

7-002550991-3-000

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Contract Number



TWC CUSTOMER SERVICES CONTRACT: Professional Medical Consultant Services

I. PARTIES

This contract (hereafter referred to as "Contract") is entered into between the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (hereafter referred to as "TWC"), and:

Legal Name of Contractor: Michael J. Allen
Mailing Address: 1905 W. Tennessee
City and Zip: Midland, TX 79701
Telephone: 432-559-0137
FAX number: N/A
Contact Person: Michael J. Allen
e-mail address of Contact Person: mallencpo@aol.com

hereafter referred to as the "Contractor." The Contractor is a Sole Proprietorship.

II. PURPOSE AND SCOPE

The purpose of this contract is to establish the responsibilities of each party regarding Professional Medical Services to review Medical Cases for Orthotics and Prosthetics purchases.

III. CONTRACT PERIOD

This Contract is effective 11/01/2019 or on the signature of both parties, whichever is later, through 08/31/2021.

IV. RENEWAL

This Contract may be renewed in writing prior to contract expiration upon mutual agreement under the same terms and conditions for up to one 2-year renewal period.

V. LEGAL AUTHORITY

Pursuant to its authority under [Texas Government Code §2155.144](#) and [Title 1 Texas Administrative Code Part 15 Chapter 391](#), TWC is authorized to enter into this contract.

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VI. DEFINITIONS

CONFLICT OF INTEREST: A situation that creates a risk that professional judgment or actions will be unduly influenced by a personal interest or relationship and creates substantial conflicts with the proper discharge of duties required by this contract and the public interest.

CUSTOMER: An individual that has met the TWC eligibility criteria and been approved to receive TWC services.

HEALTHCARE COMMON PROCEDURE CODING (HCPCS) Level II. Codes and descriptions of products and supplies that may be provided to Medicare beneficiaries.

MEDICAL CONSULTANT: The contracted medical consultant assigned to review cases and give guidance on the medical aspects of the customer's disability including symptoms, functional limitations, typical treatment and diagnostic tests, prognosis, standards of care, value of second opinion, clarification of medical reports, and the appropriateness of the recommended treatment.

ORTHOTICS. External rigid or semi-rigid devices which are used for the purpose of supporting a weak or deformed body part or restricting or eliminating motion in a diseased or injured part of the body.

ORTHOTICS OR PROSTHETICS CASE REVIEW. Includes relevant customer medical records, specialty medical evaluations if required, prescription for the orthotic or prosthetic device, letter of specification for the proposed device with HCPCS codes, VR 3601 or VR 3602, counselor notes including vocational goal, warranty information and repair estimates if indicated, material and labor estimates for any "99" codes.

ORTHOTIC/PROSTHETIC REVIEW COMMITTEE (OPRC). A committee comprised of the State Prosthetic Consultant, Texas Workforce Commission Medical Director, State Office, Program Specialist for Physical Restoration and the State Office Program Specialist for Physical Disabilities.

PROSTHETICS. Artificial devices that replace missing body parts.

STATE MEDICAL DIRECTOR: The State Medical Director reviews all cases that are required by policy. In certain situations, the State Medical Director can give guidance on the medical aspects of the customer's disability including symptoms, functional limitations, typical treatment and diagnostic tests, prognosis, standards of care, value of second

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opinion, clarification of medical reports, and the appropriateness of the recommended treatment, in cases that are complex or complicated to help guide field staff on how to proceed. The State Medical Director also reviews and approves medical consultants for the agency.

TWC OPRC CONTACT. The Program Specialist for Physical Restoration in the State Office, who is the point of contact for the State Prosthetics Consultant. All cases will originate from the TWC OPRC Contact and the State Prosthetic Consultant will send all reviews, questions and the invoice to the TWC OPRC Contact.

