

COMMISSIONERS COURT AGENDA REQUEST

The Commissioners Court convenes in regular session at **2:00 p.m. every other Tuesday** (for full list of dates, please visit <http://co.ellis.tx.us/DocumentCenter/View/7543/FY-2018-2019-Amended-Commissioners-Court-Schedule>). The Commissioners Court is located at 101 West Main St., Waxahachie, Texas, on the 2nd floor of the Historic Courthouse. Special sessions may convene as deemed necessary to conduct the business of the County.

PLEASE INCLUDE AN EXTRA ORIGINAL FOR CONTRACTS AND AGREEMENTS IF YOU REQUIRE AN ORIGINAL COPY RETURNED FOR YOUR FILES.

The **deadline** for submitting an agenda request with the supporting information is **12:00 noon on the Wednesday immediately preceding Commissioners Court.** This will give ample time for preparation of the agenda.

If you are not representing an organization, board, elected or appointed official, your agenda request must be filed through your respective Commissioner.

***All agreements, contracts and instruments, that otherwise bind the County, must first be approved in form and content by the County Attorney before submitting to the County Judge for the Commissioners Court Agenda.**

Please fill out this form completely:

DATE: _____ January 13, 2021 _____

SUPPORTING DOCUMENT(S) ATTACHED? (Y / N)

NAME: _____ E.J. Harbin _____

PHONE: _____ 972-825-5117 _____ FAX: _____ 972-825-5119 _____

DEPARTMENT OR ASSOCIATION: Consent Agenda _____

ADDRESS: _____ 101 W. Main St., Suite 102, Waxahachie, TX 75165 _____

PREFERRED DATE TO BE PLACED ON AGENDA: January 26, 2021 _____

DESCRIPTION OF AGENDA REQUEST (please use exact desired wording for agenda):

Discussion, consideration and approval for an extension with Avenue Fuel effective January 10, 2021 to February 26, 2021, using Bid No. 2017-001 Wholesale Gas and Diesel.

*

County Attorney Approval



Bid No. 2017-001

Wholesale Gas & Diesel

Will be expiring on January 9, 2021

Extension Effective Dates

January 10, 2021 through February 26, 2021

This bid contained an option for renewal. If you agree to this renewal option, please sign this form and email back to purchasing@co.ellis.tx.us or fax to 972-825-5119.

If you have any questions, please feel free to contact Purchasing Agent at 972-825-5118.

Avenue Fuel



Authorized Representative

Date 1-17-21

Date _____

Todd Little, County Judge

Date _____

County Clerk, Attest

MEMORANDUM OF UNDERSTANDING

TEXAS DEPARTMENT OF STATE HEALTH SERVICES CONTRACT NO. <ENTER CONTRACT NO.>

The **DEPARTMENT OF STATE HEALTH SERVICES** (“**DSHS**” or “**SYSTEM AGENCY**”), an administrative agency within the executive branch of the state of Texas, and **ELLIS COUNTY DEPARTMENT OF DEVELOPMENT** (“**RECEIVING ENTITY**”), having its principal office at 200 E. Franklin, Waxahachie, Tx 75165 (each a “**Party**” and collectively the “**Parties**”), enter into the following Memorandum of Understanding (“**MOU**”) for the exchange of confidential ImmTrac2 system data.

- I. PURPOSE OF THE MOU.** DSHS will provide to Receiving Entity certain available confidential data identified in **ATTACHMENT B, IMMTRAC2 COVID-19 DATA FIELDS** (“**Confidential Data**”), which Confidential Data consists of immunization records extracted from the ImmTrac2 Texas Immunization Registry (“**ImmTrac2**”) system maintained by DSHS. The Parties agree to the intended utilization of the Confidential Data as identified in **ATTACHMENT B**. No Confidential Data may be shared or otherwise released by Receiving Entity without specific statutory authority.
- II. TERM OF THE MOU.** This MOU is effective on the signature date of the latter of the Parties to sign this MOU and terminates on either **December 31, 2025** or the expiration or termination of all federal and state COVID-19 disaster declarations, whichever occurs first. Confidential Data will not be shared among the Parties beyond the effective period of this MOU.
- III. AUTHORITY.** The Parties enter into this MOU under the authority of *Texas Health and Safety Code* Title 12, Section 1001.089 and *Texas Government Code* Chapter 791, Interlocal Cooperation Act.
- IV. STATEMENT OF WORK**
 - A. Receiving Entity will complete the selection criteria fields in **ATTACHMENT B**, which will identify the Confidential Data (to which the Receiving Entity requires access) specific to Covid-19 vaccine administration to the residents of the Receiving Entity’s jurisdiction.
 - B. Receiving Entity will enter information into the ImmTrac2 system, via secure GlobalScape enterprise portal, pertaining to Covid-19 vaccine administration to the residents of the Receiving Entity’s jurisdiction.
 - C. Receiving Entity will have access to available Confidential Data (contained in the ImmTrac2 system) via secure GlobalScape enterprise portal, according to the criteria identified in **ATTACHMENT B**. The method of delivery of Confidential Data will be through the use of a secure file transfer protocol site or other method of data transfer with at least that same level of security and/or encryption whose internet address, log-in, and password identification will be sent by DSHS personnel to Receiving Entity’s Representative (as noted in **Section V**).
 - D. The Confidential Data will be provided to Receiving Entity to support its response to the COVID-19 pandemic. Confidential Data shall not be used for any other purposes unless specifically approved in writing by DSHS and in compliance with Receiving Entity’s appropriate review and statutory authority.
- V. Authorized Representatives.** The following will act as the Representative authorized to administer activities under this MOU on behalf of their respective Party.

<>

HHS Contract No.

DSHS (Contract Management Section)	DSHS (Immunizations)	Receiving Entity
Holly Zoerner, Contract Manager 1100 W 49 th Street, MC 1990 Austin, Texas 78756 Telephone: (512) 776-3742 Email: holly.zoerner@dshs.texas.gov	Andrea Costley 1100 W 49 th Street Austin, Texas 78756 Telephone: (512) 776-2946 Email: andrea.costley@dshs.texas.gov	Judy Armstrong 200 E. Franklin Waxahachie, Tx 75165 Phone: 972-825-5200 Email: alberto.mares@co.ellis.tx.us

VI. LEGAL NOTICES

Legal Notices under this MOU shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

DSHS

Department of State Health Services
Attn: General Counsel
100 W. 49th Street, MC1911
Austin, Texas 78756

Receiving Entity

Ellis County Judge's Office
Attn: Judge Todd Little
101 W. Main Street
Waxahachie, Tx 75165

With copy to

Health and Human Services
Commission
Attn: Office of Chief Counsel
4900 N. Lamar Blvd.
Austin, Texas 78751

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 receiving legal notice by notifying the other Party in writing.

VII. CERTIFICATIONS

The undersigned contracting Parties certify that:

- (1) The services specified herein are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state and local government;
- (2) Each Party executing this MOU on its behalf has full power and authority to enter into this MOU;
- (3) The proposed arrangements serve the interest of efficient and economical administration of state government; and
- (4) The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

DSHS further certifies that it has statutory authority to contract for the services described in this MOU under *Texas Health and Safety Code* Title 2.

Receiving Entity further certifies that it has statutory authority to contract for the services described in this MOU under the authority outlined in **SECTION III**.

VIII. GENERAL TERMS AND CONDITIONS

A. **AMENDMENT.** This MOU may only be amended by an Amendment executed by both Parties.

B. CONFIDENTIALITY

1. The Parties are required to comply with all applicable state and federal laws relating to the privacy and confidentiality of Confidential Data and records.
2. Receiving Entity will comply with the **DATA USE AGREEMENT** incorporated into this MOU as **ATTACHMENT A**.
3. Receiving Entity will maintain sufficient safeguards to prevent release or disclosure of any such confidential records or information obtained under this MOU to anyone other than individuals who are authorized by law to receive such records or information and who will protect the records or information from re-disclosure as required by law. Data will be housed in a secure location. The foregoing shall not apply to information that:
 - (i) is not disclosed in writing by DSHS or reduced to writing and marked confidential within thirty (30) days after disclosure; or
 - (ii) is already in Receiving Entity's possession at the time of disclosure as evidenced by written records in the possession of Receiving Entity prior to such time; or
 - (iii) is or later becomes part of the public domain through no fault of Receiving Entity; or
 - (iv) is received from a third party having no obligations of confidentiality to DSHS; or
 - (v) is independently developed by Receiving Entity or by its personnel having no access to the Confidential Data.
4. Receiving Entity will use Confidential Data obtained under this MOU only for purposes as described in this MOU and as otherwise allowed by law.
5. Notwithstanding any provision relating to confidentiality, the Confidential Data held by DSHS may be disclosed to a third party pursuant to the Texas Public Information Act (*Texas Government Code* Chapter 552), any open records decision or ruling by the Attorney General that such information constitutes public information, or as otherwise provided by law.
6. Any remaining Confidential Data provided as part of this MOU will be destroyed within 60-days of the termination of the MOU.
7. Data no longer in use will be destroyed using software that renders these data unrecoverable.

C. **TERMINATION.** Either Party may terminate this MOU with or without cause by giving thirty (30) days advance written notice of its intent to terminate to the non-terminating Party.

D. **NO COST.** There is no funding associated with this MOU. The total amount of this MOU is \$0.00. No funds will be exchanged between the Parties under this MOU for any purpose.

E. **TEXAS PUBLIC INFORMATION ACT.** Each Party is responsible for complying with the provisions of *Texas Government Code* Chapter 552 ("Texas Public Information Act") and the Attorney General Opinions issued under that statute. Responses to requests for information shall be handled in accordance with the provisions of the Texas Public Information Act.

F. **RIGHT TO AUDIT.** The Parties acknowledge the State Auditor's authority to conduct audits of state agencies under *Texas Government Code* Chapter 321.

