, which judgment will be exercised in a reasonable manner and in good faith.
- 2.9.6. Final payment under any contract resulting from this RFA, or settlement upon termination shall not constitute a waiver of any claims TDI may file against the Selected Respondent(s). TDI may refuse to reimburse expenditures for which the Selected Respondent(s) submits an invoice or expenditure report more than sixty (60) calendar days after the termination date of the awarded grant agreement.

2.10. Withdrawal and Cease of Operations.

In the event Selected Respondent(s), or a program within a joint Application (Shared Service Arrangement), decides to cease or suspend operations, TSPAP recipients must notify TDI in writing at least ninety (90) calendar days in advance of closure and provide a written explanation of what factors led to that decision, along with supporting documentation of those factors. The written notification must include:

- a detailed timeline and steps for ending operations
- a notification letter to be provided to participating employers
- a plan for communicating other coverage options to enrollees, and
- any other steps the program will take.

Selected Respondent(s) must provide written notification to enrolled employers and employees at least forty-five (45) days in advance of closure, which notifies members of the program's end and discontinuance of subsidy payments.

3. Part III. GENERAL APPLICATION INFORMATION AND MANDATORY RESPONSE REQUIREMENTS

3.1. Schedule of Events.

The schedule of RFA events is indicated in Table 1 below. TDI reserves the right to amend the schedule.

TABLE 1—RFA Schedule of Events	
Date	Event
Tuesday, July 7, 2015	RFA issued; published on the Electronic State Business Daily (ESBD)
Thursday, July 9, 2015	Pre-application conference (call in). Telephone number will be provided through an Addendum #1 prior to July 9, 2015.
Tuesday, July 14, 2015, 3 PM Central Time	Deadline for submission of written questions
Thursday, July 16, 2015	Responses to written questions posted on ESBD
Monday, July 27, 2015	Deadline for submission of Applications
August 3-5, 2015	Oral Presentations*
September 1, 2015	Anticipated contract award

*Note: *Oral Presentations are not guaranteed.*

3.2. Revisions to Schedule.

The Texas Department of Insurance reserves the right to change the dates in the schedule of events above as written notification to prospective Respondents through a posting on the ESBD as an Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFA prior to submitting an Application in response to this RFA. The Respondent's failure to neither periodically check the ESBD will in no way release the Respondent from the requirements of "addenda or additional information" nor will Respondent be allowed to add any additional costs to the Mandatory Pricing form, in order to meet any additional requirements imposed from subsequent addenda or the request for additional information, in response to the RFA.

3.3. Application Instructions.

3.3.1. Respondent Documents.

All Respondent's documents submitted in response to this RFA, including all required documents, the Acknowledgements of any posted Addenda, and any warranty documents, are collectively referred to as "Respondent Documents". Respondent Application must include copies of ALL applicable Respondent documents. Additional documents that Respondent feels would be helpful in supporting its Application, but were not requested under this RFA, yet submitted with Respondent's Application, shall not be given additional consideration for evaluation.

3.3.2. Submission of Written Questions.

Respondents are strongly encouraged to submit written questions, during the official question and answer period. TDI shall not address any questions that suggests the deletion, addition, or modification of any term or condition of this RFA and whether TDI may negotiate that provision under this particular RFA. Questions submitted after the official Question and Answer period will not be answered, unless TDI determines, at its sole discretion that answering such questions is necessary to address an error or omission of information material the RFA and any resulting contract. Should TDI exercise this option, the question(s) will be addressed through an Addendum posted on the ESBD. Prospective Respondents are encouraged to check the ESBD for Addenda through the posting period. TDI shall not provide any additional notification regarding this RFA to prospective Respondents.

3.3.3. Questions and RFA Point of Contact.

All questions shall be submitted in writing to the **Point of Contact**, Ms. Chastity Marion, via email at: chastity.marion@tdi.texas.gov, by **3:00 PM**, Central Time, on **Tuesday, July 14, 2015**, which is the date listed as the deadline for submission of questions as specified in **Table 1** of Section 3.1 above.

3.3.3.1. All questions will result in written responses with copies posted to the Electronic State Business Daily, available at <http://esbd.cpa.state.tx.us>

3.3.3.2. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

3.3.3.3. Except as otherwise provided in this Section, upon issuance of this RFA, other employees and representatives of TDI will not answer questions or otherwise discuss the contents of the RFA with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any Application submitted in response to this RFA. This restriction does not preclude discussions unrelated to this RFA.

3.3.4. Delivery of Responses.

Respondent must submit all copies of its Application to TDI's Purchasing and Contract Administration in Austin, Texas, by **3:00 PM**, Central Time on **Monday, July 27, 2015**.

3.3.4.1. Late responses will not be considered under any circumstance.

3.3.4.2. Late responses properly identified will be returned to the Respondent unopened.

3.3.4.3. All responses become the property of TDI after submission.

3.3.4.4. Responses shall be submitted to TDI by one of the following methods:

<u>U.S. Postal Service to:</u>	<u>By Overnight or Hand Delivery:</u>
Texas Department of Insurance Purchasing and Contract Administration Attn: Ms. Chastity Marion, CTCM, CTPM PO Box 149104 Austin, TX 78714-9104 RFA NO. 454-16-03118	Texas Department of Insurance Service Center/Purchasing and Contract Administration Attn: Ms. Chastity Marion, CTCM, CTPM 333 Guadalupe Street, Tower 1-Room 103 Austin, TX 78701 RFA NO. 454-16-03118

The remainder of this page intentionally left blank.

3.3.5. Response Deadline.

All responses must be received and time-date stamped at TDI's Service Center in Austin, Texas by **3:00 PM** Central Time, on **Monday, July 27, 2015**, as specified above in Section 3.1, *Schedule of Events*.

3.3.6. Response Submittal.

Respondent Applications shall be placed in a separate envelope or package from the Budget Detail Information Document (**Attachment 2**), and correctly identified with the RFA number and submittal deadline/RFA opening date and time. It is the Respondent's responsibility to appropriately mark and arrange for delivery the Response to TDI by the specified date and time via U.S. Postal Service, other delivery service, or hand-delivery.

3.3.6.1. Respondents must submit one (1) original and four (4) copies of its **Application**, and must sign the original copy in **blue ink**. Respondent must also submit one (1) electronic copy of its Application on compact disc or flash drive, which at the minimum is compatible with Microsoft Office 2010 or later. **The electronic format of the Application must be in a .PDF file format.** Compact discs or flash drives must be labeled with the company's name, and un-encrypted. If Respondent feels it is necessary to encrypt the disc or flash drive, Respondent must immediately provide TDI's Purchasing and Contract Administration contact person listed in Section 3.3.3, with the encryption code, upon request.

3.3.6.2. Respondents must submit one (1) original and four (4) copies of the Budget Detail Information Document (**Attachment 2**). Respondents must also submit one (1) electronic copy of the Budget Detail Information Workbook on compact disc, compatible with Microsoft Office 2010 or later. **The electronic format of the Application must be in a .PDF file format.**

3.3.6.3. A U.S. Postal Service (USPS) postmark or validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp from TDI will not be accepted.

3.3.6.4. Emailed and facsimile Applications will not be accepted.

3.3.6.5. Receipt of all Addenda to this RFA must be acknowledged by Respondent through the return of a signed copy of each addendum, with the submission of the Respondent's Application, in accordance with the Application Submission Checklist in **Table 3** of Section 3.8.

3.3.7. Exception to Provisions.

If Respondent takes any exceptions to any provisions of this RFA, these exceptions must be specifically and clearly identified by RFA Section, in Respondent's Application in response to this RFA and provided as Exhibit 2, in the Respondent's Application. Respondents cannot take a blanket exception to this entire RFA. If any Respondent takes a blanket exception to this entire RFA the Respondent's Application may be disqualified from further consideration. Any exception may result in a contract not being awarded to a Respondent.

3.3.8. Responsive Information.

All Applications must provide sufficient information to enable the review committee to evaluate the Respondent's ability to provide the services described in Part II, Statement of Work, and to comply with any other contractual provisions described in this RFA.

3.3.9. Legible Responses.

All Applications must be typewritten and legible, and the Respondent must sign the original copies of the Application in ink. Failure to manually sign the required, applicable Application documents may lead to a disqualification of the Application.

3.3.10. Authority to Bind in a Contract.

The person signing the Respondent's Application packet must have the authority to bind the Respondent in a contract, and must indicate his/her title on all documents requiring a signature.

3.4. General Respondent Information and Disclosures.

3.4.1. Texas Child Support Requirement for Names and Social Security Numbers.

Responses must include names and Social Security Numbers of each person, with at least twenty-five percent (25%) ownership of the business entity submitting the response. TDI may accept responses that do not include this information, if TDI obtains the required information before the contract is executed. Respondent shall submit this information with its' Application, on the *Execution of Proposal document*, identified as **Attachment 1 (included in this RFA)**, in accordance with the Application Submission Checklist in **Table 3** of Section 3.8.

Federal Privacy Act Notice: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.

3.4.2. General Respondent Information and Disclosures.

Respondent must submit the following information as a part of their response to the RFA, as part of **Exhibit 3, identified as Tab #A**, in accordance with the Application Submission Checklist in Section 3.8, in **Table 3**. Separate the following listed items in the same numerical order as numerated below.

- 1) Name, address, telephone, and fax numbers of the entity submitting the Application.
- 2) Type of business entity (i.e., corporation, partnership, trust, association, subsidiary).
- 3) The place of incorporation, if applicable.
- 4) The location(s) of all the major offices, locations, and other facilities that relate to the Respondent's performance under the Terms and Conditions of this RFA.
- 5) Length of time in business.
- 6) The Respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number (if available) with a copy of local business or Texas tax license.
- 7) Respondent must list all contracts or purchase orders that Respondent executed or accepted within the last three (3) years that were canceled, in whole or in part, by any State agency or other entity prior to completion. For each canceled contract, include a detailed explanation for the cancellation and final resolution of the matter. Include the names and telephone numbers of each such agency's or entity's contact who has knowledge of the cancellation and the reason for the cancellation. Providing the name of a contact person by the Respondent will constitute a release to contact the individual for pertinent information. If this item #7 does not apply to the respondent, specify "none" to #7" on **Exhibit 3, Tab A**.

3.4.3. Conflicts or Potential Conflicts of Interest.

Respondent must provide a statement of any conflicts or potential conflicts of interest for the Respondent or the Respondent's employees, who will or may provide services under any contract resulting from this RFA. Failure to disclose all conflicts or potential conflicts of interest may result in the

Respondent being disqualified and may result in cancellation of the contract. In submitting a response, the Respondent certifies that, except as disclosed under the provisions of this Section, the Respondent possesses the required independence in the provision of services sought by TDI under this RFA. Respondent must submit this statement as part of **Exhibit 3, identified as Tab #B**, in accordance with the Application Submission Checklist in Section 3.8, in **Table 3**.

3.4.4. Changes in Ownership Conditions.

The Application must include a certification to notify TDI of a change in ownership. If Respondent anticipates any change in ownership during the twelve (12) months following the Application due date, Respondent must describe the circumstances of such change and indicate when the change is likely to occur. Respondent must respond to this paragraph in **Tab #C**, of **Exhibit 3**. Failure to notify TDI of such substantial change in ownership during the term of the contract or upon any extension thereof, TDI will consider this as sufficient grounds for terminating the resulting contract. If this paragraph does not apply, the Respondent shall indicate "non-applicable" in its response under **Tab #C**.

3.4.5. Legal Actions.

Respondent must identify any pending or completed legal actions against the Respondent during the past five (5) years related to services performed. Respondent must submit this statement as part of **Exhibit 3, identified as Tab #D**, in accordance with the Application Submission Checklist in Section 3.8, in **Table 3**.

