



PARTICIPATING AGENCY / SUBCONTRACTOR AGREEMENT ASPR
HOSPITAL / HEALTHCARE PREPAREDNESS PROGRAM –
YEAR SIXTEEN THRU TWENTY

This **Participating Agency / Subcontractor Agreement** (the “Agreement”) is entered effective July 1, 2017 by and between the following entities (each a “Party” and, collectively, “Parties”):

Facility Name: _____

Facility Address: _____

“SETRAC”

Southeast Texas Regional Advisory Council
1111 North Loop West, Suite 160
Houston, TX 77008

BACKGROUND

As part of the U.S. Health and Human Services, The Office of the Assistant Secretary for Preparedness and Response (“ASPR”), Hospital Healthcare Preparedness Program (“HPP”), the Southeast Texas Regional Advisory Council (“SETRAC”) is the Performing Agency under that certain agreement with the Texas Department of State Health Services (“DSHS”)/Community Preparedness Section, effective July 1, 2017.

SETRAC, as the Performing Agency (as that term is defined in the agreement with DSHS), has been awarded funds for the Hospital / Healthcare Preparedness Program on behalf of Trauma Service Areas (TSA) Q, R and H, as designed by the DSHS Office of EMS/Trauma Systems Coordination. Together, TSA Q, R, and H partners and stakeholders comprise the Regional Healthcare Preparedness Coalition (RHPC) for 25 counties in southeast Texas.

SETRAC, in accordance with DSHS contractual requirements, shall be responsible for all regional healthcare planning, implementation, and fiduciary activities; including, but not limited to the implementation of critical benchmarks, planning, coordination with regional response partners, execution of the HPP work plan, distribution and expenditure of HPP funding, equipment, and supplies within the RHPC region. SETRAC staff will provide support for the region’s planning and decision-making processes, and work with all applicable regional planning and response partners to fulfill HPP work plan.

Participating Agency/Subcontractor is located within the RHPC region and is eligible to participate in the ASPR HPP.

A. Term and Termination.

1. The Term of this Agreement will commence on the Effective Date and continue in full force and effective until June 30, 2022, unless sooner terminated as provided herein.
2. Either Party may terminate this Agreement, with or without cause, upon providing 30 days' prior written notice to the other Party of the intended date of termination.
 - i. Should the Terminating Agency/Subcontractor elect to fully disassociate from the HPP program, then any equipment and supplies received as part of the HPP program must promptly be returned at the Agency/Subcontractor expense to SETRAC or an agency/location within the RHPC region as designated by SETRAC.
 - ii. By agreement, the Terminating Agency/Subcontractor may retain preparedness equipment and supplies received as part of the HPP, with conditions as follow below.

The Terminating Agency/Subcontractor must agree to:

 - Certify in writing that the Terminating Agency/Subcontractor will continue to fulfill an active role in the local or regional emergency management system or response plan.
 - Receive equipment by signing property transfer documents as needed.
 - Maintain this equipment in an operationally ready state at the expense of the Terminating Agency/Subcontractor. No additional funding may be received from the HPP to facilitate this readiness step.
 - Maintain appropriate insurance or other means of asset replacement.
 - iii. Terminated Agencies/Subcontractors, who elected to retain preparedness equipment and supplies as defined above, that cease operations, experience business closure or significant change in operational ability/status, bankruptcy proceedings, or otherwise cannot meet the provisions of that paragraph, will promptly notify SETRAC. All equipment and supplies retained by the Terminating Agency/Subcontractor, as designated on property transfer documents, and which are determined by SETRAC as retaining value to the HPP Program, must be returned at the Terminating Agency/Subcontractor's expense to SETRAC or an agency/ location within the RHPC region as designated by SETRAC staff.
3. Participating Agencies/Subcontractors which cease or significantly alter operations, including business closure and / or bankruptcy proceedings, shall notify SETRAC and arrange for the transfer or return of all funds, equipment, and supplies associated with the HPP. Such transfer of equipment shall be accompanied by a final inventory and transfer documentation.
4. Participating and/or Terminating Agencies/Subcontractors which experience a change in ownership or similar circumstances, that invalidates the previous commitment to the HPP as agreed herein, shall notify SETRAC of this status change in writing as soon as practical. Participating and/or Terminating Agency/Subcontractor may continue to participate in the program by submission of this Agreement and other applicable documents documenting changes.