VII. PAYMENT RATES AND TERMS

- A.** Payments made to Contractors for Medical Consultation services are paid at the rate of TWO HUNDRED TWENTY-FIVE DOLLARS (\$225.00) per case review, with a total Contract award not to exceed the amount of TWENTY-FOUR THOUSAND, FIVE HUNDRED DOLLARS (\$24,500.00).
- B.** In accordance with the Prompt Payment Act, Texas Government Code Chapter 2251, TWC will make payment on a correct, and properly prepared and submitted invoice within 30 days of receipt. The invoice shall meet the state requirements, be performed in accordance with a Service Authorization (SA), contract. If applicable, invoice must be supported by other documentation required, and be subject to TWC review and approval. Any invoices or other documentation submitted, including required reports that are incorrect or incomplete, shall be returned to the contractor for correction before resubmission to TWC for payment. At a minimum, invoices must include the following:
1. Contractor complete legal name (DBA optional), email and phone number (if applicable), and correct remittance address, including city, state, and ZIP code;
 2. Contractor contact name, designated to answer invoice questions, and telephone number, email address, or FAX number;
 3. A valid contractor 14-digit Texas Identification number (TIN) issued by the Comptroller of Public Accounts;
 4. Correct TWC SA number, and contract number, if applicable;
 5. TWC office name and address, or TWC' delivery address, as applicable, as indicated on the SA;

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6. An itemized description of the goods or services to be provided/performed, in sufficient detail to identify the order or authorization, including the dates of service or period;
7. Quantity, unit cost and total amount being billed, and as documented on the original SA;
8. Other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary; and
9. Any other information required by applicable state and federal laws, rules, and regulations governing provision of services under this contract and policies and standards issued by TWC.

VIII. CONTRACTOR OBLIGATIONS

- A.** Review medical cases for extensive orthotics and prosthetics (OP) needs in order to determine the appropriateness of items and Healthcare Common Procedure Coding (HCPCS).
- B.** Computer typed review with original "inked" signature to be sent to the TWC OPRC contact.
- C.** Invoice TWC based on \$225.00 flat rate per case review.
- D.** Accept TWC Service Authorization Purchase Order for services.
- E.** Provide responses of case reviews within two (2) weeks to the TWC medical services staff.
- F.** Comply with Health Information Portability and Accountability Act (HIPAA) and Personal Identification Information (PII) statutory requirements.
- G.** Contractor shall not pursue a TWC Customer, the Customer's parent or guardian, or any other individual for additional payments without prior written approval from TWC.

IX. TWC OBLIGATIONS

- A.** Provide Customer case information to include:
 1. Customer information including current Customer status on vocational goals.
 2. Customer's relevant medical records; and,
 3. Comparable benefit information, i.e., Medicare and Medicaid.
- B.** Provide TWC point of contact for VR Medical Services.

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- C. Provide instruction for receiving and reviewing transmission by email or fax.
- D. Provide contract information of the associated field office staff person for additional communications between the OP vendor and the medical case review vendor.
- E. TWC will not be liable to the Contractor for any expenses paid or incurred by Contractor except as provided specifically by this Contract and as authorized by a TWC SA.
- F. TWC is not obligated by this Contract to refer any Customers to Contractor. The TWC counselor will make individual Customer referral for specific services.

X. STANDARD TERMS AND CONDITIONS

- A. **Sovereign Immunity.** Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.
- B. **Severability.** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- C. **Survival of Terms.** Termination of the Contract for any reason shall not release the Contractor from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or that by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice, and fees verification.
- D. **Funds Availability.** This Contract is subject to the availability of state and/or federal funds appropriated for the purposes of this Contract. If funds are not appropriated or

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made unavailable or if available funding is reduced, TWC will provide the Contractor with written notice of termination or any necessary payment suspension, or funding reduction. The Contractor will have no right of action against the State of Texas or TWC in the event that TWC is unable to fulfill its obligations under this Contract as a result of a lack of sufficient funding.

E. Amendments.

1. This Contract represents the entire agreement of the parties. Except as otherwise provided in subsection 2 of this paragraph, any changes, deletions, extensions, or amendments to this Contract shall be in writing and signed by both parties.
2. Either party may provide written notice by letter to the other party at the address listed in Section I of the Contract of a change of address of the party or to change the contact name and contact information found in Section I of the Contract.

F. Contractor Notification.

The Contractor will notify TWC:

1. within two (2) business days if at any time the Contractor is not in compliance with the provisions of this Contract. A false statement regarding the Contractor's compliance with the terms of this Contract may be treated as a material breach of this Contract and may be grounds for TWC to terminate the Contract; and
2. at least sixty (60) calendar days before the intended effective date of any change in legal entity status, such as a change in ownership or control, name, legal status with the Texas Secretary of State, or Texas Identification Number issued by the Texas Comptroller of Public Accounts.