Specifically, Respondent must describe any legal actions related to failure to perform contracted services, breach of contract, or general mismanagement of a contract that have been brought against the Respondent or any of the individuals who will be working with TDI.

- 1) Assessment of Penalties or Liquidated Damages. The Respondent must also state whether during the last five (5) years the Respondent has been assessed any penalties or liquidated damages under any existing or past contract with any governmental entity. If so, the Respondent must indicate the public jurisdiction, the reason for the penalty or liquidated damages, and the penalty or liquidated damage amount of each incident. Respondent must respond to this paragraph (1) in **Tab #E**, of **Exhibit 3**. If this does not apply, the Respondent shall indicate "non-applicable" as its response, under **Tab #E**.
- 2) Restrictions or Pending Reviews for Non-compliance. A description of any restrictions or pending reviews by state or federal authorities for non-compliance with state or federal statutes or regulations. Respondent must provide details for the past three (3) years, including the outcome. Respondent must respond to this paragraph (2) in **Tab #F**, of **Exhibit 3**. If this does not apply, the Respondent shall indicate "non-applicable" as its response, under **Tab #F**.

3.4.6. Relatives/Employees, Definitions of Employee.

State law imposes restrictions on certain contracts with former or retired employees. Respondent must provide a list of all of the following, on the "Respondent Identification of Relatives & Employees Form, submitted as **Attachment 4**, with its Application, in accordance with the Application Submission Checklist in **Table 3** of Section 3.8:

- 1) Relatives of the Respondent who are currently working or have worked for TDI.
- 2) Employees of the Respondent who are current, former, or retired employees of TDI. Respondent must notify TDI of any prospective employee who is a former employee of TDI, prior to prospective employee's performance or receipt of compensation under any contract resulting from this RFA.

- 3) Respondent must notify TDI of any prospective employee who is related to a TDI employee, prior to placement, and must notify TDI of any prospective employee who holds any license or certificate related to the Insurance Industry.
- 4) As used throughout this RFA, the term "Employee" includes any individuals who, on behalf of the Respondent, will or may participate in any contract resulting from this RFA. The term "Employee" includes all personnel, replacement personnel, agents, contractors, and other representatives of the Respondent, regardless of how employed or contracted by Respondent.

3.5. HUB Subcontracting Plan Requirement.

This RFA does not require Applicants to complete a HUB Subcontracting Plan.

3.6. TDI Contact(s) Following Award.

The TDI contact(s) for day-to-day administration of the contract will be determined following contract award. These individuals may appoint one or more delegates to assist in the day-to-day administration of the contract and may notify the Respondent in writing of those delegates.

3.7. Reservation of Rights.

In addition to any other rights specified elsewhere in this RFA, TDI reserves the following rights:

- 1) TDI is under no legal requirement to execute a contract on the basis of this RFA.
- 2) TDI reserves the right to reject an Application or response submitted that does not fully comply with the instructions and criteria outlined in this RFA.
- 3) TDI reserves the right to reject any or all Applications and call for new Applications or responses, if deemed by TDI to be in the best interests of TDI or the State of Texas.
- 4) TDI reserves the right to vary all provisions set forth at any time prior to execution of a contract, where TDI deems it to be in the best interest of TDI or the State of Texas.
- 5) TDI reserves the right to select none, one, or more than one Respondent when it is determined that such action would be in the best interest of TDI and the State of Texas.

The remainder of this page intentionally left blank.

3.8. Application Submission Checklist and Required Responsive Documents.

The following checklist is provided to help the Respondent ensure that a proper Application is submitted in the required format. Respondents must include this sheet as the **Cover Page for the entire Application**. This page may be removed from the RFA in inserted with Respondent’s Application or reproduced exactly.

Table 3-Application Submission Checklist			
Item No.	Required Application Component	Mandatory (Y/N)	Verify Inclusion By Initials
1	Section 1 – Cover Letter and Executive Summary—§ 2.2.2	Y	
2	Section 2 – Statement of Eligibility or Attestation Form (Attachment 3)—§ 2.2.3	Y	
3	Section 3 – Program Abstract (a. through d.)—§ 2.2.4	Y	
4	Section 4 – Community Impact (a. through d.)—§ 2.2.5	Y	
5	Section 5 – Program Description (A. through F.)—§ 2.2.6	Y	
6	Section 6 – Program Staffing— Founding documents, board, and key staff or Attestation Form (Attachment 3)—§ 2.2.7	Y	
Respondent Exhibits			
6	Exhibit 1: Written documentation that Respondent is directly affiliated with a local government entity and authorized to operate a regional or local health care program under the definition of Chapter 75 Subchapter B, of the Texas Health and Safety Code. (For new TSPAP Applicants Only) —§ 1.1.5.2	Y (pass/fail component)	
7	Exhibit 2: Exceptions to Provisions—§ 3.3.7	Y (If Applicable)	
8	Exhibit 3: General Respondent Information and Disclosures—§ 3.4.2 Tab A— Items 1 through 7 Tab B— Conflicts or Potential Conflicts of Interest—§ 3.4.3 Tab C— Changes in Ownership Conditions—§ 3.4.4 Tab D— Pending or Completed Legal Actions—§ 3.4.5 Tab E— Assessment of Penalties or Liquidated Damages—§ 3.4.5 Tab F— Restrictions or Pending Reviews for Non-compliance § 3.4.5	Y	
Attachments			
10	Attachment 1: Execution of Proposal (Mandatory)	Y (pass/fail component)	
11	Attachment 2: Budget Detail Document (Mandatory)	Y	
12	Attachment 3: Local or Regional Health Care Program Attestation of Current Eligibility Form (For existing TSPAP Recipients Only)—§§ 1.1.5.1, 2.2.3, and 2.2.7	Y	
15	Attachment 4: Identification of Respondent Relatives and Employees	Y	
16	Attachment 5: Anti-Lobbying Affidavit	Y	
17	Attachment 6: Texas Department of Insurance Sample Contract	N/A-Reference Only	N/A

Signature of person completing form

Date

Name and Title

Respondent Company Name

3.9. Application Evaluation and Contract Award.

3.9.1. Evaluation Criteria.

The Technical Evaluation Committee (committee) will evaluate and score Applications using Evaluation Criteria outlined in Table 4 below. The relative weight of each criterion is indicated by the maximum possible number of points indicated in the right hand column.

TABLE 4-Evaluation Criteria	
Evaluation Criteria	Maximum Possible Score
(1). Whether the grant Application is complete and meets the technical specifications described in this RFA	15 points
(2). The strength and quality of the Respondent's proposed work plan and program activities	20 points
(3). Existing efforts in pursuing and continuing TSPAPs within the community	15 points
(4). Health care use and delivery factors affecting the area's health care infrastructure and capacity, including the percentage of uninsured in Respondent's service area	10 points
Application Budget: (5a). The extent to which grant funds may be matched with local funds	15 points (5a)
(5b). Whether the budget is reasonable for the program and supports the program management plan, and whether the accounting process is adequate to ensure appropriate fiscal management and oversight (fiscal management and internal controls).	25 points (5b)
	<hr style="width: 50%; margin: auto;"/> 40 points total
Total Points	100 points

3.9.2. RFA Review Process.

TDI will conduct a fair, comprehensive, and impartial evaluation of all Applications received in response to this RFA using an evaluation committee. The evaluation committee will be selected by TDI and will be conducted as follows:

3.9.2.1. Review of Applications for Minimum Requirements Compliance.

Applications will be reviewed by Purchasing and Contract Administration to ensure the Respondents met the minimum requirements required for submission, as outlined in the RFA, and to ensure the required documents are properly organized and submitted.

3.9.2.2. Review and Initial Evaluation by the Evaluation Committee.

(a) Each member of the Evaluation committee will conduct an independent review of each Application submitted and will score each Application in accordance with the Evaluation Criteria provided in **Table 4**, of Section 3.9. The relative weight of each criterion is indicated by the maximum possible score (number of points) indicated in the right-hand column.

1) Each Application will be evaluated both individually and relative to the Applications submitted by other Respondents. Purchasing and Contract Administration will compile the scores of the entire committee and determine a final average score for each Respondent.

- (b) The committee may request clarification of information or representations made in an Application or in all Applications, before completing its initial evaluation. Requests for clarification and responses to requests for clarification will be made in writing become a part of the evaluation record.
- (c) The Purchasing and Contract Administration Unit will establish a competitive range based upon the scoring of the Applications.

3.9.2.3. Respondent Oral Presentations.

If offered, one or more Respondents may be required to deliver an Oral presentation(s) before the Evaluation committee. The Oral presentation provides the Respondent the opportunity to highlight their strengths and unique aspects of their approach as provided in its RFA response, as well as to address any questions from the Evaluation committee. Respondent Oral presentations are not guaranteed.

1. Demonstrations of product functionality are recommended when appropriate, such as Information Technology and solution-based procurements.
2. If Respondent Oral presentations are held, TDI reserves the right to limit the time on presentations, and may provide Respondent's with an outline of information desired for the presentation.
3. Respondents must be prepared to answer follow-up questions, including complex technical questions, and should have skilled technical staff available during the presentations to address any questions the Evaluation committee may have.
4. Respondents will not be allowed to ask any additional questions during the RFA, subsequent contract, or negotiate any terms during the allotted presentation time.
5. Upon conclusion of Respondent Oral presentations, the Evaluation committee, in its sole discretion, may make recommendation(s) for award to the Purchasing and Contract Administration, which will either accept the recommendation(s) for award or provide the committee with an explanation for the rejection thereof.

3.9.2.4. Contract Negotiations.

TDI will have the option to negotiate with one or more Respondents, including but not limited to pricing, services, provisions, terms, and conditions. TDI reserves the right to continue to negotiate until the point where the best value for TDI and the State has been determined as achieved.

The remainder of this page intentionally left blank.

4. Part IV. GENERAL TERMS AND CONDITIONS AND RESPONDENT AFFIRMATIONS AND CERTIFICATIONS¹

This Section contains the standard terms and conditions and shall be incorporated for all purposes into this RFA and any contract awarded. Subcontractors are also obliged to comply with the provisions as shown in this Section. These general terms governing the RFA survive the RFA and become part of any resulting contract unless provision for their exclusion, in whole or part, is specifically made in the contract.

4.1. Respondent Affirmations and Certifications.

- 4.1.1. **Deceptive Trade Practices; Unfair Business Practices.** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and that Respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
- 4.1.2. **Equal Opportunity.** Respondent represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of any contract resulting from this RFA.
- 4.1.3. **Franchise Taxes, Non-Residents, Foreign Corporations, Sales Taxes.** Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171, Texas Tax Code. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Respondent certifies that it holds a permit issued by the Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas, or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.
- 4.1.4. **Eligibility.** Pursuant to Texas Government Code Section 2155.004(b), Respondent certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 4.1.5. **Prior Employment.** Pursuant to Texas Government Code Chapter 573 and Section 2254.032, Respondent certifies that it knows no officer or employee of TDI, or any relative within the second degree of consanguinity or affinity of an officer or employee of TDI that has a financial interest in Respondent's company or corporation. Respondent further certifies that no partner, corporation, or unincorporated association which employs, retains, or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Respondent will be dealing on behalf of TDI. Furthermore, Respondent certifies that if it employs any former employee of TDI, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TDI.

Contractor shall disclose any current or former employees or subcontractors who are current or former employees of the State of Texas, and shall disclose their role or position relative to the provision of services under the Contract, as well as their hire or contract date. Contractor shall also

¹ General Terms and Conditions and Respondent Affirmations and Certifications as of January 26, 2015

disclose any proposed personnel who are related by marriage or within the second degree of consanguinity to any current or former employees of the State. Failure to fully disclose the information required under this paragraph may result in disqualification of a Contractor's bid or termination of the Contract after award.

