

**SIGNATURE DOCUMENT FOR  
HHSC CONTRACT No. HHS000446400001**

**I. PURPOSE**

The Health and Human Service Agency (“System Agency”), an administrative agency within the executive department of the State of Texas and having its principal office at 4900 North Lamar Blvd. Austin, Texas, 78751 and Mercer Health & Benefits, LLC (“Contractor”), having its principal office at 2325 E. Camelback Road, Suite 600, Phoenix, AZ 8501-3417 (each a “Party” and collectively “the Parties”) enter into the following contract for consultant services for System Agency’s managed care procurement procedures, processes and evaluation tools. (the “Contract”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of Texas Government Code § 2155.144 and Texas Government Code Chapter 2254, Subchapter B, Consulting Services.

**III. STATEMENT OF SERVICES TO BE PROVIDED**

Contractor shall perform or cause to be performed a comprehensive review of the System Agency’s current managed care procurement evaluation tools and procedures, advise on its assessment of current processes, and the development and implementation of tools and procedures that will improve the efficiencies of System Agency’s managed care procurements, and assist in implementation of all such changes (together, Services) in accordance with the Statement of Work and Budget, attached hereto and incorporated herein as **Attachments A and B**, respectively.

Contractor’s Proposal and the RFP, and any agreed upon modification and clarification, including **Attachment H – Exceptions and Assumptions** are hereby incorporated into this Contract for purposes of determining the Scope of Work – Attachment A – Section II – and all other purposes.

**IV. DURATION**

The Contract is effective on the date of the last Party to sign and terminates one year from that date, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, at its own discretion, may extend this Contract for an additional two (2) years subject to terms and conditions mutually agreeable to the Parties.

## V. BUDGET

The Parties acknowledge that System Agency is currently only authorized to expend Two hundred and fifty thousand dollars (**\$250,000.00**). Should this limit be approached, System Agency reserves the right to seek additional funding authorization, mutually agree with Contractor to reallocate budgeted items in different Phases or cease further work on the Project. If System Agency seeks additional funding the Parties agree that the total amount of this Contract may not exceed Two hundred and ninety-five thousand six hundred and fifteen dollars (**\$295,615.00**). All rates for which System Agency will be invoiced for Services under the Contract will be in accordance with **ATTACHMENT B, BUDGET**. System Agency will only be invoiced by Contractor for actual hours earned and the Budget will not serve as a guarantee of a compensation amount in any particular Phase.

## VI. ORDER OF DOCUMENT PRECEDENCE

Notwithstanding any other provision in the Contract to the contrary, in the event of any conflict or contradiction, these documents will control in the following order of precedence:

- Attachment A – Statement of Work
- Attachment H – Exceptions
- Attachment D – Special Conditions
- Attachment C - Uniform Terms and Conditions
- Attachment E – Data Use Agreement
- Attachment F – Texas Health and Human Services Information and Privacy Requirements

## VII. EXCEPTIONS AND ASSUMPTIONS PROVISIONS

The Parties agree to the Exceptions as included in Attachment H, as well as, the Assumptions listed in Attachment H, which is incorporated into this Contract for all purposes

## VIII. CONTRACT REPRESENTATIVES

The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

### **System Agency**

Name: James Ramirez

Address: Health and Human Services Commission  
4900 North Lamar  
Austin, Texas 78751

Phone Number: (512) 487-3373

Email Address: Ramirez.James@hhsc.state.tx.us

**Contractor**

Name: Frederick Gibison Jr, MBA Address:  
Mercer Health & Benefits, LLC  
2325 E. Camelback Road, Suite 600  
Phoenix, AZ 85016-3417  
Phone Number: (602) 522 6526  
Email Address: fred.gibison@mercer.com

**IX. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency 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:

**System Agency**

Dr. Courtney N. Phillips  
Executive Commissioner  
Health and Human Services Commission  
P.O. Box 13247  
Austin Texas, 78711-3247

**With Required Copy to:**

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
P.O. Box 13247  
Austin Texas 78711-3247  
Fax: 512-424-6586

**Contractor**

Mercer Health & Benefits, LLC  
2325 E. Camelback Road, Suite 600  
Phoenix, AZ 85016  
Attention: Samuel Dustin

Legal notice given by Contractor shall be deemed effective when received by the System Agency. Either Party may change its address for notice by written notice to the other Party.