G. **ASSIGNMENT.** No assignment of this MOU or of any right accruing hereunder shall be made, in whole or part, by either Party without the prior written consent of the other, unless authorized by law.

- H. **DISPUTE RESOLUTION.** The Parties agree to use good faith efforts to resolve all questions, difficulties, or disputes of any nature that may arise under or by this MOU; provided however, nothing in this paragraph shall preclude either Party from pursuing any remedies available under Texas law.
- I. **FORCE MAJEURE.** Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the MOU caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.
- J. **NO WAIVER.** The failure of either Party to object to or to take affirmative action with respect to any conduct of the other Party which is in violation or breach of the terms of the MOU shall not be construed as a waiver of the violation or breach, or of any future violation or breach.
- K. **GOVERNING LAW AND VENUE.** This MOU shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the MOU is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to DSHS.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE
CONTRACT NO. <ENTER CONTRACT NO.>

By signing below, the Parties agree that this MOU constitutes the entire legal and binding agreement between them. The Parties acknowledge that they have read the MOU and agree to its terms, and that the persons whose signatures appear below have the authority to execute this MOU on behalf of their respective Party.

DEPARTMENT OF STATE HEALTH SERVICES

RECEIVING ENTITY

Associate Commissioner

Date of Execution: _____

Date of Execution: _____

THE FOLLOWING ATTACHMENTS ARE HEREBY ATTACHED TO AND INCORPORATED INTO THE MOU BY REFERENCE:

ATTACHMENT A: DATA USE AGREEMENT

ATTACHMENT B: IMMTRAC2 COVID-19 DATA FIELDS

Attachment B

ImmTrac2 COVID-19 Data Fields

Instructions:

1. Since client data is confidential, all requested ImmTrac2 data items need to have brief justifications according to your project aims.
2. If a data item is used for linkage, then state how and whether it will be removed from the resulting linked analysis file. If the data item will be retained in the linked analysis file, please also provide a brief justification according to your project aims.
3. For certain sensitive data elements, such as client data, consider alternative means of accomplishing your project aims while using less sensitive data. Examples include creating your own unique identifier instead of requesting the client data and requesting geocoded census tracts instead of client address.

I. ImmTrac2 Data Items

Item Category		Item Descriptor	Justification
Recipient ID	☐	Client ID	
Recipient Name	☐ ☐ ☐	First Middle Last	
Recipient Date of Birth	☐	Date of Birth	
Client Demographics	☐ ☐ ☐ ☐ ☐ ☐	Gender Race Ethnicity Client Type Disaster Consent Attribute First Responder Attribute	
Client Residence	☐ ☐ ☐ ☐ ☐ ☐	Street Address Street Address 2 City Name State Zip Code (5 digit) County Name	
Client Vaccination Status	☐ ☐ ☐ ☐	Overdue (Y/N) Overdue Date Due/Recommended (Y/N) Recommended Date	
Vaccination Event Information	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐	Immunization ID Date of Vaccination CVX NDC Number MVX Manufacturer Name Trade Name Vaccine Group Name Lot Number Expiration Date Route of Administration (e.g. Intradermal) Administration Site (e.g. LD (left deltoid)) Validity Ordinal position (dose number)	

1.2

ATTACHMENT A

HHS DATA USE AGREEMENT

This Data Use Agreement (“DUA”), effective as of the date the Base Contract into which it is incorporated is signed (“Effective Date”), is entered into by and between a Texas Health and Human Services Enterprise agency (“HHS”), and the Contractor identified in the Base Contract, a political subdivision of the State of Texas (“CONTRACTOR”).

ARTICLE 1.

PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

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

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

ARTICLE 2.

DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

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

“**Authorized User**” means a Person:

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

(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

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

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

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (herein “PHI”);
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

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

ARTICLE 3.

CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

- (A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in

a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in **45 C.F.R. 160.103**) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. **45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101**

All of CONTRACTOR's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources or offered under Texas Government Code Sec. 2054.519(f).

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

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

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. **45 CFR 164.502(d)(2)(i) and (ii)** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply

with all applicable laws, rules and regulations. *45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).*

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. *45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.*

(H) If CONTRACTOR maintains PHI in a Designated Record Set which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524 and 164.504(e)(2)(ii)(E).*

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. *45 CFR 164.504(e)(2)(ii)(E) and (F).*

(J) If PHI is subject to this Agreement, CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. *45 CFR 164.504(e)(2)(ii)(G) and 164.528.*

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2).*

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. *45 CFR 164.308; 164.530(c); 1 TAC 202.*

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's

legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: **45 CFR 164.504(e)(4)(A)**.

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

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

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

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

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**.

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

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

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

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306.**

(R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).**

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. **45 CFR 164.308(a)(2).**

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

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

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. *45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).*

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

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

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. *45 CFR 164.312; 164.530(d).*

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;

- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).

ARTICLE 4.

BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

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

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

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

(C) Breach Notice:

(1) Initial Notice.

(a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.

(b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410.**

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

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: ***For (a) - (m) below: 45 CFR 164.400-414.***

(a) The date the Event or Breach occurred;

(b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

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

(d) A brief description of CONTRACTOR's investigation and the status of the investigation;

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

(f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the Individual and if applicable the, Legally Authorized Representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

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

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

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

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

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

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

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

4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530

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

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

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

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

4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

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

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

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

ARTICLE 5. STATEMENT OF WORK

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

ARTICLE 6. GENERAL PROVISIONS

6.01 Oversight of Confidential Information

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

6.02 HHS Commitment and Obligations

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

6.03 HHS Right to Inspection

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

6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA shall be extended or amended concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

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

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

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

(2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or

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

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

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violation is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

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

6.05 Governing Law, Venue and Litigation

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

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

6.06 Injunctive Relief

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

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

6.07 Responsibility.

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

6.08 Insurance

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

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

6.08 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

6.09 Entirety of the Contract

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

enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

6.10 Automatic Amendment and Interpretation

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

STATE OF TEXAS

ELLIS COUNTY, TEXAS



Mutual Aid Agreement

WHEREAS, Chapter 791 of the Texas Government Code Authorizes agreements between political subdivisions of the state in order to more efficiently provide services to the citizens of the State of Texas, and;

WHEREAS, local government authorities have a responsibility to act in time of emergency as provided by Chapter 418 of the Government Code, also known as the Texas Disaster Act of 1975, for the purposes expressed in Sec. 418.002 of the act, and;

WHEREAS, the County of Ellis, Texas and the City of _____, political subdivisions of the State of Texas, desire to mutually cooperate to aid one another in time of emergency, the party providing aid, hereinafter referred to as the "providing jurisdiction" and the party receiving aid, hereinafter referred as the "receiving jurisdiction."

NOW, THEREFORE, in the consideration of the above recitals and covenants contained herein, the parties hereto agree as follows:

1. The providing jurisdiction hereby agrees to provide, through its Emergency Management Department or equivalent, in consultation with its elected officials or designees and pursuant to its emergency management plan, such mutual aid as may be requested by the requesting jurisdiction for emergency conditions as defined by the Texas Disaster Act of 1975. The aid rendered shall be to the extent of available personnel and equipment not required for the minimum needs of the providing jurisdiction. The judgment of the providing jurisdiction shall be final decision as to the personnel and equipment so available. Any requests for aid must be verified, in written form to the governing body of the providing jurisdiction or its designees.
2. Personnel dispatched to the aid of another jurisdiction shall remain the employees of the providing jurisdiction, but shall work under the supervision of the requesting jurisdiction. The providing jurisdiction retains the right to withdraw any and all aid rendered, at any time, when in the sole judgment of the providing jurisdiction, such action is necessary or advisable.
3. The providing jurisdiction will render such aid to the requesting jurisdiction, and the requesting jurisdiction agrees to compensate the providing jurisdiction for costs incurred as expeditiously as possible. It is specifically understood and agreed between the parties that the providing jurisdiction will seek, if available, reimbursement from other potential sources for the services provided to the requesting jurisdiction. It is further understood and agreed that the requesting jurisdiction will reimburse the providing jurisdiction, in full, for those expenses that relate directly to the services the providing jurisdiction rendered for the requesting jurisdiction. In this regard it is understood that the receiving jurisdiction will reimburse the providing jurisdiction for straight time, overtime, or emergency time rates the providing jurisdiction is required to pay at the time as well as or reasonable charges for equipment used.

4. The providing jurisdictions will maintain workers compensation coverage for its employees and at its sole option may provide liability insurance coverage for its vehicles and equipment. Any uninsured or extraordinary expenses may be a part of claimed costs for reimbursement.

5. It is understood that, in order for any providing jurisdiction to receive payment for aid provided, they must comply with procedures for submitting documentation that clearly itemizes and supports their claim and that if adequate documentation supporting the claim is not timely submitted, payment for the services/aid rendered will be denied until such deficiencies are corrected. It is further agreed that the requesting jurisdiction will maintain copies of all documentation submitted in support of their claim until released by the City of _____. The parties hereby acknowledge that they have received adequate information to enable them to properly prepare and submit their claims for payment.

6. Neither party to this agreement shall be liable for its failure or refusal to render aid pursuant to this agreement and no third person is entitled to rely on this agreement as the basis for any claim against any party hereto.

7. This agreement shall be effective on the last date executed by any party hereto and shall remain in full force and effect unless and until terminated by a party by giving written notice of such termination to the governing body of the other party.

8. Requests for aid should and notices shall be made to:

Ellis County, Texas
Todd Little, Ellis County Judge/
Emergency Management Director
Office of Ellis County Judge
101 West Main Street,
Waxahachie, TX 75165
972-825-5011

City of _____, Texas
Mayor/ Emergency Management Director
Attn: Office of the Mayor

IN WITNESS WHEREOF, this Agreement has been duly executed by the signatures hereto being duly authorized by the appropriate action of their respective governing bodies as required by law.