G. Participation of Historically Underutilized Businesses (HUBs). The Contractor shall comply with any HUB requirements identified in the solicitation under which the Contractor applied, if applicable.

H. Assignments. The Contractor may not assign a TWC contract in whole or in part, or any right or duty required under the Contract, without first obtaining written approval from TWC. Unless otherwise approved in writing by TWC, assignment will not release the Contractor from its contractual obligations. Contractor must submit a request for assignment a minimum of 60 days' notice prior to the planned assignment.

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- I. Subcontracting.** The Contractor accepts liability and retains responsibility for the performance of subcontractors providing services under the terms of this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract will relieve the Contractor of the responsibility for ensuring that the requested services are provided. The Contractor accepts responsibility for compensating any party with whom the Contractor enters into a subcontract to provide services under the terms of this Contract. If the Contractor uses a subcontractor for any or all of the work required, the following conditions will apply:
1. Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors;
 2. Subcontracting shall be conducted solely at the Contractor's expense;
 3. TWC retains the right to check a subcontractor's background and approve or reject the use of submitted subcontractors;
 4. The Contractor shall be the sole contact for TWC; and
 5. The Contractor shall list a designated point of contact for all TWC inquiries
- J. Independent Contractor.** The Contractor, Contractor's employees, representatives, agents, and any subcontractors shall serve as independent contractors with respect to TWC in providing services under this Contract, and as such the Contractor's employees are not employees of TWC, are not eligible for TWC employee benefits, and shall not represent themselves as TWC employees. Contractor is responsible for providing all legally required unemployment and workers' compensation insurance for the Contractor's employees.
- K. Disclosures under the Act.** The Contractor's records related to this Contract are subject to the requirements of Texas Government Code, [Chapter 552, Public Information \(the Public Information Act\)](#). Pursuant to Texas Government Code, [§ 2252.907](#) the Contractor agrees to make information not otherwise exempted from disclosure under [Chapter 552](#) available in a format specified by TWC and accessible by the public.
- L. HOLD HARMLESS AND INDEMNIFICATION. CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND ITS**

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OFFICERS AND EMPLOYEES FROM ANY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS CONNECTED WITH ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TWC. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS TWC OR THE STATE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TWC OR ITS EMPLOYEES ACTING IN THEIR CAPACITY AS AN EMPLOYEE OF TWC.

IF CONTRACTOR IS A PHYSICIAN OR PSYCHIATRIST, THE STATE OF TEXAS SHALL INDEMNIFY CONTRACTOR IN ACCORDANCE WITH TEX. CIV. PRACT. & REM. CODE, CHAPTER 104; AND CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, ITS EMPLOYEES AND AGENTS, ONLY WHEN ACTUAL DAMAGES, AND/OR COURT COSTS AND ATTORNEYS' FEES ARE ADJUDGED AGAINST TWC DUE TO CONTRACTOR'S WILLFUL OR WRONGFUL ACT OR ACTS OF GROSS NEGLIGENCE OR WHEN THE COURT IN ITS JUDGMENT OR A JURY IN ITS VERDICT FINDS THAT CONTRACTOR ACTED IN BAD FAITH, WITH CONSCIOUS INDIFFERENCE OR RECKLESS DISREGARD.

- M. Conflict of Interest.** The Contractor warrants that it has no interest and will acquire no direct or indirect interest that would conflict in any manner with its performance under this Contract.
- N. Renewal.** If the solicitation leading to this Contract allows non-competitive renewal, such renewal will be based on TWC's determination that the Contractor is in compliance with all terms of the Contract, TWC's continuing need for the services, and available funding.

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O. Privacy, Security, and Breach Notification

1. "TWC Confidential Information" means any communication or record (whether oral, written, electronically stored, or transmitted, or in any other form) provided to or made available to the Contractor electronically or through any other means that consists of or includes any or all of the following:
 - i. Customer Information;
 - ii. Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
 - iii. Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
 - iv. Federal Tax Information;
 - v. Personally, Identifiable Information;
 - vi. Social Security Administration Data, including, without limitation, Medicaid information;
 - vii. The Rehabilitation Act of 1973, 29 U.S.C., Chapter 16, as amended, and implementing regulations, 34 C.F.R., Parts 361 through 396, as applicable;
 - viii. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.
2. Any TWC Confidential Information received by the Contractor under this Contract may be disclosed only in accordance with applicable law. Any electronically transmitted communication or record containing TWC Confidential Information must be sent in an encrypted format. By signing this Contract, the Contractor certifies that the Contractor is, and intends to remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:
 - i. The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;