**SIGNATURE PAGE FOLLOWS**

System Agency Contract No. HHS000446400001

Page 3 of 4

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000446400001**

**SYSTEM AGENCY**

Mercer Health & Benefits, LLC

DocuSigned by:  
*Stephanie Muth*  
D2864AE64F6B4  
[Insert Name] **Stephanie Muth**  
[Insert Title] State Medicaid Director  
Date of execution: August 30, 2019

DocuSigned by:  
*Frederick Gibison Jr*  
F38CDDC4196A418  
Name: **Frederick Gibison Jr**  
Title: Partner  
Date of execution: August 29, 2019

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. \*\*\* ARE HEREBY ATTACHED AND INCORPORATED BY REFERENCE:**

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET**
- ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D – SPECIAL CONDITIONS**
- ATTACHMENT E – DATA USE AGREEMENT**
- ATTACHMENT F – TEXAS HEALTH AND HUMAN SERVICE INFORMATION SECURITY AND PRIVACY REQUIREMENTS**
- ATTACHMENT G – GENERAL AFFIRMATIONS**
- ATTACHMENT H – EXCEPTIONS AND ASSUMPTIONS**
- ATTACHMENT I – CERTIFICATION REGARDING LOBBYING**
- ATTACHMENT J- HUB SUBCONTRACTING PLAN**

**THE FOLLOWING DOCUMENTS TO SYSTEM AGENCY CONTRACT NO. ARE HEREBY INCORPORATED BY REFERENCE**

- A. HHSC RFP No. HHS0004464**
- B. CONTRACTOR’S PROPOSAL**

**ATTACHMENTS FOLLOW**

**HHSC CONTRACT NO. HHS000446400001**  
**ATTACHMENT A**  
**STATEMENT OF WORK**

**1.1 DESCRIPTION OF SERVICES**

Contractor's services will be conducted in four phases, with a potential fifth phase dependent on the System Agency's discretion. Phase I is an assessment of the System Agency's current managed care procurement evaluation processes. Phase II is the development of recommendations for the restructuring of the managed care procurement evaluation process based on the assessment conducted in Phase I. Phase III is the development of tools and procedures for managed care procurement evaluations and facilitating the implementation of such tools and procedures for an upcoming managed care procurement(s). Phase IV is the conducting and overseeing of a managed care procurement evaluation and assessing the tools and procedures developed in Phase III. Phase V is the possible incorporation and implementation of legislative changes resulting from the 86th Texas Legislative Session that pertain to managed care procurements. Contractor may be required to participate in an engagement conference prior to any phase. Throughout the term of the Contract, Contractor will be required to provide regular updates, which may include in-person meetings to update the System Agency on the progress of the services provided under this Contract. The timeline and Deliverable for each Phase are suggestions. Contractor is free, and is in fact encouraged, to propose differing timelines for the phases. Contractor may also combine or further delineate the Phases. However, Phases I through III must be completed within eight (8) weeks from the Effective Date of the Contract.

**1.1.1 PHASE I: ASSESSMENT**

Contractor must perform a comprehensive review and analysis of the System Agency's current managed care procurement processes (the "Assessment"). The Contractor must provide the System Agency a clear written statement of the status quo of the System Agency's managed care procurement processes. The Assessment will serve as a baseline for the remainder of the Project. The Contractor's Assessment must include, but not be limited to: organizational structure; processes being utilized; staff resources and training; quality of tools; quality assurance processes; and any other factors that may contribute to the overall success or failure of the System Agency's managed care procurement processes. Contractor must incorporate input received from diverse stakeholders in completing the Assessment. Contractor must identify key System Agency staff integral to successful managed care procurements. Contractor must also interview key staff and identify barriers to

success given the constraints of the current operating environment. The Assessment will include a review of solicitation evaluation criteria and response evaluation processes, including, but not limited to, selection and training of evaluation teams and evaluation tools. The Assessment must consider the existing information technology tools used to support managed care procurement evaluations. Also, at System Agency's discretion, Contractor may be required to review documentation and approvals of procurements, effectiveness of standard forms, vendor protest procedures, scoring tools, and evaluation materials to identify additional opportunities for improvement.

Contractor also must, as applicable, incorporate in the Assessment recommendations from the Texas State Auditor's Office, the HHSC Office of the Inspector General, and HHSC Internal Audit, if any, as they pertain to the System Agency's managed care procurement and evaluation functions. To the extent these reports, if any, become available after completion of the Contractor's initial Assessment, Contractor will amend the Assessment to incorporate the new information.

#### **1.1.1.1 Phase I - Timeline and Deliverable**

Contractor must, if an alternate proposal is not accepted by System Agency, complete and provide the written Assessment to the System Agency **within three (3) weeks** of the Effective Date of the Contract. After delivery of this preliminary Assessment, the System Agency may provide further direction to Contractor as to the need for additional assessments or refinements to the Assessment. After Contractor incorporates the System Agency's refinements, as applicable, Contractor will provide the final Phase I Assessment to the System Agency. Contractor's Phase I deliverable will include the detailed level of work described in Contractor's Solicitation Response.