- 4.1.6. Family Code.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Respondent has provided the name and SSN of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25 percent (25%) ownership of the business entity entering into this Contract prior to its execution. Respondent acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 4.1.7. Financial Interests/Gifts.** Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Respondent certifies that it has not given, offered to give, 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 in connection with this Contract.
- 4.1.8. Debts or Delinquencies to the State.** Pursuant to Texas Government Code Section 403.055, Respondent understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.
- 4.1.9. Agency Executive Head.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four (4) years, served as an executive of TDI or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Respondent. If Respondent employs or has used the services of a former executive head of TDI or any other state agency, then Respondent shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent .
- 4.1.10. Liability for Taxes.** Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales, or excise taxes of Respondent or its employees. TDI shall not be liable for any taxes resulting from this Contract.
- 4.1.11. No Conflicts.** Respondent represents and warrants that Respondent has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Respondent's provision of services under this Contract would not reasonably create an appearance of impropriety.
- 4.1.12. Prohibition of Certain Bids and Contracts.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Respondent certifies that the individual or business entity responding to the RFA or any subsequent contract is not ineligible to receive the specified contract and acknowledges that any resulting contract may be terminated and payment withheld if this certification is inaccurate. Respondent represents and warrants that during the five (5) year period preceding the publication date of the RFA or the date of any resulting contract, Respondent has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other

disaster occurring after September 24, 2005, or (ii) assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

- 4.1.13. Felony Criminal Convictions.** Respondent represents and warrants that Respondent and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised TDI as to the facts and circumstances surrounding the conviction.
- 4.1.14. Immigration Reform.** Respondent represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under any resulting PO/Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996. Respondent shall not place any employee of Respondent at a worksite, nor shall Respondent permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TDI without first ensuring said employee's authorization to lawfully work in the United States.
- 4.1.15. Warranties.** Notwithstanding any disclaimers in any RFA response or other Respondent document, and notwithstanding any other provision of this RFA or the contract to the contrary, Respondent warrants and guarantees that all services will meet all specifications of the executed contract, including but not limited to this RFA.
- 4.1.16. False Statements, Breach of Representations.** If Respondent signs the RFA with a false statement or it is subsequently determined that the Respondent has violated any of the representations, warranties, guarantees, certifications, and affirmations included in this RFA and any resulting contract, the Respondent shall be in default under this RFA and any resulting contract, and TDI may terminate or void the contract for cause and pursue other remedies available to TDI under this contract and applicable law.

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4.2. General Terms and Conditions²

- 4.2.1. **Drug Free Workplace.** Respondent shall comply with the applicable provisions of the Drug Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment. The final rule, government-wide requirements for drug free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug Free Work Place Act of 1988 is incorporated by reference, and the Respondent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 4.2.2. **Contract Award, Copyright, Reissuance.** A response to an RFA is a proposal to contract with the State based upon the specifications, terms, and conditions contained in the RFA. Application proposals do not become contracts with TDI unless, until and to the extent, a duly authorized representative of TDI issues a valid TDI Contract. TDI reserves the right to reject, in its sole discretion, all or any part of any Application, waives minor technicalities, and reserves the right to negotiate price and other provisions with all Respondents or no Respondents, and award a contract in the best interests of TDI and the State. TDI's waiver of any deviations in any Application will not constitute a modification of this RFA and will not preclude TDI from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFA. Copyrighted Applications are unacceptable and are subject to disqualification as non-responsive. TDI reserves the right to make any corrections or include additional requirements in the contract prior to issuance, which are required for TDI's compliance, as an agency of the State of Texas, with all state and federal requirements. TDI reserves the right to disqualify any Application that asserts any copyright on any TDI-created form that is specifically designated by this RFA to be a form that must be completed and included in an Application submitted in response to this RFA. TDI may reissue or issue another RFA for the requested items described in this RFA or similar items at any time.
- 4.2.3. **Indemnification.**
- 4.2.3.1. **Acts or Omissions:** Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 4.2.3.2. **Infringements.**
- a. Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH

² General Terms and Conditions as of January 26, 2015

CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b. Vendor shall have no liability under this Section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4.2.3.3. Texas/Workers' Compensation/Unemployment Insurance – Including Indemnity.

- 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 4.2.4. **Respondent Identification.** Applications must include Respondent's Texas Identification Number, which is the taxpayer number assigned by The Comptroller of Public Account (CPA) and used by TDI. If this number is not known, provide the Respondent's Federal Employer's Identification Number, if any, or for sole proprietors that do not have a Texas Identification Number or Federal Employer's Identification Number, provide Respondent's Social Security Number.
- 4.2.5. **No Alterations or Withdrawals of Applications After Deadline.** Applications cannot be altered or amended after the deadline specified in Section 3 of this RFA. Any alterations made before this deadline must be initialed by the Respondent or its authorized employee. No Applications can be withdrawn after this deadline without approval by TDI's Purchasing and Contract Administration, based on a written acceptable reason.
- 4.2.6. **Tie Applications.** Consistent and continued tie Applications could cause rejection of Applications by TDI's Purchasing and Contract Administration.
- 4.2.7. **Limitation on Authority, No Other Obligations.** Respondent will have no authority to act for or on behalf of TDI or the State of Texas except as expressly provided for in the executed contract; no other authority, power, or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of TDI or the State of Texas.
- 4.2.8. **No Other Benefits.** Respondent has no exclusive rights or benefits other than those set forth herein.
- 4.2.9. **Attachments.** TDI will not consider any terms and conditions or other documents attached to the Application as part of the Application unless the Respondent specifically and prominently refers to each of them in Exhibit 2 of its Application. TDI reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Application.
- 4.2.10. **Incorporation of Entire RFA.** Except as otherwise provided in the negotiated terms and conditions, if any that are expressly identified as such in the formal signed agreement or contract resulting from this RFA, this entire RFA applies to and becomes part of any such agreement or contract.
- 4.2.11. **Amendments and Agreement between TDI and Respondent.** Any resulting Contract may be amended only upon the written agreement between TDI and Successful Respondent; however, the contract may not be amended so as to conflict with the laws of the State of Texas. To the extent the laws of the State of Texas require TDI to include additional language in its contracts, the Respondent agrees to amend any resulting contract and to cooperate in the execution of any contract amendments necessary to effectuate such state law. During the term of a resulting contract, if any, and any extensions or renewals, TDI reserves the right to request contract amendments or modifications as is determined to be in the best interests of TDI or the State and for compliance with all applicable state and federal laws, regulations, requirements and guidelines. Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed contract resulting from this RFA, the entire agreement between TDI and Respondent shall consist of the following documents: The Contract, Purchase Order, Change Notices, if any, the RFA, and Respondent's Application.
- 4.2.12. **Conflicting Provisions.** Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or Contract resulting from this RFA, in the event of conflicting terms or provisions between this RFA, the Contract; this RFA; any Addenda, if issued; and Respondent's Application will control in this order of precedence.

- 4.2.13. **Unacceptable Terms in Respondent's Application.** No TDI action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms, conditions, or attachments in Respondent's Application; however, this lack of acceptance by TDI shall not apply to the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or contract resulting from this RFA. Such negotiated terms and conditions shall take precedence over the other documents that collectively constitute the contract as specifically provided in the formal signed agreement or contract resulting from this RFA.
- (a) Proposed terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to TDI for inclusion in any formal signed agreement or contract resulting from the RFA include:
- 1) Applications that incorporate the laws of a state other than Texas, requirements for prepayment
 - 2) limitations on TDI's remedies
 - 3) requirements that TDI indemnify the Respondent
 - 4) requirements that Respondent's documents control in case of conflicts
 - 5) requirements that Respondent's documents control even if Respondent accepts or acknowledges the contract, and
 - 6) disclaimer of warranties.
- 4.2.14. **Statement of Work, Performance.** Respondent will provide the requested services in the manner described in this RFA. Respondent's failure to conform to all requirements of this RFA may, among other things, result in TDI's withholding of acceptance and payments under the contract, TDI's cancellation of all or part of the contract, TDI's revocation of any prior acceptance and Respondent's refund of amounts paid prior to revocation of acceptance.
- 4.2.15. **Respondent Costs.** Respondent will bear all costs and expenses for the provision of the requested items required by this RFA and the contract. All such costs and expenses are included in the prices detailed in the contract. No other amounts will be paid.
- 4.2.16. **Assignments.** Respondent may not assign this RFA and any resulting contract, in whole or in part, and may not assign any right or duty required under this RFA or awarded contract without the prior written consent of TDI. Respondent will have no right to transfer, assign, or pledge as security for a debt all or any part of Respondent's interest in any resulting contract without the prior written consent of TDI. Any attempted assignment in violation of this Section is void and without effect.
- 4.2.17. **Time Limits.** Time is of the essence in any resulting contract and accordingly, all time limits will be strictly construed and rigidly enforced.
- 4.2.18. **No Waiver.** No provision of this RFA and/or resulting Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDI as an agency of the State of Texas or otherwise available to TDI. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this RFA and the resulting Contract or otherwise available to TDI by law, shall not constitute a waiver of said privileges, rights, defenses, remedies, or immunities available to TDI, or be considered as a basis for estoppel. TDI does not waive any privileges, rights, defenses, remedies, or immunities available to TDI as an agency of the State of Texas or otherwise available to TDI, by entering into a resulting Contract with selected Respondent or by its conduct prior to, or subsequent to, entering into a Contract.

- 4.2.19. **No Prepayments.** TDI will not prepay for any services provided to TDI by Respondent in its performance under the contract. Likewise, TDI will not make down payments, deposits, nor pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by, and satisfactorily provided to TDI.
- 4.2.20. **Refunds.** Respondent shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by TDI which are not expressly authorized under the contract.
- 4.2.21. **Invoicing.** Respondent shall submit an electronic copy via email of an itemized invoice showing the Contract number to the TDI point of contact or their designee for all requested items, which have been delivered, inspected, tested, evaluated, and accepted by TDI. To expedite processing, additional recipients may be included on the email; Respondent must provide the required documentation for the invoiced service.
- (a) **Invoice Requirements.** The Respondent may request a sample of the invoice format from TDI. Submitted invoice must include the following information:
- 1) respondent name
 - 2) respondent address
 - 3) bill to information
 - 4) remit payment to information
 - 5) invoice date
 - 6) invoice number
 - 7) TDI Contract number
 - 8) vendor Texas Identification Number (TIN), as assigned by the Texas Comptroller of Public Accounts
 - 9) date and time of services
 - 10) description of services, and
 - 11) signature or certification by an authorized representative.
- (b) **Missing Invoice Requirements.** Invoices that are received by TDI which are otherwise received in non-conformance with all of the requirements of this RFA or the contract will be returned to Respondent unpaid or will be held by TDI until proper documentation is submitted.
- (c) **Correct Invoicing.** Prior to authorizing payment to Respondent, TDI shall evaluate Respondent's performance in accordance with the requirements of any resulting contract. No payment whatsoever will be made under any resulting contract without the prior submission of detailed, correct invoices. Subject to foregoing, TDI must make all payments in accordance with the Texas Prompt Pay Act, Texas Government Code, Chapter 2251.
- (d) **Non-Reimbursable Items.** TDI will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for in the agreement. In that event, such costs will be invoiced to TDI based on actual expenses and TDI shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by TDI or (ii) exceed the current State Travel Regulations. Receipts are required to validate invoicing.
- 4.2.22. **Termination and Cancellation.**
The contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances:
- 4.2.22.1. **Mutual Agreement.** Upon the mutual written agreement of TDI and Respondent, the contract may be terminated or canceled.