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- ii. 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164;
- iii. The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
- iv. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
- v. Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
- vi. OMB Memorandum 07-16;
- vii. Texas Business and Commerce Code Chapter 521;
- viii. Texas Health and Safety Code, § 81.046 and Chapters 181 and 611;
- ix. Texas Human Resources Code § 12.003;
- x. Texas Government Code, Chapter 552, as applicable;
- xi. Title 3 of the Texas Occupations Code, as applicable;
- xii. Constitutional and Common Law Privacy;
- xiii. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99); and,
- xiv. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract. The Contractor further certifies that the Contractor will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.
- xv. Contractor will ensure that any subcontractor of Contractor who has access to TWC Confidential Information will sign an agreement with Contractor that includes a requirement that the subcontractor shall comply with the terms of this section to protect TWC Confidential Information, and Contractor will submit a copy of that subcontractor agreement to TWC upon request.
- xvi. Contractor will ensure that no TWC Confidential Information is transmitted to or stored in a server that is located in a foreign country. Contractor is responsible for ensuring that any contract with a data storage provider does not store TWC data on a server located in a foreign country.

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- P. Record Retention.** The Contractor and any of its subcontractors associated with this Contract will retain financial and supporting documents, statistical records, and any other records pertinent to the services provided under this Contract for which a claim or report was submitted to TWC. The records and documents must be kept for seven (7) years after the date of submission of the final invoice or until all billing-related questions are resolved, whichever is later. If Contractor is unable to retain records in accordance with this section, Contractor will notify the assigned TWC Contract Manager to arrange to deliver documents to TWC for proper retention and disposal.
- Q. Authority to Audit.** Acceptance of funds under this Contract acts as acceptance of the authority of TWC, the State Auditor's Office (SAO), federal funding agency or any successor agency, to conduct an audit or investigation of the Contractor or any subcontractors in connection with those funds during the term of the Contract and thereafter, as provided by law. Upon request, the Contractor and any of its subcontractors associated with this Contract will provide TWC, the SAO, the federal funding agency, their successor agencies, or any of their duly authorized representatives with any books, documents, papers and records that are directly pertinent to this Contract for the purpose of conducting audits, examinations, investigations, or matching funds validations, or for the purpose of making excerpts and transcriptions. The Contractor and subcontractors associated with this Contract will cooperate fully with the above parties in the conduct of an audit, examination, investigation, funds validation, or the making of excerpts and transcriptions. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor; the requirement to make books, records, documents, and papers; and the requirement to cooperate is included in any subcontract that the Contractor awards under this Contract.
- R. TWC Monitoring.** The Contractor and any subcontractors associated with this Contract agree to permit on-site monitoring visits and desk reviews, as deemed necessary by TWC to review all financial or other records and management control systems relevant to the provision of goods and services under this Contract. The Contractor will include this requirement in any subcontract associated with this Contract.

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S. Remedies. The Contractor and any of its subcontractors associated with this Contract will remedy in a timely manner, any weaknesses, deficiencies, or program noncompliance found as a result of a review, audit or investigation, and any performance or fiscal exceptions found by TWC, the SAO, the federal funding agency, their successor agencies, or any of their duly authorized representatives. The remedy can include a refund of disallowed costs or invoiced amounts or any other appropriate sanctions or penalties deemed necessary by TWC.

T. Federal and State Requirements. The Contractor will comply with all applicable state and federal laws, rules and regulations governing the provision of services under this Contract and state policies and procedures issued by TWC, including but not limited to requirements specifically stated in this Contract.

1. The Contractor agrees to comply with state and federal antidiscrimination laws, including without limitation:
 - i. [Title VI of the Civil Rights Act of 1964](#) (42 U.S.C. § 2000d et seq.);
 - ii. Sections [504](#) and [508](#) of the Rehabilitation Act of 1973 (29 U.S.C. § 794 and 794D);
 - iii. [Americans with Disabilities Act of 1990](#) (42 U.S.C. § 12101 et seq.);
 - iv. [Age Discrimination Act of 1975](#) (42 U.S.C. §§ 6101-6107);
 - v. [Title IX of the Education Amendments of 1972](#) (20 U.S.C. §§ 1681-1688);
 - vi. [Food and Nutrition Act of 2008](#) (7 U.S.C. § 2011 et seq.); and
 - vii. The [TWC administrative rules, as set forth in the Texas Administrative Code](#), to the extent applicable to this Contract.
2. The Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service, or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.
3. The Contractor agrees to comply with [Title VI of the Civil Rights Act of 1964](#), and its implementing regulations at [45 C.F.R. Part 80](#) or [7 C.F.R. Part 15](#), prohibiting a