#### **1.1.2 Phase II - Recommendations**

Based on the Assessment, Contractor must develop recommendations to restructure the managed care evaluation process to realize process improvements and efficiency gains (the "Recommendations"). The Recommendations must be consistent with the standards and proposal submission requirements of relevant Solicitations. The Recommendations must allow for scoring options such as consensus scoring or peer-reviewed scoring by evaluators and utilize broad categories of assessment.

#### **1.1.2.1 Phase II - Timeline and Deliverable**

After the final Phase I Assessment is delivered and the System Agency had sufficient time to evaluate the Assessment, the System Agency will direct Contractor to provide Recommendations. Contractor must, if an alternate proposal is not accepted by System Agency, complete and provide the Recommendations to the System Agency **within one (1) week** of the System Agency's request. Contractor's Phase II Deliverable will include the detailed level of work described in Contractor's Solicitation Response.

### **1.1.3 Phase III - Development of Tools and Procedures**

After the Assessment and Recommendations are complete, Contractor must develop written tools and procedures to implement the Recommendations (the "Implementation"). Contractor must develop a solicitation response evaluation work plan and evaluation schedule that includes clear milestones and allows each evaluator to initially evaluate all written responses independently of the other evaluation committee members. Contractor must provide technical assistance to System Agency to facilitate the Implementation for an upcoming managed care procurement(s).

#### **1.1.3.1 Phase III - Timeline and Deliverable**

Contractor must, if an alternate proposal is not accepted by System Agency, complete the Implementation **within three (3) weeks** of the System Agency's receipt and acceptance of the Recommendations. Contractor's Phase III Deliverable will include the detailed work described in Contractor's Solicitation Response.

### **1.1.4 Phase IV - Oversight of Evaluation**

After the Implementation is complete, System Agency will assign Contractor a managed care procurement for which Contractor must conduct and oversee a procurement evaluation (the "Evaluation") using the tools and procedures developed during Implementation. Contractor must facilitate, moderate, and chair Contractor oral presentations, consensus scoring meetings if implemented, and evaluator outlier meetings as required and in conjunction with System Agency's Procurement and Contracting Services division. Contractor will serve as an impartial, independent third party who oversees the conduct of the evaluation process and provides an opinion at the conclusion as to whether the process was fairly conducted, consistent with process detailed within the solicitation and System Agency rules. Contractor must document major observations of evaluators during Contractor oral presentations. These observations include; but are not limited to: overall strengths and weaknesses of each proposal reviewed, identification of

clarification and deficiencies of each proposal to address, consensus rationale as applicable, and reasons for evaluator score changes. Contractor must also facilitate, moderate, and chair evaluator deliberations and written responses to solicitation submission requirements. Contractor must prepare summary minutes of evaluator deliberations and oral presentations. Contractor also must provide assurance that the final evaluation documents accurately reflect the criteria applied by evaluators in making the final ranking. Contractor must assist with developing an award recommendation, as well as assisting with awarding the contract(s).

#### **1.1.4.1 Phase IV - Timeline and Deliverable**

Contractor must begin Evaluation activities by the date identified on the procurement timeline. Contractor's performance under Phase IV terminates at the conclusion of all procurement protests, if any, and the successful award of one or more contracts. Contractor may only bill the System Agency for work completed after the award of one or more contracts, but before the conclusion of any protests, if the work is specifically authorized by the System Agency. Contractor's Phase IV Deliverable will include the detailed work described in Contractor's Solicitation Response.

### **1.1.5 Phase V - Legislative Changes**

At System Agency's sole discretion, Contractor may be required to incorporate and implement legislative changes pertaining to managed care procurements resulting from the 86th Texas Legislative Session (the "Legislative Changes"). If System Agency decides to proceed to Phase V, Phase V may run concurrently with one or more of the phases identified above. If Phase V is authorized by System Agency, Contractor must identify Legislative Changes and incorporate such changes into the written Deliverables submitted in Phases II and III, as applicable.

#### **1.1.5.1 Phase V - Timeline and Deliverable**

Contractor must, if an alternate proposal is not accepted by System Agency, complete and provide the written Deliverables described in this section **within six (6) weeks** of HHSC direction. Contractor's Phase V Deliverable will include the detailed work described in Contractor's Solicitation Response.

### **1.1.6 Turnover**

Contractor shall turnover all draft deliverables, work papers, products, notes or other documentation that are not purely internal Contractor administrative or privileged information. System Agency and Contractor will agree to a timeline for the turnover of all materials.



HHSC Contract No. HHS000446400001  
Attachment B - BUDGET

<b>Cost Proposal for Consulting Services Supporting Managed Care Procurements</b>			
Phase	# of hours	Cost	
Phase I: Assessment	240	\$	67,050
Phase II: Recommendations	82	\$	21,190
Phase III: Development of Tools and Procedures	205	\$	52,975
Phase IV: Oversight of Evaluation	520	\$	142,150
Phase V: Legislative Changes	50	\$	12,250
<b>Total</b>	<b>1047</b>	<b>\$</b>	<b>295,615</b>
<b>Phase I: Assessment</b>			
Position Title	Hourly rate	# of hours	Total
Consultant	\$295	225	\$ 66,375
Administrative Assistant	\$45	15	\$ 675
<b>Total, Phase I</b>		<b>240</b>	<b>\$ 67,050</b>
<b>Phase II: Recommendations</b>			
Position Title	Hourly rate	# of hours	Total
Consultant	\$295	70	\$ 20,650
Administrative Assistant	\$45	12	\$ 540
<b>Total, Phase II</b>		<b>82</b>	<b>\$ 21,190</b>
<b>Phase III: Development of Tools and Procedures</b>			
Position Title	Hourly rate	# of hours	Total
Consultant	\$295	175	\$ 51,625
Administrative Assistant	\$45	30	\$ 1,350
<b>Total, Phase III</b>		<b>205</b>	<b>\$ 52,975</b>
<b>Phase IV: Oversight of Evaluation</b>			
Position Title	Hourly rate	# of hours	Total
Consultant	\$295	475	\$ 140,125
Administrative Assistant	\$45	45	\$ 2,025
<b>Total, Phase IV</b>		<b>520</b>	<b>\$ 142,150</b>
<b>Phase V: Legislative Changes</b>			
Position Title	Hourly rate	# of hours	Total
Consultant	\$295	40	\$ 11,800
Administrative Assistant	\$45	10	\$ 450
<b>Total, Phase V</b>		<b>50</b>	<b>\$ 12,250</b>



# TEXAS

## Health and Human Services

**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions - Vendor**  
**Version 2.15**

Published and Effective September 1, 2017

Responsible Office: Chief Counsel

**TABLE OF CONTENTS**

Article I. Definitions and Interpretations ..... 4

    1.1 Definitions ..... 4

    1.2 Interpretive Provisions..... 5

Article II. Consideration..... 6

    2.1 Prompt Payment..... 6

    2.2 Expenses ..... 6

    2.3 Work Orders ..... 6

Article III. State and Federal Funding..... 7

    3.1 Funding..... 7

    3.2 No debt Against the State ..... 7

    3.3 Debt to State ..... 7

    3.4 Recapture of Funds ..... 7

Article IV. Warranty, Affirmations, Assurances and Certifications ..... 8

    4.1 Warranty ..... 8

    4.2 General Affirmations ..... 8

    4.3 Federal Assurances ..... 8

    4.4 Federal Certifications..... 8

Article V. Ownership and Intellectual Property ..... 9

    5.1 Ownership..... 9

    5.2 Intellectual Property..... 9

Article VI. Records, Audit, and Disclosure..... 9

    6.1 Books and Records ..... 9

    6.2 Access to records, books, and documents ..... 9

    6.3 Response/compliance with audit or inspection findings ..... 10

    6.4 SAO Audit ..... 10

    6.5 Confidentiality ..... 10

    6.6 Public Information Act ..... 11

Article VII. Contract Management and Early Termination ..... 11

    7.1 Contract Management..... 11

7.2 Termination for Convenience ..... 11

7.3 Termination for Cause ..... 11

7.4 Contractor responsibility for associated costs. .... 12

7.5 Equitable Settlement ..... 12

Article VIII. Miscellaneous Provisions ..... 12

8.1 Amendment..... 12

8.2 Insurance..... 12

8.3 Delegation of Authority ..... 12

8.4 Legal Obligations..... 13

8.5 E-Verify ..... 13

8.6 Permitting and Licensure ..... 13

8.7 Indemnity ..... 13

8.8 Assignments..... 14

8.9 Subcontracts..... 14

8.10 HUB/Mentor Protégé..... 15

8.11 Relationship of the Parties ..... 15

8.12 Technical Guidance Letters ..... 16

8.13 Governing Law and Venue..... 16

8.14 Severability ..... 16

8.15 Survivability ..... 16

8.16 Force Majeure..... 16

8.17 Dispute Resolution..... 17

8.18.2017No Waiver of Provisions..... 17

8.19 Publicity..... 17

8.20 Prohibition on Non-compete Restrictions ..... 17

8.21 No Waiver of Sovereign Immunity ..... 17

8.22 Entire Contract and Modification ..... 17

8.23 Counterparts..... 18

8.24 Proper Authority ..... 18

8.25 Civil Rights..... 18

8.26 Enterprise Information Management Standards ..... 19

8.27 Notice of Legal Matter or Litigation ..... 19

## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

### 1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

“Deliverable” means a work product prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Contractor, collectively.

“Party” means either the System Agency or Contractor, individually.

