

SIGNATURE DOCUMENT FOR
HHSC CONTRACT NO. HHS0002879-00003
AMENDMENT NO. 3

The Health and Human Service Commission (**HHSC**) and UnitedHealthcare Insurance Company, Inc., (**Dental Contractor**), each a “Party” and collectively the “Parties” to HHSC Contract No. HHS0002879-00003 (the “**Contract**”) effective October 25, 2019, now want to amend the Contract.

A. PURPOSE.

The purpose of this Amendment is to amend Attachment B, Amended and Restated HHSC Dental Contract Terms and Conditions, September 1, 2020, by adding section 1.07.

B. AMENDMENTS.

The Parties agree as follows:

1. Attachment B, Amended and Restated HHSC Dental Contract Terms and Conditions, September 1, 2020, of the Contract is hereby amended and restated in its entirety with Attachment B, Amended and Restated HHSC Dental Contract Terms and Conditions, December 15, 2020.
2. This Amendment requires approval by the Centers for Medicare & Medicaid Services (CMS). The Parties agree to act in good faith and, if needed, to take reasonable steps to modify this Amendment in order to secure CMS approval. If HHSC is unable to secure CMS approval, HHSC will not be responsible for any expense or loss occasioned by such failure. While HHSC agrees to act in good faith and reasonably pursue CMS approval, the length and substance of that pursuit will be in HHSC's sole discretion.
3. This Amendment is effective on December 15, 2020, subject to CMS approval as stated in section B.2 of this Amendment.
4. Except as modified by this Amendment, all terms of the Contract shall remain in effect.
5. Any further revisions to the Contract shall be by written agreement of the Parties, unless otherwise permitted by the Contract.
6. All references in this Contract to Attachment B are understood to be references to the amended and restated version as found on this Signature Document.

The Parties hereby execute this Amendment in their capacities as stated below with authority to bind their respective parties on the dates set forth by their signatures.


SIGNATURE PAGE FOR CONTRACT NO. HHS0002879-00003

HHSC

DENTAL CONTRACTOR

DocuSigned by:

C80071B769504E9...
 Name: Cecile Young
 Title: Executive Commissioner
 Date of signature: December 27, 2020

DocuSigned by:

915E12D3700F49E...
 Name: James F. Bedard
 Title: CFO
 Date of signature: December 21, 2020

THE FOLLOWING DOCUMENT IS HEREBY ATTACHED AND INCORPORATED BY REFERENCE INTO HHSC CONTRACT NO: HHS0002879-00003:

- 1) ATTACHMENT B, AMENDED AND RESTATED HHSC DENTAL CONTRACT TERMS AND CONDITIONS, DECEMBER 15, 2020.**

ATTACHMENT FOLLOWS

Dental Services for Texas Children's Medicaid and Children's Health Insurance Program

Contract No. HHS000287900003

Attachment B – Amended and Restated HHSC Dental Contract Terms and Conditions, December 15, 2020



Texas Health & Human Services Commission

HHSC Dental Contract Terms and Conditions

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Article 1: Introduction

Section 1.01 Purpose.

The purpose of this Contract is to set forth the terms and conditions for the Dental Contractor's participation as a dental indemnity insurer or single-service health maintenance organization, also referred to as a "dental maintenance organization" or "DMO," for the statewide Dental Program. Under the terms of this Contract, the Dental Contractor will provide comprehensive Medically Necessary Covered Dental Services to eligible Medicaid and CHIP Members through a Network of licensed dentists contracted with the Dental Contractor.

Section 1.02 Risk-based Contract.

This is a risk-based contract.

Section 1.03 Inducements.

In making the award of this Contract, HHSC relied on Dental Contractor's assurances of the following:

- (a) Dental Contractor is an established dental indemnity insurance provider or DMO that arranges for the delivery of Medically Necessary Covered Dental Services, and:
 - (1) Is currently licensed as such in the State of Texas and is fully authorized to conduct business in the Service Area; or
 - (2) Will be fully authorized by TDI to conduct business in the Service Area no later than 120 days after the Contract's Effective Date;
- (b) Dental Contractor and its Material Subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to provide the Services and Deliverables described in this Contract in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;
- (c) Dental Contractor has thoroughly reviewed, analyzed, and understood the RFP, has timely raised all questions or objections to the RFP, and has had the opportunity to review and fully understand HHSC's current Dental Program and operating environment for the activities that are the subject of this Contract and the needs and requirements of HHSC during the Contract term;
- (d) Dental Contractor has had the opportunity to review and understand HHSC's stated objectives in entering into this Contract and, based on such review and understanding, Dental Contractor currently has the capability to perform in accordance with the terms and conditions of this Contract;
- (e) Dental Contractor also has reviewed and understands the risks associated with the Dental Program as described in the RFP, including the risk of non-appropriation of funds.

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Accordingly, on the basis of the terms and conditions of this Contract, HHSC desires to engage Dental Contractor to perform the Services and provide the Deliverables described in this Contract under the terms and conditions set forth in this Contract.

Section 1.04 Construction of the Contract.

(a) Scope of Introductory Article.

The provisions of any introductory article to the Contract are intended to be a general introduction and are not intended to expand the scope of the Parties’ obligations under the Contract or to alter the plain meaning of the terms and conditions of the Contract.

(b) References to the “State.”

References in the Contract to the “State” mean the State of Texas unless otherwise specifically indicated and must be interpreted, as appropriate, to mean or include HHSC and other agencies of the State of Texas that may participate in the administration of the Dental Program, provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

(c) Severability.

If any provision of this Contract is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated in this Contract, but all other provisions will remain in full force and effect.

(d) Survival of terms.

Termination or expiration of this Contract for any reason will not release either Party from any liabilities or obligations set forth in this Contract that:

- (1) The Parties have expressly agreed will survive any such termination or expiration; or
- (2) Arose prior to the effective date of termination and remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration.

(e) Headings.

The article, section, and paragraph headings in this Contract are for reference and convenience only and may not be considered in the interpretation of this Contract.

(f) Global drafting conventions.

- (1) The terms “include,” “includes,” and “including” are terms of inclusion, and where used in this Contract, are deemed to be followed by the words “without limitation.”
- (2) Any references to “sections,” “appendices,” “exhibits” or “attachments” are deemed to be references to sections, appendices, exhibits, or attachments to this Contract.

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- (3) Any references to laws, rules, regulations, and manuals in this Contract are deemed references to these documents as amended, modified, or supplemented from time to time during the term of this Contract.

Section 1.05 No Implied Authority.

The authority delegated to Dental Contractor by HHSC is limited to the terms of this Contract. HHSC is the state agency designated by the Texas Legislature to administer Medicaid and CHIP, and no other agency of the State grants Dental Contractor any authority related to these programs unless directed through HHSC. Dental Contractor may not rely upon implied authority, and specifically is not delegated authority under this 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 HHSC Programs; or
- (c) Unilaterally communicate or negotiate with any federal or State agency or the Texas Legislature on behalf of HHSC regarding the HHSC Programs.

Dental Contractor is required to cooperate to the fullest extent possible to assist HHSC in communications and negotiations with state and federal governments and agencies concerning matters relating to the scope of the Contract and the Dental Program, as directed by HHSC.

Section 1.06 Legal Authority.

- (a) HHSC is authorized to enter into this Contract under Chapters 531 and 533, Texas Government Code; Section 2155.144, Texas Government Code; or Chapter 62, Texas Health & Safety Code. Dental Contractor is authorized to enter into this Contract pursuant to the authorization of its governing board or controlling owner or officer.
- (b) The person or persons signing and executing this Contract on behalf of the Parties, or representing themselves as signing and executing this Contract on behalf of the Parties, warrant and guarantee that he, she, or they have been duly authorized to execute this Contract and to validly and legally bind the Parties to all of its terms, performances, and provisions.

Section 1.07 Loss of Program Authority.

Should any part of the scope of work under this contract relate to a state program that is no longer authorized by law (e.g., which has been vacated by a court of law, or for which CMS has withdrawn federal authority, or which is the subject of a legislative repeal), the Dental Contractor must do no work on that part after the effective date of the loss of program authority. The state must adjust capitation rates, or non-risk payments as applicable, to remove costs that are specific to any program or activity that is no longer authorized by law. If the Dental Contractor works on a program or activity no longer authorized by law after the date the legal authority for the work ends, the Dental Contractor will not be paid for that work. If the state paid the Dental Contractor in advance to work on a no-longer-authorized program or activity and under the terms of this

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contract the work was to be performed after the date the legal authority ended, the payment for that work should be returned to the state. However, if the Dental Contractor worked on a program or activity prior to the date legal authority ended for that program or activity, and the state included the cost of performing that work in its payments to the Dental Contractor, the Dental Contractor may keep the payment for that work even if the payment was made after the date the program or activity lost legal authority.

Article 2: Definitions

As used in this Contract, the following terms and conditions have the meanings assigned below:

Abuse means provider practices that are inconsistent with sound fiscal, business, medical, or dental practices and result in an unnecessary cost to the Dental Program, or in reimbursement for services that fail to meet professionally recognized standards for dental care. It also includes member practices that result in unnecessary cost to the Dental Program.

Account Name means the name of the individual who lives with the child(ren) and who applies for the CHIP coverage on behalf of the child(ren).

Adjudicate means to deny or pay a Clean Claim.

Adverse Benefit Determination means:

- (1) the denial or limited authorization of a Member or Provider requested Services, including the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
- (2) the reduction, suspension, or termination of a previously authorized service;
- (3) the denial in whole or in part of payment for service;
- (4) the failure to provide services in a timely manner as determined by the State;
- (5) the failure of a Dental Contractor to act within the timeframes set forth in the Contract and 42 C.F.R. § 438.408(b); or
- (6) the denial of a Member's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other member financial liabilities.

Affiliate means any individual or entity that meets any of the following criteria:

- (a) Owns or holds more than a five percent interest in the Dental Contractor, either directly, or through one or more intermediaries;
- (b) In which the Dental Contractor owns or holds more than a five percent interest either directly, or through one or more intermediaries;
- (c) Any parent entity or subsidiary entity of the Dental Contractor, regardless of the organizational structure of the entity;
- (d) Any entity that has a common parent with the Dental Contractor, either directly, or through one or more intermediaries;

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- (e) Any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Dental Contractor; or,
- (f) Any entity that would be considered to be an affiliate by any Securities and Exchange Commission or Internal Revenue Service regulation, Federal Acquisition Regulations, or by another applicable regulatory body.

Agency Sensitive Information means information that is not subject to specific legal, regulatory or other external requirements, but is considered HHS sensitive and is not readily available to the public. "Agency Sensitive Information" could be subject to disclosure under the Texas Public Information Act, but disclosure should be controlled due to sensitivity

Allowable Expenses means all expenses related to the Contract between HHSC and the Dental Contractor that are incurred during the Contract Term, are not reimbursable or recovered from another source, and that conform with the Chapter 6.1 of Exhibit “C”.

Appeal (CHIP only) means the formal process by which the Dental Contractor or its Utilization Review agent addresses Adverse Determinations.

Auxiliary Aids and Services means an accommodation that ensures that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals that do not need such accommodations and includes:

- (a) Qualified interpreters or other effective methods of making aurally delivered materials understood by persons with hearing impairments;
- (b) Taped texts, large print, Braille, or other effective methods to ensure visually delivered materials are available to individuals with visual impairments; and
- (c) Other effective methods to ensure that materials, delivered both aurally and visually, are available to those with cognitive or other Disabilities affecting communication.

Batch Processing is a technique that allows providers to send billing information all at once in a “batch” rather than in separate individual transactions.

Benchmark means a target or standard based on historical data, or an objective, or goal.

Breach means the unauthorized acquisition, access, use, or disclosure of protected health information in a manner as described in 45 C.F.R. § 164.402.

Business Continuity Plan (BCP) means a day-to- day plan that provides for a quick and smooth restoration of MIS operations after a disruptive event, and includes business impact analysis, BCP development, testing, awareness, training, and maintenance.

Business Day means any day other than a Saturday, Sunday, or a State or federal holiday on which HHSC’s offices are closed.

CAHPS means the Consumer Assessment of Healthcare Providers and Systems. This survey is conducted annually by the EQRO.

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Case-by-case Services means additional services for coverage beyond those specified in Attachments B-2 and B-2.1; however, services required by EPSDT are not considered Case-by-case Services

Case Head means the head of the household that is applying for Medicaid.

C.F.R. means the Code of Federal Regulations.

Children's Health Insurance Program (CHIP) means the health insurance program authorized and funded pursuant to Title XXI, Social Security Act (42 U.S.C. §§ 1397aa-1397jj) and administered by HHSC.

CHIP Program means the State of Texas program in which HHSC contracts with Dental Contractors to provide, arrange for, and coordinate Medically Necessary Covered Dental Services for enrolled CHIP members.