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contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. The Contractor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

4. The Contractor agrees to comply with [Executive Order 13279](#), and its implementing regulations at [45 C.F.R. Part 87](#) or [7 C.F.R. Part 16](#). These provide in part that any organization that participates in programs funded by direct financial assistance from the U. S. Department of Agriculture or the U. S. Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
5. Upon request, the Contractor will provide the TWC Civil Rights Division with copies of all of the Contractor's civil rights policies and procedures.
6. The Contractor must notify TWC Civil Rights Division about any civil rights complaints received relating to its performance under this Contract. The notice must be delivered no more than ten (10) calendar days after the Contractor receives the complaint. Notice provided pursuant to this section must be directed to:

Texas Workforce Commission Civil Rights Division

101 East 15th Street, Guadalupe/CRD

Austin, Texas 78778-0001

Phone Toll Free: (888) 452-4778

Phone: (512) 463-2642

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TTY Toll Free: (800) 735-2989**Fax: (512) 463-2643**

7. **Federal Grant Requirements.** If applicable, the Contractor will comply with:
- i. If applicable, the Contractor will comply with: Title 34 C.F.R. Part 74, Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;
 - ii. The Office of Management and Budget's (OMB) circulars and/or [2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#);
 - iii. The Uniform Grant Management Standards (UGMS) issued by the State of Texas; and
 - iv. Contract Cost Principles and Procedures [48 C.F.R. Part 31](#).
8. **Reporting of Abuse, Neglect, or Exploitation.** The Contractor will comply with [Chapter 48, Human Resources Code](#), regarding reporting of abuse, exploitation, or neglect of persons with disabilities or persons who are age 65 or older.
9. **E-Verify.** To the extent required by law, the Contractor certifies and ensures that the Contractor utilizes and will continue to utilize, for the term of this Contract including any subsequent extensions, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
- i. All persons employed to perform duties in Texas, during the term of the Contract; and
 - ii. All persons (including subcontractors) assigned by the respondent to perform work pursuant to the Contract, within the United States.

The Contractor shall provide, upon the request of TWC, an electronic or hardcopy screenshot of either the confirmation screen or the 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

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Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the 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.

10. If applicable, the Contractor will comply with:

- i. [Health and Safety Code § 85.113](#) (workplace and confidentiality guidelines regarding AIDS and HIV);
- ii. The requirements of the [Immigration Reform and Control Act of 1986](#) (8 U.S.C. §1324a, *et seq.*) and any subsequent immigration laws related to verification of employment and the retention of verification forms for any individuals hired after November 6, 1986, who will perform any labor or services under this Contract, including the [Immigration Act of 1990](#) and [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 \(IIRIRA\)](#);
- iii. All state and federal licensing and certification requirements and regulations prescribed by the U.S. Department of Health and Human Services, and TWC;
- iv. The [Clean Air Act](#) (42 U.S.C. §7401 *et seq.*) and the [Federal Water Pollution Control Act](#) (33 U.S.C. §1251 *et seq.*);
- v. All of the mandatory standards and policies relating to energy efficiency contained in the state's energy conservation plan, [Executive Order RP-49](#), and are related to the [Energy Policy and Conservation Act](#) (Pub.L.94-163);
- vi. The [Fair Labor Standards Act \(FLSA\)](#) (29 U.S.C. §201 *et seq.*) regarding minimum wages, overtime pay, recordkeeping, and child labor;
- vii. 42 [U.S.C. §675\(4\)](#), which requires that Foster care maintenance payments must be expended for items that are provided by foster parents and facilities; and
- viii. Referral of Debt to IRS for [Tax Refund Offset 45 C.F.R. Part 31](#).