ELLIS COUNTY, TEXAS

CITY OF _____, TEXAS

Date: _____

Date: _____

By: _____

Ellis County Judge, Todd Little

By: _____

Elected Official Name, Title

Attest: _____

Attest: _____

By: _____

By: _____

City of _____, Texas
Mayor/ Emergency Management Director
Attn: Office of the Mayor

REQUEST FOR MUTUAL ASSISTANCE

In accordance with the Mutual Aid Agreement between the City of _____, Texas and Ellis County, Texas, the County requests mutual aid for operation of a COVID-19 vaccination hub related to the COVID-19 pandemic emergency response. Ellis County understands in accordance with paragraph three of the Mutual Aid agreement, that all costs associated with this request be paid as expeditiously as possible.

Signed,

Date:

Ellis County Judge, Todd Little
Ellis County, Texas

Attest: _____

By: _____

1.6

STATE OF TEXAS

ELLIS COUNTY, TEXAS



Mutual Aid Agreement

WHEREAS, Chapter 791 of the Texas Government Code Authorizes agreements between political subdivisions of the state in order to more efficiently provide services to the citizens of the State of Texas, and;

WHEREAS, local government authorities have a responsibility to act in time of emergency as provided by Chapter 418 of the Government Code, also known as the Texas Disaster Act of 1975, for the purposes expressed in Sec. 418.002 of the act, and;

WHEREAS, the County of Ellis, Texas and the City of _____, political subdivisions of the State of Texas, desire to mutually cooperate to aid one another in time of emergency, the party providing aid, hereinafter referred to as the "providing jurisdiction" and the party receiving aid, hereinafter referred to as the "receiving jurisdiction."

NOW, THEREFORE, in the consideration of the above recitals and covenants contained herein, the parties hereto agree as follows:

1. The providing jurisdiction hereby agrees to provide, through its Emergency Management Department or equivalent, in consultation with its elected officials or designees and pursuant to its emergency management plan, such mutual aid as may be requested by the requesting jurisdiction for emergency conditions as defined by the Texas Disaster Act of 1975. The aid rendered shall be to the extent of available personnel and equipment not required for the minimum needs of the providing jurisdiction. The judgment of the providing jurisdiction shall be final decision as to the personnel and equipment so available. Any requests for aid must be verified, in written form to the governing body of the providing jurisdiction or its designees.
2. Personnel dispatched to the aid of another jurisdiction shall remain the employees of the providing jurisdiction, but shall work under the supervision of the requesting jurisdiction. The providing jurisdiction retains the right to withdraw any and all aid rendered, at any time, when in the sole judgment of the providing jurisdiction, such action is necessary or advisable.
3. The providing jurisdiction will render such aid to the requesting jurisdiction, and the requesting jurisdiction agrees to compensate the providing jurisdiction for costs incurred as expeditiously as possible. It is specifically understood and agreed between the parties that the providing jurisdiction will seek, if available, reimbursement from other potential sources for the services provided to the requesting jurisdiction. It is further understood and agreed that the requesting jurisdiction will reimburse the providing jurisdiction, in full, for those expenses that relate directly to the services the providing jurisdiction rendered for the requesting jurisdiction. In this regard it is understood that the receiving jurisdiction will reimburse the providing jurisdiction for straight time, overtime, or emergency time rates the providing jurisdiction is required to pay at the time as well as or reasonable charges for equipment used.

4. The providing jurisdictions will maintain workers compensation coverage for its employees and at its sole option may provide liability insurance coverage for its vehicles and equipment. Any uninsured or extraordinary expenses may be a part of claimed costs for reimbursement.

5. It is understood that, in order for any providing jurisdiction to receive payment for aid provided, they must comply with procedures for submitting documentation that clearly itemizes and supports their claim and that if adequate documentation supporting the claim is not timely submitted, payment for the services/aid rendered will be denied until such deficiencies are corrected. It is further agreed that the requesting jurisdiction will maintain copies of all documentation submitted in support of their claim until released by the City of _____. The parties hereby acknowledge that they have received adequate information to enable them to properly prepare and submit their claims for payment.

6. Neither party to this agreement shall be liable for its failure or refusal to render aid pursuant to this agreement and no third person is entitled to rely on this agreement as the basis for any claim against any party hereto.

7. This agreement shall be effective on the last date executed by any party hereto and shall remain in full force and effect unless and until terminated by a party by giving written notice of such termination to the governing body of the other party.

8. Requests for aid should and notices shall be made to:

Ellis County, Texas
Todd Little, Ellis County Judge/
Emergency Management Director
Office of Ellis County Judge
101 West Main Street,
Waxahachie, TX 75165
972-825-5011

City of _____, Texas
Mayor/ Emergency Management Director
Attn: Office of the Mayor

IN WITNESS WHEREOF, this Agreement has been duly executed by the signatures hereto being duly authorized by the appropriate action of their respective governing bodies as required by law.

ELLIS COUNTY, TEXAS

CITY OF _____, TEXAS

Date: _____

Date: _____

By: _____

By: _____

Ellis County Judge, Todd Little

Elected Official Name, Title

Attest: _____

Attest: _____

By: _____

By: _____

City of _____, Texas
Mayor/ Emergency Management Director
Attn: Office of the Mayor

REQUEST FOR MUTUAL ASSISTANCE

In accordance with the Mutual Aid Agreement between the City of _____, Texas and Ellis County, Texas, the County requests mutual aid for operation of a COVID-19 vaccination hub related to the COVID-19 pandemic emergency response. Ellis County understands in accordance with paragraph three of the Mutual Aid agreement, that all costs associated with this request be paid as expeditiously as possible.

Signed,

Date:

Ellis County Judge, Todd Little

Ellis County, Texas

Attest: _____

By: _____

1.7 ExA
SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is entered as of **Insert Effective Date**, ("Effective Date") by and between Access2Care, LLC ("LICENSOR"), and **Insert CUSTOMER Legal Name** ("CUSTOMER"). LICENSOR is a subsidiary of Global Medical Response, Inc. and American Medical Response, Inc.

Insert Department
Insert Street Address
Insert City, State, Zip
Insert Customer Contact
Insert Customer Email
Insert Customer Telephone

1. **Term and Termination.** This Agreement shall be for a term of one (1) year from the Effective Date and shall automatically renew for subsequent one (1) year periods. Either party terminate this Agreement without cause with thirty (30) days written notice to the other party.

If to LICENSOR:

Law Department
Global Medical Response, Inc.
6363 S. Fiddler's Green Circle, Suite 1500
Greenwood Village, Colorado 80111

2. **Grant License.** Subject to all of the terms and conditions of this Agreement, LICENSOR grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the web-based SafeRestart software ("Software"), but only in accordance with its: (i) the documentation; and (ii) the restrictions in this Agreement.

3. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software, and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). CUSTOMER acknowledges that it is obtaining only a limited license right to the Software and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

7. **Confidentiality.** All information with respect to the operations and business of a party (including the rates charged hereunder) and any other information considered to be and treated as confidential by that party gained during the negotiation or Term of this Agreement will be held in confidence by the other party and will not be divulged to any third-party or unauthorized person without prior written consent of the other party. The rates set forth herein are exempt from public records request or freedom of information act request. At the end of the Software, LICENSOR will provide the Customer with a flat file in csv format containing the data collected throughout the Agreement. LICENSOR will retain data via archive storage in accordance with its risk and retention policies. CUSTOMER will retain data in accordance with the minimum periods of time under applicable laws.

4. **Payment.** CUSTOMER shall pay all fees associated with the Software licensed and any Software purchased hereunder as set forth in the applicable Invoice or at the time of purchase. All payments shall be made in the currency noted on the applicable ordering document within thirty (30) days of the Delivery of the Software to you. Except as expressly set forth herein, all fees are non-refundable once paid. CUSTOMER shall be responsible for all taxes, withholdings, duties and levies arising from the order.

8. **Laws and Regulatory.** The parties: (a) will comply in all material respects with all applicable federal, state and local laws and regulations including, the federal Anti-kickback statute; (b) represent and warrant that it is not the intent of either party that any remuneration, benefit or privilege provided for under this Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any Software other than the specific Software described in this Agreement and any remuneration set forth in this Agreement is fair market value and negotiated at arm-length; (c) will comply with the provisions under the Health Insurance Portability and Accountability Act of 1996 and its regulations; (d) acknowledge that if it is a cost reporting entity that it has been informed of, and will fully and accurately account for, and report on its applicable cost report, the total value of any discount, rebate or other compensation paid pursuant to this Agreement in a way that complies with all applicable federal, state and local laws and regulations that establish a "Safe Harbor" for discounts; (e) represent and warrant that neither it nor any practitioner who orders or provides Software on its behalf has been convicted of any conduct that constitutes grounds for mandatory exclusion under any federal or state law and each party further represents and warrants that it is not ineligible to participate in federal or state health care programs or in any other federal or state government payment program; (f) will make available to the other a copy of its code of conduct, anti-kickback policies and other compliance policies, as may be changed from time-to-time; (g) represents and warrants that neither it nor any of its officers or directors have been

5. **Insurance.** LICENSOR represents that it has and will maintain through a program of self-insurance or third-party carriers the following minimum levels of insurance general liability insurance (\$1,000,000). LICENSOR will maintain excess insurance in an amount of five million dollars (\$5,000,000).

6. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier then upon delivery thereof as confirmed by such service; (c) by email transmission; or (d) if mailed within the United States, 3 days after deposit in the United States mails, postage prepaid, certified mail return receipt requested. Notice shall be sent to the following addresses:

If to CUSTOMER:

convicted of a crime against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (h) represent and warrant that it and its personnel are and, shall at all times during the term of this Agreement be, properly credentialed, licensed, certified and in good standing in accordance with all applicable federal, state, and local laws and regulations; and (i) will notify the other party immediately but no less than five (5) days of any actual knowledge contrary to the requirements set forth in this section.