B. SETRAC Obligations. As applicable, SETRAC agrees to the following:

1. Administer the program to ensure that Participating Agencies are provided information, support, opportunities for training and exercises and all funds are allocated and approved in accordance with grant guidelines and approved work plans.
2. Provide an assigned liaison to partner with and assist the Participating Agency/Subcontractor in their planning, response and coordination activities set forth by regulatory/licensure requirements that align with the capabilities and deliverables of the HPP program.
3. To the extent that SETRAC determines it is reasonably able to purchase directly, or to facilitate the bulk purchase of, equipment and supplies, SETRAC shall do so. Otherwise, SETRAC shall endeavor to facilitate purchasing of equipment and supplies through a combination of bulk, cooperative, or group purchasing efforts.
4. Monitor implementation of the preparedness guidelines in Participating Agency/Subcontractor in accordance with DSHS contract requirements.
5. Make Participating Agency/Subcontractors aware of training opportunities, exercises, drills and other activities that would serve to enhance and promote emergency management activities at the Participating Agency level.
6. Make Participating Agency/Subcontractor aware of any unused funds and reallocate such funds, if any, to Participating Agency/Subcontractor to meet equipment and/or supply needs. SETRAC will review all requests for funds to determine the appropriate distribution and utilization of the unused funds, and to reallocate such funds until all funds are exhausted.
7. Comply with all applicable federal and state laws, rules, regulations, standards and guidelines associated with the Hospital Preparedness Program grant, including, but not limited to, DSHS Contractors Financial Procedure Manual and General and Special Provisions.
8. As the contractor, SETRAC shall comply with, and shall require its Participating Agencies/Subcontractors to comply with, the requirements of DSHS rules of general applicability and other applicable state and federal laws and regulations. Regulations and rules currently exist and may be lawfully amended. The DSHS rules are in the Texas Administrative Code, Title 25 (“Rules”). To the extent this Participating Agency/Subcontractor Agreement imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations or the Rules, the terms of this Agreement shall control. Access to appropriate sections of the HPP contract, references, statutes, regulations, rules, and program guidance documents is located on the DSHS website.

C. Participating Agencies/Subcontractors Obligations.

Participating Agency/Subcontractor agrees to the following:

1. Utilize regionally prescribed crisis management information systems such as EmSystem, to affect uniform situational awareness as well as common command, control, communications and information access prior to, during and after an emergency and/or disaster.
2. Appoint a primary contact person to serve in the capacity of hospital/agency representative to the Coalition. This individual will actively participate in Coalition meetings and provide a conduit to the facility concerning regional planning and response issues. Active participation in Coalition meetings is defined as attending at least 4 scheduled Coalition meetings or 3 Coalition meetings and 1 RHPC meetings.
3. Participate in functional exercises, per contract year, as specified in that respective year's SETRAC contract with DSHS. Functional exercise participation requirements may be waived following submission of appropriate documentation, including after action reports and corrective action plans, which reflect participation in actual emergencies or disasters.
4. Indicate acceptance of this Agreement to serve as a region-wide Memorandum of Agreement (MOA) between all signatory. Participants of this MOA agree to collaborate, share resources and personnel, and provide surge capacity as reasonable able during significant incidents and/or disaster.
5. Participate in monthly and/or quarterly exercising of redundant communications equipment and systems, and complete preparedness surveys/reports by the posted deadlines.
6. Maintain minimum levels of preparedness by ensuring National Incident Management System ("NIMS") compliance for all emergency preparedness essential personnel.
7. Participate fully in all actual disaster/emergency response for the RHPC region, as outlined in applicable response plans.
8. In the event SETRAC has purchased or arranged for the purchase of equipment or supplies needed by Participating Agency / Subcontractor under this Agreement, Participating Agency / Subcontractor shall request an allocation of such equipment or supplies to SETRAC prior to separately purchasing such equipment or supplies.
9. Make available: (a) all equipment and supplies (except those supplies already consumed) received or reimbursed by SETRAC; (b) an inventory of such equipment and supplies; and (c) any other books and records of Participating Agency / Subcontractor relating to the receipt or purchase of such equipment and supplies for inspection and audit by SETRAC, DSHS, or ASPR personnel, as applicable, to ascertain Participating Agency's compliance with the ASPR HPP requirements.
10. Comply with all applicable federal and state laws, rules, regulations, standards, and guidelines governing the ASPR HPP Participating Agency's / Subcontractor's operations.
11. Participating Agency/Subcontractor shall comply with the requirements of DSHS' rules of general applicability and other applicable state and federal laws and regulations.

12. Regulations and rules currently exist and may be lawfully amended. The DSHS rules are in the Texas Administrative Code, Title 25 (“Rules”). To the extent this Participating Agency/Subcontractor Agreement imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations or the Rules, the terms of this Agreement shall control. Access to appropriate sections of the HPP contract, references, statutes, regulations, rules, and program guidance documents is located on the DSHS website.