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11. **Block Terrorism:** The parties must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.
12. **Drug-Free Workplace:** Contractor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §81).
13. **Trafficking in Persons.** Contractor acknowledges the requirements of 2 C.F.R. Part 175, including the U.S. Department of Education's modifications to these requirements, and agrees to comply with the requirements regarding trafficking in persons.
14. **Specific Conditions for Disclosing Federal Funding in Public Announcements.** Contractor agrees that that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money from the U.S. Department of Education, shall clearly state:
1. the percentage of the total costs of the program or project which will be financed with Federal money;
 2. the dollar amount of Federal funds for the project or program; and,
 3. the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
- Recipients must comply with these conditions under Division H, Title V, Section 505 of Public Law 115-141, Consolidated Appropriations Act, 2018.
15. **Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business.** Contractor and its employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official

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contract business, or from using government supplied electronic equipment to text message or email when driving. Contractor must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

U. Anti-Trust. In accepting the Contract, the Contractor certifies and agrees as follows:

1. Neither the Contractor, nor the person represented by the Contractor, nor any person acting for the represented person has:
 - i. Violated the antitrust laws codified by [Chapter 15, Business and Commerce Code](#), or the federal antitrust laws; or
 - ii. Directly or indirectly communicated any bid or offer associated with this Contract to a competitor or other person engaged in the same line of business.
2. The Contractor hereby assigns to TWC any and all claims for overcharges associated with this Contract arising from the Contractor's violation of the anti-trust laws of the United States, [15 U.S.C.A. Section 1, et seq. \(1973\), as amended](#), and the anti-trust laws of the State of Texas, [Texas Business and Commerce Code, Section 15.01](#), et seq. (1967) as amended.

V. Debts or Delinquencies to State. If the Contractor is indebted to or owes delinquent taxes to the state, pursuant to [Texas Government Code § 403.0551](#), any payments owed to the Contractor under this Contract will be applied toward elimination of the Contractor's indebtedness to the state, delinquency in payment of taxes to the state, or delinquency in payment of taxes that the Texas Comptroller of Public Accounts administers or collects until the indebtedness or delinquency is paid in full.

W. Withholding/Recoupment of Payments. TWC may withhold or recoup payments due or paid under this Contract, in whole or in part, in the event of the Contractor's noncompliance with any term or provision of this Contract, any federal or state law or regulation, or any TWC rules or standards, including but not limited to the requirements specifically stated in this Contract, relating to the Contractor's performance under this Contract, as pursuant to Title 40 Texas Administrative Code, § 858.9.

X. Certifications. The certifications below represent material facts upon which TWC relies when contracting for services. If TWC determines that the Contractor knowingly

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made erroneous certifications, TWC may pursue all available remedies in accordance with Texas and federal law.

1. If this is a contract for goods or services that equals or exceeds \$25,000 or a grant or a sub-grant in any amount, then the Contractor/grantee agrees as follows:

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts

- i. Neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or by the State of Texas.
- ii. The Contractor will include this certification statement (provided in item i, directly above), without modification, in all covered subcontracts and solicitations for all covered subcontracts.
- iii. The Contractor will not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by TWC or other federal department or agency, as applicable.
- iv. A Contractor may rely upon a certification of a potential subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the Contractor knows that the certification is erroneous. A contractor must, at a minimum, obtain certifications from its covered subcontractors upon each subcontract's initiation and upon each renewal.
- v. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this contract certification document. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.
- vi. Except for contracts authorized under this paragraph X (1) iii of these terms, if a Contractor in a covered contract knowingly enters into a covered

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subcontract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, TWC may pursue available remedies, including suspension and/or debarment.

- vii. The Contractor will provide immediate written notice to TWC if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - viii. Where the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Contract.
2. If this Contract (including all sub-grants or subcontracts) equals or exceeds \$100,000 the Contractor/grantee agrees as follows:
- Certification Regarding Lobbying (Certification for Contracts, Grants, Loans, and Cooperative Agreements)
- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), Disclosure Form to Report Lobbying, in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including

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subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

- iv. This certification of the statements in paragraph X (2) is a material representation of fact upon which reliance was placed by TWC when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by [Section 1352, Title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. **State of Israel:** In contracts worth \$100,000 or more in value, if Contractor is a Company as defined by Texas Government Code § 808.001 with 10 or more full-time employees, and Contractor is not a sole proprietorship, Contractor represents and warrants that, pursuant to Texas Government Code § 2270.002, Contractor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.