9. Force Majeure. LICENSOR shall not be responsible for any delay in or failure of performance resulting from acts of God, riot, war, civil unrest, natural disaster, labor dispute, acts or regulations of public authorities, disease epidemic, pandemic, national or global health crisis, hurricane, tornado, earthquake, act of terrorism or other manmade disaster or other circumstances not reasonably within its control.

10. Disclaimers. CUSTOMER acknowledges that the Software provided do not eliminate the need to practice other steps to avoid the spread of disease, such as COVID-19, including but not limited to the following: maintaining social distancing best practices; using recommended face coverings; maintaining adequate distances between employees who are in the workplace; frequent hand washing and disinfecting; and, frequent cleaning and disinfecting of common areas and touch-points throughout any facility or venue. The software is provided on a non-exclusive as-is basis without any representation or warranty, express or implied, including, but not limited to, any warranty of merchantability, non-infringement, fitness for a particular purpose, continuous operation, quality and accuracy.

11. Limitation of Liability. The maximum liability of LICENSOR under this Agreement or related to this Agreement for any reason whatsoever shall not exceed the lesser of: (a) one hundred thousand dollars (\$100,000.00); or (b) the amount of the fees paid under this Agreement. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY LOST PROFITS, LOSS INCOME OR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING WITHOUT LIMITATION NEGLIGENCE), CONTRACT AND BREACH OF WARRANTY, EVEN IF LICENSOR HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

12. Notice Regarding COVID-19 and Other Infectious Diseases. COVID-19, has been declared a pandemic. Other infectious diseases have been declared pandemics from time-to-time and other infectious diseases may be in the future be declared pandemics. COVID-19 is reported to be extremely contagious. The

state of medical knowledge is evolving, but the virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease. Evidence has shown that COVID-19 and other infectious diseases can cause serious and potentially life-threatening illness and even death. LICENSOR cannot prevent CUSTOMER, its employees or guests from becoming exposed to, contracting, or spreading COVID-19 or any other infectious diseases while utilizing LICENSOR's Software. It is not possible to prevent against the presence of COVID-19 or other infectious diseases. CUSTOMER shall indemnify and hold LICENSOR harmless from and against all claims, costs, expenses, damages, losses, injuries or liabilities related to or in connection with exposure, infections, and/or spread of COVID-19 or any other infectious disease related to utilizing LICENSOR's Software.

13. Miscellaneous. This Agreement: (a) constitutes the entire agreement between the parties with respect to the subject matter, superseding all prior oral or written agreements, marketing materials, sales presentations, emails, representations or other materials with respect to the subject matter; (b) may be amended only by written instrument executed by both parties; (c) may not be assigned by either party without the written consent of the other party (except to affiliates, parents or subsidiaries), such consent not to be unreasonably withheld; (d) shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns; (e) shall be interpreted and enforced in accordance with the laws of the state where the Software are rendered, without regard to the conflict of laws provisions thereof, and the federal laws of the United States applicable therein; (f) this Agreement may be executed in several counterparts (including by DocuSign or other electronic means), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement; (g) this Agreement shall not be effective until executed by both Parties; (h) if any term or provision of this Agreement is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, the illegality, invalidity or unenforceability shall not affect the validity of the remainder of this Agreement, and to the extent permitted by applicable law, any such term or provision shall be restricted in applicability or reformed to the minimum extent for such to be enforceable; and (i) except as otherwise provided herein, no waiver of any of the provisions of this Agreement shall be valid or effective unless in writing and signed by the Parties hereto; and no waiver of any breach or condition of this Agreement shall be deemed to be a continuing waiver or a waiver of any other breach or condition. The Parties represent and warrant that they have not relied upon any prior or contemporaneous writings, negotiations, proposals, agreements, communications, discussions or representations. ~~EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BETWEEN THE PARTIES AND ARISING UNDER THIS AGREEMENT.~~

[Signatures below and Exhibit A follows]

By signing below, each Party acknowledges that they have carefully read and fully understand this Agreement. Each Party each fully agrees to be bound by the terms of this Agreement.

LICENSOR

CUSTOMER

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Exhibit A - Software and Rates

Software			Rates
1	License to use and access LICENSOR's simplified vaccination registration software – SafeRestart – with implementation of basic custom branding	Per user, per registration for vaccination	\$1.50
2	Implementation costs (per basic configuration)	One-time	\$5,000.00
3	On-going support fees	Monthly	\$2,500.00

Contract Addendum – Ellis County, Texas

This addendum is made part of the Software License Agreement between Access2Care, LLC, and Ellis County, Texas.

1. Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement, you verify that you, your company, and your employees: (1) do not boycott **Israel**; and (2) will not boycott Israel during the term of this Agreement. Tex. Gov't. Code 2270.002.
2. Pursuant to Section 2252.152, Texas Government Code, by executing this Agreement, you verify that you, your company, and your employees are not engaged in business with **Iran, Sudan**, or any company identified on the list referenced in Section 2252.152, Texas Government Code. Tex. Gov't. Code 2252.152.
3. Funds for payment of this contract have been provided through the **County budget approved by Commissioners Court for this fiscal year only**. State of Texas law prohibits the obligations and expenditures of public funds beyond the fiscal year for which a budget has been approved. However, the performance of this contract may extend beyond the current fiscal year. The fiscal year for Ellis County extends from October 1 of each calendar year to September 30 of the following calendar year. It is the expectation of County that funding will be available to pay for the expenditures related to this Contract. Notwithstanding anything to the contrary within this contract, if at any time during the term of this contract the Commissioners Court of Ellis County, Texas (1) fails to provide funding for this contract during the following fiscal year at Ellis County, Texas; (2) does not adopt a budget for expenditures; (3) or is only able to partially fund the expenditures required by this contract, then Ellis County may, upon giving the Seller written notice of such failure to fund and termination, terminate this contract, or part thereof, without any further liability, effective (30) days after Ellis County notifies Seller in writing of such failure to fund and termination. Ellis County shall pay Seller for work completed up to that date. There shall be no recourse for the Seller as to sums beyond those for work performed to that date, including no recovery allowed for consequential damages, interruption of business, or lost profits anticipated being made hereunder.
4. This Agreement will be governed by and construed according to the laws of the State of Texas. **Venue** for any action or claim arising out of the Agreement shall be Ellis County, Texas. Tex. Civ. Prac. & Rem. Code § 15.015.
5. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't. Code §552.001 *et seq.*, as amended (the "**Open Records Act**"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Ellis County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Open Records Act to any software, or any part thereof, or other items or data furnished to Ellis County whether or not the same are available to the public. It is further understood that Ellis County, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Ellis County, its officers and employees shall have no liability or obligations to Access2Care, LLC for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other items or data furnished to Ellis County

by Access2Care, LLC in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

6. **Limitations** for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.
7. It is understood and agreed that Ellis County will not be subject to **arbitration**; therefore, clauses related to Arbitration are hereby deleted.
8. The parties agree that under the Constitution and laws of the State of Texas, Ellis County cannot enter into an Agreement whereby Ellis County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to **indemnifying**, holding or saving harmless for any reason whatsoever are hereby deleted. Tex. Const. Article XI § 7. Tex. Att'y Gen. Op. DM-467. Tex. Att'y Gen. Op. GA-0176.
9. Ellis County shall be responsible for the acts or failure to act of its employees, agents or servants, provided, however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the **Texas Tort Claims Act**.
10. Access2Care, LLC shall not assign this Agreement unless Access2Care, LLC receives the prior written consent of Ellis County. Any **assignment** of this Agreement by Access2Care, LLC shall be made subject to all the rights and interests of Ellis County.
11. **Payment for goods and services** under this contract shall comply with Chapter 2251 of the Texas Government Code, the Texas Prompt Payment Act.
12. The relationship between the Parties is solely that of **independent contractors** and nothing in this Agreement shall be construed or deemed to create any other relationship including one of employment, agency or joint venture.
13. In no event, shall any payment made by Ellis County or any act or omission of the Ellis County constitute or be construed in any way **to be a waiver by the Ellis County** of any breach or default of this Agreement. Neither shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to the Ellis County to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of the Ellis County may waive the effect of this provision.
14. This Agreement is expressly made subject to Ellis County's **Sovereign Immunity**, Title 5, Texas Civil Practice and Remedies Code. This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Ellis County, Texas.

15. This Agreement is expressly subject to and contingent upon formal approval by the Ellis County Commissioners Court.
16. Neither party shall be deemed to have breached any provision of this contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond any party's control. The parties are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event.

REQUIRED 2 CFR 200 CLAUSES
Uniform Administrative Requirements, Cost Principles & Audit Requirements
For Federal Awards

1. **Equal Employment Opportunity.** PERFORMING PARTY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. PERFORMING PARTY shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. **Davis-Bacon Act.** PERFORMING PARTY agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
3. **Contract Work Hours and Selection Standards.** PERFORMING PARTY agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
4. **Rights to Invention Made Under Contract or Agreement.** PERFORMING PARTY agrees to comply with all applicable provisions of 37 CFR Part 401.
5. **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** PERFORMING PARTY agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
6. **Debarment/Suspension.** PERFORMING PARTY is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. PERFORMING PARTY and its subcontractors shall comply with the special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions,” which is included as Attachment B of this agreement.
7. **Restrictions on Lobbying.** PERFORMING PARTY of these funds is prohibited from using monies for lobbying purposes; PERFORMING PARTY shall comply with the special provision “Restrictions on Lobbying,” which is included as Attachment C of this Agreement. PERFORMING PARTY shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by

subcontractors and included in subcontractor contracts, as applicable.