- 4.2.22.2. **TDI Cancel upon Thirty (30) Days' Notice.** TDI may, in its sole discretion, terminate, cancel the contract, or cancel specific services of the contract with thirty (30) calendar day's written notice to Respondent.
- (a) No additional charges or fees will be assessed to TDI for the termination or cancellation.
 - (b) Upon termination or cancellation under this provision, Respondent shall refund to TDI any amounts attributable to the terminated or canceled months within thirty (30) calendar days of the termination or cancellation. If TDI does not receive the refund within thirty (30) calendar days, the contract amount and monthly invoice will be reduced during the next billing cycle based on the services canceled.
- 4.2.22.3. **Breach of Material Term.** Either party may, upon giving thirty (30) calendar day's written notice identifying specifically the basis of such notice, terminate the contract for breach of a material term or condition of the contract, provided the breaching party must not have cured such breach within the thirty (30) calendar day period. In the event of such termination, Respondent will be paid for all services accepted prior to the date of the termination.
- 4.2.22.4. **Respondent Nonperformance.** If Respondent fails to comply with any requirement of the Contract or fails to provide goods or services as required, including, but not limited to, this RFA, TDI may immediately terminate or cancel all or any part of the contract.
- (a) Upon written notice of default or cause to Respondent, TDI may immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but shall be in addition to any other rights and remedies provided in equity, by law or under the contract.
 - (b) TDI may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law, or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of foregoing remedies will not constitute a termination of the contract unless TDI notifies Respondent in writing prior to the exercise of such remedy.
 - (c) TDI may obtain substitute requested items, may withhold acceptance and payments to Respondent, may revoke any prior acceptance, may require Respondent to refund amounts paid prior to revocation of acceptance, and may pursue all rights and remedies against the Respondent under the contract and any applicable law.
 - (d) The Respondent remains liable for all covenants and indemnities under the contract.
 - (e) The Respondent is liable for all costs and expenses, including court costs, incurred by TDI with respect to the enforcement of any remedies listed herein.
- 4.2.22.5. **Bankruptcy.** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Respondent, TDI may terminate the contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.
- 4.2.22.6. **Availability of State Funds, Legislative Action, Necessity of Performance.** The contract is subject to termination or cancellation, without penalty to TDI, in either whole or in part, subject to the availability of state funds. TDI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TDI becomes subject to

a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either TDI's or Respondent's delivery or performance under the contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Part, TDI will not be liable to Respondent for any damages which are caused or associated with such termination or cancellation, and TDI will not be required to give prior notice.

- 4.2.23. **Legal Remedies and Damages Resulting from Breach of Contract.** TDI expressly reserves any and all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Respondent or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Respondent. TDI reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason and TDI expressly waives no such rights or remedies.
- 4.2.24. **Recovery of Funds.** TDI reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TDI under the contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Respondent's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to TDI under the contract or under applicable law. TDI reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason, and TDI expressly waives no such rights or remedies.
- 4.2.25. **Notice of Termination or Cancellation Delivery.** Any termination by TDI of the contract, which requires written notice, may be accomplished by TDI's delivery to Respondent of a notice of termination or cancellation specifying that the contract is terminated or canceled.
- 4.2.26. **Substitute of Services.** In the event TDI terminates or cancels the contract for Respondent's nonperformance or for cause, TDI may procure, upon such reasonable terms and in such manner as it deems appropriate, substitute services similar to those so terminated or canceled. Respondent shall be liable to TDI for any excess or additional costs incurred by TDI in acquiring such services plus court costs and attorneys' fees. TDI's recovery of costs under this Section is in addition to any other remedies available to TDI under the contract and/or under applicable law.
- 4.2.27. **Legal Obligations.** Respondent shall procure and maintain for the duration of this RFA and any resulting contract, any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Respondent to provide the goods or services required by this RFA or any resulting contract. Respondent will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Respondent agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this resulting contract.
- 4.2.28. **Assignments and Subcontractors.** Respondent shall not assign, transfer, nor delegate any rights, obligations, or duties under this RFA or resulting contract without the prior written consent of TDI.
- (a) Notwithstanding this provision, it is mutually understood and agreed that Respondent may subcontract with others for some or all of the services to be performed.
- 1) TDI shall approve in writing, all subcontractors.
 - 2) Subcontractors providing service under the resulting contract shall meet the same requirements and level of experience as required of the Respondent.
 - 3) No subcontract under the resulting contract shall relieve the Respondent of responsibility for the service. If Respondent uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

- i. Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Attachment 3, HUB Subcontracting Plan Form.
 - ii. Subcontracting shall be at the Respondent's expense.
 - iii. TDI retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors.
 - iv. Respondent shall be the only contract for TDI and subcontractors. Respondent shall list a designated point of contact for all TDI and subcontractor inquiries.
- 4.2.29. **Historically Underutilized Businesses (HUBS).** In accordance with State law, it is TDI's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TDI encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Respondent's obligations with TDI. If Respondent subcontracts with others for some or all of the services to be performed under a resulting contract, Respondent shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 and file with TDI a HUB Subcontracting Plan. In addition to information required by Section 4.2.28 above, Respondent shall provide TDI's Purchasing and Contract Administration unit with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan (HSP) Progress Assessment Report.
- 4.2.30. **Federal, State, and Local Requirements.** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Respondent shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.
- 4.2.31. **Patent, Trademark, Copyright, and Other Infringement Claims.** Respondent shall indemnify, save, and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret, or other proprietary rights, violations, or infringements arising from the State's or Respondent's use of or acquisition of any services or other items provided to the State of Texas by Respondent or otherwise to which the State of Texas has access as a result of Respondent's performance under this Contract, provided that the State shall notify Respondent of any such claim within a reasonable time of the State's receiving notice of any such claim. If Respondent is notified of any claim subject to this Section, Respondent shall notify TDI of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Respondent without TDI's prior written approval. Respondent shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments, or any other amounts including, but not limited to, attorneys' fees and court costs, arising from any such claim. Respondent shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Respondent represents that it has determined what licenses, patents, and permits are required under this Contract and has acquired all such licenses, patents, and permits.
- 4.2.32. **Accessibility.** Effective September 1, 2006, state agencies and institutions of higher education must procure products which comply with the State of Texas' Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement

solicitation. Respondent must provide TDI and DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas' Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" at: <http://www.buyaccessible.gov>. Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

For any web based components, the Respondent's system or service must meet all the State of Texas Accessibility requirements. These requirements were changed to comply with the provisions of House Bill 2819 (79th Regular Session), and aligns the State requirements with the Federal accessibility standards (Section 508). The State of Texas accessibility requirements can be found in the Texas Administrative Code, Title 1, Administration, Part 10, Department of Information Resources, Chapter 206, State Web Sites that is available at the following URL: [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=1&pt=10&ch=206&sch=B&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=1&pt=10&ch=206&sch=B&rl=Y).

- 4.2.33. **Relationship of the Parties.** Respondent is associated with TDI only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Respondent is and shall be an independent contractor. Subject only to the terms of this Contract, Respondent shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the resulting contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TDI whatsoever with respect to the indebtedness, liabilities, and obligations of Respondent or any other party. Respondent shall be solely responsible for, and TDI shall have no obligation with respect to:
- (a) withholding of income taxes, FICA, or any other taxes or fees;
 - (b) industrial worker's compensation insurance coverage;
 - (c) participation in any group insurance plans available to employees of the State of Texas;
 - (d) participation or contributions by State of Texas to the State Employees Retirement System;
 - (e) accumulation of vacation leave or sick leave, or
 - (f) Unemployment compensation coverage provided by the State.
- 4.2.34. **Compliance With Other Laws.** In the execution of this RFA and any resulting contract, Respondent shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Respondent shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.
- 4.2.35. **Notices.** Any notice required or permitted to be delivered under this RFA and any resulting contract, shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TDI or Respondent. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.
- 4.2.36. **Governing Law and Venue.** This RFA and any resulting contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this RFA on any resulting contract shall be in a court of competent jurisdiction in Travis County, Texas. Respondent irrevocably

waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this RFA and any resulting contract or any document related hereto. Nothing in this Section shall be construed as a waiver of sovereign immunity by TDI.

- 4.2.37. **Severability.** If any provision contained in this RFA and any resulting contract is held to be unenforceable by a court of law or equity, this RFA and any resulting contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
- 4.2.38. **Force Majeure.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this RFA or resulting contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure," including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TDI may terminate the resulting contract immediately upon written notification to the Respondent.
- 4.2.39. **Labor Activity.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Respondent at TDI's facility, which results in the curtailment or discontinuation of services performed herein, TDI shall have the right during said period to employ any means legally permissible to have the work performed.
- 4.2.40. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract. TDI has adopted rules under Chapter 2260, codified at 28 Texas Administrative Code §§ 1.1801-1.1823. TDI may adopt revisions to these rules throughout the term of any awarded contract including any extensions. Respondent must comply with such rules. To the extent that Chapter 2260 of the Texas Government Code applies to a contract resulting from this RFA, then the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used, as further described herein, by TDI and Respondent to attempt to resolve any claim for breach of contract made by the Respondent arising under the awarded contract.
- (a) The Respondent's claim for breach of contract that the parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, the Respondent must submit written notice, as required by Subchapter B of Chapter 2260, to the attention of TDI General Counsel. The written notice must expressly state that the provisions of Chapter 2260, Subchapter B are being invoked by the Respondent. Said notice must also be given to all other representatives of TDI and the Respondent otherwise entitled to notice under the parties' contract. Compliance by the Respondent with Chapter 2260, Subchapter B is a condition precedent to filing a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

- (b) The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the Respondent's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TDI if the parties are unable to resolve their disputes under this Section.
- (c) Neither the occurrence of an event nor the pendency of a claim for breach of contract constitutes grounds for the suspension of performance by the Respondent, in whole or in part.
- (d) To the extent that Chapter 2260 of the Texas Government Code does not apply to a contract resulting from this RFA, should a dispute arise out of the contract, TDI and Respondent will first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute will be mediated by a mutually acceptable third-party to be chosen by TDI and Respondent within fifteen (15) business days after written notice by one of them demanding mediation under this Section. Respondent will pay all costs of the mediation unless TDI, in its sole good faith discretion, approves such or some portion of such costs. By mutual agreement, TDI and Respondent may use a non-binding form of dispute resolution other than mediation. The execution of a contract by TDI or any other conduct of any representative of TDI relating to a Contract must not be considered or construed as a waiver by TDI of sovereign immunity or of any rights, privileges, defenses, or immunities available to TDI as an agency of the State of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract. To the extent consistent with other Texas Law, including, but not limited to, the Texas Public Information Act and the Texas Open Meetings Act, any non-binding dispute resolution process conducted under the terms of this Section will be confidential within the meaning of Texas Civil Practices and Remedies Code Ann. §§154.073.

4.2.41. **Counterparts.** Any contract issued pursuant to this RFA may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

4.2.42. **Entire Contract and Modification.** The resulting Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to the RFA and resulting Contract specifically displays a mutual intent to amend a particular part of this RFA and resulting Contract, general conflicts in language between any such attachment and this RFA and resulting Contract shall be construed consistently with the terms of this RFA and resulting contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this RFA and resulting contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

4.2.43. **Intellectual Property and Data Ownership Matters.** By signature to a resulting Contract, Respondent acknowledges TDI's exclusive legal rights, interests, privileges, and ownership of all TDI data as follows:

- a. **Rights in Data.** TDI remains the owner of the data made available to the Respondent or its agents, Subcontractors, or employees pursuant to this RFA and any resulting contract.
 - 1) Respondent shall not use TDI data for any purpose other than providing the Services, nor will any part of TDI's data be disclosed, sold, assigned, leased, or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Respondent.

- 2) Access to TDI's data must be restricted at all times. Respondent nor its agents, Subcontractors, or representatives, other than those authorized by TDI, shall have access to TDI data.
 - 3) Respondent nor its agents, Subcontractors, or representatives will possess or assert any lien or other right against Personally Identifying Identification (PII) as strictly necessary to provide the Services and will disclose such information only to its employees who have TDI authorized access to the data.
 - 4) Respondent shall comply, at all times, with all state and federal laws and regulations applicable to such PII.
 - 5) TDI will remain the owner of all data pursuant to this RFA and any resulting contract. TDI may use the data provided by the Respondent for any purpose. TDI will not possess or assert any lien or other right against the Respondent's data.
- b. **Infringement and Misappropriation.** Respondent warrants that all deliverables provided by the Respondent or its agents, Subcontractors, or representatives will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.
- 1) Respondent or its agents, Subcontractor, or representatives shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret, or other proprietary rights, violations, or infringements arising from the State's or Respondent's use of or acquisition of any services or other items provided by the State of Texas by Respondent or otherwise to which the State of Texas has access as a result of Respondent's performance under this RFA or resulting contract, provided that the State shall notify Respondent of any such claim within a reasonable time of the State's receiving notice of such claim.
 - 2) If Respondent or its agents, Subcontractor, or employees is notified of any claim subject to this section, Respondent or its agents, Subcontractor, or employees shall notify TDI of any such claim within seven (7) calendar days of such notice.
 - 3) No settlement of any such claim shall be made by Respondent or its agents, Subcontractor, or representatives without obtaining TDI's prior written approval.
 - 4) Respondent shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from such claim.
 - 5) Respondent shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest.
 - 6) Respondent or its agents, Subcontractor, or employees represents that it has determined what licenses, patents and permits are required under this RFA or resulting contract and has acquired all licenses, patents, and permits.
 - 7) In the case the deliverables, or any one or part thereof, in such action is held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted, or if a

proceeding appears to the Respondent to be likely to be brought, Respondent will, at its own expense either:

- i. procure for TDI the right to continue using the deliverables, or
- ii. modify or replace the deliverables to comply with the Specifications and to not violate any intellectual property rights.

4.2.44. **Ownership of Pre-existing Materials.** TDI and Respondent will continue to own their respective proprietary technologies developed before entering into the Agreement. Any equipment bought through the Respondent by TDI, and paid for by TDI will be owned by TDI. Any software licensed through the Respondent and sold to TDI, will be licensed directly to TDI.

4.2.45. **Waiver of Moral Rights.** Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Respondent may now have or which may accrue to Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation, or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

4.2.46. **Confidentiality of Information.** Respondent shall not use, share, or sell any TDI information to any other entity or person, for any reason, unless otherwise required by law and with prior written permission of TDI.

4.2.46.1. Materials forwarded to selected Respondent by TDI, for use in and preparation of the Work Product or the provision of services under this RFA, are confidential.

4.2.46.2. Selected Respondent shall not disclose to anyone, directly or indirectly, any work-papers, data, databases, materials, information, or reports in any form that are designated as confidential or that are or could be construed as confidential or subject to restrictions on disclosure under applicable law, and received from TDI, or any such confidential information to which selected Respondent has access as a result of or in the course of performing services under this RFA and any awarded contract without the prior written consent of TDI.

4.2.46.3. This confidentiality provision does not apply to information required to be disclosed by law, legal process, and applicable professional standards or to information disclosed in connection with litigation relating to the contract or Respondent's performance.

4.2.46.4. Each party shall protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind.

4.2.46.5. Nothing in this RFA and any awarded contract shall prohibit or limit either party's use or disclosure of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies):

- a) previously known to it without obligation of confidence;
- b) independently developed by it;
- c) acquired by it from a third party which is not, to its knowledge, under any obligation of confidence, with respect to such information, or

- d) which is, or becomes publicly available through no breach of the contract.
- 4.2.46.6. In the event either party receives a subpoena or other validly issued administrative or judicial notice requesting Confidential Information, it will provide prompt notice to the other of such receipt. The party receiving the subpoena will thereafter be entitled to comply with such subpoena or other notice to the extent permitted by law, provided, however, that the Respondent is acting as TDI's agent in providing services under the contract and will defer to TDI's decision as to compliance with and other matters related to such subpoena or other validly issued notice.
- 4.2.46.7. Notwithstanding any provisions of this RFA and the executed contract to the contrary, Respondent understands that TDI is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Within three (3) business days of receipt, Respondent will refer to TDI any third-party requests, received directly by Respondent, for information to which the Respondent has access as a result of or in the course of performing services under the contract.
- 4.2.47. **Injunctive Relief.** This RFA and any resulting contract is intended to protect TDI's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to TDI's business. Therefore, Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this RFA and any resulting contract, upon a request by TDI, without requiring proof of irreparable injury as same should be presumed.
- 4.2.48. **Return of Materials Pertaining to Work Product.** Upon the request of TDI, but in any event upon termination or expiration of any contract issued pursuant to this RFA, Respondent must surrender to TDI all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Respondent or furnished by TDI to Respondent, including all materials embodying the Work Product, any TDI confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Respondent by TDI or by anyone else that pertains to the Work Product.
- 4.2.49. **Respondent License to Use.** TDI hereby grants to Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to TDI. Except as provided in this Section, neither Respondent nor any Subcontractor will have the right to use the Work Product in connection with the provision of services to other persons or entities without the prior written consent of TDI, which consent may be withheld in TDI's sole discretion.
- 4.2.50. **Agreements with Subcontractors.** Respondent agrees that it must have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors, or subcontractors providing Services or Work Product pursuant to any contract issued pursuant to this RFA, prior to their providing such Services or Work Product, and that it must maintain such written agreements at all times during performance of any contract issued pursuant to this RFA, which are sufficient to support all performance and grants of rights by Respondent. Copies of such agreements must be provided to TDI promptly upon request.

- 4.2.51. **Personal Injury, Property Damage.** Respondent will be liable for any bodily injury or personal injury to any individual caused by any of Respondent's employees during any assignment under the terms of the contract. In the event of loss, destruction, or damage to any TDI or State of Texas property by Respondent's employees, Respondent will indemnify TDI or the State of Texas and pay to TDI or the State of Texas the full cost of repair, reconstruction, or replacement at TDI's election. Respondent will reimburse TDI or the State of Texas for such property damage within thirty (30) calendar days after receipt of TDI's notice of amount due to Respondent. This provision survives the termination or expiration of any awarded contract.
- 4.2.52. **No TDI Obligations for Costs.** TDI accepts no obligations for costs incurred in responding to this RFA in anticipation of being awarded a contract. All of the costs and expenses incurred by any Respondent or prospective Respondent in connection with or arising out of its possible or actual response to this RFA, including without limitation to the cost of developing and preparing a response, making presentations before the evaluation committee, and any travel and travel-related expenses therefore, are entirely the responsibility of the Respondent and must not be borne or reimbursed directly or indirectly by TDI, whether or not: (i) the prospective Respondent formally submits a response, (ii) such response, if submitted, is rejected by TDI, (iii) the Respondent is awarded the contract, or (iv) the RFA is withdrawn by TDI.
- 4.2.53. **Misunderstanding or Lack of Information.** Respondents who respond to this RFA must be thoroughly informed concerning all relevant facts, data, and estimates, which are required for the purpose of assembling an Application, and concerning all difficulties that may be encountered in managing or operating the program under the contract.
- (a) No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered will be accepted as an excuse for any failure or omission on the part of the Respondent to fulfill in every detail all of the requirements of the contract or will be accepted as a basis for any claim whatsoever for additional compensation.
 - (b) By submitting a response, each Respondent acknowledges and agrees that it fully understands and will abide by the terms and conditions of this RFA, and that it will not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.
- 4.2.54. **Insurance/Bonds.** Respondent must acknowledge that, if selected, it will provide the following bonds and insurance within the prescribed time periods.
- (a) Within five (5) business days of executing any contract related to this RFA, Respondent(s) must furnish to TDI proof of the insurance coverages outlined below.
 - 1) *Dishonesty Bonding.* Respondent(s) must maintain dishonesty bonding under a commercial crime policy or business services bonding in the minimum amount of ten thousand dollars (\$10,000).
 - 2) *Workers' Compensation Insurance & Employers' Liability.* Respondent(s) must maintain Workers' Compensation insurance coverage in accordance with statutory limits for any employee and/or independent contractor, subcontractor, or agent who is to perform services under any resulting contract:
 - a. Employer's Liability: Each Accident \$1,000,000;
 - b. Disease-Each Employee \$1,000,000; Disease Policy Limit \$1,000,000.

- 3) *Commercial General Liability Insurance. This coverage is occurrence based:*
- a. Bodily Injury and Property Damage: Each occurrence limit \$1,000,000; Aggregate limit: \$2,000,000;
 - b. Medical Expense each person: \$5,000;
 - c. Personal Injury and Advertising Liability: \$1,000,000;
 - d. Products/Completed Operations Aggregate Limit: \$2,000,000;
 - e. Damage to Premises Rented to Respondent: \$50,000.

(b) The dishonesty bonding and insurance coverages outlined above must meet the following requirements:

- 1) All required bonds and insurance must be issued by companies that are rated excellent or better by A.M. Best Company, and duly licensed, admitted, and authorized to do business in the State of Texas.
- 2) All required bonds and insurance must remain in effect during the term of the contract, and any extensions thereof, unless a different period is specifically required. TDI will consider a lapse of any coverages a material breach by Respondent and TDI may immediately terminate any agreement.
- 3) Each policy of insurance must contain a provision whereby TDI will receive thirty (30) calendar days advance written notice of cancellation, termination, or failure to renew any policy. If the Respondent's carrier cancels any policies, the Respondent must immediately obtain a replacement policy prior to the expiration of the thirty (30) calendar day warning period.
- 4) If a material change is made in any policy or bond, Respondent must notify TDI in writing not later than the second (2nd) day after the material change takes effect.
- 5) All certificates of insurance must name TDI as additional insured.
- 6) All required bonds and certificates of insurance evidencing Respondent's compliance must be submitted to TDI within fifteen (15) calendar days following the contract execution and any renewals.
- 7) TDI reserves the right to withhold payments to Respondent(s) in the event of non-compliance with the bond and insurance requirements outlined in this RFA until such time as the Respondent comes into compliance with such provisions.

4.2.55. **Compliance with RFA and Contract.** By submitting a response, acknowledging and accepting the Contract, or delivering any services under the Contract, Respondent acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the contract, including, but not limited to, this RFA. A response to this RFA is a proposal to contract with TDI based upon the terms, conditions, and specifications contained in this RFA. Applications and responses do not become part of a contract or agreement with TDI unless and until they are accepted and agreed to by TDI. All parts of this RFA are incorporated as part of any resulting contract for all purposes. TDI, at its sole discretion, may disqualify an Application from consideration if TDI determines that an Application is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFA.

- 4.2.56. **Binding Effect of Application.** Unless otherwise agreed in writing and signed by TDI, each Respondent agrees to and is bound by the information and documentation provided with the Application, including prices quoted for services. By submitting an Application or response, the Respondent commits to providing the goods and services required at the prices set forth in its' Application. Applications must be valid for 180 calendar days following the Application/response receipt date. Proposed rates must be firm and guaranteed for the entire contract period.
- 4.2.57. **Rejection of Applications and Cancellation of RFA.** Issuance of this RFA does not constitute a commitment on the part of TDI to award a contract. TDI is under no obligation to award any contract as a result of this RFA. TDI maintains the right to reject any or all Applications and to cancel this RFA if it considers it in the best interests of TDI to do so. TDI reserves the right to reject, in its sole discretion, any or all RFA responses and all or any part of any response, and waive minor technicalities. TDI will award a contract, if any, to serve the best interests of TDI and the State of Texas. TDI's waiver of any deviations in any response will not constitute a modification of this RFA and will not preclude TDI from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFA.
- 4.2.58. **Ambiguity, Conflict, Exclusionary Specification, or Omission.** If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in this RFA, Respondent must immediately notify, in writing, the TDI contact person identified above. If a Respondent fails to notify the TDI contact person of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, the Respondent must submit a response at its own risk; and, if awarded a contract, the Respondent is not entitled to additional compensation, relief, or time by reason of the error or its later correction.
- 4.2.59. **Right to Amend, Modify, or Withdraw the RFA.** TDI reserves the right to alter, amend, or modify any provisions of this RFA or to rescind, revoke, or withdraw this RFA, in whole or in part, at any time prior to the award of any Contract if it is determined by TDI to be in the best interest of TDI or the State to do so.
- 4.2.60. **Accessibility of Public Information.** Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Selected Respondent understands that TDI will comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. TDI agrees to notify selected Respondent in writing within a reasonable time from receipt of a request for information related to the selected Respondent's work under the resulting Contract. Selected Respondent will cooperate with TDI in the production of documents responsive to the request. TDI will make a determination whether to submit a Public Information Act request to the Attorney General. Selected Respondent will notify TDI General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. The resulting Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Public Information Act.
- 4.2.61. **Vendor Reporting Requirements.** Selected Respondent shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

4.2.62. **Budget Detail Document (Mandatory).** Respondents must complete and attach the Mandatory Budget Detail Document, which is included as **Attachment 2** to this RFA. Each Response should provide pricing that is all-inclusive of all costs associated with providing the goods and/or services required as outlined in this RFA.

4.2.63. **Vendor Performance.** State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from Comptroller of Public Accounts (CPA) Texas Procurement and Support Services Division procurement rules and procedures.

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA web site at:

http://www.window.state.tx.us/procurement/prog/vendor_performance/.

4.2.64. **Abandonment or Default.** If the selected Respondent defaults on the Contract, TDI reserves the right to cancel the contract without notice and either re-solicit or award the Contract to the next best responsive and responsible Respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of termination will be determined by TDI, based upon the seriousness of the default.

4.2.65. **Public Disclosure.** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of TDI.

4.2.66. **Supporting Documents, Retention, Right to Audit and Independent Audits.**

Supporting Documents. Selected Respondent shall maintain and retain all supporting fiscal and any other supporting documents relevant to showing that any payments under the resulting Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor.

Retention. Selected Respondent shall maintain all such documents and other records relating to the resulting Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Selected Respondent shall make available, at reasonable times, and upon reasonable notice, and for reasonable periods, all documents and other information related to "Work" as defined in this RFA.

Right to Audit and Internal Audits. Selected Respondent and the selected Respondent's subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigate or audit. Selected Respondent must maintain all work and other supporting documents pertaining to the resulting Contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TDI, its representatives, agents, and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Selected Respondent shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work, as requested. Selected Respondent's failure to comply with this Section shall constitute a breach of the resulting Contract and shall authorize the Texas Department of Insurance and the state of Texas to immediately assess appropriate damages for such failure.

Pursuant to Texas Government Code, Section 2262.003, the acceptance of funds by Selected Respondent or any other entity or person directly under the resulting Contract, or indirectly through a subcontract under the resulting Contract, shall constitute acceptance of the authority of the State Auditor, to conduct an audit or investigation in connection with those funds. Selected Respondent acknowledges and understands that the acceptance of funds under the resulting Contract shall constitute consent to an audit by the Comptroller, or other agency of the State of Texas.

Selected Respondent shall ensure that this paragraph concerning the State's authority to audit funds is included in any subcontract it awards. Furthermore, under the directive 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 the investigation or audit.

- 4.3. Execution of Proposal.** Respondents must sign and return the Execution of Proposal form, attached hereto as Attachment 1, which will become part of any resulting contract. This document is Mandatory, and failure to return to return this document shall automatically render the Respondent's Application as nonresponsive.

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ATTACHMENTS

ATTACHMENT 1:

EXECUTION OF PROPOSAL

(Mandatory: Must Sign and Return with Application)

EXECUTION OF PROPOSAL

1. By signature hereon, Respondent represents and warrants that Respondent makes a commitment to provide the services required by TDI as set forth in this RFA, by submission of an Application in response to this RFA.
2. By signature hereon, Respondent represents and warrants that the provisions in this Request for Applications (RFA) apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
3. By signature hereon, Respondent represents and warrants its intent to furnish the requested goods and/or services at the budget amounts reported in the Budget Detail Information document (Attachment 2), including an allowable budget revisions, as permitted or approved by TDI.
4. By signature hereon, Respondent represents and warrants that its Budget Detail form include all costs of Respondent in providing the requested items that meet all specifications of this RFA, and that the entire Application and all Budget Detail information will remain firm for acceptance for a minimum of one hundred eighty (180) days from deadline for submission of Application or until contract award, whichever comes later. Respondent further agrees that any Application containing a term of less than 180 calendar days for acceptance, will be rejected by TDI as non-responsive.
5. By signature hereon, Respondent acknowledges and agrees to comply with the requirements described in Part II, Statement of Work and the Terms and Conditions contained in this RFA and those of any resulting contract. Respondent represents and warrants that if Respondent takes exception to any of the requirements of the Statement of Work or Terms and Conditions of this RFA, those exceptions must be noted separately in an Exhibit as part of Respondent's Application. Respondent further acknowledges and agrees that failure to accept the requirements of the Statement of Work or Terms and Conditions specified in this RFA, may result in disqualification of the Application.
6. By signature hereon, Respondent represents and warrants that each employee, including replacement employees' hired in the future, will possess the qualifications, education, training, experience and certifications required to perform the services in the manner required by this RFA.
7. By signature hereon, Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TDI under the RFA and any resulting contract, if any, and that Respondent's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
8. By signature hereon, Respondent represents and warrants that, pursuant to Section 2155.003, Texas Government Code, it has not 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 in connection with the submitted Application.
9. By signature hereon, Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
10. By signature hereon, Respondent hereby represents and warrants that, pursuant to 15 U.S.C. Section 1, et seq. and Texas Business and Commerce Code Section 15.01, et seq., neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution

has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.

11. By signature hereon, Respondent represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete and accurate.
12. By signature hereon, Respondent represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of Respondent's Application.
13. By signature hereon, Respondent represents and warrants that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
14. Check below if preference claimed under 34 Texas Administrative Code §20.38:
 - Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service disabled veteran *
 - Agricultural products produced or grown in TX
 - Agricultural products and services offered by TX bidders*
 - USA produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycle, remanufactured, or environmentally sensitive materials, including recycled steel
 - Energy Efficient Products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or Reused Computer Equipment of Other
 - Foods of Higher Nutritional Value
15. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Respondent certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

NAME:	SSN:
NAME:	SSN:
NAME:	SSN:

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

16. By signature hereon, Respondent certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. Respondent must complete the following, marking "N/A" if not applicable:
Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Respondent: _____
Date of Employment with Respondent: _____
17. By signature hereon, pursuant to Section 2155.004(a), Texas Government Code Respondent represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. In addition, under Section 2155.004, Texas Government Code, Respondent certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
18. By signature hereon, in accordance with Section 2155.4441, Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
19. By signature hereon, Respondent represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
20. Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Respondent certifies that the individual or business entity named in its Application is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFA may be terminated and payment withheld if this certification is inaccurate.
21. By signature hereon, if Respondent is submitting an Application for the purchase or lease of computer equipment, then Respondent hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 Texas Administrative Code Chapter 328.
22. By signature hereon, Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent, within the five (5) calendar years immediately preceding the submission of Respondent's Application in response to this RFA that would or could impair Respondent's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to TDI's consideration of Respondent's Application. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Application, a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to TDI's consideration of Respondent's Application. In addition, Respondent represents and warrants that it shall notify TDI in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TDI

shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFA.

23. By signature hereon, Respondent represents and warrants to TDI that it and each of its subcontractors have the requisite resources, qualifications and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of TDI's objectives.
24. By signature hereon, Respondent represents that neither Respondent or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, proposed in the Application has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised TDI of the facts and circumstances in its Application.
25. By signature hereon, Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFA, unless Respondent specifically takes an exception and offers an alternative provision in Respondent's Application as provided in the Exhibit 2 (See Section 3.3.7).
26. By signature hereon, Respondent certifies and affirms that it utilizes and will continue to utilize, for the term of any resulting contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 - a) All persons employed to perform duties within Texas, during the term of the resulting contract; and
 - b) All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the resulting Contract, within the United States of America.

The Respondent shall provide, upon request of TDI, an electronic or hard copy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Respondent, and Respondent's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the resulting contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated contract.

27. By signature hereon, Respondent agrees that any payments or other amounts due under any resulting contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full and agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

Failure to sign the Execution of Proposal or signing it with a false statement shall void the submitted Application or any resulting contracts.

Authorized representative on behalf of Respondent must complete and sign the following:

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Phone Number

Company Name

Fax Number

Federal Employer Identification Number

Email Address

Mailing Address

City, State, Zip Code

ATTACHMENT 2:
BUDGET DETAIL DOCUMENT

(Mandatory: Must Submit with Application)

IMPORTANT NOTE:
Respondents must use an electronic version of Attachment 2 to respond.
(Available as an MS Excel download with the RFA materials)

Attachment 2--Budget Detail Form (Excel Workbook)—**SCREEN Shots Only**

Tab A: Third-Share Subsidy Budget

§1.14.3.2 A. Mandatory Third-Share Premium Subsidy Budget

Respondent Name: _____

Do all subsidy-eligible members in your program receive the same monthly premium subsidy?

FY2016 Premium Subsidy Budget													
Actual Value at Date of Application	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	
Covered Businesses													
Covered Lives													
Subsidy-Eligible Members													
Per- Member Subsidy Amount													
Total Monthly Subsidy		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	FY 2016 TOTAL \$0.00

FY2017 Premium Subsidy Budget													
	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	
Covered Businesses													
Covered Lives													
Subsidy-Eligible Members													
Per- Member Subsidy Amount													
Total Monthly Subsidy	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	FY 2017 TOTAL \$0.00

Projected Average Per-Member Subsidy Calculator (Complete if Cell I4 is "No.")