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document issued by the System Agency under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“[Solicitation Response](#)” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Contractor.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

“[Work Order](#)” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

## 1.2 INTERPRETIVE PROVISIONS

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

## **ARTICLE II. CONSIDERATION**

### **2.1 PROMPT PAYMENT**

The System Agency will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

### **2.2 EXPENSES**

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas Textravel.

### **2.3 WORK ORDERS**

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the System Agency will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the System Agency makes no guarantee of volume or usage under this Contract.

### **ARTICLE III. STATE AND FEDERAL FUNDING**

#### **3.1 FUNDING**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

#### **3.2 NO DEBT AGAINST THE STATE**

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

#### **3.3 DEBT TO STATE**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

#### **3.4 RECAPTURE OF FUNDS**

The System Agency may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor



understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

### **4.1 WARRANTY**

Contractor warrants that all Work under this Contract will be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and will be fit for ordinary use, of good quality, and with no material defects. If Contractor fails to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

### **4.2 GENERAL AFFIRMATIONS**

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.3 FEDERAL ASSURANCES**

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

### **4.4 FEDERAL CERTIFICATIONS**

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition, Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

## **ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP**

The System Agency will own, and Contractor hereby assigns to the System Agency, all right, title, and interest in all Work.

### **5.2 INTELLECTUAL PROPERTY**

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

## **ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE**

### **6.1 BOOKS AND RECORDS**

Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor’s Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

### **6.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS**

In addition to any right of access arising by operation of law, Contractor and any of Contractor’s affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States,

the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

### **6.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- a. Contractor must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Contractor must provide to HHSC upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

### **6.4 SAO AUDIT**

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

### **6.5 CONFIDENTIALITY**

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

## 6.6 PUBLIC INFORMATION ACT

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

## ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

### 7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

### 7.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

### 7.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

#### a. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

#### b. **Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial

viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

#### **7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.**

If the System Agency terminates the Contract for Cause, the Contractor will be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation that is reasonably attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

#### **7.5 EQUITABLE SETTLEMENT**

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

### **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

#### **8.1 AMENDMENT**

The Contract may only be amended by an Amendment executed by both Parties.

#### **8.2 INSURANCE**

Unless otherwise specified in this Contract, Contractor will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

#### **8.3 DELEGATION OF AUTHORITY**

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is

limited to the terms of the Contract. Contractor may not reply upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

#### **8.4 LEGAL OBLIGATIONS**

Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

#### **8.5 E-VERIFY**

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

#### **8.6 PERMITTING AND LICENSURE**

At Contractor's sole expense, Contractor will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

#### **8.7 INDEMNITY**

**TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND**

**LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:**

- **CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- **EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR**
- **WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

## **8.8 ASSIGNMENTS**

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

## **8.9 SUBCONTRACTS**

Contractor will be responsible to the System Agency for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the System Agency of any Subcontractor receiving compensation of One hundred thousand dollars (\$100,000.00) or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The System Agency reserves the right to:

- a. Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for the System Agency to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
- c. Object to the subcontracting of the Work proposed to be Subcontracted.

#### **8.10 HUB/MENTOR PROTÉGÉ**

In accordance with State law, it is the System Agency's policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

#### **8.11 RELATIONSHIP OF THE PARTIES**

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.



## **8.12 TECHNICAL GUIDANCE LETTERS**

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

## **8.13 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

## **8.14 SEVERABILITY**

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

## **8.15 SURVIVABILITY**

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

## **8.16 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

### **8.17 DISPUTE RESOLUTION**

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

### **8.18.2017NO WAIVER OF PROVISIONS**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

### **8.19 PUBLICITY**

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

### **8.20 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Contractor will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

### **8.21 NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

### **8.22 ENTIRE CONTRACT AND MODIFICATION**

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the System Agency.

### 8.23 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

### 8.24 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor with respect to compensation.

### 8.25 CIVIL RIGHTS

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
  - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
  - (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
  - (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  - (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - (6) Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
  - (7) The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Contractor agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for

the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- d. Contractor agrees to comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- e. Upon request, Contractor will provide HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- f. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885.

## **8.26 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

## **8.27 NOTICE OF LEGAL MATTER OR LITIGATION**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



# TEXAS

## Health and Human Services

**Health and Human Services Commission**  
**Special Conditions**  
**Version 1.2**  
**9.1.17**

## Table of Contents

<b>Article I. Special Definitions .....</b>	<b>1</b>
<b>Article II. General Provisions.....</b>	<b>2</b>
2.01 Most Favored Customer .....	2
2.02 Renegotiation and Reprocurement Rights.....	2
<b>Article III. Contractors Personnel and Subcontractors .....</b>	<b>2</b>
3.01 Qualifications .....	2
3.02 Conduct and Removal .....	2
<b>Article IV. Performance .....</b>	<b>2</b>
4.01 Measurement .....	2
<b>Article V. Amendments and Modifications.....</b>	<b>3</b>
5.01 Formal Procedure .....	3
5.02 Minor Administrative Changes .....	3
<b>Article VI. Payment .....</b>	<b>3</b>
6.01 Enhanced Payment Procedures .....	3
<b>Article VII. Confidentiality .....</b>	<b>4</b>
7.01 Consultant Disclosure .....	4
7.02 Confidential System Information .....	4
<b>Article VIII. Disputes and Remedies.....</b>	<b>4</b>
8.01 Agreement of the Parties .....	4
8.02 Operational Remedies .....	5
8.03 Equitable Remedies.....	5
8.04 Continuing Duty to Perform.....	6
<b>Article IX. Damages.....</b>	<b>6</b>
9.01 Availability and Assessment .....	6
9.02 Specific Items of Liability .....	6
<b>Article X. Additional License and Ownership Provisions .....</b>	<b>7</b>
10.01 HHSC Additional Rights.....	7
10.02 Third Party Software .....	7
10.03 Software and Ownership Rights.....	7
<b>Article XI. Miscellaneous Provisions .....</b>	<b>8</b>
11.01 Conflicts of Interest.....	8
11.02 Flow Down Provisions .....	8
11.03 Manufacturer’s Warranties.....	8

## HHSC SPECIAL CONDITIONS

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions –Vendor- Version 2.14

### **Article I. SPECIAL DEFINITIONS**

**“Conflict of Interest”** means a set of facts or circumstances, a relationship, or other situation under which Contractor, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Contractor’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements.

**“Contractor Agents”** means Contractor’s representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

**“Data Use Agreement”** means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

**“Item of Noncompliance”** means Contractor’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Work; (3) represent a failure of Contractor to be responsive to a request of HHSC relating to the Work under the Contract.

**“Minor Administrative Change”** refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 5.02 of these Special Conditions.

**“Confidential System 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 create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Work, which is not designated as Confidential Information in aData Use Agreement.

**“State”** means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

**“Software”** means all operating system and applications software used or created by Contractor to perform the Work under the Contract.

**“Third Party Software”** refers to software programs or plug-ins developed by companies or individuals other than Contractor which are used in performance of the Work. It does not include items which are ancillary to the performance of the Work, such as internal systems of Contractor which were deployed by Contractor prior to the Contract and not procured to perform the Work.

**“UTC”** means HHSC’s Uniform Terms and Conditions- Vendor –Version 2.15

## **Article II. GENERAL PROVISIONS**

### **2.01 Most Favored Customer**

Contractor agrees that if during the term of the Contract, Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, Contractor will notify HHSC within (10) business days from the date Contractor executes any such agreement. Contractor agrees, at HHSC's option, to amend the Contract to accord equivalent advantage to HHSC.

### **2.02 Renegotiation and Reprocurement Rights**

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor's receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

## **Article III. CONTRACTORS PERSONNEL AND SUBCONTRACTORS**

### **3.01 Qualifications**

Contractor agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Contractor Agents assigned to perform the duties and responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

### **3.02 Conduct and Removal**

While performing the Work under the Contract, Contractor Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Contractor Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any Work under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

## **Article IV. PERFORMANCE**

### **4.01 Measurement**



Satisfactory performance of the Contract, unless otherwise specified in the Contract, will be measured by:

- (a) Compliance with Contract requirements, including all representations and warranties;
- (b) Compliance with the Work requested in the Solicitation and Work proposed by Contractor in its response to the Solicitation and approved by HHSC;
- (c) Delivery of Work in accordance with the service levels proposed by Contractor in the Solicitation Response as accepted by HHSC;
- (d) Results of audits, inspections, or quality checks performed by the HHSC or its designee;
- (e) Timeliness, completeness, and accuracy of Work; and
- (f) Achievement of specific performance measures and incentives as applicable.

## **Article V. AMENDMENTS AND MODIFICATIONS**

### **5.01 Formal Procedure**

No different or additional Work or contractual obligations will be authorized or performed unless contemplated within the Scope of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for Work that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract. Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

### **5.02 Minor Administrative Changes**

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Work or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 5.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

## **Article VI. PAYMENT**

### **6.01 Enhanced Payment Procedures**

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any

such dispute, Contractor will continue to perform the Work in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

## **Article VII. CONFIDENTIALITY**

### **7.01 Consultant Disclosure**

Contractor agrees that any consultant reports received by HHSC in connection with the Contract may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC's website or the website of a standing committee of the Texas Legislature.

### **7.02 Confidential System Information**

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Contractor and all Contractor Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Work or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Other Confidential Information, Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Contractor. Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, Contractor WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM Contractor OR Contractor AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. Contractor WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.**

## **Article VIII. DISPUTES AND REMEDIES**

### **8.01 Agreement of the Parties**

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before

resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every reasonable effort to resolve the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the UTC and Texas Government Code §2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.