Claims Administrator means a HHSC-contracted entity, often referred to as the Texas Medicaid and Healthcare Partnership (TMHP), performing provider enrollment, and claims, and Encounter processing for the Dental Program.

Clean Claim means a claim submitted by a dental provider for dental services rendered to a Dental Member, with documentation reasonably necessary for the Dental Contractor to adjudicate and accurately report the claim. A Clean Claim must meet all requirements for accurate and complete data as defined in the appropriate 837- (claim type) encounter guides as follows:

- (1) 837 Dental Implementation Guide; and
- (2) 837 Dental Companion Guide;

CMS means the Centers for Medicare and Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

Competent Interpreter means a person who is proficient in both English and the other language being used, and has had orientation or training in the ethics of interpreting, including accuracy and impartiality in interpretation.

Complainant means a Dental Member or a treating Dental Provider or other individual designated to act on behalf of the Dental Member who filed the Complaint.

Complaint means an expression of dissatisfaction expressed by a Complainant, orally or in writing to the Dental Contractor, about any matter related to the Dental Contractor other than an Adverse Benefit Determination. Complaint has the same meaning as grievance, as provided by 42 C.F.R. § 438.400(b). Possible subjects for Complaints include the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the Member's rights, regardless of whether remedial action is requested. Complaint includes the Member's right to dispute an extension of time (if authorized by law)

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proposed by the Dental Contractor to make an authorization decision. There is no exception for an Initial Contact Complaint

A Complainant's oral or written dissatisfaction with an Adverse Benefit Determination is considered a request for a Dental Contractor Appeal.

Comprehensive Care Program see Texas Health Steps.

Confidential Information means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Dental Contractor or that Dental Contractor may create, receive, maintain, use, disclose, or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code § 6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. § 160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including without limitation Medicaid information, means disclosures of information made by the Social Security Administration or CMS from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

Consolidated FSR Reporting or Consolidated Basis means FSR reporting results for the Dental Program and any other managed care or capitated contract with HHSC operated by the Dental Contractor or its Affiliates, including those under separate contracts between the Dental Contractor or its Affiliates and HHSC. Consolidated FSR Reporting does not include revenues or expenses from any of the Dental Contractor's or its Affiliates' business activities or operations outside of their contracts with HHSC.

Consumer Assessment of Healthcare Providers and Systems means the survey conducted annually by the EQRO.

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Contract or Agreement means this formal, written, and legally enforceable contract between the Parties, and all amendments and attachments thereto.

Contract Term means the Initial Contract Period plus any Contract extensions.

Contractor or Dental Contractor means the Dental Contractor that is a party to this Contract.

Copayment (CHIP only) means the amount that a member is required to pay when utilizing certain CHIP Medically Necessary Covered Dental Services.

Corrective Action Plan means the detailed written plan required by HHSC to correct or resolve a deficiency or event causing the assessment of a remedy or damage against Dental Contractor.

Covered Services or Covered Dental Services means dental services the Dental Contractor must arrange to provide to Dental Members, including all services required by the Contract and State and federal law.

Credentialing means the process of collecting, assessing, and validating qualifications and other relevant information pertaining to a dental provider to determine eligibility and to deliver Medically Necessary Covered Dental Services.

Cultural Competency means the ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of those served people and protects and preserves their dignity.

Date of Disenrollment means the last day of the last month for which the Dental Contractor receives payment for a Dental Member.

Default Enrollment means the processes established by HHSC to assign an enrollee, who has not selected a Dental Contractor or Main Dentist, to a Dental Contractor or Main Dentist. See 1 Tex. Admin. Code § 353.403 for Medicaid default enrollment processes, and 1 Tex. Admin. Code § 370.303 for CHIP default enrollment processes.

Deliverable means a written or recorded work product or data prepared, developed, or procured by Dental Contractor as part of the Services under the Contract for the use or benefit of HHSC or the State.

Dental Administrative Services means the performance of services or functions other than the direct delivery of Medically Necessary Covered Dental Services necessary for the management of the delivery of and payment for Medically Necessary Covered Dental Services, including Network, quality management, service authorization, claims processing, and MIS operation and reporting. This term also includes the infrastructure development for, preparation of, and delivery of, all required Deliverables under the Contract, outside of the Medically Necessary Covered Dental Services.

Dental Contractor or Contractor means the Dental Contractor that is a party to this Contract

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Dental Contractor Internal Appeal means the formal process by which a Member or his or her representative requests a review of the Dental Contractor's Action by the Dental Contractor.

Dental Contractor Internal Appeal and Complaint System means the process the Dental Contractor implements to handle Dental Contractor Internal Appeals of a Complaint or Adverse Benefit Determination, as well as the process to collect and track information about the Dental Contractor Internal Appeals of a Complaint or Adverse Benefit Determination.

Dental Health-related Materials are materials developed by the Dental Contractor or obtained from a third party relating to the prevention, diagnosis or treatment of a dental condition.

Dental Member means a person who has met Medicaid or CHIP dental services eligibility criteria, and is enrolled with a Dental Contractor.

Dental Program means the State of Texas' managed care program in which HHSC contracts with a Dental Contractor to provide, arrange for, and coordinate Medically Necessary Covered Dental Services and benefit limitations for Texas Children's Medicaid Dental Services and CHIP Dental Services.

Dental Reporting Regions means state-wide regions designated by HHSC, which will be used to measure the Network adequacy of each Dental Contractor. These state-wide regions mirror the designated service areas under HHSC's managed care programs, as included in Exhibit M.

Diagnostic means an assessment that may include gathering of information through interview, observation, examination, and use of specific tests that allows a provider to determine existing pathology or disease or lack thereof.

Disability means a physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

Disability-related Access means that facilities are readily accessible to and usable by individuals with disabilities, and that Auxiliary Aids and Services are provided to ensure effective communication, in compliance with Title III of the Americans with Disabilities Act.

Disaster Recovery Plan means the document developed by the Dental Contractor that outlines details for the restoration of the MIS in the event of an emergency or disaster.

Discovery/Discovered has the meaning assigned by 45 C.F.R. § 164.410.

DMO means dental maintenance organization.

EDI means electronic data interchange.

Effective Date means the effective date of this Contract.

Effective Date of Coverage means the first day of the month for which the Dental Contractor has received payment for a Dental Member.

Eligibles means Medicaid or CHIP-eligible individuals residing in the State of Texas.

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Emergency Dental Services mean covered inpatient and outpatient services needed to evaluate or stabilize an emergency dental condition furnished by a provider qualified to furnish these services under this title. This is a Non-capitated Service for the Dental Contractor.

Encounter means a Medically Necessary Covered Dental Service or group of Medically Necessary Covered Dental Services delivered by a Provider to a Dental Member during a visit between the Dental Member and Provider, including Value-added Services.

Encounter Data means a representation of a claim received and adjudicated by a Dental Contractor without alteration or omission, unless specifically directed by HHSC. The data must include information on receipt of items or services including billing and rendering provider.

Enrollment Report/File means the daily or monthly list of Eligibles that are enrolled with the Dental Contractor as Members on the day or for the month the report is issued.

EPSDT means the federally mandated Early and Periodic Screening, Diagnosis and Treatment program contained at 42 U.S.C. § 1396d(r). HHSC refers to EPSDT as Texas Health Steps.

Expedited Appeal means an appeal to the Dental Contractor in which the decision is required quickly based on the Dental Member's health status, and the amount of time necessary to participate in a standard Appeal could jeopardize the Member's life, or health, or ability to attain, maintain, or regain maximum function.

Experience Rebate means the portion of the Dental Contractor's net income before taxes that may be returned to the State in accordance with **Section 10.08** "Experience Rebate" below.

External Medical Review (EMR) - is an independent review of the relevant information the Dental Contractor used related to an Adverse Benefit Determination based on functional necessity or medical necessity. EMRs are conducted by third party organizations, known as Independent Review Organizations (IROs), contracted by HHSC.

External Quality Review Organization (EQRO) means the entity that contracts with HHSC to provide external review of access to and quality of dental care provided to Dental Members.

Expiration Date means the expiration date of this Contract, as specified in the HHSC Dental Program Contract.

Farmworker Child(ren) (FWC) means a child or children birth through age 17 of a Migrant Farmworker.

Federal Poverty Level (FPL) means the Federal Poverty Level updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. § 9902(2) and as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 C.F.R. § 435.603(h).

Fee-for-Service (FFS) means the traditional Medicaid Health Care Services payment system under which providers receive a payment for each unit of service, after the service is provided, according to rules adopted pursuant to Chapter 32 Texas Human Resources Code.

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Financial Statistical Report (FSR) means a report designed by HHSC, and submitted to HHSC by the Dental Contractor in accordance with Contract requirements. The FSR is a form of modified income statement, subject to audit, and contains revenue, cost, and other data, as defined by the Contract. Not all incurred expenses may be included in the FSR.

First Dental Home is a group of benefits designed to establish a Dental Home, provide preventive care, identify oral health problems, provide treatment, and parental or guardian oral health anticipatory guidance to eligible Medicaid members 6 months through 35 months of age.

Force Majeure Event means any failure or delay in performance of a duty by a Party under this Contract that is caused by fire, flood, hurricane, tornadoes, earthquake, an act of God, an act of war, riot, civil disorder, or any similar event beyond the reasonable control of such Party and without the fault or negligence of such Party.

FOHC means a Federally Qualified Health Center, certified by CMS to meet the requirements of Section 1861(aa)(3) of the Social Security Act as a federally qualified health center, that is enrolled as a provider in the Texas Medicaid program.

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person and includes any act that constitutes fraud under applicable federal or state law.

FSR Reporting Period is the period of months that are measured on a given FSR. Generally, the FSR Reporting Period is a twelve-calendar-month period corresponding to the State Fiscal Year, but it can vary by Contract and by year. If an FSR Reporting Period is not defined in the Contract, then it will be deemed to be the twelve months following the end of the prior FSR Reporting Period.

Health and Human Services Commission (HHSC) means the administrative agency within the executive department of Texas state government established under Chapter 531, Texas Government Code or its designee, or authorized agent, including but not limited to, the Texas Health and Human Services agencies.

Healthcare Effectiveness Data and Information Set (HEDIS), is a registered trademark of NCQA and is a set of standardized performance measures.

HHS Agency means the Texas Health and Human Service agencies subject to HHSC's oversight under Chapter 531, Texas Government Code, and their successor agencies.

HHSC Administrative Services Contractor (ASC) means an entity performing administrative services functions, including Member eligibility and enrollment functions, for the Dental Program under a separate contract with HHSC.

HHSC Enrollment Broker (EB) means a State-contracted entity performing administrative services associated with Dental Member enrollment functions for the Dental Program.

HHSC Office of the Inspector General In accordance with Texas Government Code § 531.102, the HHSC Office of Inspector General is responsible for the prevention, detection, audit,

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inspection, review, and investigation of Fraud, Waste, and Abuse in the provision and delivery of all health and human services in the State, including services through any state-administered health or human services program that is wholly or partly federally funded or services provided by the Department of Family and Protective Services, and the enforcement of State law relating to the provision of those services.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (August 21, 1996), as amended or modified.

Independent Review Organization (IRO) is a third-party organization contracted by HHSC that conducts an External Medical Review (EMR) during Member appeal processes related to Adverse Benefit Determinations based on functional necessity or medical necessity.

Indian Health Care Provider has the meaning assigned to it in 42 C.F.R. § 438.14. and means a health care program operated by the Indian Health Service (IHS) or by an Indian tribe, tribal organization, or urban Indian organization, otherwise known as an I/T/U as those terms are defined in section 4 of the Indian Health Care Improvement Act, 25 U.S.C. § 1603.

Information Resources means the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors as defined in 44 U.S.C. § 3502, NIST SP 800-53 rev 4.

Information Technology Conduit Services Provider means an entity that transports information but does not access it other than on a random or infrequent basis as necessary for the performance of the transportation service or as required by law.

Initial Contact Complaint means a Complaint that is resolved within one Business Day.

Initial Contract Period means the Effective Date of the Contract through August 31, 2023.

Inquiry means a request by a member or Provider for information about HHS programs or services.

Internal Dental Contractor Appeal (Medicaid only) means the formal process by which an eligible Medicaid member or his or her representative request a review of a Complaint or the Dental Contractor's Action.

Joint Interface Plan (JIP) means a document used to communicate basic system interface information. This information includes: file structure, data elements, frequency, media, type of file, receiver and sender of the file, and file identification.

Key Personnel means the critical management and technical positions identified by the Dental Contractor in accordance with **Article 4.02** below.

Legally Authorized Representative (LAR) means the Dental Member's representative defined by State or federal law, including Tex. Occ. Code § 151.002(6), Tex. Health & Safety Code § 166.164, and Tex. Estates Code Ch. 752.

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Limited English Proficient (LEP) has the meaning assigned to it in 42 C.F.R. § 438.10 and means potential members and Dental Members who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

Linguistic Access means translation and interpreter services for written and spoken language to ensure effective communication, and includes sign language interpretation, and the provision of other Auxiliary Aids and Services to persons with Disabilities.

Main Dental Home Provider, Main Dentist or Dental Home means the ongoing relationship between the dentist and the member, inclusive of all aspects of oral health care delivered in a comprehensive continually accessible, coordinated, and family-centered way and includes referrals to dental specialists when appropriate.

Main Dentist means a provider who has agreed with a Dental Contractor to provide a Main Dental Home to Dental Members and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to Dental Members, maintaining the continuity of Dental Member care, and initiating referral for care. Provider types that can serve as Main Dental Home Providers are FQHCs, RHCs, and individuals who are general dentists or pediatric dentists.

Major Population Group means any population, which represents at least 10% of the Dental Program population in the Service Area.

Major Systems Change means a change that affects a mission critical component of the system, or a change which requires more than 4 hours planned outage to implement, or other specified timeframe in the Contract.

Management Information System (MIS) means the information systems and subsystems, applications, and automations used to support the delivery of managed care services.

Marketing means any communication from the Dental Contractor to a Medicaid or CHIP Eligible who is not enrolled with the Dental Contractor that can reasonably be interpreted as intended to influence the Eligible to:

- (a) Enroll with the Dental Contractor; or
- (b) Not enroll in or to disenroll from another Dental Contractor.

Marketing Materials means materials that are produced in any medium by or on behalf of the Dental Contractor and can reasonably be interpreted as intending to market to potential members. Health-related materials are not Marketing Materials.

Material Subcontract means any contract, Subcontract, or agreement between the Dental Contractor and another entity that meets any of the following criteria:

- (a) The other entity is an Affiliate of the Dental Contractor;
- (b) The Subcontract is considered by HHSC to be for a key type of service or function, including:

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- (1) Administrative Services, including third party administrator, Network administration, and claims processing;
 - (2) Delegated Networks, including behavioral health, dental, pharmacy, and vision;
 - (3) Management services, including management agreements with parent;
 - (4) Reinsurance; or
 - (5) Call lines, including nurse and medical consultation; or
- (c) Any other Subcontract that exceeds, or is reasonably expected to exceed, the lesser of
- (1) \$500,000 per year, or
 - (2) One percent of the Dental Contractor's annual revenues under this Contract. Any Subcontracts between the Dental Contractor and a single entity that are split into separate agreements by time period, Program, or otherwise, will be consolidated for the purpose of this definition.

For the purposes of this Contract, Material Subcontracts do not include contracts with any non-Affiliates for any of the following, regardless of the value of the contract: utilities (e.g., water, electricity, telephone, Internet, trash), mail or shipping, office space, maintenance, security, or computer hardware.

Material Subcontractor means any entity with a Material Subcontract with the Dental Contractor. For the purposes of this Contract, Material Subcontractors do not include Providers in the Dental Contractor's Provider Network. Material Subcontractors may include, Affiliates, subsidiaries, and affiliated and unaffiliated third parties.

Medicaid means the medical assistance entitlement program authorized and funded pursuant to Title XIX, Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and administered by HHSC.

Medically Necessary has the meaning defined in 1 Tex. Admin. Code. § 353.2 (Medicaid) and 1 Tex. Admin. Code. § 370.4 (CHIP).

Medically Underserved Areas (MUA) means areas or populations designated by the Health Resources and Services Administration as having: too few primary care providers, high infant mortality, high poverty or high elderly population. MUAs may be a whole county or a group of contiguous counties, a group of county or civil divisions, or a group of urban census tracts in which residents have a shortage of personal health services.

Member means a person who has met Medicaid or CHIP eligibility criteria, and is enrolled in the Dental Contractor's dental plan.

Member Advocate means the person with the primary responsibility for providing advocacy and assistance to Dental Members.

Member Materials means all written materials produced or authorized by the Dental Contractor and distributed to Dental Members or potential members containing information concerning the

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Dental Program. Member Materials include, but are not limited to, Member ID cards, Member handbooks, Provider directories, and Marketing Materials.

Member Month means one Dental Member enrolled with the Dental Contractor during any given month. The total Member Months for each month of a year comprise the annual Member Months.

Migrant Farmworker means a migratory agricultural worker, generally defined as an individual:

- (a) Whose principal employment is in agriculture on a seasonal basis;
- (b) Who has been so employed within the last 24 months;
- (c) Who performs an activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence; and
- (d) Who establishes, for the purposes of such employment, a temporary abode.

National CLAS Standards means *The National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care* (the *National CLAS Standards*). These standards were developed by the U.S. Department of Health and Human Services - Office of Minority Health and are "intended to advance health equity, improve quality, and help eliminate health care disparities by providing a blueprint for individuals and health and health care organizations to implement culturally and linguistically appropriate services." Originally developed in 2000, the CLAS Standards were updated in 2013. For the list of CLAS Standards, see the Think Cultural Health website: <https://www.thinkculturalhealth.hhs.gov/clas/standards>.

Net Income Before Taxes or Pre-tax Income means an aggregate excess of Revenues over Allowable Expenses.

Network means all Dental Providers that have a Provider Contract with the Dental Contractor, or any Subcontractor, for the delivery of Medically Necessary Covered Dental Services to the Dental Contractor's members.

Non-capitated Services benefits of Texas Medicaid or CHIP that are excluded from Medically Necessary Covered Dental Services.

Non-provider Subcontracts means contracts between the Dental Contractor and a third party that performs a function, excluding delivery of Medically Necessary Covered Dental Services that the Dental Contractor is required to perform under its Contract with HHSC.

Open Panel means Main Dentists who are accepting new patients for the Dental Program.

Open Practice means specialist dental providers who are accepting new patients for the Dental Program.

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Operational Start Date means the first day on which the Dental Contractor is responsible for providing Medically Necessary Covered Dental Services to Dental Members in exchange for a Premium Payment under the Contract.

Operations Phase means the period of time when the Dental Contractor is responsible for providing the Medically Necessary Covered Dental Services and all related Contract functions and begins on the Operational Start Date.

Out-of-Network (OON) means an appropriately licensed individual, facility, agency, institution, organization, or other entity that has not entered into a contract with the Dental Contractor for the delivery of Medically Necessary Covered Dental Services to the Dental Contractor's Dental Members.

Overpayment means any payment made to a Network Provider by a MCO, PIHP, or PAHP to which the Network Provider is not entitled to under Title XIX or Title XXI of the Act or any payment to a MCO, PIHP, or PAHP by HHSC to which the MCO, PIHP, or PAHP is not entitled to under Title XIX or Title XXI of the Act.

Parties mean HHSC and the Dental Contractor, collectively.

Party means HHSC or the Dental Contractor, individually.

Pended Claim means a claim for payment that requires additional information before the claim can be adjudicated as a Clean Claim.

Person-Centered means the opportunity to achieve greater independence and community integration, through exercising self-direction, incorporation of individual perceptions and experiences, personal preferences and choices, and control with respect to services and providers, while ensuring medical and non-medical needs are met via means that are exclusively for the benefit of the individual in reaching their personal outcomes and allowing them to have the quality of life and level of independence they desire.

Population Risk Group means a distinct group of Dental Members identified by age, age range, gender, type of program, eligibility category, or other criteria established by HHSC.

PPACA means the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), together known as the Affordable Care Act (ACA).

Premium Payment means the aggregate amount paid by HHSC to the Dental Contractor on a monthly basis for the provision of Medically Necessary Covered Dental Services to enrolled Dental Members, including associated administrative services, in accordance with the Premium Rates in the Contract.

Premium Rate means a fixed predetermined fee paid by HHSC to the Dental Contractor each month in accordance with the Contract, for each enrolled Dental Member in a defined Rate Cell, in exchange for the Dental Contractor arranging for or providing a defined set of Medically Necessary Covered Dental Services to such a Dental Member, regardless of the amount of

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Medically Necessary Covered Dental Services used by the enrolled Dental Member that are within the defined limits as stated in the Medically Necessary Covered Dental Services described in **Section 2.5.4** of the Statement of Work.

Prevalent Language has the meaning assigned to it in 42 C.F.R. § 438.10 and means a non-English language determined to be spoken by a significant number or percentage of potential members and Dental Members that are LEP. For the purposes of the Contract the terms “significant number or percentage” will mean ten percent of the population in a Service Area who speak the non-English language.

Preventive means aspects of oral health concerned with promoting good oral health and function by preventing or reducing the onset or development of oral diseases or deformities, and the occurrences of orofacial injuries.

Program means a managed care program operated by HHSC for either Children’s Medicaid Dental Services or CHIP Dental Services.

Proposal means the submission by the Dental Contractor in response to the RFP.

Provider means an appropriately credentialed and licensed dentist facility, agency, institution, organization, or other entity, and its employees and subcontractors, who has a Provider Contract with the Dental Contractor for the delivery of Medically Necessary Covered Dental Services to Dental Members.

Provider Contract means a contract entered into by a direct provider of dental services and the Dental Contractor, or an intermediary entity, for the provision of Covered Dental Services to the Dental Contractor’s Members.

Provider Materials means all written materials produced or authorized by the Dental Contractor or its administrative services Subcontractors concerning the Dental Program that are distributed to Providers and include the Dental Contractor’s Provider Manual, training materials regarding the Dental Contractor’s Dental Program requirements, and mass communications directed to all or a large group of Providers, e-mail or fax “blasts”. Provider Materials do not include written correspondence between the Dental Contractor or its administrative services Subcontractors and a Provider regarding individual business matters.

Public Information means information that:

- (a) Is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body; and
- (b) The governmental body owns or has a right of access to.

Quality Improvement means a system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

Rate Cell means a Population Risk Group for which a Premium Rate has been determined.

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Real-Time Captioning also known as Communication Access Real-Time Translation (CART) means a process by which a trained individual uses a shorthand machine, a computer, and real-time translation software to type and simultaneously translate spoken language into text on a computer screen. Real Time Captioning is provided for individuals who are deaf, have hearing impairments, or have unintelligible speech. It is usually used to interpret spoken English into text English; but may be used to translate other spoken languages into text.

Readily Accessible has the meaning assigned to it in 42 C.F.R. § 438.10 and means electronic information and services which comply with modern accessibility standards such as section 508 guidelines, and section 504 of the Rehabilitation Act, and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor version.

Readiness Review means HHSC or its agent's process of review, assessment, and determination of Dental Contractor's ability, preparedness, and availability to fulfill its obligations under the Contract.

Request for Proposals (RFP) means the procurement solicitation instrument issued by HHSC under which the Contract is awarded, and all RFP addenda, corrections or modifications.

Retaliation means an action, including refusal to renew or termination of a contract against a Provider because the Provider filed a complaint against the Dental Contractor or appealed an Action of the Dental Contractor on behalf of a Member.

Revenue means all revenue received by the Dental Contractor pursuant to the Contract during the Contract Term, including retroactive adjustments made by HHSC and includes any funds earned on Medicaid or CHIP managed care funds such as investment income and earned interest. Revenue excludes any reinsurance recoveries, which shall be shown in the FSR as a contra-cost, or reported offset to reinsurance expense. Revenues are reported at gross, and are not netted for any reinsurance premiums paid. See also the UMCM Chapter 6.1

Risk means the potential for loss as a result of expenses and costs of the Dental Contractor exceeding payments made by HHSC under the Contract.

Rural Health Clinic (RHC) means an entity that meets all of the requirements for designation as a rural health clinic under Section 1861(aa)(1) of the Social Security Act and approved for participation in the Texas Medicaid Program.

Scope of Work means the description of Services and Deliverables specified in the Contract, and any agreed modifications thereto.

SDX means State Data Exchange.

Security Plan means a document that contains detailed management, operational, and technical information about a system, its security requirements, and the controls implemented to provide protection against risks and vulnerabilities.

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Service Area means geographic area wherein the Dental Program's Medically Necessary Covered Dental Services are available to Dental Members, which is statewide and includes all counties in the State of Texas.

Services mean the tasks, functions, and responsibilities assigned and delegated to the Dental Contractor under the Contract.

Significant Traditional Provider (STP) means dental providers identified by HHSC as having provided a significant level of care to Medicaid or CHIP clients.

Software means all operating system and applications software used by the Dental Contractor to provide the Services under the Contract.

Specialty Provider means a pediatric dentist, endodontist, oral surgeon, orthodontist, periodontist, or prosthodontist.

SSA means the Social Security Administration.

State Fair Hearing means the process adopted and implemented by HHSC in 1 Tex. Admin Code Chapter 357, in compliance with federal regulations and state rules relating to Medicaid Fair Hearings.

State Fiscal Year (SFY) means a 12-month period beginning on September 1st and ending on August 31.

Subcontract means any written Contract between the Dental Contractor and another party to fulfill the requirements of the Contract.

Subcontractor has the same meaning as assigned in 42 C.F.R. § 438.2.

Subsidiary means an Affiliate controlled by such person or entity directly, or indirectly through one or more intermediaries.

Supplemental Security Income (SSI) means a Federal income supplement program funded by general tax revenues, not Social Security taxes, designed to help aged, blind, and disabled people with little or no income by providing cash to meet basic needs for food, clothing, and shelter.

TDD means telecommunication device for the deaf. It is interchangeable with the term Teletype machine or TTY.

TDI means the Texas Department of Insurance.

Texas Health Steps is the name adopted by the State of Texas for the federally mandated EPSDT program, and includes the State's Comprehensive Care Program extension to EPSDT, which adds benefits to the federal EPSDT requirements contained in 42 U.S.C. § 1396d(r), and defined and codified at 42 C.F.R. §§ 440.40 and 441.56-62. HHSC's administrative rules governing Texas Health Steps and Comprehensive Care Program services are contained in 25 T.A.C. Chapter 33, relating to Early and Periodic Screening, Diagnosis and Treatment.

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Texas Health Steps Outreach and Informing Unit means the HHSC Texas Health Steps vendor contracted to provide outreach and education to parents, caretakers, and older children about Texas Health Steps benefits and services.

Texas Medicaid Provider Procedures Manual means the policy and procedures manual published by or on behalf of HHSC that contains policies and procedures required of all health and dental care providers who participate in the Texas Medicaid program.

Texas Public Information Act refers to the provisions of Chapter 552 of the Texas Government Code.

Therapeutic means beneficial therapy or treatment, including the following categories of service: restorative, endodontic, periodontic, prosthodontic, oral and maxillofacial surgery, and orthodontic.

Third Party Liability (TPL) means the legal responsibility of another individual or entity to pay for all or part of the services provided to Dental Members under the Contract. See 1 T.A.C. §§ 354.2301 *et seq.*, relating to Third Party Resources.

Third Party Recovery (TPR) means the recovery of payments on behalf of a Dental Member by HHSC or the Dental Contractor from an individual or entity with the legal responsibility to pay for the Medically Necessary Covered Dental Services.

TP 13 means Type Program 13 that is a Medicaid program eligibility type assigned to persons determined eligible for federal SSI assistance by the Social Security Administration (SSA). If a subsequent eligibility system uses a different identifier for this eligibility type, references to TP 13 include the subsequent identifier.

Transition Phase includes all activities the Dental Contractor is required to perform between the Effective Date and the Operational Start Date resulting from an award through procurement or an assignment and assumption due to termination, merger, or acquisition.

Transition Plan means the written proposal for readiness developed by the Dental Contractor, approved by HHSC, to be employed during the Transition Phase.

Turnover Phase includes all activities the Dental Contractor is required to perform prior to, upon, and following the termination of the Contract or the Expiration Date in order to close-out the Contract and transition Contract activities and operations to HHSC or a subsequent contractor.

Turnover Plan means the written proposal developed by the Dental Contractor, approved by HHSC, to be employed during the Turnover Phase.

Uniform Managed Care Manual (UMCM) means the manual published by or on behalf of HHSC that contains policies and procedures required of the Dental Contractor. The UMCM, as amended or modified, is incorporated by reference into the Contract.

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Utilization Review means the system for retroactive, prospective, or concurrent review of the appropriateness of dental services being provided or proposed to be provided to a Dental Member. The term does not include elective requests for clarification of coverage.

Value-added Services (VAS) may be actual dental services, benefits, or positive incentives that HHSC determines will promote healthy lifestyles and improve oral health outcomes among Dental Members. VAS must promote oral health, healthy lifestyles, or other initiatives approved by HHSC. If approved by HHSC, VAS may also include transportation. Best practice approaches to delivering Medically Necessary Covered Dental Services are not considered VAS.

Waste means practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

Article 3. General Contract Terms and Conditions

Section 3.01 Contract Elements.

(a) Contract documentation.

The Contract between the Parties will consist of the Dental Program Contract documents and all attachments and amendments to these documents.

(b) Order of documents.

In the event of any conflict or contradiction between or among these Contract documents, the documents must control in the following order of precedence:

- (1) The final executed HHSC Dental Contract signature document, and all amendments thereto;
- (2) Contract **Exhibit A** – “HHSC’s Dental Contract Terms and Conditions,” and all amendments thereto;
- (3) Contract **Exhibit B** – “Scope of Work,” and all attachments and amendments thereto;
- (4) Contract **Exhibit C** - HHSC’s UCM, and amendments thereto; and
- (5) Contract **Exhibit D** – “Dental Contractor’s Proposal.”

Section 3.02 Term of the Contract.

The term of the Contract will begin on the Effective Date and will conclude on the expiration date. The Parties may renew the Contract for a period or periods, but the Contract Term may not exceed a total of eight operational years. Subject to the provisions of **Section 12.04(e)**, all reserved contract extensions beyond the expiration date will be subject to good faith negotiations between the Parties and mutual agreement to the extensions.

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Section 3.03 Funding.

This Contract is expressly conditioned on the availability of state and federal appropriated funds. The Dental Contractor will have no right of action against HHSC in the event that HHSC is unable to perform its contractual obligations as a result of the suspension, termination, withdrawal, or failure of funding to HHSC, or lack of sufficient funding of HHSC for any Services or Deliverables contained within the scope of the Contract. If funds become unavailable, the provisions of **Article 12** (“Remedies and Disputes”) will apply. HHSC will use all reasonable efforts to ensure that such funds are available, and will negotiate in good faith with Dental Contractor to resolve any claims for payment by the Dental Contractor that represent accepted Services or Deliverables that are pending at the time funds become unavailable. HHSC will use best efforts to provide reasonable advance written notice to Dental Contractor upon learning that funding for the Contract may be unavailable.

Section 3.04 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 HHSC's Executive Commissioner unless any such right, power, or duty is specifically delegated to the duly appointed agents or employees of HHSC. The Executive Commissioner will reduce any such delegation of authority to writing and HHSC will provide a copy to Dental Contractor on request.

Section 3.05 No Waiver of Sovereign Immunity.

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by HHSC or the State of any immunities from suit, or from liability that HHSC or the State may have by operation of law.

Section 3.06 Force Majeure.

Neither Party will be liable for any failure or delay in performing its obligations under the Contract if such failure or delay is due to a Force Majeure Event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five Business Days of the existence of a Force Majeure Event.

Section 3.07 Publicity.

- (a) Dental Contractor may use the name of HHSC, the State of Texas, any HHS agency, and the name of the HHSC Dental Program in any media release, public announcement, or public disclosure relating to the Contract or its subject matter only if, at least seven calendar days prior to distributing the material, the Dental Contractor submits the information to HHSC for review and comment. The Dental Contractor may not use the submitted information without prior approval from HHSC. HHSC reserves the right to object to and require changes to the

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publication if, at HHSC's sole discretion, it determines that the publication does not accurately reflect the terms of the Contract or the Dental Contractor's performance under the Contract.

- (b) Dental Contractor will provide HHSC at least three copies of any information described in subsection 3.07(a) prior to public release. Dental Contractor will provide additional copies at HHSC's request.
- (c) The requirements of subsection 3.07(a) do not apply to:
 - (1) Proposals or reports submitted to HHSC, an administrative agency of the State, or a governmental agency, or unit of another state, or the federal government;
 - (2) Information concerning the Contract's terms, subject matter, and estimated value:
 - (i) In any report to a governmental body to which the Dental Contractor is required by law to report such information, or
 - (ii) That the Dental Contractor is otherwise required by law to disclose.
 - (3) Member Materials: the Dental Contractor must comply with the UMCM's provisions regarding the review and approval of Member Materials.

Section 3.08 Assignment.

- (a) Assignment by Dental Contractor.

Dental Contractor must not assign all or any portion of its rights under or interests in the Contract without prior written consent of HHSC. Any written request for assignment must be accompanied by written acceptance by the party to whom the assignment is made. Except where otherwise agreed in writing by HHSC, assignment will not release Dental Contractor from its obligations pursuant to the Contract.

- (b) Assignment by HHSC.

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

- (c) Assumption.

Each party to whom an assignment is made (an "Assignee") must assume all of the assigned interests in and responsibilities under the Contract and any documents executed with respect to the Contract, including without limitation, its obligation for all or any portion of the purchase payments, in whole or in part.

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Section 3.09 Cooperation with Other Vendors and Prospective Vendors.

HHSC may award supplemental contracts for work related to the Contract, or any portion thereof. Dental Contractor will reasonably cooperate with such other vendors, and will not commit or permit any act that may interfere with the performance of work by any other vendor.

Section 3.10 Renegotiation and Reprourement Rights.

(a) Renegotiation of Contract terms.

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Dental Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Dental Contractor’s receipt of any notice pursuant to this section, Dental Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract, and may execute an amendment to the Contract in accordance with Article 8 “Amendments and Modifications”.

(b) Reprourement of the services or procurement of additional services.

Notwithstanding anything in the Contract to the contrary, whether or not HHSC has accepted or rejected Dental Contractor’s Services or Deliverables provided at any time during the Contract Term, HHSC may at any time issue requests for proposals or offers to other potential contractors for performance of any portion of the Services covered by the Contract or services similar or comparable to the Services performed by Dental Contractor under the Contract.

(c) Termination rights upon reprourement.

If HHSC elects to procure the Services or Deliverables or any portion of the Services or Deliverables from another vendor in accordance with this Section, HHSC will have the termination rights set forth in Article 12 “Remedies and Disputes”.

Section 3.11 RFP Errors and Omissions.

Dental Contractor will not take advantage of any errors or omissions in the RFP or the resulting Contract. Dental Contractor must promptly notify HHSC of any such errors or omissions that are discovered.

Section 3.12 Attorneys’ Fees.

In the event of any litigation, appeal, or other legal action to enforce any provision of the Contract, Dental Contractor agrees to pay all reasonable expenses of such action, if HHSC is the prevailing Party.

Section 3.13 Preferences Under Service Contracts.

Dental Contractor is required in performing the Contract to purchase products and materials produced in the State when they are available at a price and time comparable to products and materials produced outside the State.

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Section 3.14 Time of the Essence.

In consideration of the need to ensure uninterrupted and continuous Services to Dental Program Members, time is of the essence in the performance of the Services under the Contract.

Section 3.15 Notice.

- (a) Any notice or other legal communication required or permitted to be made or given by either Party pursuant to the Contract will be in writing, and will be deemed to have been given:
- (1) Three Business Days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested;
 - (2) When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
- (b) When delivered if delivered personally or sent by express courier service.
- (c) The notices described in this section may not be sent by electronic mail.
- (d) All notices must be sent to the program contact identified in the Contract. In addition, legal notices must be sent to the legal contact identified in the Contract.
- (e) Routine communications that are administrative in nature will be provided in a manner agreed to by the Parties.

Article 4. Contract Administration and Management

Section 4.01 Qualifications, Retention and Replacement of Dental Contractor Employees.

Dental Contractor agrees to maintain the organizational and administrative capacity and capabilities to carry out all duties and responsibilities under the Contract. The personnel Dental Contractor assigns to perform the duties and responsibilities under the Contract will be properly trained and qualified for the functions they are to perform. Notwithstanding transfer or turnover of personnel, Dental Contractor remains obligated to perform all duties and responsibilities under this Contract without degradation and in accordance with the terms of this Contract.

Section 4.02 Dental Contractor's Key Personnel.

- (a) Designation of Key Personnel.

Dental Contractor must designate key management and technical personnel who will be assigned to the Contract. For the purposes of this requirement, Key Personnel are those with management responsibility or principal technical responsibility for the following functional areas:

- (1) Member services;
- (2) Management Information Systems;

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- (3) Claims processing,
- (4) Network development and management;
- (5) Benefit administration and utilization and care management;
- (6) Quality Improvement;
- (7) Financial functions;
- (8) Reporting;
- (9) Security Official as required in 45 C.F.R. § 164.308(a)(2); and Privacy Official as required in 45 C.F.R. § 164.530(a)(2).
- (10) Executive Directors, as defined in Section 4.03;
- (11) Dental Director, as defined in **Section 4.04 below (“Dental Director”)**; and
- (12) Special Investigative Unit (SIU)

(b) Support and Replacement of Key Personnel.

Dental Contractor must maintain, throughout the Contract Term, the ability to supply its Key Personnel with the required resources necessary to meet Contract requirements and comply with applicable law. Dental Contractor must ensure project continuity by timely replacement of Key Personnel, if necessary, with a sufficient number of persons having the requisite skills, experience and other qualifications. Regardless of specific personnel changes, Dental Contractor must maintain the overall level of expertise, experience, and skill reflected in Dental Contractor's Proposal.

(c) Notification of replacement of Key Personnel.

Dental Contractor must notify HHSC in writing within 15 Business Days of any change in Key Personnel. Hiring or replacement of Key Personnel must conform to all Contract requirements. If HHSC determines that a satisfactory working relationship cannot be established between certain Key Personnel and HHSC, it will notify the Dental Contractor in writing. Upon receipt of HHSC's notice, HHSC and Dental Contractor will attempt to resolve HHSC's concerns on a mutually agreeable basis.

Section 4.03 Executive Director.

- (a) Dental Contractor must employ a qualified individual to serve as the Executive Director for the Dental Program. The Executive Director must be employed full-time by Dental Contractor, be primarily dedicated to the Dental Program, and must hold a Senior Executive or Management position in Dental Contractor's organization, except that Dental Contractor may propose an alternate structure for the Executive Director position, subject to HHSC's prior review and written approval.
- (b) The Executive Director must be authorized and empowered to represent Dental Contractor regarding all matters pertaining to the Contract prior to such representation. The Executive

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Director must act as liaison between Dental Contractor and HHSC and must have responsibilities that include, but are not limited to:

(1) Ensuring Dental Contractor's compliance with the terms of the Contract, including securing and coordinating resources necessary for such compliance;

(2) Receiving and responding to all inquiries and requests made by HHSC related to the Contract, in the timeframes and formats specified by HHSC. Where practicable, HHSC will consult with Dental Contractor to establish timeframes and formats reasonably acceptable to the Parties;

(3) Attending and participating in regular meetings or conference calls with HHSC;

(4) Attending and participating in regular HHSC Regional Advisory Committees (RACs) for managed care. The Executive Director may designate key personnel to attend a RAC if the Executive Director is unable to attend;

(5) Making best efforts to promptly resolve any issues identified either by Dental Contractor or HHSC that may arise and are related to the Contract;

(6) Meeting with HHSC representative(s) on a periodic or as needed basis to review Dental Contractor's performance and resolve issues, and

(7) Meeting with HHSC at the time and place requested by HHSC, if HHSC determines that Dental Contractor is not in compliance with the requirements of the Contract.

Section 4.04 Dental Director.

(a) Dental Contractor must have a qualified full-time individual to serve as the Dental Director for the Dental Program. The Dental Director must be currently licensed in Texas as a Doctor of Dentistry with no restrictions or other licensure limitations. The Dental Director must comply with applicable federal and state statutes and regulations.

(b) The Dental Director, or his or her designee meeting the qualifications described in Section 4.04(a), must be available during normal business hours for Utilization Review decisions, and must be authorized and empowered to represent Dental Contractor regarding clinical issues, Utilization Review and quality of care inquiries.

Section 4.05 Responsibility for Dental Contractor Personnel and Subcontractors.

(a) Dental Contractor's employees and Subcontractors will not be considered employees of HHSC or the State; but will be considered for all purposes as Dental Contractor's employees or its Subcontractor's employees, as applicable.

(b) Except as expressly provided in the Contract, neither Dental Contractor nor any of Dental Contractor's employees or Subcontractors may act in as agents or representatives of HHSC or the State.

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- (c) Dental Contractor agrees that anyone employed by Dental Contractor to fulfill the terms of the Contract is an employee of Dental Contractor and remains under Dental Contractor's sole direction and control. Dental Contractor assumes sole and full responsibility for its acts and the acts of its employees and Subcontractors.
- (d) Dental Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Dental Contractor, including, but not limited to, claims of discrimination against Dental Contractor, its officers, or its agents, is the sole responsibility of Dental Contractor and not the responsibility of HHSC. Dental Contractor will indemnify and hold harmless the State from any and all claims asserted against the State arising out of such employment or alleged employment by Dental Contractor. Dental Contractor understands that any person who alleges a claim arising out of employment or alleged employment by Dental Contractor will not be entitled to any compensation, rights, or benefits from HHSC including, but not limited to, tenure rights, medical and hospital care, sick and annual or vacation leave, severance pay, or retirement benefits.
- (e) Dental Contractor agrees to be responsible for the following in respect to its employees:
 - (1) Damages incurred by Dental Contractor's employees within the scope of their duties under the Contract; and
 - (2) Determination of the hours to be worked and the duties to be performed by Dental Contractor's employees.
- (f) Dental Contractor agrees and will inform its employees and Subcontractor(s) that there is no right of subrogation, contribution, or indemnification against HHSC for any duty owed to them by Dental Contractor pursuant to the Contract or any judgment rendered against the Dental Contractor. HHSC's liability to the Dental Contractor's employees, agents, and Subcontractors, if any, will be governed by the Texas Tort Claims Act, as amended or modified (Tex. Civ. Prac. & Rem. Code §§ 101.001 et seq.).
- (g) Dental Contractor understands that HHSC does not assume liability for the actions of, or judgments rendered against, Dental Contractor, its employees, agents, or Subcontractors. Dental Contractor agrees that it has no right to indemnification, or contribution from HHSC for any such judgments rendered against Dental Contractor or its Subcontractors.

Section 4.06 Cooperation with HHSC and State Administrative Agencies.

- (a) Cooperation with other HHSC Dental Contractors.

Dental Contractor agrees to reasonably cooperate and work with the State's contractors, including other Dental Contractors, Subcontractors and third-party representatives as requested by HHSC. To the extent permitted by HHSC's financial and personnel resources, HHSC agrees to reasonably cooperate with Dental Contractor and to use its best efforts to ensure that other HHSC contractors reasonably cooperate with the Dental Contractor.

- (b) Cooperation with state and federal administrative agencies.

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Dental Contractor must ensure that Dental Contractor personnel cooperate with HHSC or other state or federal administrative agency personnel at no charge to HHSC for purposes relating to the administration of the Dental Program including, but not limited to the following purposes:

- (1) The investigation and prosecution of fraud, abuse, and waste in the HHSC programs;
- (2) Audit, inspection, or other investigative purposes; and
- (3) Testimony in judicial or quasi-judicial proceedings relating to the Services or Deliverables under this Contract or other delivery of information to HHSC or other agencies' investigators or legal staff.
- (4) Conduct of Dental Contractor personnel and Subcontractors.

Section 4.07 Conduct of Dental Contractor Personnel and Subcontractors.

- (a) While performing the Services, Dental Contractor's personnel and Subcontractors must:
 - (1) Comply with applicable State laws, rules, and regulations and HHSC's requests regarding personal and professional conduct generally applicable to the service locations; and
 - (2) Otherwise conduct themselves in a businesslike and professional manner.
- (b) If HHSC determines in good faith that a particular employee or Subcontractor is not conducting himself or herself in accordance with the Contract, HHSC may provide Dental Contractor with notice and documentation concerning such conduct. Upon receipt of such notice, Dental Contractor must promptly investigate the matter and take appropriate action that may include:
 - (1) Removing the employee or Subcontractor from the project;
 - (2) Providing HHSC with written notice of such removal; and
 - (3) Replacing the employee or Subcontractor with a similarly qualified individual or Subcontractor acceptable to HHSC.
- (c) Nothing in the Contract will prevent Dental Contractor, at the request of HHSC, from replacing any personnel who are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHSC's project manager, after consultation with Dental Contractor, are unable to work effectively with the members of HHSC's staff. In such event, Dental Contractor will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of Key Personnel will be subject to HHSC review. The Parties will work together in the event of any such replacement so as not to disrupt the overall project schedule.
- (d) Dental Contractor agrees that anyone employed or retained by Dental Contractor to fulfill the terms of the Contract remains under Dental Contractor's sole direction and control.

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- (e) Dental Contractor must have policies regarding disciplinary action for all employees who have failed to comply with federal or state laws and the Dental Contractor's standards of conduct, policies and procedures, and contract requirements. Dental Contractor must have policies regarding disciplinary action for all employees who have engaged in illegal or unethical conduct.

Section 4.08 Subcontractors and Agreements with Third Parties.

- (a) Dental Contractor remains fully responsible for the obligations, services, and functions performed by its Subcontractors to the same extent as if such obligations, services, and functions were performed by Dental Contractor's employees, and for purposes of the Contract such work will be deemed work performed by Dental Contractor. The Dental Contractor must ensure its contracts with Subcontractors comply with all of the requirements of 42 C.F.R. 438.230. HHSC reserves the right to require the replacement of any Subcontractor found by HHSC to be unacceptable and unable to meet the requirements of the Contract, and to object to the selection of a Subcontractor.

- (b) Dental Contractor must:

(1) Actively monitor the quality of care and Services, as well as the quality of reporting data, provided under a Subcontract;

(2) Provide HHSC with a copy of TDI filings of delegation agreements;

(3) Unless otherwise provided in this Contract, provide HHSC with written notice no later than:

(i) 3 Business Days after receiving notice from a Material Subcontractor of its intent to terminate a Subcontract;

(ii) 180 calendar days prior to the termination date of a Material Subcontract for MIS systems operation or reporting;

(iii) 90 calendar days prior to the termination date of a Material Subcontract for non-MIS Dental Administrative Services; and

(iv) 30 calendar days prior to the termination date of any other Material Subcontract.

HHSC may grant a written exception to these notice requirements if, in HHSC's reasonable determination, Dental Contractor has shown good cause for a shorter notice period.

- (c) During the Contract Term, Readiness Reviews by HHSC or its designated agent may occur if:

(1) A new Material Subcontractor is employed by Dental Contractor;

(2) An existing Material Subcontractor provides services in a new area;

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- (3) An existing Material Subcontractor changes locations or changes its MIS and or operational functions;
- (4) An existing Material Subcontractor changes one or more of its MIS subsystems, claims processing or operational functions; or
- (5) A Readiness Review is requested by HHSC.

Dental Contractor must submit information required by HHSC for each proposed Material Subcontractor as indicated in **RFP Section 2.4**, "Transition Phase Scope." Refer to **RFP Sections 2.5.2**, "Additional Operational Readiness Reviews and Monitoring Efforts," and **2.5.29**, "Management Information System (MIS) Requirements" for additional information regarding Dental Contractor Readiness Reviews during the Contract Term.

- (d) Dental Contractor must not disclose HHSC's or the State's Confidential Information to a Subcontractor unless Subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of Dental Contractor under the Contract.
- (e) Dental Contractor must identify any Subcontractor that is a subsidiary or entity formed after the Effective Date of the Contract, whether or not an Affiliate of the Dental Contractor. Dental Contractor must substantiate the proposed Subcontractor's ability to perform the subcontracted Services, and certify to HHSC that no loss of service will occur as a result of the performance of such Subcontractor. Dental Contractor will be the sole point of contact with regard to contractual matters.
- (f) Except as provided herein, all Subcontracts must be in writing and must provide HHSC the right to examine the Subcontract and all Subcontractor records relating to the Contract and the Subcontract. This requirement does not apply to agreements with non-affiliate utility or mail service providers.

If Dental Contractor intends to report compensation or any other payments paid to any third party, including an Affiliate as an Allowable Expense under the Contract, and the amounts paid to the third party exceed \$200,000, or are reasonably anticipated to exceed \$200,000, in a SFY, or in any contiguous twelve-month period, then Dental Contractor's agreement with the third party must be in writing. The agreement must provide HHSC the right to examine the agreement and all records relating to the agreement.

For any third party agreements not in writing valued under \$200,000 per SFY that are reported as Allowable Expenses, the Dental Contractor must maintain standard financial records and data sufficient to verify the accuracy of those expenses in accordance with the requirements of Article 9, "Audit & Financial Compliance." Any agreements that are, or could be interpreted to be, with a single party, must be in writing if the combined total is more than \$200,000. This would include payments to individuals or entities that are related to each other.

- (g) A Subcontract or any other agreement in which Dental Contractor receives rebates, recoupments, discounts, payments, incentives, fees, free goods, bundling arrangements,

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retrocession payments, as described in UCMCM Chapter 6.1, or any other consideration from a Subcontractor or any other third party, including Affiliates as related to the Contract must be in writing. Dental Contractor must allow HHSC and the Office of the Attorney General to examine the Subcontract or agreement and all related records.

- (h) All Subcontracts or agreements described in subsections (f) and (g) must show the dollar amount or the value of any consideration that Dental Contractor pays to or receives from the Subcontractor or any other third party.
- (i) Dental Contractor must submit a copy of each Material Subcontract and any agreement covered under subsection (g) executed prior to the Effective Date of the Contract to HHSC no later than 30 days after the Effective Date of the Contract. For Material Subcontracts or Section 4.08(g) agreements executed or amended after the Effective Date of the Contract, the Dental Contractor must submit a copy to HHSC no later than 5 Business Days after execution or amendment.
- (j) HHSC reserves the right to reject any Subcontract or require changes to any provisions that do not comply with the requirements or duties and responsibilities of the Contract or create significant barriers for HHSC in monitoring compliance with the Contract.
- (k) Dental Contractor and its Subcontractors must provide all information required under Section 4.08 to HHSC, or to the Office of the Attorney General, if requested, at no cost.

Section 4.09 HHSC’s Ability to Contract with Subcontractors.

Dental Contractor may not limit or restrict, through a covenant not to compete, employment contract or other contractual arrangement, HHSC’s ability to contract with Subcontractors or former employees of the Dental Contractor.

Section 4.10 This Section Intentionally Left Blank.

Section 4.11 Prohibition Against Performance Outside the United States.

- (a) All work performed under this Agreement must be performed exclusively within the United States.
 - (1) All information obtained by the Dental Contractor or a Subcontractor under the Contract must be stored and maintained within the United States.
 - (2) The performance of any work or the maintenance of any information relating or obtained pursuant to this Contract is forbidden to occur outside of the United States, except as specifically authorized or approved by HHSC.
- (b) For the purpose of this Contract “within the United States” and “outside the United States” means the following:
 - (1) As used in this **Section 4.11**, the term “within the United States” means any location inside the territorial boundaries comprising the republic of the United States of America,

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including any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

(2) Conversely, the phrase “outside the United States” means any location that is not within the territorial boundaries comprising the republic of the United States of America, including any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

(c) Maintenance of Confidential Information.

(1) The Dental Contractor and all Subcontractors, vendors, agents, and service providers of or for the Dental Contractor must not allow any Confidential Information that the Dental Contractor receives from or on behalf of HHSC to be moved outside the United States by any means, physical or electronic, at any time, for any period of time, for any reason.

(2) The Dental Contractor and all Subcontractors, vendors, agents, and service providers of or for the Dental Contractor must not permit any person to have remote access to HHSC information, systems, or Deliverables from a location outside the United States.

(d) Performance of Work.

(1) Unless otherwise approved in advance by HHSC in writing, and subject to the exceptions specified in this subparagraph, the Dental Contractor and all Subcontractors, vendors, agents, and service providers of or for the Dental Contractor must perform all services under this Contract, including all tasks, functions, and responsibilities assigned and delegated to the Dental Contractor under this Contract, within the United States.

(i) This obligation includes, but is not limited to, all Services, including information technology services, processing, transmission, storage, archiving, data center services, disaster recovery sites and services, customer support, medical, dental, laboratory and clinical services.

(ii) All custom software prepared for performance of the Contract, and all modifications of custom, third party, or vendor proprietary software, must be performed within the United States.

(2) Unless otherwise approved in advance by HHSC in writing, and subject to the exceptions specified in this subparagraph, the Dental Contractor and all Subcontractors, vendors, agents, and service providers of or for the Dental Contractor must not permit any person to perform work under the Contract from a location outside the United States.

(e) Exceptions.

(1) COTS software. The foregoing requirements will not preclude the acquisition or use of commercial off-the-shelf software that is developed outside the United States or hardware that is generically configured outside the United States.

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(2) Foreign-made products and supplies. The forgoing requirements will not preclude the Dental Contractor from acquiring, using, or reimbursing products or supplies that are manufactured outside the United States, provided such products or supplies are commercially available within the United States for acquisition or reimbursement by HHSC.

(3) HHSC prior approval. The foregoing requirements will not preclude the Dental Contractor from performing work outside the United States that HHSC has approved in writing and that HHSC has confirmed will not involve the sharing of Confidential Information outside the United States.

Section 4.12 Employment Verification (E-Verify Program).

(a) Dental Contractors must confirm the eligibility of all persons employed by the Dental Contractor to perform duties within Texas and all persons, including subcontractors, assigned by the Dental Contractor to perform work pursuant to the Contract.

(b) The Dental Contractor may not knowingly have a relationship with the following:

(1) An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.

(2) An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 C.F.R. § 2.101, of a person described in (b) (1) of this section.

A relationship as described in this section is as follows:

- (1) A director, officer, or partner of the Dental Contractor.
- (2) A subcontractor of the Dental Contractor as governed by 42 C.F.R. § 438.230.
- (3) A person with ownership of 5 percent or more of the Dental Contractor.
- (4) A person with an employment, consulting or other arrangement with the Dental

Contractor for the provision of items and services that relate to the Dental Contractor’s obligations under its contract with the State.

(c) The Dental Contractor must confirm the identity and determine the exclusion status, any subcontractor of the Dental Contractor (as governed by 42 C.F.R. § 438.230), as well as any person with an ownership or control interest, or who is an agent or managing employee of the Dental Contractor as defined in (b) of this section upon contract execution and through checks of federal databases that include the:

(1) U.S. Department of Health and Human Services, Office of Inspector General’s List of Excluded Individuals and Entities (LEIE);

(2) System for Awards Management (SAM) [the successor to the Excluded Parties List System (EPLS)];

(3) Social Security Administration’s Death Master File (SSA-DMF); and

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(4) National Plan & Provider Enumeration System.

- (d) The Dental Contractor must consult the databases upon contracting and no less frequently than monthly thereafter. If the Dental Contractor finds a party that is excluded, it must promptly notify the entity and take action consistent with 42 C.F.R. § 438.610(c).
- (e) The Dental Contractor must maintain records demonstrating compliance with this section in accordance with Section 9.01 below.

By entering into this Contract, Dental 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 verify system to determine the eligibility of all persons, including Subcontractors, assigned by the Dental Contractor to perform work pursuant to the Contract.

Article 5. Member Eligibility, Enrollment, and Disenrollment

Section 5.01 Eligibility Determination and Disenrollment

The HHSC Enrollment Broker determines Medicaid and CHIP eligibility. Should a Member become ineligible for Medicaid, HHSC will disenroll the Member from the managed care plan. If a Dental Contractor becomes aware that a Member has moved outside of the Dental Contractor service area or that a Member is no longer Medicaid-eligible, for example the Member has moved outside of the state or is deceased, the Dental Contractor must inform HHSC within 10 Business Days.

Section 5.02 General Information Concerning Member Enrollment and Disenrollment.

- (a) HHSC or the HHSC Enrollment Broker will enroll and disenroll eligible individuals in the Dental Program. The HHSC Enrollment Broker will use HHSC's default assignment methodologies, as described in 1 Tex. Admin. Code § 353.403 and § 370.303, to enroll individuals who do not select a Dental Plan or Main Dentist. Once an eligible individual is enrolled, a file is sent to the Dental Contractor to notify the Dental Contractor that the individual is enrolled as a Medicaid or CHIP Member. The Dental Contractor is not allowed to induce or accept disenrollment from a Member. The Dental Contractor must refer the Member to the HHSC Enrollment Broker for information regarding enrollment or disenrollment.
- (b) HHSC makes no guarantees or representations to the Dental Contractor regarding the number of eligible Members who will ultimately be enrolled into the Dental Contractor's plan, or the length of time Members will remain enrolled in the Dental Contractor's plan. The Dental Contractor has no ownership interest in its Member base, and therefore cannot sell or transfer this base to another entity.

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- (c) The HHSC Enrollment Broker will electronically transmit to the Dental Contractor new Member information and change information applicable to active Members.

Section 5.03 Medicaid Member Enrollment and Disenrollment.

- (a) Medicaid Members are given the opportunity to request a termination or change enrollment from one dental plan to another. A Medicaid Member can request to change dental plans for any reason during the first 90 days of enrollment in a dental plan, and once thereafter. A Medicaid Member can also request to change dental plans for “good cause” at any time. HHSC or its designee will determine “good cause” events that qualify a Member to change dental plans. If a Member requests a change, the change will be prospective, and the effective date will be the first day of the month in which the Member appears on the Member eligibility file for the receiving dental plan.
- (b) In cases where a Member loses Medicaid eligibility, if Medicaid eligibility is re-instated or re-established within 6 months from the date of loss, HHSC will retroactively restore a Member's managed care enrollment to avoid a gap in coverage. In these cases, the HHSC Enrollment Broker will retroactively enroll the Member into the same dental plan the Member was in before losing coverage.
- (c) A Medicaid Dental Contractor has a limited right to request a Member be disenrolled from Dental Contractor without the Member’s consent. HHSC must approve any Dental Contractor request for disenrollment of a Member for cause. HHSC may permit disenrollment of a Member under the following circumstances:
 - (1) Member misuses or loans Member’s membership card to another person to obtain services.
 - (2) Member’s behavior is disruptive or uncooperative to the extent that Member’s continued enrollment in the Dental Contractor seriously impairs Dental Contractor’s or Provider’s ability to provide services to either the Member or other Members, and Member’s behavior is not related to a developmental, intellectual, or physical disability or behavioral health condition.
 - (3) Member steadfastly refuses to comply with managed care restrictions.
 - (4) Dental Contractor must take reasonable, documented measures to correct Member behavior prior to requesting disenrollment. Reasonable measures may include providing education and counseling regarding the offensive acts or behaviors.
- (d) HHSC must notify the Member of HHSC’s decision to disenroll the Member if all reasonable measures have failed to remedy the problem.
- (e) If the Member disagrees with the decision to disenroll the Member from Dental Contractor, HHSC must notify the Member of the availability of the Complaint procedure and, for Medicaid Members, HHSC’s Fair Hearing process.

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- (f) Dental Contractor cannot request a disenrollment based on adverse change in the Member's health status or utilization of services that are Medically Necessary for treatment of a member's condition.
- (g) Members taken into conservatorship by the Department of Family and Protective Services (DFPS) will be disenrolled from the Dental Contractor effective the date of conservatorship and enrolled in the STAR Health Program unless otherwise determined by DFPS.

Section 5.04 CHIP Eligibility and Enrollment.

- (a) Children enrolled in the CHIP Program with incomes at or below the Medicaid eligibility threshold receive Dental Program coverage for 12 months. Children enrolled in CHIP with incomes above the Medicaid eligibility threshold receive Dental Program coverage for up to 12 months and are required to verify income eligibility at month 6 of their 12-month coverage period. Should a Member become ineligible for CHIP, HHSC will disenroll the Member from the managed care plan. If a Dental Contractor becomes aware that a Member is no longer CHIP-eligible, for example the Member has moved outside of the state or is deceased, the Dental Contractor must inform HHSC within five Business Days.
- (b) CHIP Members are given the opportunity to request a termination or change enrollment from one dental plan to another within the first 90 days after Dental Program coverage begins. If a Member requests a change from one dental plan to another, the change will be prospective, and the effective date will be the first day of the month in which the Member appears on the Member eligibility file for the receiving dental plan.
- (c) HHSC Enrollment Broker enrolls and disenrolls Members from dental plans. HHSC Enrollment Broker will not allow Members to change dental plans after their first 90 days of coverage unless granted an exception for a "good cause" event. HHSC and the HHSC Enrollment Broker determine "good cause" events that qualify a CHIP Member to change dental plans. Additionally, HHSC Enrollment Broker will not allow CHIP Members who have exhausted their annual benefit limits to change dental plans.

Section 5.05 Default Enrollment.

The following special Default Enrollment process will apply to and be calculated separately for Medicaid and CHIP program recipients.

- (a) Special Default Enrollment Process.
 - (1) Prior to the Operational Start Date, HHSC's Administrative Service Contractor will notify all Dental Members and new enrollees of their choice in dental plans. If a Dental Member does not select a dental plan by the due date established by HHSC, the Dental Member will remain with the Dental Member's current dental plan. If a new enrollee does not select a dental plan by the due date established by HHSC, HHSC will utilize the following special default enrollment process:

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- i. if the new enrollee has a dental plan affiliation within the last 12 months, assign the new enrollee to the affiliated dental plan;
 - ii. if a household member of the new enrollee is enrolled in a dental plan, assign the new enrollee to the household member's dental plan; or
 - iii. if the new enrollee does not have a dental plan affiliation within the last 12 months or a household member that is enrolled in a dental plan, assign the new enrollee to any dental plan below the minimum enrollment threshold in an equal manner.
- (2) HHSC will assign new enrollees to a dental plan accordance with this subsection until all dental plans meet the minimum enrollment threshold. The minimum enrollment threshold is 300,000 Members in Medicaid and 80,000 Members in CHIP.
- (3) During this maintenance period, if one or more dental plans' enrollment falls below the threshold, HHSC will enroll all individuals who have not made a dental plan selection into these dental plans on a Round Robin basis until they reach the required Member threshold again it will receive 100 percent of the unassociated Member default enrollments until the threshold is reached. If more than one plans' enrollment falls below the threshold, the default population will be split between the plans.
- (4) To offset incumbent plans' advantage with prior coverage and household associations, an incremental default process will begin for the incoming plan and continue through operational year one after the enrollment threshold is met.
- (5) The default process will incrementally decrease the percentage of unassociated defaults from the initial 100 percent of unassociated defaults down to 33.33 percent over the remaining months of operational year one. The incremental decline will be calculated by dividing 66.67 percent (incumbents' portion of the unassociated defaults) by the number of remaining months left in operational year one. If the incoming plan reaches the enrollment ceiling of one-third of the total dental managed care enrollment population in either Medicaid or CHIP, HHSC will stop the incremental default process for that program and begin the ongoing standard default process, described below in Section 5.05(c), in which all plans receive an equal distribution of the default pool. If the incoming plan fails to meet the enrollment thresholds during year one, the incremental default process will not go into effect.
- (6) Medicaid and CHIP default processes will be evaluated separately. For example, if the enrollment minimum threshold is reached in Medicaid but not in CHIP, the initial default process will continue in CHIP and Medicaid will move to an incremental approach.
- (7) HHSC reserves the right to revisit these processes if monitoring of enrollment trends or other factors indicate an adjustment to the default enrollment strategy is needed (e.g., due to a significant shift in enrollments).

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(8) HHSC will provide notice to the dental plans at least 30 calendar days in advance of any changes to the final default enrollment strategy outlined above.

(b) Standard Default Enrollment Process.

(1) The standard default enrollment process is a process by which HHSC, on a monthly basis:

- i. determines the total number of Dental Members who have not selected a dental plan; and
- ii. from this total number, assigns an equal number of Dental Members to each dental plan to the extent possible.

(2) HHSC uses the standard default enrollment process if:

(i) in operational year one, all of the dental plans meet the enrollment ceiling of one-third of the total dental managed care enrollment population in either Medicaid or CHIP (as applicable, Medicaid and CHIP ceilings are treated separately); or

(ii) in a year other than operational year one:

- (A) all dental plans meet the enrollment threshold; or
- (B) all dental plan’s six-month maintenance period have expired.

(c) Changing Assigned Dental Plan.

Defaulted Dental Members may change their assigned dental plan under the conditions described in **Section 5.03** for Medicaid members and **Section 5.04** for CHIP members.

Article 6. Service Levels and Performance Measurement

Section 6.01 Performance Measurement.

- (a) Satisfactory performance of this Contract will be measured by:
- (b) Adherence to this Contract, including all representations and warranties;
- (c) Compliance with project work plans, schedules, and milestones as proposed by Dental Contractor in its Proposal and as revised by Dental Contractor and finally approved by HHSC;
- (d) Delivery of the Services and Deliverables in accordance with the Contract’s requirements;
- (e) Results of audits performed by HHSC or its representatives in accordance with **Article 9** (“Audit and Financial Compliance”);
- (f) Timeliness, completeness, and accuracy of required Deliverables; and

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(g) Achievement of contractual performance measures.

Article 7. Governing Law and Regulations

Section 7.01 Governing Law and Venue.

This Contract is governed by the laws of the State of Texas and interpreted in accordance with Texas law. Provided Dental Contractor first complies with the procedures set forth in **Section 12.13** (“Dispute Resolution,”) proper venue for claims arising from this Contract will be in the State District Court of Travis County, Texas.

Section 7.02 Dental Contractor Responsibility for Compliance with Laws and Regulations.

(a) Dental Contractor must comply, to the satisfaction of HHSC, with all provisions set forth in this Contract, and all provisions of state and federal laws, rules, regulations, federal waivers, policies and guidelines that govern the performance of the Services including, but not limited to, all applicable provisions of the following:

- (1) Titles XIX and XXI of the Social Security Act;
- (2) The Immigration and Nationality Act (8 U.S.C. §§ 1101 *et seq.*) and all subsequent immigration laws and amendments.
- (3) The Patient Protection and Affordable Care Act (“PPACA”; Public Law 111-148);
- (4) The Health Care and Education Reconciliation Act of 2010 (“HCERA”; Public Law 111-152) 42 C.F.R. Part 455;
- (5) Health Insurance Portability and Accountability Act (Public Law 104-191) 45 C.F.R. Parts 160-164;
- (6) Clinical Laboratory Improvement Amendments (CLIA, 42 C.F.R. Part 493) (for purposes of the Contract, the Dental Contractor must require its Providers to agree that the Dental Contractor and HHSC are "authorized persons");
- (7) 42 C.F.R. Parts 417, 438, 455, and 457, as applicable;
- (8) 45 C.F.R. Parts 74 and 92;
- (9) 48 C.F.R. Part 31;
- (10) 2 C.F.R. Part 200;
- (11) Chapters 62, 63, 109, and 181 Texas Health and Safety Code;
- (12) Chapter 531 and 533, Texas Government Code;
- (13) Chapter 35A Texas Penal Code;
- (14) Chapters 32 and 36 Texas Human Resources Code, except as provided in Section 2.5.17, the Texas Dental Practice Act requiring all dental services to be provided by

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licensed Texas dentists and auxiliary personnel working under the supervision of licensed Texas dentists;

- (15) 1 Tex. Admin. Code Chapter 353;
 - (16) 1 Tex. Admin. Code Chapter 354, Subchapters B and J;
 - (17) 1 Tex. Admin. Code. Chapters 361, 370, 371, 391, and 392;
 - (18) Consent Decree and Corrective Action Orders, Frew, et al. v. Smith, et al., (applies to Medicaid only);
- (b) The Parties acknowledge that the federal or state laws, rules, regulations, policies, or guidelines that affect the performance of the Services may change from time to time or be added, judicially interpreted, or amended by competent authority. Dental Contractor acknowledges that the Dental Program will be subject to continuous change during the term of the Contract and, except as provided in **Section 8.02**. Dental Contractor has provided for or will provide for adequate resources, at no additional charge to HHSC, to reasonably accommodate such changes. The Parties further acknowledge that Dental Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal or state laws, rules, regulations, policies, or guidelines that affect the performance of the Services. In keeping with HHSC's reliance on this knowledge and expertise, Dental Contractor is responsible for identifying the impact of changes in applicable federal or state legislative enactments and regulations that affect the performance of the Services or the State's use of the Services. Dental Contractor must timely notify HHSC of such changes and must work with HHSC to identify the impact of such changes on how the State uses the Services.
- (c) HHSC will notify Dental Contractor of any changes in applicable law, rule, regulation, policy, or guidelines that HHSC becomes aware of in the ordinary course of its business.
- (d) The Dental Contractor is responsible for compliance with changes in federal and state law that occur during the course of the contract term. If there are any conflicts between rules promulgated by CMS, including the C.F.R., and this Contract, then the federal rule takes precedence over the Contract and the Dental Contractor must comply with the C.F.R unless CMS has waived applicability of the C.F.R. provision to Texas Medicaid via a waiver.
- (e) Dental Contractor is responsible for any fines, penalties, or disallowances imposed on the State or Dental Contractor arising from any noncompliance with the laws and regulations relating to the delivery of the Services or Deliverables by the Dental Contractor, its Subcontractors or agents.
- (f) Dental Contractor is responsible for ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract is properly licensed, certified, and/or has proper permits to perform any activity related to the Services or Deliverables.

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- (g) Dental Contractor warrants that the Services and Deliverables will comply with all applicable federal, state, and county laws, regulations, codes, ordinances, guidelines, and policies. Dental Contractor will indemnify HHSC from and against any losses, liability, claims, damages, penalties, costs, fees, or expenses arising from or in connection with Dental Contractor's failure to comply with or violation of any such law, rule, regulation, code, ordinance, or policy.

Section 7.03 This Section Intentionally Left Blank.

Section 7.04 This Section Intentionally Left Blank.

Section 7.05 Compliance with State and Federal Anti-discrimination Laws.

- (a) Dental Contractor agrees to comply with state and federal anti-discrimination laws, including without limitation:
- (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 regarding education programs and activities);
 - (6) Food and Nutrition Act of 2008 (7 U.S.C. §§ 2011 *et. seq.*); and
 - (7) The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

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

- (b) Dental 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. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Dental Contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Dental Contractor also agrees to take reasonable steps to provide services and information, both orally and in

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writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- (c) Dental Contractor agrees to comply with Section 1557 of the Patient Protection and Affordable Care Act;
- (d) Dental Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services must not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- (e) Upon request, Dental Contractor will provide HHSC Civil Rights Office with copies of all of the Dental Contractor's civil rights policies and procedures.
- (f) Dental 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 calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st 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.

Section 7.06 Environmental Protection Laws.

Dental Contractor must comply with the applicable provisions of federal environmental protection laws as described in this Section:

- (a) Pro-Children Act of 1994.

Dental Contractor must comply with the Pro-Children Act of 1994 (20 U.S.C. §§ 6081 *et seq.*), as applicable, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.

- (b) National Environmental Policy Act of 1969.

Dental Contractor must comply with any applicable provisions relating to the institution of environmental quality control measures contained in the National Environmental Policy Act of

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1969 (42 U.S.C. §§ 4321 *et seq.*) and Executive Order 11514 (“Protection and Enhancement of Environmental Quality”).

(c) Clean Air Act and Water Pollution Control Act regulations.

Dental Contractor must comply with any applicable provisions relating to required notification of facilities violating the requirements of Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans”).

(d) State Clean Air Implementation Plan.

Dental Contractor must comply with any applicable provisions requiring conformity of federal actions to State (Clean Air) Implementation Plans under § 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 740 *et seq.*).

(e) Safe Drinking Water Act of 1974.

Dental Contractor must comply with applicable provisions relating to the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (21 U.S.C. § 349; 42 U.S.C. §§ 300f to 300j-9).

Section 7.07 HIPAA.

- (a) Dental Contractor must comply with applicable provisions of HIPAA. This includes the requirement that the Dental Contractor's MIS system comply with applicable certificate of coverage and data specification and reporting requirements promulgated pursuant to HIPAA. Dental Contractor must comply with HIPAA EDI requirements.
- (b) Additionally, Dental Contractor must comply with HIPAA notification requirements, including those set forth in the Health Information Technology for Economic and Clinical Health Act (HITECH Act) at 42 U.S.C. §§ 17931 *et seq.* If, in HHSC's determination, Dental Contractor has not provided notice in the manner or format prescribed by the HITECH Act, then HHSC may require the Dental Contractor to provide this notice.
- (c) Dental Contractor must notify HHSC of all breaches or potential breaches of unsecured protected health information, as that term is defined by the HITECH Act. As noted in **Article 2**, "Definitions," Confidential Information includes HIPAA-defined protected health information. Therefore, any breach of that information is also subject to the requirements, including notice requirements, in **Article 11**, "Disclosure & Confidentiality of Information."
- (d) The Dental Contractor must use or disclose protected health information as authorized and in response to another HIPAA-covered entity's inquiry about a Member for authorized purposes of treatment, payment, healthcare operations, or as required by law under HIPAA.
- (e) The Dental Contractor must comply with rights of individual access by a Member or a Member's Legally Authorized Representative to Member's protected health information. The Dental Contractor may permit limited disclosures of protected health information as

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permissible under HIPAA for a family member, other relative, or close personal friends of the Member or anyone identified in the Member's protected health information directly relevant to the Member's involvement with the Member's healthcare or payment related to the Member's healthcare. The Dental Contractor should refer to 45 C.F.R. § 164.510(b) and related regulatory guidance for additional information.

Section 7.08 Privacy, Security and Breach Notification Laws

- (a) The Dental Contractor must comply with all applicable privacy, security and breach notification laws and regulations, including the following, if applicable to the type of Confidential Information and the authorized purpose for which it is being used:
- (1) 1 Tex. Admin. Code Chapter 202, Subchapter B;
 - (2) The Privacy Act of 1974;
 - (3) OMB Memorandum 17-12;
 - (4) The Federal Information Security Management Act of 2002 (FISMA);
 - (5) The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - (6) Internal Revenue Publication 1075 - Tax Information Security Guidelines for Federal, State, and Local Agencies;
 - (7) National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 - An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
 - (8) NIST Special Publications 800-53 and 800-53A - Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
 - (9) NIST Special Publications 800-47 - Security Guide for Interconnecting Information Technology Systems;
 - (10) NIST Special Publication 800-88, Guidelines for Media Sanitization;
 - (11) NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
 - (12) Family Educational Rights and Privacy Act
- (b) Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that the Dental Contractor supports on behalf of HHS.
- (c) The Dental Contractor must notify HHSC of all Breaches or potential Breaches of Confidential Information in compliance with applicable laws and regulations as specified in **Article 11** of this Contract.

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Section 7.09 Historically Underutilized Business Participation Requirements.

(a) Definitions.

For purposes of this Section:

(1) “Historically Underutilized Business” or “HUB” means a minority or women-owned business as defined by Texas Government Code, Chapter 2161.