Income Range/Coverage Type	Expected Proportion of Enrollment Per Range/Type	Maximum Per-Member Subsidy Amount	Projected Average Subsidy Amount
			\$ -
Total	0%		

Tab B—Itemized Program Administration Budget (SCREEN Shot Only)

§1.14.3.2 B. Itemized Administrative Budget

Respondent Name _____

Budgeted Administrative Expenses	GRANT BUDGET REQUEST			Required for all Respondents LOCAL MATCHING FUNDS		Total Program Budget ^[3]	Percentage of Total Program Budget from TDI Grant	Percentage of Total Program Budget from Local Match
	FY 2016 Grant Request	FY 2017 Grant Request	2-Year Total Grant Request	FY 2016 Budget from Local Match ^[2]	FY 2017 Budget from Local Match ^[1]			
Non-Passthrough Expenses								
Salaries			\$ -			\$ -	#DIV/0!	#DIV/0!
Fringe Benefits			\$ -			\$ -	#DIV/0!	#DIV/0!
Contracted Services								
<i>Actuarial</i>			\$ -			\$ -	#DIV/0!	#DIV/0!
<i>Legal</i>			\$ -			\$ -	#DIV/0!	#DIV/0!
<i>Claims Administration / TPA</i>			\$ -			\$ -	#DIV/0!	#DIV/0!
<i>Marketing / Outreach</i>			\$ -			\$ -	#DIV/0!	#DIV/0!
Accounting			\$ -			\$ -	#DIV/0!	#DIV/0!
Human Resources			\$ -			\$ -	#DIV/0!	#DIV/0!
System Administration			\$ -			\$ -	#DIV/0!	#DIV/0!
Contract/Supply Procurement			\$ -			\$ -	#DIV/0!	#DIV/0!
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	#DIV/0!
Indirect Rate			\$ -			\$ -	#DIV/0!	#DIV/0!
Total Non-Passthrough Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	#DIV/0!
Passthrough Expenses								
Furniture/Equipment			\$ -			\$ -	#DIV/0!	#DIV/0!
Capitalization (Reserves) ^[2]			\$ -			\$ -	#DIV/0!	#DIV/0!
Internet/Telephone			\$ -			\$ -	#DIV/0!	#DIV/0!
Copy/Fax			\$ -			\$ -	#DIV/0!	#DIV/0!
Postage/Shipping			\$ -			\$ -	#DIV/0!	#DIV/0!
Office Space			\$ -			\$ -	#DIV/0!	#DIV/0!
Other Expenses*			\$ -			\$ -	#DIV/0!	#DIV/0!
Total Passthrough Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	#DIV/0!
TOTAL PROPOSED ADMINISTRATIVE BUDGET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	#DIV/0!

1: Total budget funded from premium revenues, other grants, local contributions and other revenues.

2: Capitalization amount is a one-time cost to create a reserve fund for open and unreported claims, which will be committed prior to start date.

3: 2-year Total Grant column plus FY 2016 and FY 2017 Budget from Local Match columns.

* List any items and cost of each for any expenses recorded as "Other."

Projected Revenues

Projected Revenues	FY2016	FY2017	TOTAL
Premium Revenues			\$0
TDI Grants			\$0
Other Grants			\$0
Local Contributions			\$0
Other Revenues			\$0
TOTAL REVENUES	\$0	\$0	\$0

ATTACHMENT 3:

**LOCAL OR REGIONAL HEALTH CARE PROGRAM
ATTESTATION OF CURRENT ELIGIBILITY FORM**

(Currently funded TSPAP Recipients ONLY to Complete and return with Application)

Texas Department of Insurance
Local or Regional Health Care Program Attestation of Current Eligibility Form
(for the Three-Share Premium Assistance Program Request for Applications No. 454-16-03118)

Purpose

Respondents to Request For Applications (RFA) No. 454-16-03118 must complete this form in accordance with Section 1.1.5 of the RFA to confirm whether or not they are currently funded under the 2014-2015 Biennial Three-Share Premium Assistance grant and to report if there have been any changes to the supporting documentation related to eligibility (Section 2.2.3) and Program Staffing (Section 2.2.7) since the previous grant application.

Attestations

I am an **existing** Three-Share Premium Assistance Program grantee with funding in the 2014-2015 Biennium. **Yes** **No**

If no, **do not complete the rest of this form.** Please submit all supporting documentation required for all sections of RFA No. 454-16-03118.

If yes, answer the following questions to determine what, if any, supporting documentation must be submitted.

My eligibility status as described in Section 2.2.3 to this RFA, including my organization structure, governance, and health benefit plan structure under Chapter 75, **has not** changed since my previous grant application. **Yes** **No**

My program staffing as described in section 2.2.7 of this RFA, including my founding documents, Board members and key staff, **have not** changed since my previous grant Application. **Yes** **No**

If **yes to both**, this completed form with your signature fulfills the supporting documentation requirements of sections 2.2.3 and 2.2.7 of this RFA.

If **no to either**, please specify what changes have occurred and provide the supporting documentation required in Sections 2.2.3 or 2.2.7 of the RFA that have changed.

Signature

Printed Name

Company Name

Title

Date

**ATTACHMENT 4:
RESPONDENT IDENTIFICATION OF RELATIVES & EMPLOYEES**

(Must complete and return with Application)

RESPONDENT IDENTIFICATION OF RELATIVES/EMPLOYEES
FOR RFA 454-16-03118

State law imposes restrictions on certain contracts with former or retired employees. Respondent must provide a list of all of the following, on this **Attachment 4**, in accordance with the Application Submission Checklist in Table 3 of Section 3.8.:

- (a) Relatives of the Respondent who are currently working or have worked for TDI.
- (b) Employees of the Respondent who are current, former, or retired employees of TDI. Respondent must notify TDI of any prospective employee who is a former employee of TDI, prior to prospective employee's performance or receipt of compensation under any contract resulting from this RFA.
- (c) Respondent must notify TDI of any prospective employee who is related to a TDI employee, prior to placement, and must notify TDI of any prospective employee who holds any license or certificate related to the Insurance Industry.

If none, specify by marking an "X" in the "None" box for each category. Failure to complete this form will cause Respondent to be non-responsive.

1.	Relatives of Respondent (current or former TDI employees)	
	None- <input type="checkbox"/>	
	Name (First and Last)	Relationship to TDI
a		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
b		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
c		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
d		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
e		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>

2.	Non-relative Employees of Respondent (current or former TDI employees), including retired	
	None- <input type="checkbox"/>	
	Name (First and Last)	Relationship to TDI
a		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
b		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
c		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
d		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
e		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>

Use the additional lines below, as necessary for additional employees not listed above.

Signature of person completing form

Date

Name and Title

Respondent Company Name

ATTACHMENT 5:

**TEXAS DEPARTMENT OF INSURANCE
ANTI-LOBBYING AFFIDAVIT**

(Must sign and return with Application)

**Texas Department of Insurance
ANTI-LOBBYING AFFIDAVIT**

Anti-Lobbying Affidavit

On behalf of the entity named below, I, an official with authority to bind such entity, execute this Affidavit as a part of the entity's Application to:

Request for Applications No. 454-16-03118

By executing this Affidavit, the entity agrees to the following terms and conditions of this requisition.

From and after the posting of this RFA for the above-noted requisition, the entity, its employees, officials, agents and subcontractors, may not communicate or attempt to communicate about this requisition and the entity's Application, with TDI personnel, the evaluation committee members and the other TDI officials involved in making recommendations or decisions for award of contracts arising from this requisition; provided, however, entity, its employees, officials, agents and subcontractors will be allowed to participate in the TDI-sponsored evaluation process, in the form authorized.

Further, the entity may not, through indirect means of unpaid associates, volunteers or other persons, communicate or attempt to communicate about the entity's Application to any TDI personnel, the evaluation committee members or other TDI officials involved in making recommendations or decisions for award of contracts arising from this requisition. The entity understands and agrees that violation of this Affidavit may result in rejection of its Application, as a violation of the terms and conditions of the procurement process.

Signature

Printed Name

Company Name

Title

Date

ATTACHMENT 6:

**TEXAS DEPARTMENT OF INSURANCE
SAMPLE CONTRACT**

**CONTRACT
FOR
THE THREE-SHARE PREMIUM ASSISTANCE PROGRAM
BETWEEN
TEXAS DEPARTMENT OF INSURANCE
AND
CONTRACTOR**

The Texas Department of Insurance (hereinafter referred to as "TDI"), a state agency located at 333 Guadalupe St., Austin, Texas 78701 and _____ (hereinafter referred to as "Contractor"), located at _____ enter into a contract agreement (hereinafter referred to as the "Contract") for a _____ (hereinafter referred to as "_____") pursuant to TEX. GOV'T CODE Chapters 2155 and 2156, and Rider 14 of House Bill 1 of the General Appropriations Act, 84th Legislature, Regular Session.

I. CONTRACTED SERVICES/CONTRACT DOCUMENTS.

1.01. SERVICE REQUIREMENTS. Contractor shall provide XXXXXXXX services, as further described in RFA #454-16-03118 and subsequently negotiated under this contract. Services shall be performed in accordance with the following documents:

- (a.) Service Contract - TDI Contract No. 45400-16-_____;
- (b.) Exhibit A, TDI's Request for Applications No. 454-16-03118 thereto including all attachments, appendices and subsequent addenda;
- (c.) Exhibit B, Contractor's Application response submitted as modified by responses to Contractor Questions, if any;

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01.(b) through (c) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

1.03. ORDER OF PRECEDENCE. (a.) In interpreting this Contract and resolving any ambiguities, this Service Contract - TDI Contract No. 15-_____ shall take precedence over the Additional Documents (section 1.01, b-c above), and any inconsistency among the documents shall be resolved in the order in which they are listed below:

- (b.) Executed Service Contract – Contract No. 45400-16-_____
- (c.) Exhibit A, TDI's Request for Applications No. 454-16-03118 (including all associated Attachments, Appendices, and Addenda);
- (d.) Exhibit B, Contractor's Application response submitted as modified by responses to Contractor Questions, if any.

1.04. CONTRACT ADMINISTRATOR. (a.) TDI shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TDI and the Contractor. The instructions of the TDI Contract Administrator ("or designated representative") are to be strictly and promptly followed by Contractor at all times. TDI's Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. TDI's Contract Administrator will determine the amount of work performed which are to be paid under the Contract. Failure of the TDI Contract Administrator during

the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract, or to exercise any remedies shall not be deemed an acceptance or a waiver of TDI's right to full performance of the Contract. TDI's Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the TDI Contract Administrator. No services shall be undertaken by Contractor except with the prior written direction of the TDI Contract Administrator. Contractor understands and agrees that services performed without the prior written direction of the TDI Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

II. TERM.

2.01. CONTRACT AWARD. (a.) This Contract shall be effective as of the date executed by the parties and shall continue through August 31, 2016 unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.02 set forth below or in Section 4.2.22 of the RFA.

(b.) Notwithstanding the termination or expiration of this contract, the provisions (if applicable) regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, tool development, limitation of distribution and warranties, will survive the termination or expiration dates of this Contract.

2.02. TERMINATION. (a.) Termination with Default. TDI may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TDI, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TDI resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b.) Termination without Default. TDI may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TDI under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02(c).

(c.) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by TDI's Contract Administrator or his/her designated representative to preserve the work in progress. In the event of termination by TDI, TDI shall pay Contractor for all work satisfactorily performed up to the effective date of termination.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, TDI and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION.

3.01. CONTRACT LIMIT AND FEES AND EXPENSES. (a.) The total amount of fees to be paid under this Contract during the initial term must not exceed _____ (\$_____).

(b.) The total amount of fees to be paid under this Contract shall be in accordance with Attachment 2 – Budget Detail Document, attached hereto and incorporated herein for all purposes. Any changes to the budget set forth in Attachment 2 – Budget Detail Document, shall be submitted to TDI for review and shall be approved by amendment to this Contract.

(c.) At any time, TDI may adjust the Contract, in whole or in part, with thirty (30) days' notice to Contractor. Adjustments shall be in accordance with the Attachment 2 – Budget Detail Form and shall be documented by amendment to this Contract.

(d.) The contract amount for any renewal periods will be specified by written contract amendment signed by both parties.

3.02. PAYMENTS TO CONTRACTOR. (a.) Payments to Contractor will be made at the completion of a project under a Delivery Release Change Notice and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TDI. Contractor will be paid for completion of work accepted and approved by TDI's Contract Administrator or his/her designated representative.

(b.) Contractor shall invoice TDI for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number and contract number. Address for submission is: Texas Department of Insurance, Accounting – Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email: invoices@tdi.texas.gov.

IV. STATE FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of TDI hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. CONTRACTOR PERSONNEL.

4.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

VI. NOTICES.

5.01. NOTICES. (a.) Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TDI or Contractor, as the case may be, at the address set forth below:

For TDI: Texas Department of Insurance
333 Guadalupe St., PO Box _____
Austin, TX 78701
Attention: _____
Phone: _____
Fax: _____
Email: _____

For Contractor: _____

Attention: _____
Phone: _____
Fax: _____
Email: _____

(b.) Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

VII. MISCELLANEOUS PROVISIONS.

6.01. GOVERNING LAW AND VENUE. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by TDI.**

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

6.03. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

6.04. SOVEREIGN IMMUNITY. The parties agree and acknowledge that nothing contained in Contractor's Application response or this contract will in any manner be construed as a waiver of sovereign immunity or official immunity by TDI, its employees, or the state of Texas. TDI and the state of Texas retain all legal defenses and immunities available to each. TDI does not waive any privileges, rights, defenses, remedies, or immunities, available to TDI as an agency of the state of Texas or otherwise available to TDI.

6.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in

default under this Contract, and TDI may terminate or void this Contract for cause and pursue other remedies available to TDI under this Contract and applicable law.

6.06. ENTIRE CONTRACT & MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

6.07. EXECUTION SIGNATURES. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective parties.

TEXAS DEPARTMENT OF INSURANCE
By _____
Karen A. Phillips
Chief Of Staff

CONTRACTOR
By _____

Date of Execution: _____

Date of Execution: _____

**CONTRACT
FOR
THREE-SHARE PREMIUM ASSISTANCE PROGRAM SERVICES
BETWEEN THE
TEXAS DEPARTMENT OF INSURANCE
AND
TEXHEALTH CENTRAL TEXAS**

The Texas Department of Insurance (hereinafter referred to as "TDI"), a state agency located at 333 Guadalupe Street, Austin, Texas 78701 and TexHealth Central Texas (hereinafter referred to as "Grantee" or "Contractor"), affiliated with a political subdivision of the State of Texas, located at 2800 S. IH-35, Suite 131, Austin, TX 78704 enter into a contract (hereinafter referred to as the "Contract") for eligible approved services, per Chapter 75 of the Texas Health and Safety Code, for the Three-Share Premium Assistance Program, (hereinafter referred to as "Three-Share Program" or "TSPAP") pursuant to TEX. GOV'T CODE Chapters 2155 and/or 2156, as applicable, and Rider 14 of Article VIII of House Bill 1 of the 84th Texas Legislature, Regular Session.

I. CONTRACTED SERVICES/CONTRACT DOCUMENTS

1.01. SERVICE REQUIREMENTS. Grantee shall provide all services and other deliverables described in and in the manner required by Request for Applications (RFA) No. 454-16-03118, Provider Enrollment for the Three-Share Premium Assistance Program, the Grantee's Application response, documentation requested by TDI on August 12, 2015, and the response provided by Grantee on August 14, 2015. Services shall be performed in accordance with the following documents:

- (a.) Service Contract – TDI Contract No. 45400-16-0165-17;
- (b.) Exhibit A, TDI's RFA No. 454-16-03118 – thereto, including all Attachments, Appendices, and subsequent Addenda, and
- (c.) Exhibit B, Grantee's Application response submitted, including responses to additional questions and the revised Budget Detail Document (Attachment 2) submitted on August 14, 2015.

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01.(b) and (c) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

1.03. ORDER OF PRECEDENCE. (a.) In interpreting this Contract and resolving any ambiguities, this Service Contract - TDI Contract No. 45400-16-0165-17 shall take precedence over the Additional Documents (section 1.01, (b) and (c) above), and any inconsistency among the documents shall be resolved in the order in which they are listed below:

- (a.) Service Contract – TDI Contract No. 45400-16-0165-17;
- (b.) Exhibit A, TDI's RFA No. 454-16-03118 – thereto, including all Attachments, Appendices, and subsequent Addenda, and
- (c.) Exhibit B, Grantee's Application response submitted, including responses to additional questions and the revised Budget Detail Document (Attachment 2) submitted on August 14, 2015.

1.04. CONTRACT ADMINISTRATOR. (a.) TDI shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TDI and the Contractor. The instructions of the TDI Contract Administrator ("or

ORIGINAL

designated representative") are to be strictly and promptly followed by Contractor at all times. TDI's Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. TDI's Contract Administrator will determine the amount of work performed which are to be paid under the Contract. Failure of the TDI Contract Administrator during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract, or to exercise any remedies shall not be deemed an acceptance or a waiver of TDI's right to full performance of the Contract. TDI's Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the TDI Contract Administrator. No services shall be undertaken by Contractor except with the prior written direction of the TDI Contract Administrator. Contractor understands and agrees that services performed without the prior written direction of the TDI Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

II. TERM.

2.01. CONTRACT AWARD. (a.) This Contract shall be effective as of the date executed by the parties and shall continue through August 31, 2017, unless terminated earlier, as provided in Section 2.02 set forth below or in Section 4.2.22 of the RFP.

(b.) Notwithstanding the termination or expiration of this contract, the provisions (if applicable) regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, and warranties, will survive the termination or expiration dates of this Contract.

2.02. TERMINATION. (a.) **Termination with Default.** TDI may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TDI, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TDI resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b.) **Termination without Default.** TDI may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TDI under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02(c).

(c.) **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by TDI's Contract Administrator or his/her designated representative to preserve the work in progress. In the event of termination by TDI, TDI shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the Contract.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, TDI and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION.

3.01. CONTRACT LIMIT AND FEES AND EXPENSES. (a.) The total amount of grant funds available and awarded under this Contract are subject to section 1.1.4, Eligible Use of Funds and Amount of Available Funds, of the RFA and are dependent upon the fines, penalties, and sanctions (fines) from regulated entities except for workers compensation and this award shall not exceed fines collected in each fiscal year (FY) of the Contract Term.

Fees to be paid under this Contract during the Fiscal Year 2016 shall not exceed ONE MILLION, TWO HUNDRED THIRTEEN THOUSAND THREE HUNDRED NINETY-THREE AND NO HUNDRETHS DOLLARS (\$1,213,393.00).

Fees to be paid under this Contract during the Fiscal Year 2017 shall not exceed ONE MILLION, SIX HUNDRED SEVENTY-FIVE THOUSAND SEVEN AND NO HUNDRETHS DOLLARS (\$1,675,007.00).

(b.) In the event fine collections in either fiscal year are below the possible \$1.5 million, this award will be reduced accordingly. Should a gap in funding occur as the result of lack of fines collected, grantee must suspend all new enrollment for members eligible for TDI grant funding until funds become available.

(c.) The total amount of fees to be paid under this Contract shall be in accordance with the revised Attachment 2 – Budget Detail Document, submitted on August 14, 2015, and attached hereto and incorporated herein for all purposes. Monthly payments of Third-Share Premium Subsidy shall not exceed monthly amounts projected in the revised Attachment 2 – Budget Detail Document, submitted on August 14, 2015.

Any changes to the budget set forth in Attachment 2 – Budget Detail Document, shall be submitted to TDI for review and shall be approved by amendment to this Contract.

(d.) At any time, TDI may adjust the Contract, in whole or in part, with thirty (30) days' notice to Contractor. Adjustments shall be in accordance with the revised Attachment 2 – Budget Detail Form, submitted on August 14, 2015, and shall be documented by amendment to this Contract.

3.02. PAYMENTS TO CONTRACTOR. (a.) Payments to Contractor will be made in accordance with section 2.4, Payment Requirements and Changes in Plan of Operations of Selected Respondents, section 2.5, Monthly Request for Payment, and section 2.6, Payment and Required Documentation in Support of Payment, of the RFA and in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TDI. Contractor will be paid for completion of work accepted and approved by TDI's Contract Administrator or his/her designated representative.

(b.) Contractor shall invoice TDI for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number and contract number. Address for submission is: Texas Department of Insurance, Accounting – Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email: invoices@tdi.texas.gov.

IV. STATE FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of TDI hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated or reduced accordingly.

Additionally, in House Bill 1, the 84th Texas Legislature instructed TDI to create a competitive grant Three-Share Premium Assistance Program. A "Three-Share Premium Assistance Program" is an insurance or health care coverage funding program that requires coverage costs to be funded by three separate parties. Coverage costs are generally

shared by an employer, an employee, and a third entity, which is often a local government organization. Chapter 75 of the Texas Health & Safety Code establishes regional and local health care programs to operate the TSPAPs. The purpose of such a funding structure is to reduce the enrollee's cost of insurance or health care coverage by distributing the cost among three parties rather than just the two parties (employer and employee) that traditionally pay for employment-based coverage.

Funding under this Contract is available from general appropriations and from the collection of fines, penalties, and sanctions.

In creating this program, the 84th Legislature, Regular Session, specified in Rider 14 of article VIII of House Bill 1 that \$444,866 in State fiscal years (FY) 2016 and 2017, may be used for the research, planning, development, and continuation of TSPAPs, to increase access to private healthcare coverage for the uninsured and to provide technical assistance to grant recipients.

The Legislature also provided that "out of funds collected from regulated entities except for workers compensation for fines, penalties, and sanctions and deposited to General Revenue, the Texas Department of Insurance is appropriated, out of amounts collected in excess of those contained in the Comptroller's Biennial Revenue Estimate (estimated to be \$0), an amount not to exceed \$1,500,000 in each year of the biennium for the Three-Share Premium Assistance Program". Available funds are limited to those collected by TDI at the time selected Applicants submit any requests for reimbursement.

In addition, any unexpended and unobligated balances of TSPAP grant funds remaining from the state fiscal year ending August 31, 2015, are available for use in FY 2016.

V. CONTRACTOR PERSONNEL.

4.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

VI. NOTICES.

5.01. NOTICES. (a.) Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TDI or Contractor, as the case may be, at the address set forth below:

For TDI: Texas Department of Insurance
Purchasing and Contract Administration
333 Guadalupe St., PO Box 149104 MC 108-1B
Austin, TX 78701
Attention: Manager
Phone: (512) 676-6140
Fax: (512) 490-1073

For Contractor: TexHealth Central Texas
2800 S. IH 35, Suite 131
Austin, Texas 78704
Attention: Mr. James I. Rodriguez, President & CEO
Phone: (512) 524-2618
Email: jrodriguez@texhealthct.org

(b.) Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

VII. MISCELLANEOUS PROVISIONS.

6.01. GOVERNING LAW AND VENUE. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by TDI.**

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

6.03. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

6.04. SOVEREIGN IMMUNITY. The parties agree and acknowledge that nothing contained in Contractor's proposal response or this contract will in any manner be construed as a waiver of sovereign immunity or official immunity by TDI, its employees, or the state of Texas. TDI and the state of Texas retain all legal defenses and immunities available to each. TDI does not waive any privileges, rights, defenses, remedies, or immunities, available to TDI as an agency of the state of Texas or otherwise available to TDI.

6.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TDI may terminate or void this Contract for cause and pursue other remedies available to TDI under this Contract and applicable law.

6.06. ENTIRE CONTRACT & MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

6.07. EXECUTION SIGNATURES. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective parties.

TEXAS DEPARTMENT OF INSURANCE

By (Signature) 
David C. Mattax
(Name)

Commissioner _____

Date of Execution: 9/8/15

TEXHEALTH CENTRAL TEXAS

By (Signature) 
James I. Rodriguez
(Name)

President _____

Date of Execution: 8/31/2015