- 8. Procurement of Recovered Materials.** PERFORMING PARTY agrees to comply with all applicable provisions of 2 CFR §200.322.



NOTARIZED SOLE-SOURCE PURCHASE AFFIDAVIT

STATE OF TEXAS
COUNTY OF ELLIS

KNOW ALL MEN BY THESE PRESENTS THAT:

Before me, the undersigned authority duly authorized to take acknowledgments and administer oaths, on this day personally appeared January 14, 2021, who after being duly sworn on oath stated the following:

My name is Steve Dralle. My title is Regional President of American Medical Response. I am aware that the Ellis County Purchasing Department is required to comply with competitive bidding requirements of Chapter 262 of the Texas Local Government Code. I am aware that the statutory competitive bidding provisions do not apply to the purchase of an item that can be obtained from only one source. See, Texas Local Government Code section 262.003.

Sole-source items include:

Items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies, films, manuscripts, or books, electric power, gas, water, and other utility services, and captive replacement parts or components for equipment.

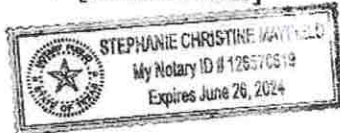
- I have represented to the Purchasing Department of Ellis County and I hereby warrant that as of the date below, I am the sole-source supplier of the following item: SafeRestart vaccination management platform. I am the sole-source supplier of this item because the SafeRestart management platform is proprietary and has been utilized by local government and county health entities as an integrated solution to streamline pre-registration, scheduling, documentation, communications and required reporting to state departments for large-scale community-based COVID-19 vaccine services. The platform was developed in-house to assist with community-based mass clinic vaccination centers. This solution is being utilized at mass clinic vaccination centers across the country. I agree that if I ever cease being the sole-source supplier of this item, I shall immediately make a full disclosure in writing to the Ellis County Purchasing Department of all relevant facts and circumstances.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit on the 15th day of January, 2021.

[Signature]

Steven Dralle, Regional President
[Printed Name] [Title]

SWORN TO AND SUBSCRIBED before me on January 15, 2021 by
Stephanie Mayfield
[Printed Name]



[Signature] Notary Public

State of Texas
My Commission expires on 6/26/24

Steve Dralle
Regional President
4905 New York Avenue
Arlington, TX 76018

January 15, 2021

Samantha Pickett
Emergency Management Coordinator
Ellis County Emergency Management
The Historic Courthouse
101 W. Main St., Ste B105
Waxahachie, TX 75165

Re: Formalized Quote for SafeRestart Vaccination Management Platform

Included is a preliminary written quote for the SafeRestart Vaccination Management Platform. The final agreed pricing will be formalized in a dually executed agreement.

SafeRestart Vaccination Software			Rates
1	License to use and access proprietary vaccination registration software – SafeRestart – with implementation of basic custom branding	Per user, per registration for vaccination	\$1.50
2	Implementation costs (per basic configuration)	One-time	\$5,000.00
3	On-going support fees	Monthly	\$2,500.00

Feel free to contact me directly with questions at 817.247.6224 or steven.dralle@gmr.net

Sincerely,


Steve Dralle

Steve Dralle
Regional President
4905 New York Avenue
Arlington, TX 76018

January 15, 2021

Samantha Pickett
Emergency Management Coordinator
Ellis County Emergency Management
The Historic Courthouse
101 W. Main St., Ste B105
Waxahachie, TX 75165

Re: Letter of Justification for SafeRestart Vaccination Management Platform

The SafeRestart vaccine management platform is proprietary and has been utilized by local government and county health entities as an integrated solution to streamline pre-registration, scheduling, documentation, communications and required reporting to state departments for large-scale community-based COVID-19 vaccine services. The platform was developed in-house to assist with community-based mass clinic vaccination centers. This solution is being utilized at mass clinic vaccination centers across the country.

Local Ellis County public health, first responders, emergency management and other administrative team members will leverage the SafeRestart platform to engage constituents of Ellis County to receive COVID-19 vaccines in a proactive and efficient manner.

Feel free to contact me directly with questions at 817.247.6224 or steven.dralle@gmr.net

Sincerely,



Steve Dralle



Sole Source Justification Request

This request is for a:

Sole Source Item (goods or services are available from ONLY this supplier due to a unique capability, patent, copyright, secret process, or capability to meet the requirements of the solicitation)

This Sole Source justification requires additional documentation and requirements as listed below. **One of these steps may require placing a public notice for 14 days, in order to allow any possible competitors to come forward with equivalent goods or services.** This step will be completed by the Purchasing Team that supports your office or county department after all required documents have been submitted. In addition, all sole source justifications must be approved in Commissioners Court.

Required Documentation that must accompany this request before this purchase can be considered (any missing documentation will result in delays). *Check all included documents:*

- ☒ This request form completed and signed
- ☒ A written quote from the supplier, listing the goods, services and pricing
- ☒ Letter of justification from the supplier (on company letterhead and signed by an authorized representative) establishing why they are the only Sole Source provider of the service or item
- ☒ Notarized Sole source affidavit completed by the supplier
- ☒ Signed letter of recommendation from the Elected Official or County Department Head

Requestor Name and County Office / Department: Samantha Pickett

Requestor Title: Emergency Management Coordinator Requestor Phone Number: 972-825-5199

Requested Sole Source Supplier:

Company Name: Global Medical Response (GMR)

Contact Name: Steve Dralle

Address: 4905 New York Avenue

City: Arlington State: TX Zip Code: 75165

Phone Number: 817-247-6224 Email Address: Steven.Dralle@gmr.net

Website: <https://www.globalmedicalresponse.com/home>

Is the recommended supplier the manufacturer? ☒ Yes ☐ No

Does the manufacturer sell the item(s) through distributors? ☐ Yes ☒ No

Description of the Product or Service: (if additional space is needed, include a separate page) *Describe the full scope of work, including installation if required, items should include brand, model and part number if applicable.*

Schedule: Identify the date items are needed to be delivered, or month work is to be performed. Please be specific and do not use "ASAP".

Ellis County Office of Emergency Management is in the process of developing and executing a COVID-19 mass vaccination hub on January 26th. The GMS SafeRestart vaccine management platform will need to be specific to Ellis County and operational on January 25th. The platform must streamline pre-registration, scheduling, documenting, communicating, and data reporting for DSHS Immtrac 2 reporting.

Estimated Cost: Implementation: \$5,000, Maintenance: \$2,500 License Use: \$1.50 per individual dose

SOLE SOURCE RATIONALE

Complete the following checklist:

The requested supplier is the only source of required item(s) or service(s) because:

Check all that apply:

- ☒ The required item or service is proprietary to the supplier
- ☐ The recommended supplier holds the patent on the requested item(s)
- ☐ The recommended supplier is the only supplier capable of performing the requested service
- ☐ A specific item is needed
- ☐ To be compatible or interchangeable with existing hardware
- ☐ As a spare or replacement hardware
- ☐ For the repair or modification of existing hardware
- ☐ For technical evaluation or testing
- ☐ Have there been any prior attempts to obtain competitive bids or proposals for the items or services that failed?

If so, please list and describe such attempts:

- ☒ There is a substantial risk in selecting another product or service provider.

If so, please describe:

There is a substantial risk other product not meeting transparency in required Texas Department of State Health Services (DSHS) data reporting through the Immtrac 2 system. Additionally, creating a common operating picture for pre-registration, scheduling, documentation, dashboard overview, and communicating with other state reporting platforms such as Texas Division of Emergency Management (TDEM).

- ☒ It is not possible to obtain competitive bids for consideration.

If so, why:

This is a sole source proprietary platform that is unique and build for mass vaccination documentation and reporting specifically for Texas data bases.

☐ Are there any other companies who can provide the services or needed items?

If so, please list and provide explanation of why they were unable to meet the requirements:

No.

☐ List any other sources, suppliers, products or service providers that you reviewed in your selection process:

Curative

☐ List all research methods that you reviewed in your selection process (i.e.: specific internet searches, trade publications, references, etc.):

Google search: vaccine scheduling and reporting systems

Coordinated with City of Arlington and Tarrant County on recommendations of providers through their vaccination hubs.

ACKNOWLEDGEMENT

☒ I affirm and acknowledge Ellis County's requirements, justification and criteria for Sole Source purchases. I have gathered the required technical information, provided all required documentation, have made a concerted effort to review comparable/equal equipment or services to the best of my ability, and further affirm that there is no conflict of interest in my recommendation of the selected item(s), service(s) or supplier.

☒ I also acknowledge and understand that I may be subject to criminal prosecution for the willful falsification of information in this document. I, by the act of signing or typing my name below, hereby certify under penalty of perjury, under the laws of the State of Texas, the foregoing is true and correct.

Date: 1/15/2021

Signature: Samantha Pickett

** By typing your name, this is equivalent to a legal signature*

NOTE: After a passage of time, an item or service may no longer qualify as a sole source purchase due to other similar items or services becoming available from other suppliers. Thus, all prior sole source determinations must be reapproved by the Ellis County Purchasing Department following completion of a Sole Source Justification Request Process and satisfactory completion of such process must be noted on requisitions and purchase orders.

1.7

Exh. B



ELLIS COUNTY
OFFICE OF EMERGENCY MANAGEMENT

109 S Jackson · Waxahachie, Texas 75165
Office (972) 825-5199 · Fax (972) 825-5551

Office of
Emergency Management

Samantha Pickett
EMC Coordinator
Samantha.Pickett@co.ellis.tx.us

January 15, 2020

SUBJECT: Global Medial Response (GMS) Safe ReStart Vaccination Platform

TO: Ellis County Commissioners' Court

Ellis County Office of Emergency Management (OEM) is partnering with several city municipalities to execute a safe and effective COVID-19 vaccination hub for our citizens. In order to efficiently register, schedule, and properly document the number of vaccinations implemented (at the Ellis County COVID-19 hub) to the Texas Department of State Health Services (DSHS), Ellis County will need to contract with a vendor to meet DSHS mandated requirements.

Ellis County OEM recommends Global Medical Response's (GMS) mass vaccination web platform called Safe ReStart as our preferred vendor. GMS's Safe ReStart is a proprietary platform built to address the specific needs and requirements of reporting detailed vaccination criteria. The Safe ReStart program also fulfills the needs to execute a HIPPA safe, effective, and efficient platform to pre-register, schedule, document, and communicate re-scheduling for the second dose of the vaccine for our citizens. This platform has been tested and utilized in several states, including several vaccination hubs in north Texas.

Thank you,

Sam Pickett

Samantha Pickett
Emergency Management Coordinator
Ellis County Emergency Management
101 W. Main Street
Waxahachie, TX 75165
Office – (972) 825-5199
emc@co.ellis.tx.us

1.7

Ex.B.



ELLIS COUNTY PURCHASING DEPARTMENT

E.J. Harbin, MPA, CPPO
Purchasing Agent

101 W. Main St., Suite 203
Waxahachie, TX 75165
Bus. (972) 825-5117
Fax (972) 825-5119

January 15, 2021

RE: Sole Source Acknowledgment
Global Medical Response

The attached request for Sole Source Acknowledgement has been received by the Ellis County Purchasing Department from Samantha Pickett, Emergency Management Coordinator, Ellis County Emergency Management for the requested purchase of the SafeRestart Vaccine Platform and Services from Global Management Response.

It is the recommendation of the Ellis County Purchasing Department and the Purchasing Agent to approve Global Medical Response SafeRestart Vaccine Platform as a sole source.

Sincerely,

A handwritten signature in blue ink, appearing to read "E.J. Harbin".

E.J. Harbin, MPA, CPPO
Purchasing Agent
Ellis County

1.7

COMMISSIONERS COURT AGENDA REQUEST

The Commissioners Court convenes in regular session at **2:00 p.m. every other Tuesday** (for full list of dates, please visit <http://co.ellis.tx.us/DocumentCenter/View/7543/FY-2018-2019-Amended-Commissioners-Court-Schedule>). The Commissioners Court is located at 101 West Main St., Waxahachie, Texas, on the 2nd floor of the Historic Courthouse. Special sessions may convene as deemed necessary to conduct the business of the County.

PLEASE INCLUDE AN EXTRA ORIGINAL FOR CONTRACTS AND AGREEMENTS IF YOU REQUIRE AN ORIGINAL COPY RETURNED FOR YOUR FILES.

The **deadline** for submitting an agenda request with the supporting information is **12:00 noon on the Wednesday immediately preceding Commissioners Court.** This will give ample time for preparation of the agenda.

If you are not representing an organization, board, elected or appointed official, your agenda request must be filed through your respective Commissioner.

***All agreements, contracts and instruments, that otherwise bind the County, must first be approved in form and content by the County Attorney before submitting to the County Judge for the Commissioners Court Agenda.**

Please fill out this form completely:

DATE: January 15, 2021 SUPPORTING DOCUMENT(S) ATTACHED? (

YES)

NAME: E.J. Harbin

PHONE: 972-825-5117 FAX: 972-825-5119

DEPARTMENT OR ASSOCIATION: PURCHASING

ADDRESS: _____

PREFERRED DATE TO BE PLACED ON AGENDA January 21, 2021

DESCRIPTION OF AGENDA REQUEST (please use exact desired wording for agenda):

Granting an exemption under Section 262.024, Local Government Code, from the bidding requirements of Section 262.023, Local Government Code for the purchase of Proprietary SafeRestart Vaccination Management Platform and Services from Global Medical Response.

*

County Attorney Approval

**ORDER GRANTING DISCRETIONARY EXEMPTION FROM SECTION 262.023
OF THE TEXAS LOCAL GOVERNMENT CODE FOR SOLE SOURCE ITEM**

WHEREAS, Section 262.023 of the Texas Local Government Code requires the Commissioners Court to comply with competitive bidding procedures for purchase of one or more items under a contract that will require an expenditure exceeding \$50,000; and

WHEREAS, Section 262.024 (a)(1-2) of the Texas Local Government Code authorizes the Commissioners Court to grant an exemption for “(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens of the county; or (2) an item necessary to preserve or protect the public health or safety of the residents of the county”; and

WHEREAS, Section 262.024 (a)(7) of the Texas Local Government Code authorizes the Commissioners Court to grant an exemption for “an item that can be obtained from only one source”; and

WHEREAS, Ellis County wishes to contract with Access2Care, LLC for procurement of the SafeRestart Vaccination Management Platform as described in Exhibit “A” and herein incorporated; and

WHEREAS, The Ellis County Emergency Management Coordinator, Ms. Samantha Pickett, has presented the Commissioners Court with a signed statement as to the existence of only one source for such COVID-19 vaccination management platform. Further, exigent and emergency circumstances exist to preserve or protect the public health or safety of the residents of Ellis County by providing distribution of a COVID-19 vaccine without delay. Ms. Pickett’s statement has been entered into the Commissioners Court minutes and is attached as Exhibit “B” and herein incorporated; and

WHEREAS, the Commissioners Court of Ellis County acknowledges that Access2Care, LLC is the sole source for Ellis County’s vaccination platform and that this software purchase is necessary to set up a vaccination-hub site. The software will provide a platform for efficient registration and appointment confirmation, so that COVID-19 vaccinations can be provided immediately and without further delay in an effort to preserve and protect the public health of Ellis County residents; and

NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS’ COURT FOR ELLIS COUNTY THAT: The provisions of Texas Local Government Code §262.024 shall apply to exempt the agreement with Access2Care, LLC for the procurement of a COVID-19 vaccination management platform as described in Exhibit “A” from the competitive bidding procedures because the system qualifies as a sole source item and qualifies as an item necessary to preserve or protect the public health or safety of the residents of the County.

EFFECTIVE THIS ____TH DAY OF JANUARY ____, 2021.

Todd Little, COUNTY JUDGE

Randy Stinson,
COUNTY COMMISSIONER PCT. #1

Lane Grayson,
COUNTY COMMISSIONER PCT. #2

Paul Perry,
COUNTY COMMISSIONER PCT. #3

Kyle Butler,
COUNTY COMMISSIONER PCT. #4

ATTEST: _____
Krystal Valdez, COUNTY CLERK

1.8

COMMISSIONERS COURT AGENDA REQUEST

The Commissioners Court convenes in regular session at **2:00 p.m. every other Tuesday** (for full list of dates, please visit <http://co.ellis.tx.us/DocumentCenter/View/7543/FY-2018-2019-Amended-Commissioners-Court-Schedule>). The Commissioners Court is located at 101 West Main St., Waxahachie, Texas, on the 2nd floor of the Historic Courthouse. Special sessions may convene as deemed necessary to conduct the business of the County.

PLEASE INCLUDE AN EXTRA ORIGINAL FOR CONTRACTS AND AGREEMENTS IF YOU REQUIRE AN ORIGINAL COPY RETURNED FOR YOUR FILES.

The **deadline** for submitting an agenda request with the supporting information is **12:00 noon on the Wednesday immediately preceding Commissioners Court.** This will give ample time for preparation of the agenda.

If you are not representing an organization, board, elected or appointed official, your agenda request must be filed through your respective Commissioner.

***All agreements, contracts and instruments, that otherwise bind the County, must first be approved in form and content by the County Attorney before submitting to the County Judge for the Commissioners Court Agenda.**

Please fill out this form completely:

DATE: January 15, 2021 SUPPORTING DOCUMENT(S) ATTACHED? (Y / N)

NAME: E.J. Harbin

PHONE: 972-825-5117 FAX: 972-825-5119

DEPARTMENT OR ASSOCIATION: Purchasing

ADDRESS: 101 W. Main St., Suite 201, Waxahachie, TX 75165

PREFERRED DATE TO BE PLACED ON AGENDA: January 21, 2021

DESCRIPTION OF AGENDA REQUEST (please use exact desired wording for agenda):

Authority to purchase SafeRestart Vaccination Management Platform and Services from Global Medical Response.

*

County Attorney Approval

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is entered as of **Insert Effective Date**, ("Effective Date") by and between Access2Care, LLC ("LICENSOR"), and **Insert CUSTOMER Legal Name** ("CUSTOMER"). LICENSOR is a subsidiary of Global Medical Response, Inc. and American Medical Response, Inc.

1. **Term and Termination.** This Agreement shall be for a term of one (1) year from the Effective Date and shall automatically renew for subsequent one (1) year periods. Either party terminate this Agreement without cause with thirty (30) days written notice to the other party.

2. **Grant License.** Subject to all of the terms and conditions of this Agreement, LICENSOR grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the web-based SafeRestart software ("Software"), but only in accordance with its: (i) the documentation; and (ii) the restrictions in this Agreement.

3. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software, and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). CUSTOMER acknowledges that it is obtaining only a limited license right to the Software and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

4. **Payment.** CUSTOMER shall pay all fees associated with the Software licensed and any Software purchased hereunder as set forth in the applicable Invoice or at the time of purchase. All payments shall be made in the currency noted on the applicable ordering document within thirty (30) days of the Delivery of the Software to you. Except as expressly set forth herein, all fees are non-refundable once paid. CUSTOMER shall be responsible for all taxes, withholdings, duties and levies arising from the order.

5. **Insurance.** LICENSOR represents that it has and will maintain through a program of self-insurance or third-party carriers the following minimum levels of insurance general liability insurance (\$1,000,000). LICENSOR will maintain excess insurance in an amount of five million dollars (\$5,000,000).

6. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier then upon delivery thereof as confirmed by such service; (c) by email transmission; or (d) if mailed within the United States, 3 days after deposit in the United States mails, postage prepaid, certified mail return receipt requested. Notice shall be sent to the following addresses:

If to CUSTOMER:

Insert Department
Insert Street Address
Insert City, State, Zip
Insert Customer Contact
Insert Customer Email
Insert Customer Telephone

If to LICENSOR:

Law Department
Global Medical Response, Inc.
6363 S. Fiddler's Green Circle, Suite 1500
Greenwood Village, Colorado 80111

7. **Confidentiality.** All information with respect to the operations and business of a party (including the rates charged hereunder) and any other information considered to be and treated as confidential by that party gained during the negotiation or Term of this Agreement will be held in confidence by the other party and will not be divulged to any third-party or unauthorized person without prior written consent of the other party. The rates set forth herein are exempt from public records request or freedom of information act request. At the end of the Software, LICENSOR will provide the Customer with a flat file in csv format containing the data collected throughout the Agreement. LICENSOR will retain data via archive storage in accordance with its risk and retention policies. CUSTOMER will retain data in accordance with the minimum periods of time under applicable laws.

8. **Laws and Regulatory.** The parties: (a) will comply in all material respects with all applicable federal, state and local laws and regulations including, the federal Anti-kickback statute; (b) represent and warrant that it is not the intent of either party that any remuneration, benefit or privilege provided for under this Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any Software other than the specific Software described in this Agreement and any remuneration set forth in this Agreement is fair market value and negotiated at arm-length; (c) will comply with the provisions under the Health Insurance Portability and Accountability Act of 1996 and its regulations; (d) acknowledge that if it is a cost reporting entity that it has been informed of, and will fully and accurately account for, and report on its applicable cost report, the total value of any discount, rebate or other compensation paid pursuant to this Agreement in a way that complies with all applicable federal, state and local laws and regulations that establish a "Safe Harbor" for discounts; (e) represent and warrant that neither it nor any practitioner who orders or provides Software on its behalf has been convicted of any conduct that constitutes grounds for mandatory exclusion under any federal or state law and each party further represents and warrants that it is not ineligible to participate in federal or state health care programs or in any other federal or state government payment program; (f) will make available to the other a copy of its code of conduct, anti-kickback policies and other compliance policies, as may be changed from time-to-time; (g) represents and warrants that neither it nor any of its officers or directors have been

convicted of a crime against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (h) represent and warrant that it and its personnel are and, shall at all times during the term of this Agreement be, properly credentialed, licensed, certified and in good standing in accordance with all applicable federal, state, and local laws and regulations; and (i) will notify the other party immediately but no less than five (5) days of any actual knowledge contrary to the requirements set forth in this section.

9. Force Majeure. LICENSOR shall not be responsible for any delay in or failure of performance resulting from acts of God, riot, war, civil unrest, natural disaster, labor dispute, acts or regulations of public authorities, disease epidemic, pandemic, national or global health crisis, hurricane, tornado, earthquake, act of terrorism or other manmade disaster or other circumstances not reasonably within its control.

10. Disclaimers. CUSTOMER acknowledges that the Software provided do not eliminate the need to practice other steps to avoid the spread of disease, such as COVID-19, including but not limited to the following: maintaining social distancing best practices; using recommended face coverings; maintaining adequate distances between employees who are in the workplace; frequent hand washing and disinfecting; and, frequent cleaning and disinfecting of common areas and touch-points throughout any facility or venue. The software is provided on a non-exclusive as-is basis without any representation or warranty, express or implied, including, but not limited to, any warranty of merchantability, non-infringement, fitness for a particular purpose, continuous operation, quality and accuracy.

11. Limitation of Liability. The maximum liability of LICENSOR under this Agreement or related to this Agreement for any reason whatsoever shall not exceed the lesser of: (a) one hundred thousand dollars (\$100,000.00); or (b) the amount of the fees paid under this Agreement. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY LOST PROFITS, LOSS INCOME OR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING WITHOUT LIMITATION TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), CONTRACT AND BREACH OF WARRANTY, EVEN IF LICENSOR HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

12. Notice Regarding COVID-19 and Other Infectious Diseases. COVID-19, has been declared a pandemic. Other infectious diseases have been declared pandemics from time-to-time and other infectious diseases may be in the future be declared pandemics. COVID-19 is reported to be extremely contagious. The

state of medical knowledge is evolving, but the virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease. Evidence has shown that COVID-19 and other infectious diseases can cause serious and potentially life-threatening illness and even death. LICENSOR cannot prevent CUSTOMER, its employees or guests from becoming exposed to, contracting, or spreading COVID-19 or any other infectious diseases while utilizing LICENSOR's Software. It is not possible to prevent against the presence of COVID-19 or other infectious diseases. CUSTOMER shall indemnify and hold LICENSOR harmless from and against all claims, costs, expenses, damages, losses, injuries or liabilities related to or in connection with exposure, infections, and/or spread of COVID-19 or any other infectious disease related to utilizing LICENSOR's Software.

13. Miscellaneous. This Agreement: (a) constitutes the entire agreement between the parties with respect to the subject matter, superseding all prior oral or written agreements, marketing materials, sales presentations, emails, representations or other materials with respect to the subject matter; (b) may be amended only by written instrument executed by both parties; (c) may not be assigned by either party without the written consent of the other party (except to affiliates, parents or subsidiaries), such consent not to be unreasonably withheld; (d) shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns; (e) shall be interpreted and enforced in accordance with the laws of the state where the Software are rendered, without regard to the conflict of laws provisions thereof, and the federal laws of the United States applicable therein; (f) this Agreement may be executed in several counterparts (including by DocuSign or other electronic means), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement; (g) this Agreement shall not be effective until executed by both Parties; (h) if any term or provision of this Agreement is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, the illegality, invalidity or unenforceability shall not affect the validity of the remainder of this Agreement, and to the extent permitted by applicable law, any such term or provision shall be restricted in applicability or reformed to the minimum extent for such to be enforceable; and (i) except as otherwise provided herein, no waiver of any of the provisions of this Agreement shall be valid or effective unless in writing and signed by the Parties hereto; and no waiver of any breach or condition of this Agreement shall be deemed to be a continuing waiver or a waiver of any other breach or condition. The Parties represent and warrant that they have not relied upon any prior or contemporaneous writings, negotiations, proposals, agreements, communications, discussions or representations. ~~EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BETWEEN THE PARTIES AND ARISING UNDER THIS AGREEMENT.~~

[Signatures below and Exhibit A follows]

By signing below, each Party acknowledges that they have carefully read and fully understand this Agreement. Each Party each fully agrees to be bound by the terms of this Agreement.

LICENSOR

CUSTOMER

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Exhibit A - Software and Rates

Software		Rates
1	License to use and access LICENSOR's simplified vaccination registration software – SafeRestart – with implementation of basic custom branding	Per user, per registration for vaccination \$1.50
2	Implementation costs (per basic configuration)	One-time \$5,000.00
3	On-going support fees	Monthly \$2,500.00

Contract Addendum – Ellis County, Texas

This addendum is made part of the Software License Agreement between Access2Care, LLC, and Ellis County, Texas.

1. Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement, you verify that you, your company, and your employees: (1) do not boycott **Israel**; and (2) will not boycott Israel during the term of this Agreement. Tex. Gov't. Code 2270.002.
2. Pursuant to Section 2252.152, Texas Government Code, by executing this Agreement, you verify that you, your company, and your employees are not engaged in business with **Iran, Sudan**, or any company identified on the list referenced in Section 2252.152, Texas Government Code. Tex. Gov't. Code 2252.152.
3. Funds for payment of this contract have been provided through the **County budget approved by Commissioners Court for this fiscal year only**. State of Texas law prohibits the obligations and expenditures of public funds beyond the fiscal year for which a budget has been approved. However, the performance of this contract may extend beyond the current fiscal year. The fiscal year for Ellis County extends from October 1 of each calendar year to September 30 of the following calendar year. It is the expectation of County that funding will be available to pay for the expenditures related to this Contract. Notwithstanding anything to the contrary within this contract, if at any time during the term of this contract the Commissioners Court of Ellis County, Texas (1) fails to provide funding for this contract during the following fiscal year at Ellis County, Texas; (2) does not adopt a budget for expenditures; (3) or is only able to partially fund the expenditures required by this contract, then Ellis County may, upon giving the Seller written notice of such failure to fund and termination, terminate this contract, or part thereof, without any further liability, effective (30) days after Ellis County notifies Seller in writing of such failure to fund and termination. Ellis County shall pay Seller for work completed up to that date. There shall be no recourse for the Seller as to sums beyond those for work performed to that date, including no recovery allowed for consequential damages, interruption of business, or lost profits anticipated being made hereunder.
4. This Agreement will be governed by and construed according to the laws of the State of Texas. **Venue** for any action or claim arising out of the Agreement shall be Ellis County, Texas. Tex. Civ. Prac. & Rem. Code § 15.015.
5. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't. Code §552.001 *et seq.*, as amended (the “**Open Records Act**”), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Ellis County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Open Records Act to any software, or any part thereof, or other items or data furnished to Ellis County whether or not the same are available to the public. It is further understood that Ellis County, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Ellis County, its officers and employees shall have no liability or obligations to Access2Care, LLC for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other items or data furnished to Ellis County.

by Access2Care, LLC in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

6. **Limitations** for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.
7. It is understood and agreed that Ellis County will not be subject to **arbitration**; therefore, clauses related to Arbitration are hereby deleted.
8. The parties agree that under the Constitution and laws of the State of Texas, Ellis County cannot enter into an Agreement whereby Ellis County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to **indemnifying**, holding or saving harmless for any reason whatsoever are hereby deleted. Tex. Const. Article XI § 7. Tex. Att'y Gen. Op. DM-467. Tex. Att'y Gen. Op. GA-0176.
9. Ellis County shall be responsible for the acts or failure to act of its employees, agents or servants, provided, however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the **Texas Tort Claims Act**.
10. Access2Care, LLC shall not assign this Agreement unless Access2Care, LLC receives the prior written consent of Ellis County. Any **assignment** of this Agreement by Access2Care, LLC shall be made subject to all the rights and interests of Ellis County.
11. **Payment for goods and services** under this contract shall comply with Chapter 2251 of the Texas Government Code, the Texas Prompt Payment Act.
12. The relationship between the Parties is solely that of **independent contractors** and nothing in this Agreement shall be construed or deemed to create any other relationship including one of employment, agency or joint venture.
13. In no event, shall any payment made by Ellis County or any act or omission of the Ellis County constitute or be construed in any way **to be a waiver by the Ellis County** of any breach or default of this Agreement. Neither shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to the Ellis County to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of the Ellis County may waive the effect of this provision.
14. This Agreement is expressly made subject to Ellis County's **Sovereign Immunity**, Title 5, Texas Civil Practice and Remedies Code. This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Ellis County, Texas.

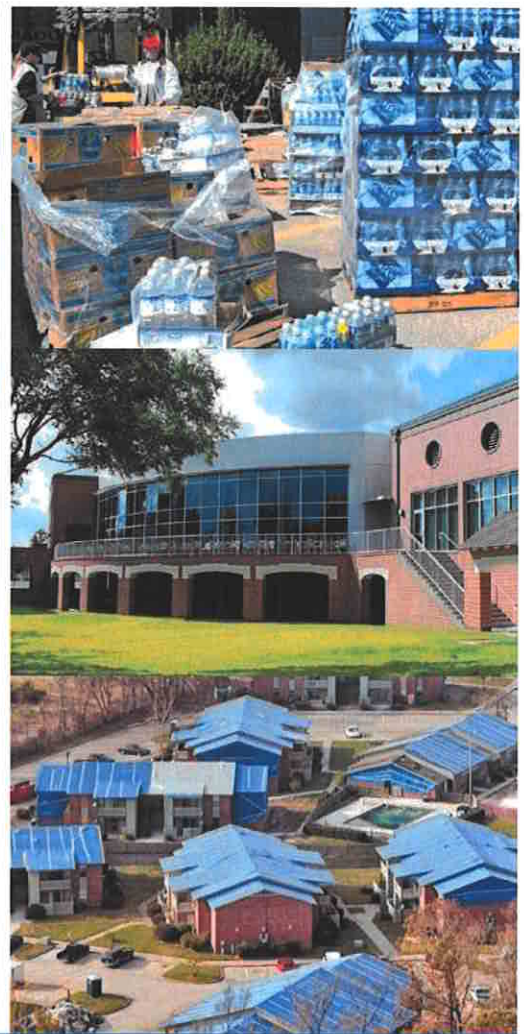
15. This Agreement is expressly subject to and contingent upon formal approval by the Ellis County Commissioners Court.
16. Neither party shall be deemed to have breached any provision of this contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond any party's control. The parties are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event.

REQUIRED 2 CFR 200 CLAUSES
Uniform Administrative Requirements, Cost Principles & Audit Requirements
For Federal Awards

1. **Equal Employment Opportunity.** PERFORMING PARTY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. PERFORMING PARTY shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. **Davis-Bacon Act.** PERFORMING PARTY agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
3. **Contract Work Hours and Selection Standards.** PERFORMING PARTY agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
4. **Rights to Invention Made Under Contract or Agreement.** PERFORMING PARTY agrees to comply with all applicable provisions of 37 CFR Part 401.
5. **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** PERFORMING PARTY agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
6. **Debarment/Suspension.** PERFORMING PARTY is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. PERFORMING PARTY and its subcontractors shall comply with the special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions,” which is included as Attachment B of this agreement.
7. **Restrictions on Lobbying.** PERFORMING PARTY of these funds is prohibited from using monies for lobbying purposes; PERFORMING PARTY shall comply with the special provision “Restrictions on Lobbying,” which is included as Attachment C of this Agreement. PERFORMING PARTY shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by

subcontractors and included in subcontractor contracts, as applicable.

8. **Procurement of Recovered Materials.** PERFORMING PARTY agrees to comply with all applicable provisions of 2 CFR §200.322.



Public Assistance Program and Policy Guide

FP 104-009-2 / April 2018



FEMA

Table 10. Documentation to Support Costs Claimed

Documentation to Support Costs Claimed	
The Applicant should submit the following to support costs claimed (not an all-inclusive list):	
Applicant (Force Account) Labor and Prisoner Labor:	
For each individual:	
☐	Name
☐	Job title and function
☐	Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, prisoner, etc.)
☐	Days and hours worked
☐	Pay rate(s) and fringe benefit rate(s)
☐	Description of work performed with representative sample of daily logs / activity reports, if available
☐	Representative sample of timesheets
☐	Fringe benefit calculations
☐	Pay policy
Applicant-Owned (Force Account) Equipment:	
For each piece of equipment:	
☐	Type of equipment and attachments used, including year, make, and model
☐	Size/capacity (e.g., horsepower, wattage)
☐	Locations and days and hours used with usage logs
☐	Operator name
☐	Schedule of rates, including rate components
Rented or Purchased Equipment:	
☐	Rental or lease agreements, invoices, receipts
☐	Days used
Supplies from Stock:	
☐	Historical cost records
☐	Inventory records
☐	Type of supplies and quantities used, with support documentation such as daily logs
Purchased Supplies:	
☐	Receipts or invoices
Contracts:	
☐	Procurement policy
☐	Procurement and bid documents
☐	For procurements in excess of the simplified acquisition threshold, a cost/price analysis
☐	Contracts, change orders, and invoices
☐	Dates worked
☐	For time and materials (T&M) contracts, monitoring documentation
Mutual aid:	
☐	Written agreement
☐	Services requested and received
☐	Same information listed for labor, equipment, and supplies above (as applicable)
☐	Invoices

Documentation to Support Costs Claimed

Donated Resources:

For each individual:

- ☐ Name
- ☐ Days and hours worked
- ☐ Location of work and work performed

Equipment:

- ☐ Same information listed under Applicant-Owned Equipment above
- ☐ Who donated each piece of equipment

Supplies or materials:

- ☐ Quantity donated
- ☐ Who donated
- ☐ Location(s) used

Cost Estimates:

- ☐ Cost estimate for the agreed-upon SOW developed with unit costs
- ☐ Qualifications of the company or individual who prepared the cost estimate

Cost reasonableness (if requested by FEMA):

- ☐ Documentation showing current market price for similar goods or services, such as:
 - Historical documentation;
 - Average costs in the area; or
 - Published unit costs from national cost estimating databases.
- ☐ Documentation supporting necessity of unique services or extraordinary level of effort
- ☐ Documentation supporting shortages, challenging procurement circumstances, and length of time shortages or procurement challenges existed, such as:
 - News stories
 - Supply chain vendor reports

For Direct Administrative Costs (DAC):

- ☐ Specific description of administrative task performed by individual
- ☐ Skill level and position description of individual performing task

Other:

- ☐ Documentation regarding cash donations or other funding received
- ☐ Cost comparisons and source documentation, if applicable
- ☐ Actual insurance proceeds, if available

E. Project Documentation

The Applicant must maintain all source documentation supporting the project costs.³¹³ To facilitate closeout and audits, the Applicant should file all documentation pertaining to each project with the corresponding PW as the permanent record of the project.

The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date of the Recipient's final Financial Status Report (FSR) (FEMA Form 112-0-1).³¹⁴ Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.³¹⁵

³¹³ 2 CFR § 200.302.

³¹⁴ 2 CFR § 200.333; www.fema.gov/media-library/assets/documents/29496.

³¹⁵ 2 CFR § 200.336.

FEMA Supporting COVID-19 Vaccine Distribution

FEMA is supporting state, local, tribal and territorial governments in the fight against the Coronavirus (COVID-19) by reimbursing eligible expenses incurred in providing the COVID-19 vaccine to the public.

COVID-19 vaccines have been purchased and are being distributed by Operation Warp Speed at no cost to enrolled COVID-19 vaccine providers. Operation Warp Speed is also providing vaccination kits, including needles, syringes, and personal protective equipment (PPE) needed for the safe administration of COVID-19 vaccines.

As part of the unprecedented effort to support the protection of public health and end the COVID-19 pandemic, FEMA will support eligible state, local, tribal, and territorial governments and private nonprofit (PNP) facilities with the distribution, transportation, storage, and administration of COVID-19 vaccines. Eligible costs include, but are not limited to: PPE, other equipment, and supplies required for storing, handling, distributing/transporting, and administering COVID-19 vaccines; facility support costs, including leasing space for storage and/or administration of vaccines, utilities, maintenance, and security; medical and support staff not paid for by another funding source; information technology systems and support; communications to disseminate public information regarding vaccinations; and training and technical assistance for vaccine distribution and administration. FEMA will continue to consider additional costs incurred by eligible entities to expedite vaccinations across the country.

Funding to assist state, local, tribal and territorial governments in vaccinating their residents is in addition to the \$56.6 billion FEMA has previously allocated in the fight against COVID-19.

Contact Us

If you have any questions, please contact FEMA Office of External Affairs:

- Congressional Affairs at (202) 646-4500 or at FEMA-Congressional-Affairs@fema.dhs.gov
- Intergovernmental Affairs at (202) 646-3444 or at FEMA-IGA@fema.dhs.gov
- Tribal Affairs at (202) 646-3444 or at FEMA-Tribal@fema.dhs.gov
- Private Sector Engagement at (202) 646-3444 or at nbeoc@max.gov



FEMA

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FEMA Mission

Helping people before, during, and after disasters.