D. Miscellaneous.

1. The Parties hereto warrants and represents the Party is not currently excluded, debarred, suspended or otherwise ineligible to participate in any federal or state health care programs or procurement or non-procurement programs nor is it in imminent danger of such exclusion, debarment, suspension, or other ineligibility. The Parties agree that the foregoing representation and warranty shall remain true and correct throughout the duration of this Agreement.
2. Any notice required or desired to be given under this Agreement will be deemed given upon the earlier of (a) actual delivery, if by hand delivery or courier, or electronic confirmation of delivery, if by facsimile or electronic mail (“e-mail”), to the intended recipient or its agent; or (b) the third business day following deposit in the U.S. Mail, postage prepaid, certified or registered mail, return receipt requested to the respective addresses set out above, or to such other address as a Party shall specify in the manner required by this Section D(2).
3. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, contracts and understandings, whether written or otherwise, between the Parties relating to the subject matter herein.
4. Participating Agency / Subcontractor may not assign any of its rights or obligations under this Agreement without the prior written consent of SETRAC.
5. This Agreement shall be governed by the laws of the U.S. Department of Health and Human Services, Office of Assistant Secretary for Preparedness and Response (“ASPR”), Hospital Preparedness Program (“HPP”) guidance and the State of Texas.
6. SETRAC may be required to provide matching funds for ASPR funds not less than 10% of such costs (For example, \$1 for each \$10 of federal funds provided to the HPP Contractor “SETRAC” by DSHS). While it is not an anticipated event, SETRAC shall make reasonable efforts to match these funds. Otherwise, SETRAC may pass down these requirements to any Participating Agency/Subcontractor per written request. Documentation of the match, including methods and sources, may be required in the ASPR allocation budget and/or reimbursement requests. Each subcontractor must follow procedures for generally accepted accounting practices and meet audit requirements. Specific requirements for subcontractor’s non-federal contributions to fulfilling its match requirement shall be specifically identified in the ASPR funding allocation letter by SETRAC to the Participating Agency/Subcontractor.

7. Participating Agency/Subcontractor will indemnify SETRAC, its directors, employees, agents and representatives (the “SETRAC Indemnitees”) and hold the SETRAC Indemnitees harmless against any damage, claims, suits, actions, liabilities, losses, penalties, costs and expenses, including, without limitation, reasonable attorneys’ fees arising out of:
 - i. A breach of any of the representatives, warranties or obligations of this Agreement by the Participating Agency/Subcontractor; or
 - ii. The negligent acts or omissions of Participating Agency/Subcontractor or any of its employees, agents, or representatives in their performance of the Participating Agency/Subcontractor’s obligations under this Agreement or the Hospital Preparedness Program.

To the extent permitted by law, SETRAC will indemnify Participating Agency/Subcontractor, its directors, officers, employees, agents and representatives (the “Participating Agency/Subcontractor Indemnitees”) and hold the Participating Agency/Subcontractor Indemnitees harmless against any damages, claims, suits, actions, liabilities, loss, penalties, costs and expenses including, without limitation reasonable attorney’s fees, arising out of SETRAC’s negligent acts or omissions related to the Hospital Preparedness Program or otherwise arise under this Agreement. Notwithstanding the foregoing, the indemnifications contained in this Section shall not apply if the indemnified party is found by a trier of fact to be negligent or otherwise at fault.

8. All reasonable efforts shall be made in good faith by the Parties to amicably resolve any dispute, controversy or disagreement arising out of or relating to this Agreement. If any such controversy, dispute or disagreement is not resolved within ten (10) days after the start of negotiations, then within five (5) days immediately after the expiration of the aforesaid ten (10) day period, the Parties shall attempt to agree upon an independent mediator. If the Parties are unable to reach an agreement on an independent mediator within such five (5) day period, then either Party shall be entitled to request that the American Health Lawyers Association (“AHLA”) appoint an independent mediator who shall serve as mediator for all purposes hereof. The mediation shall be conducted in accordance with the rules set forth by the AHLA. Each Party shall pay one-half (½) of the cost of the mediator’s services, in advance upon request by the mediator or either Party. Within ten (10) days after selection of the mediator, the mediator shall call for and set a meeting among the Parties and the mediator for mediating the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after the start of mediation, then the Parties shall be permitted to pursue any other legal remedy provided for under law. The foregoing provisions of this Section D (8) shall not be interpreted to restrict either Party’s right to terminate this Agreement in accordance with Section A (2).

[Signature page follows]

IN WITNESS, WHEREOF, Participating Agency / Subcontractor and SETRAC have duly executed this Agreement effective as of the Effective Date.

Please mark one option below

For regional disaster response purposes:

- Our facility is an Assisted Living Facility
- Our facility is an ICF/IID
- Our facility is a Skilled Nursing Facility
- Our facility is a Dialysis Center
- Our facility is a Home Health Agency
- Our facility is a Personal Care Agency
- Our facility is a Surgical Center
- Our facility is a Hospice (*If Home Based, Please Specify in Other*)
- Our facility is a(n) Other: _____

PARTICIPATING AGENCY / SUBCONTRACTOR

Facility Name _____

Title: Administrator/CEO (Required)

Printed Name: _____

Signature: _____

E-mail: _____

Phone: _____

Date: _____

Title: Designated Emergency Preparedness Contact (Required)

Mark here if same as Administrator/CEO

Printed Name: _____

Signature: _____

E-mail: _____

Phone: _____

Date: _____

SETRAC (For Internal Use Only)

By: _____ (Signature)

Printed Name: Darrell Pile