Y. In accepting the Contract, the Contractor certifies and agrees as follows:

1. **Franchise Tax:** Contractor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
2. **Child Support:** Neither Contractor nor its principals is not ineligible to receive the specified grant, loan, or payment under § 231.006 of the Texas Family Code (relating to child support) and acknowledges that the Contract may be terminated, and payment may be withheld if certification is inaccurate.
3. **Certain Bids and Contracts Prohibited:** Under Texas Government Code § 2155.004 and 2155.006, the business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and/or payment withheld if this certification is inaccurate.
4. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to provide services under this contract have not been convicted of a felony criminal offense, or that, if

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such a conviction has occurred, Contractor has fully advised TWC as to the facts and circumstances surrounding the conviction.

5. **Executive:** Contractor is in compliance with Texas Government Code § 669.003, relating to contracting with the executive head of a State agency or former executive head of a state agency.
 6. **Prohibited Responses and Contracts.** Under Government Code, section [2261.053](#), Contractor certifies that the individual or business named in this Contract is eligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- Z. Intellectual Property.** TWC and any federal funding agency reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal or State of Texas government purposes: 1. the copyright in any work developed under this Contract, and 2. any rights of copyright to which the contractor purchases ownership with contract support.
- AA. Buy Texas.** In accordance with [Texas Government Code §2155.4441](#), the State of Texas requires that during the performance of a contract for services, the contractor will purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of the state.
- BB. Force Majeure.** TWC may grant relief from performance of the Contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain relief from performance of the Contract based on force majeure, the Contractor shall file a written request with TWC. The Contractor must provide TWC with proof of force majeure in writing within five (5) business days of the Contractor's failure to perform in accordance with the Contract on the basis of force majeure or otherwise waive this right as a defense.
- CC. Dispute Resolution.** Disputes and claims for breach of contract against TWC or the State of Texas under this Contract will be resolved under the laws of the State of

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Texas, the [Texas Government Code Chapter 2260](#) and TWC rules, policies, and procedures.

DD. Failure to Perform. If the Contractor fails to perform in accordance with the provisions of this Contract, TWC may upon written notice to the Contractor, take adverse action against the Contractor, up to and including terminating the Contract in whole or in part. If notice of termination is given, all work by the Contractor shall cease on the effective date of the termination, and TWC will not pay for work performed on or after the effective date of termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided by law or under this Contract. Adverse action, including termination, may result from, but is not limited to:

- i. Violation of the terms of this Contract;
- ii. Any evidence of abuse, neglect, or exploitation of TWC Vocational Rehabilitation (TWC VR) customers receiving services from the Contractor as substantiated by an investigation conducted by the Contractor, an external regulatory agency, or TWC;
- iii. Any information giving TWC reason to believe that the health or safety of TWC VR customers is compromised;
- iv. Any change in ownership or change in control that TWC believes would adversely affect the delivery of services;
- v. Any real or apparent conflict of interest giving TWC reason to believe that continuation of the Contract is not in the best interest of TWC, the state, or TWC VR customers; or
- vi. Any violation of state or federal law.

EE. Contract Termination. This Contract may be terminated by mutual consent or by either party with 30 calendar day's written notice. TWC "Notice of Termination" will be delivered to the Contractor, specifying the extent to which performance of work under the Contract is terminated and the date upon which the termination becomes effective. TWC shall not be liable to the Contractor for any work done or materials purchased after termination or for lost profits or other damages. The right to terminate is in addition to and not in lieu of the rights provided to TWC by this Contract.

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FF. Signatures: The parties agree that signatures on this Contract are valid if signed by an individual authorized to obligate that party, whether that individual's signature is hand-made or represented electronically or digitally as those terms are defined by 34 Texas Administrative Code § 20.3.

GG. Contract Terms. The terms of this Contract are accepted by the parties of the Contract. By signing this Contract, the persons signing the Contract are certifying that they are authorized to obligate the party for whom they are signing to the terms of the Contract. For the convenience of the parties, the signatures of authorized representatives for each party may appear on separate pages.

SIGNATURES:

TWC REPRESENTATIVE:

CONTRACTOR REPRESENTATIVE:

Cheryl Fuller
Signature

Michael Allen
Signature

Cheryl Fuller
Print Name:

Michael Allen
Print Name:

Director, Vocational Rehabilitation Services
Title:

CPO
Title:

10/25/2019
Date:

10/25/2019
Date: