GENERAL PROVISIONS FOR TITLE V POPULATION-BASED

ARTICLE 1. Purpose and Authority

This contract is entered into between the RECEIVING AGENCY and the PERFORMING AGENCY, collectively referred to as the Parties. The contract consists of these General Provisions, the Attachments, any Exhibits, all documents incorporated by reference, and all duly executed Amendments. The contract represents the complete understanding and agreement of the Parties and may only be amended by written agreement.

RECEIVING AGENCY and PERFORMING AGENCY agree to be bound by all of the terms and conditions within the contract and shall faithfully perform the duties as prescribed.

ARTICLE 2. Term

The term of this contract is for a period of time that coincides with the term(s) of the Attachment(s).

ARTICLE 3. Funding

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human services agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply.

ARTICLE 4. Amendments

Amendments to the contract must be in writing and signed by both Parties. PERFORMING AGENCY requests for amendments must be submitted in the prescribed format. PERFORMING AGENCY shall not perform and RECEIVING AGENCY will not pay for the performance of different or additional services, work, or products without a prior written and executed amendment.

ARTICLE 5. Applicable Laws and Standards

The contract shall be interpreted in accordance with the laws of the State of Texas. The Parties shall comply with all applicable state and federal statutes, rules, and regulations, including any federal grant requirements applicable to the funding source.

PERFORMING AGENCY shall not use funds received under this contract to pay any person for influencing or attempting to influence an officer or employee of any agency, federal or state, a member of Congress, an office or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract. If at any time this contract exceeds $100,000 in federal funds, PERFORMING AGENCY shall file with RECEIVING AGENCY a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of this contract, a certification that none of the funds have been or will be used for payment to lobbyists, and disclosure of all registered lobbyists with whom PERFORMING AGENCY has an agreement. PERFORMING AGENCY shall require all subcontractors to file a declaration with RECEIVING AGENCY if applicable. All declarations must be updates at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information.

ARTICLE 6. Debarment and Suspension

PERFORMING AGENCY certifies by execution of this contract to the following:

- it is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension, Feb. 18, 1986, 51 Federal Register 6370;
- neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by an federal or state department or agency;
- it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency; and,
- it is not subject to an outstanding judgment in a suit for collection of the balance of a debt.

If the PERFORMING AGENCY'S status with respect to the items certified above changes during the contract, PERFORMING AGENCY shall notify RECEIVING AGENCY immediately. PERFORMING AGENCY shall require the same certification from all subcontractors.

ARTICLE 7. Assurances and Certifications

PERFORMING AGENCY shall comply with all federal and state tax laws and is solely responsible for filing all required forms and paying all sums due.

PERFORMING AGENCY shall not transfer, assign or sell its interest in this contract without the prior written consent of RECEIVING AGENCY.

ARTICLE 8. Child Abuse Reporting Requirements

PERFORMING AGENCY and all subcontractors shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Chapter 261 of the Texas Family Code relating to investigations of reports of child abuse and neglect. For Contractors and subcontractors receiving funding through Human Immunodeficiency Virus and Sexually Transmitted Diseases, Title X, Title XX, Primary Health Care, Title V Maternal and Child Health, and Nutrition Services Section for the WIC program, each contractor and subcontractor shall develop, implement, train, and enforce a written policy that includes, at a minimum, the RECEIVING AGENCY Child Abuse Screening, Documenting, and Reporting Policy. PERFORMING AGENCY and its subcontractors shall use the Checklist for RECEIVING AGENCY Monitoring.

ARTICLE 9. Intellectual Property

The Texas Health and Safety Code, §12.020, as amended, authorizes RECEIVING AGENCY to protect intellectual property developed as a result of this contract.

"Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.

"Mark," either service mark or trademark, means a word, name, symbol, device, slogan or any combination the RECEIVING AGENCY adopts and uses to identify goods and/or services created by or for RECEIVING AGENCY.

"Work made for hire" is a copyrightable work prepared for RECEIVING AGENCY use, or a work specially ordered or commissioned through a contract for RECEIVING AGENCY use. RECEIVING AGENCY owns works made for hire unless it agrees otherwise by contract.

If federal funds are used to finance activities supported by this contract that result in the production of original material, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant and (2) any rights of copyright to which PERFORMING AGENCY or its subcontractors purchase ownership with federal funds. PERFORMING AGENCY shall place an acknowledgement of federal funding support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing the activity supported by federal funds. An acknowledgment shall be to the effect that "This publications was made possible by funding from (federal awarding agency)" or "The project was supported by funding from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."

In the event the terms of the federal funding award give the copyright to PERFORMING AGENCY, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for purposes of public health and state governmental noncommercial purposes (the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter, products, technology, scientific information, trade secrets, and computer software in any work developed under a contract and (2) any rights of copyright, service or trade marks or patents to which PERFORMING AGENCY purchases ownership with contract funds.

If the results of the contract performance are subject to copyright law, PERFORMING AGENCY cannot publish those results without prior review and approval of RECEIVING AGENCY.

ARTICLE 10. <u>Historically Underutilized Businesses</u>

PERFORMING AGENCY agrees to make a good faith effort to subcontract with HUBs during the performance of this contract and will report HUB subcontractor activity on a quarterly basis to RECEIVING AGENCY.

ARTICLE 11. <u>Conflict of Interest</u>

PERFORMING AGENCY does not have nor will it acquire any interest that would conflict in any manner with the performance of its obligations under this contract. Potential conflicts of interest include an existing business or personal relationship between the PERFORMING AGENCY, its principal, or any affiliate or subcontractor with RECEIVING AGENCY, its board members, officers or employees, or any other entity or person involved in any way in any project that is the subject of this contract.

PERFORMING AGENCY shall establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

ARTICLE 12. <u>Certification of Software, Hardware, Firmware and Micro Code Products</u>

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware, and micro code products used individually or together as a system to comply with RECEIVING AGENCY

contract requirements shall operate "accurately" in the manner in which they were intended when given a "valid date" containing century, year, month, and day. For purposes of this Article, "supplied or supported software, hardware, firmware, and micro code products" do not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing any versions of any software provided by RECEIVING AGENCY or an agency of the federal government, which is used in performance of this contract.

For purposes of this Article,

a) "accurately" is defined to include the following:

1) calculations shall be correctly performed using four-digit year processing;
2) functionality-on-line, batch including entry, inquiry, maintenance and updates shall support four-digit year processing;
3) interfaces and reports shall support four-digit year processing;
4) processing with a four-digit year shall occur without human intervention;
5) correct results in forward and backward date calculation spanning century boundaries shall be provided;
6) correct leap year calculations shall be performed; and
7) processing correct results in forward and backward date calculation spanning century boundaries shall occur;

b) "date integrity" shall mean all manipulations of time-related data (dates, durations, days of week, etc.) shall produce desired results for all valid date values within the application domain;

c) "explicit century" shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;

d) "extraordinary actions" shall be defined to mean any action outside the normal documented processing steps identified in the product's reference documentation;

e) "general integrity" shall mean no value for current date shall cause interruptions in desired operation;

f) "implicit century" shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;

g) "product" or "products" shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code;

h) "valid date" shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) shall obtain a warranty from any vendor/licensor from which it obtains product(s) that product(s) delivered and installed under the contract/license shall accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license shall possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products shall perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to

PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor's standard commercial warranty or warranties contained in the contract/license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product if its noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY'S product/software from RECEIVING AGENCY is inaccurate or corrupt.

ARTICLE 13. Standards for Financial and Programmatic Management

PERFORMING AGENCY and its governing board shall bear full responsibility for the integrity of the fiscal and programmatic management of the business entity. Ignorance of any contract provision or other requirement contained or referenced in this contract shall not constitute a defense or basis for waiving or appealing such provision or requirement.

ARTICLE 14. Terms and Conditions of Payment

PERFORMING AGENCY shall provide the services described in this contract in the prescribed time and manner for the deliverable payments described herein.

PERFORMING AGENCY shall submit a State of Texas Purchase Voucher (Form B-13) no later than 30 days after the submission of the deliverable(s) specified in the attached Exhibit B. Upon receipt and approval of the deliverable(s), RECEIVING AGENCY shall pay PERFORMING AGENCY an amount not to exceed the amount for that deliverable as specified in Exhibit B.

ARTICLE 15. Contracts with Subcontractors

Contractor may enter into contracts with subcontractors unless restricted or otherwise prohibited. Prior to entering into an agreement equaling $25,000 or 25% of the contract, whichever is greater, Contractor shall obtain written approval from RECEIVING AGENCY. Contracts with subcontractors shall be in writing and must include the following:

- Name and address of all parties;
- A detailed description of the services to be provided;
- Measurable method and rate of payment and total amount of the contract;
- Clearly defined and executable termination clause;
- Beginning and ending dates which coincide with the dates of this contract, or cover a term within the beginning and ending dates of this contract;
- Access to inspect the work and the premises on which any of the work is performed; and
- All clauses required by state/federal statutes, executive orders, and their implementing regulations.

Contractor is responsible to RECEIVING AGENCY for the performance of any subcontractor. Contractor will monitor performance and maintain pertinent records that will be available for inspection by RECEIVING AGENCY.

ARTICLE 16. Inspections

RECEIVING AGENCY and the Texas State Auditor, and their successors, and the federal government when federal funds are involved have the right to inspect or otherwise evaluate the work performed by PERFORMING AGENCY. PERFORMING AGENCY agrees it shall provide reasonable access and assistance in the participation of these inspections and evaluations. All inspections and evaluations will be conducted in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY shall give RECEIVING AGENCY and the Texas State Auditor, and their successors**,** and the federal government, or any of their duly authorized representatives, access to any pertinent books, documents, papers, and client or patient records for the purpose of making audit, examination, excerpts, and transcripts of transactions related to this contract. RECEIVING AGENCY will have the right to audit billings both before and after payment. Payments will not foreclose the right of RECEIVING AGENCY to recover excessive or illegal payments.

ARTICLE 17. Records Retention

PERFORMING AGENCY shall retain medical records in accordance with Title 22 of the Texas Administrative Code, Part 9, §165.1(b)(c) or other applicable statutes and regulations governing medical information. PERFORMING AGENCY shall retain and preserve all other records, including financial records, which are generated or collected under the provisions of this contract, for a period of four (4) years after the termination of the contract. If funding of this contract includes federal funds, the federal retention period, if more than four (4) years shall apply. PERFORMING AGENCY shall retain all records that are the subject of litigation or an audit until the litigation is ended or all questions pertaining to the audit are resolved. Legal requirements for PERFORMING AGENCY may extend beyond the retention schedules established herein.

ARTICLE 18. Confidentiality and Protected Health Information

PERFORMING AGENCY is required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information or other information made confidential by law.

PERFORMING AGENCY is required to disclose protected health information of patients or clients provided services funded through this contract to RECEIVING AGENCY upon request, or as otherwise required in other contract provisions.

RECEIVING AGENCY is authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, for funding, payment and administration of the grant program.

RECEIVING AGENCY is also authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, under exceptions to state confidentiality laws and federal privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 CFR Parts 160 and 164, at §164.512, and Occupations Code, Chapter 159, at §§159.003 and 159.004.

PERFORMING AGENCY must maintain patient and client records in compliance with state laws relating to the security and retention of medical or patient records. RECEIVING AGENCY may require PERFORMING AGENCY to transfer original or copies of patient and client records to another entity,

without the consent or authorization of the patient or client, upon termination of this contract, or if the care and treatment of the individual patient or client is transferred to another entity.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY'S policies based on the model HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) workplace guidelines, and PERFORMING AGENCY shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Health and Safety Code, §§85.112-114.

ARTICLE 19. Hold Harmless

PERFORMING AGENCY, as an independent contractor, agrees to hold RECEIVING AGENCY and/or the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments, and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of PERFORMING AGENCY under this contract.

ARTICLE 20. Sanctions

RECEIVING AGENCY may impose sanctions for any breach of this contract, and will monitor PERFORMING AGENCY for compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY will notify PERFORMING AGENCY in writing of any deficiencies. PERFORMING AGENCY will submit to RECEIVING AGENCY a written plan for resolution of the deficiencies within thirty (30) days of notification. If the deficiencies are not resolved, RECEIVING AGENCY may impose sanctions, which will remain in effect until the deficiencies are properly remedied.

PERFORMING AGENCY is expected to meet its performance and deliverable dates. Any deadline adjustments must be negotiated in advance. If any extensions are granted, RECEIVING AGENCY will determine the length of that extension. RECEIVING AGENCY is not required to renegotiate any dates, performance measures, or deliverables under any circumstances. If PERFORMING AGENCY fails to meet any of the performance measures or deliverables by the dates specified and no extension is granted, RECEIVING AGENCY may:

A. Terminate all or a part of this contract. See the Termination Article in these provisions.

B. Suspend all or part of this contract. Suspension is, the temporary withdrawal of PERFORMING AGENCY'S authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension; and

C. Disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance.

D. Temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY for

proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas;

E. Permanently withhold cash payments. Permanent withholding of cash payment means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas;

F. Deny contract renewal or future contract awards to a PERFORMING AGENCY;

G. Delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution;

H. Require PERFORMING AGENCY to obtain technical or managerial assistance;

I. Require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY;

J. Demand repayment from PERFORMING AGENCY;

K. Reduce the funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the Attachment(s); and

L. Impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which shall be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within fifteen (15) days of receipt of notice, a written response to RECEIVING AGENCY'S program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY shall correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted. RECEIVING AGENCY'S decision is final and PERFORMING AGENCY shall take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of this contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures;

- PERFORMING AGENCY fails to achieve a performance measure;
- PERFORMING AGENCY is paid or requesting payment for expenditures which are not in accordance with or the provisions of this contract; or
- PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY'S conduct or inaction is an emergency will be determined by RECEIVING AGENCY on a case-by-case basis and will be based upon the egregious nature of the noncompliance or conduct.

Article 21. Termination

This contract may be terminated as follows:

1. Either party may terminate this contract with at least 90 days prior written notice to the other party.
2. The parties may terminate this contract by mutual agreement.
3. Either party may terminate this contract with at least 30 days prior written notice to the other party in the event state and/or federal funding for this contract is terminated, limited, suspended, or withdrawn.
4. Either party may terminate for material breach of contract with at least 30 days written notice to the other party.
5. RECEIVING AGENCY may terminate this contract, in whole or in part, for breach of contract by giving at least 30 days written notice to Contractor.
6. RECEIVING AGENCY may terminate this contract when, in the sole determination of RECEIVING AGENCY, termination is in the best interest of the State of Texas.

In emergency circumstances, RECEIVING AGENCY may terminate this contract immediately upon notice to PERFORMING AGENCY by any verifiable means. "Emergency" is defined in the Sanctions Article.

Either party may deliver written notice of intent to terminate by any verifiable method. If either party gives notice of its intent to terminate this contract, PERFORMING AGENCY and RECEIVING AGENCY will try to resolve any issues related to the anticipated termination in good faith during the notice period. During this time, PERFORMING AGENCY will continue to have the responsibility to provide services under this contract and RECEIVING AGENCY will continue to have the responsibility to pay for the services in the manner specified in the contract.

Upon termination of this contract, PERFORMING AGENCY and RECEIVING AGENCY will be discharged from any further obligation created under the terms of this contract, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this contract. In addition, the obligations of PERFORMING AGENCY to retain records and maintain the confidentiality of information shall survive this contract.

ARTICLE 22. Breach of Contract Claim

The process for a breach of contract claim provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by RECEIVING AGENCY and PERFORMING AGENCY to attempt to resolve any claim for breach of contract made by PERFORMING AGENCY. (This process is not applicable for governmental entities.)

ARTICLE 23. Void Contract

RECEIVING AGENCY may hold this contract void upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

ARTICLE 24. Severability

If any provision of this contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue.

ARTICLE 25. Survival of Terms

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

ARTICLE 26. Construction of Ambiguities

The parties expressly agree that they have each independently read and understood this contract. Any ambiguities in this contract shall not be construed against the drafters.

ARTICLE 27. No Waiver of Sovereign Immunity

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY RECEIVING AGENCY OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT RECEIVING AGENCY OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.