## **8.02 Operational Remedies**

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the Work as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

- (a) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- (b) Require additional or different corrective action(s) of HHSC's choice;
- (c) Suspension of all or part of the Contract or Work;
- (d) Prohibit Contractor from incurring additional obligations under the Contract;
- (e) Issue Notice to stop Work Orders;
- (f) Assessment of liquidated damages as provided in the Contract;
- (g) Accelerated or additional monitoring;
- (h) Withholding of payments; and
- (i) Additional and more detailed programmatic and financial reporting.

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

## **8.03 Equitable Remedies**

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose

the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

#### **8.04 Continuing Duty to Perform**

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension of performance, in whole or in part, by Contractor of the Work or any duty or obligation with respect to the Contract.

### **Article IX. DAMAGES**

#### **9.01 Availability and Assessment**

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the Work or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- (a) Through direct assessment and demand for payment to Contractor; or
- (b) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

#### **9.02 Specific Items of Liability**

Contractor bears all risk of loss or damage due to defects in the Work, unfitness or obsolescence of the Work, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the Work, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor Agents' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor Agents, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

**IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, Contractor WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY Contractor TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.**

## **Article X. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS**

### **10.01 HHSC Additional Rights**

HHSC will have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by Contractor under or resulting from the Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Contractor in the performance of the Work. If applicable, Contractor will reproduce and include HHSC's copyright, proprietary notice, or any product identifications provided by Contractor.

### **10.02 Third Party Software**

Contractor grants HHSC a non-exclusive, perpetual, license for HHSC to use Third Party Software and its associated documentation for its internal business purposes. HHSC will be entitled to use Third Party Software on the equipment or any replacement equipment used by HHSC, and with any replacement Third Party Software chosen by HHSC, without additional expense.

Terms in any licenses for Third Party Software will be consistent with the requirements of this section. Prior to utilizing any Third Party Software product not identified in the Solicitation Response, Contractor will provide HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to, in its discretion, object to the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Contract. Contractor will assign to HHSC all licenses for the Third Party Software as necessary to carry out the intent of this section.

Contractor will, during the Contract, maintain any and all Third Party Software at their most current version or no more than one version back from the most current version. However, Contractor will not maintain any Third Party Software versions, including one version back, if notified by HHSC that any such version would prevent HHSC from using any functions, in whole or in part, of HHSC systems or would cause deficiencies in HHSC systems.

### **10.03 Software and Ownership Rights**

In accordance with 45 C.F.R. Part 95.617, all appropriate federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for government purposes all Work, materials, Custom Software and modifications thereof, source code, associated documentation designed, developed, or installed with Federal Financial Participation under the Contract, including but not limited to those materials covered by copyright.

## **Article XI. MISCELLANEOUS PROVISIONS**

### **11.01 Conflicts of Interest**

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Contractor agrees that, if after Contractor's execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

If HHSC determines that Contractor was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

### **11.02 Flow Down Provisions**

Contractor must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of Work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

### **11.03 Manufacturer's Warranties**

Contractor assigns to HHSC all of the manufacturers' warranties and indemnities relating to the Work, including without limitation, Third Party Software, to the extent Contractor is permitted by the manufacturers to make such assignments to HHSC.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

## ATTACHMENT G

### CONTRACT AFFIRMATIONS

By entering into this Contract, Contractor affirms, without exception, as follows:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. Contractor represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Contractor understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, if any, are rejected unless expressly accepted by HHSC in writing.
5. Contractor agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
6. Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of HHSC.
7. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.
8. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this

**ATTACHMENT G**

- Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
9. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
  10. Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
  11. Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.
  12. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
  13. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
  14. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
  15. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
  16. Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
  17. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).



## ATTACHMENT G

18. Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
19. Contractor agrees that upon request of HHSC, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.
20. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - providing equivalent access for effective use by both visual and non-visual means;
  - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

21. If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
22. If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
23. Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services

**ATTACHMENT G**

under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

24. Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
25. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
26. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
27. Contractor understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
28. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and (c) neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

**ATTACHMENT G**

29. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
30. Contractor represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of this Contract.
31. Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
- (a) all persons employed by Contractor to perform duties within Texas; and
  - (b) all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.
32. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.
33. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
34. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
35. Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or


**ATTACHMENT G**

material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

- 36. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor.

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

**Legal Name of Contractor:** Mercer Health & Benefits LLC

  
**Signature of Authorized Representative**

August 19, 2019  
**Date Signed**

Fredrick Gibison Jr, MBA, Partner  
**Printed Name and Title of Authorized Representative**

+1 602 522 6526  
**Phone Number**

34-2015463  
**Federal Employer Identification Number**

+1 602 522 6499  
**Fax Number**

616213125  
**DUNS Number**

fred.gibison@mercerc.com  
**Email Address**

2325 East Camelback Road, Suite 600  
**Physical Street Address**

Phoenix, AZ, 25016  
**City, State, Zip Code**

N/A  
**Mailing Address, if different**

N/A  
**City, State, Zip Code**

**ATTACHMENT H  
EXCEPTIONS AND ASSUMPTIONS**

**SECTION I - EXCEPTIONS**

The Parties agree that the following exceptions shall replace the described portion of each section of the documents listed below:

**1) Contract Attachment C – Uniform Terms and Conditions Section 8.7 - Indemnity**

The first paragraph of this section is replaced with the following:

“TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES IN CONNECTION WITH A THIRD PARTY CLAIM, INCLUDING ATTORNEY’S FEES AND THE COURT COSTS TO THE EXTENT DIRECTLY ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:”

The first bullet point of this section is replaced with the following:

“CONTRACTOR’S NEGLIGENCE ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR...

**2) Contract Attachment D – Special Conditions Section 7.02 – Confidential System Information**

The second to last paragraph of this section is replaced with the following:

“HHSC will have the right to recover from Contractor all damages and liabilities to the extent directly caused by or arising from Contractor or Contractor’s failure to protect HHSC’s Confidential Information as required by this Agreement.”

The last paragraph of this section is replaced with the following:

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, CONTRACTOR, WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES AND COSTS) IN CONNECTION

WITH A THIRD-PARTY CLAIMS TO THE EXTENT DIRECTLY CASUSED BY OR ARISING FROM CONTRACTOR OR CONTRACTOR'S AGENTS' FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. CONTRACTOR WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

3) **Contract Attachment D Special Conditions – Section 9.01 – Availability and Assessment**

The entirety of this section is replaced with the following:

HHSC will be entitled to actual or direct damages resulting from Contractor's failure to comply with any of the terms of the Contract. Contractor's liability for any and all damages or loss arising out of or related to the services giving rise to such loss shall be limited to two (2) times the entire value of the Contract. Contractor shall not be liable for the acts or omissions of any third party (other than its subcontractors, if any).

In no event shall either party or its affiliates be liable in connection with this Contract to the other party or its affiliates for any loss of profit or incidental, consequential, special, indirect, punitive, or similar damages. This limitation is intended to apply to the fullest extent permitted by the State of Texas Constitution or State of Texas law. Provided, however, that this limitation of liability shall not apply to any liability caused by a party's fraud, willful injury, or violation of law, whether willful or negligent.

**SECTION II – ASSUMPTIONS**

The Parties agree to the following Assumptions:

- 1) HHSC will be responsive to Mercer's request to schedule meetings and for relevant documents, data and other information to enable Mercer to successfully complete the Scope of Work in a timely manner.
- 2) HHSC will help facilitate work flow and interaction with applicable agency staff to ensure Mercer's ability to complete the Scope of Work in a timely manner. Information provided by HHSC will be accurate, complete, and reliable for the intended purpose.
- 3) Mercer will have no responsibility for the performance of other contractors or vendors engaged by HHSC or delays that may be caused by them in connection with the work performed under this Contract.
- 4) Mercer assumes its work products will be produced in English and if any translation is needed, HHSC will take that responsibility.

- 5) Mercer assumes HHSC will not require that Mercer provide in detailed format any proprietary data, methodologies or information that Mercer possessed prior to the start of this Contract or was created outside of this Contract. Mercer assumes HHSC will not require Mercer to divulge confidential or non-public information in detailed format from Mercer's other clients unless Mercer's other client(s) provide express written permission to do so. Summary level information or information disguised for example as "Midwest State #1" will be acceptable to HHSC.
- 6) Protected Health Information (PHI) will not be required for this scope of work.
- 7) In Phase I, Mercer will conduct no more than 20 pages interviews, with a maximum of 5 people per interview.
- 8) The Assessment (Phase I) will be no more than 20 pages in length, not including appendices or exhibits.
- 9) The Recommendations (Phase II) will be no more than 15 pages in length, not including appendices or exhibits.
- 10) In Phase III, Mercer will not be drafting or significantly revising manuals or similar documentation.
- 11) Mercer will not be reviewing or scoring proposals as part of the oversight of an evaluation (Phase IV).
- 12) Consensus /Evaluator outlier meetings in Phase IV will occur within a period of two weeks.
- 13) The report on the evaluation process (Phase IV) will not exceed 25 pages excluding appendices or exhibits.

# Attachment I Lobbying Certificate

## CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.


(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
Mercer Health & Benefits LLC	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: Mr.	* First Name: Frederick Middle Name:
* Last Name: Gibison Jr, MBA	Suffix:
* Title: Partner	
* SIGNATURE: 	* DATE: 05/21/2019