(2) “HSP” means a HUB Subcontracting Plan for Dental Administrative Services.

(b) HUB Requirements.

(1) In accordance with Exhibit G, the Dental Contractor must submit an HSP with its Proposal for HHSC’s approval, and maintain the HSP thereafter.

(2) The Dental Contractor must report to HHSC’s contract manager and HUB Office monthly, in the format required by Chapter 5.4.4.5 of the UCM, its use of HUB Subcontractors to fulfill the subcontracting opportunities identified in the HSP.

(3) The Dental Contractor must obtain prior written approval from the HHSC HUB Office before making any changes to the HSP. The proposed changes must comply with HHSC’s good faith effort requirements relating to the development and submission of HSPs.

(4) The Dental Contractor must submit a revised HSP to the HHSC HUB Office when it: changes the dollar amount of, terminates, or modifies an existing Subcontract for Dental Administrative Services; or enters into a new Subcontract for Dental Administrative Services. All proposed changes to the HSP must comply with the requirements of this Agreement.

(5) HHSC will determine if the value of Subcontracts to HUBs meet or exceed the HUB subcontracting provisions specified in the Dental Contractor's HSP. If HHSC determines that the Dental Contractor's subcontracting activity does not demonstrate a good faith effort, the Contractor may be subject to provisions in the Vendor Performance and Debarment Program (1 Tex. Admin. Code § 20.585), and subject to remedies for breach.

Section 7.10 Compliance with Fraud, Waste, and Abuse Requirements.

Dental Contractor, Dental Contractor’s personnel, and all Subcontractors must comply with all fraud, waste, and abuse requirements found in HHS Circular C-027. The Dental Contractor must comply with Circular C-027 requirements in addition to other fraud, waste, and abuse provisions in the contract and in state and federal law.

Article 8. Amendments and Modifications

Section 8.01 Mutual Contract.

This Contract may be amended at any time by mutual agreement of the Parties. The amendment must be in writing and signed by individuals with authority to bind the Parties.

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Section 8.02 Changes in Law or Contract.

If federal or state laws, rules, regulations, policies or guidelines are adopted, promulgated, judicially interpreted or changed, or if contracts are entered or changed, the effect of which is to alter the ability of either Party to fulfill its obligations under this Contract, the Parties will promptly negotiate in good faith appropriate modifications or alterations to the Contract and any schedules or attachments made a part of this Contract. Such modifications or alterations must be in writing and signed by individuals with authority to bind the Parties, equitably adjust the terms and conditions of this Contract, and must be limited to those provisions of this Contract affected by the change.

Section 8.03 Modifications as a Remedy.

This Contract may be modified under the terms of **Article 12** (“Remedies and Disputes”).

Section 8.04 Modification Process.

- (a) If HHSC seeks modifications to the Contract as a condition of any Contract extension, HHSC's notice to Dental Contractor will specify those modifications to the Scope of Work, the Contract pricing terms, or other Contract terms and conditions.
- (b) Dental Contractor must respond to HHSC's proposed modification within the timeframe specified by HHSC, generally within ten Business Days of receipt. Upon receipt of Dental Contractor's response to the proposed modifications, HHSC may enter into negotiations with Dental Contractor to arrive at mutually agreeable Contract amendments. In the event that HHSC determines that the Parties will be unable to reach agreement on mutually satisfactory contract modifications, then HHSC may provide written notice to Dental Contractor of its intent to terminate the Contract or not to extend the Contract beyond the Contract Term then in effect.

Section 8.05 Modification of HHSC Uniform Managed Care Manual.

- (a) HHSC will provide Dental Contractor with at least ten Business Days advance written notice before implementing a substantive and material change in the HHSC Uniform Managed Care Manual (UMCM). For purposes herein, this would refer to a change that materially and substantively alters the Dental Contractor's ability to fulfill its obligations under the Contract. The UMCM, and all modifications thereto, are incorporated by reference into this Contract. HHSC will provide Dental Contractor with a reasonable amount of time to comment on such changes, generally at least five Business Days. HHSC is not required to provide advance written notice of changes that are not material and substantive in nature, such as corrections of clerical errors or policy clarifications.
- (b) The Parties agree to work in good faith to resolve disagreements concerning material and substantive changes to the UMCM. If the Parties are unable to resolve issues relating to material and substantive changes, then either Party may terminate the agreement in accordance with **Article 12** (“Remedies and Disputes”).

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- (c) Changes will be effective on the date specified in HHSC's written notice, which will not be earlier than the Dental Contractor's response deadline, and such changes will be incorporated into the HHSC UMCM. If the Dental Contractor has raised an objection to a material and substantive change to the UMCM and submitted a notice of termination in accordance with **Section 12.04(e)**, HHSC will not enforce the change during the period of time between the receipt of the notice and the date of Contract termination.

Section 8.06 Required Compliance with Amendment and Modification Procedures.

No different or additional services, work, or products will be authorized or performed except as authorized by this Article. No waiver of any term, covenant, or condition of this Contract will be valid unless executed in compliance with this Article. Dental Contractor will not be entitled to payment for any services, work or products that are not authorized by a properly executed Contract amendment or modification.

Article 9. Audit and Financial Compliance and Litigation Hold

Section 9.01 Record Retention and Audit.

- (a) The State, CMS, the OIG, the Comptroller, the Attorney General and their designees have the right to audit records or documents, related to this Contract of the Dental Contractor or Dental Contractors Subcontractor for ten years from the final date of the Contract Term or from the date of any audit, whichever is later.
- (b) Dental Contractor agrees to maintain, and require its Subcontractors to maintain, records, books, documents, and information (collectively "records") that are adequate to ensure that the services provided and are made payments in accordance with the requirements of this Contract, including UMCM Chapter 18 and applicable Federal and State requirements (e.g., 45 C.F.R. § 74.53). Such records must be retained by Dental Contractor or its Subcontractors for a period of ten years after the Contract Expiration Date or until the resolution of all litigation, claim, financial management review or audit pertaining to this Contract, whichever is longer.
- (c) The Dental Contractor and the Dental Contractors' subcontractor must retain, as applicable, enrollee grievance and appeal records under 42 C.F.R. § 438.16, base data in 42 C.F.R. § 438.5(c), MLR reports under 42 C.F.R. § 438.8(k), and the data, information, and documentation specified under 42 C.F.R. § 438.604, § 438.606, § 438.608, and § 438.610 for a period no less than ten years from the expiration date of this Contract or from the date of the completion of any audit, whichever is later.
- (d) Additionally, Dental Contractor agrees to, and to require its Subcontractors to, retain all records in accordance with any litigation hold that is provided to them by HHSC and actively participate in the discovery process if required to do so, at no additional charge to HHSC. Litigation holds may require the Dental Contractor or its Subcontractors to keep the records

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longer than other records retention schedules. The Dental Contractor will be required to retain all records subject to the litigation hold until notified by HHSC when the litigation hold ends and then other approved records retention schedule(s) may resume. If Dental Contractor or its Subcontractors fail to retain the pertinent records after receiving a litigation hold from HHSC, the Dental Contractor agrees to pay to HHSC all damages, costs, and expenses incurred by HHSC arising from such failure to retain.

Section 9.02 Access to Records, Books, and Documents.

- (a) Upon reasonable notice, Dental Contractor must provide, and cause its Subcontractors to provide, at no cost to the officials and entities identified in this Section prompt, reasonable, and adequate access to any records that are related to the scope of this Contract.
- (b) Dental Contractor and its Subcontractors must provide the access described in this Section upon HHSC's request. This request may be for, but is not limited to, the following purposes:
 - (1) examination;
 - (2) audit;
 - (3) investigation;
 - (4) inspection;
 - (5) contract administration; or
 - (6) the making of copies, excerpts, or transcripts.
- (c) The access required must be provided to the following officials and/or entities:
 - (1) The United States Department of Health and Human Services or its designee;
 - (2) The Comptroller General of the United States or its designee;
 - (3) Dental Program personnel from HHSC or its designee, including HHSC's independent auditor;
 - (4) The Office of Inspector General;
 - (5) The Medicaid Fraud Control Unit of the Texas Attorney General's Office or its designee;
 - (6) Any independent verification and validation contractor or quality assurance contractor acting on behalf of HHSC;
 - (7) The Office of the State Auditor of Texas or its designee;
 - (8) A State or Federal law enforcement agency;
 - (9) A special or general investigating committee of the Texas Legislature or its designee; and

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(10) Any other State or Federal entity identified by HHSC, or any other entity engaged by HHSC.

- (d) Dental Contractor agrees to provide the access described wherever Dental Contractor maintains such books, records, and supporting documentation. Dental Contractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, and other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. Dental Contractor will require its Subcontractors to provide comparable access and accommodations.
- (e) Upon request, the Dental Contractor must provide copies of the information described in this Section free of charge to HHSC and the entities described in subsection (c).
- (f) In accordance with Texas Government Code § 533.012(e), any information submitted to HHSC or the Texas Attorney General’s Office pursuant to Texas Government Code § 533.012(a)(1) is confidential and is not subject to disclosure under the Texas Public Information Act.

Section 9.03 Audits of Services, Deliverables and Inspections.

- (a) Upon reasonable notice from HHSC, Dental Contractor will provide, and will cause its Subcontractors to provide, such auditors and inspectors as HHSC may from time to time designate, with access to:
 - (1) service locations, facilities, or installations;
 - (2) records; and
 - (3) software.

Reasonable notice may include time-limited or immediate requests for information.

- (b) The access described in this Section will be for the purpose of examining, auditing, or investigating:
 - (1) Dental Contractor’s capacity to bear the risk of potential financial losses;
 - (2) The Services and Deliverables provided;
 - (3) A determination of the amounts payable under this Contract;
 - (4) A determination of the allowability of costs reported under this Contract;
 - (5) An examination of Subcontract terms and/or transactions;
 - (6) An assessment of financial results under this Contract;
 - (7) Detection of fraud, waste, or abuse;
 - (8) Other purposes HHSC deems necessary to perform its regulatory function and/or enforce the provisions of this Contract.

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- (c) Dental Contractor must provide, as part of the Services, any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.
- (d) If, as a result of an audit or review of payments made to the Dental Contractor, HHSC discovers a payment error or overcharge, HHSC will notify the Dental Contractor of such error or overcharge. HHSC will be entitled to recover such funds as an offset to future payments to the Dental Contractor, or to collect such funds directly from the Dental Contractor. Dental Contractor must return funds owed to HHSC within 30 days after receiving notice of the error or overcharge, or interest will accrue on the amount due. HHSC will assess any such interest at 12 per cent per annum, compounded daily. In the event that an audit reveals that errors in reporting by the Dental Contractor have resulted in errors in payments to the Dental Contractor or errors in the calculation of the Experience Rebate, the Dental Contractor will indemnify HHSC for any losses resulting from such errors, including the cost of audit. If the interest rate stipulated hereunder is found by a court of competent jurisdiction to be outside the range deemed legal and enforceable, then the rate hereunder will be adjusted as little as possible so as to be deemed legal and enforceable.

Section 9.04 SAO Audit.

The Dental Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office ("SAO"), or any successor agency, to conduct an investigation in connection with those funds. The Dental Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested at no cost. The Dental Contractor will ensure that this clause concerning the authority to audit funds and the requirement to cooperate is included in any Subcontract, and in any third party agreements described in **Section 4.08**.

Section 9.05 Response and Compliance with Audit or Inspection Findings.

- (a) Dental Contractor must take action to ensure its or a Subcontractor's compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under this Article. This action will include Dental Contractor's delivery to HHSC, for HHSC'S approval, a Corrective Action Plan that addresses deficiencies identified in any audit, review, or inspection within 30 calendar days of the close of the audit, review, or inspection.
- (b) Dental Contractor must bear the expense of compliance with any finding of noncompliance under this Section that is:
- (1) Required by Texas or Federal law, regulation, rule, court order, or other audit requirement relating to Dental Contractor's business;
 - (2) Performed by Dental Contractor as part of the Scope of Work; or

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- (3) Necessary due to Dental Contractor’s noncompliance with any law, regulation, rule, court order, or audit requirement imposed on Dental Contractor.
- (c) As part of the Scope of Work, Dental Contractor must provide to HHSC upon request a copy of those portions of Dental Contractor’s and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to HHSC under this Contract.

Section 9.06 Notification of Legal and Other Proceedings, and Related Events.

The Dental Contractor must notify HHSC of all proceedings, actions, and events as specified in UCMCM, Chapter 5.8, “Report of Legal and Other Proceedings and Related Events.”

Article 10. Terms and Conditions of Payment

Section 10.01 Calculation of Monthly Premium Payment.

- (a) This is a risk-based contract. For each Program, HHSC will pay the Dental Contractor monthly Premium Payments set forth in the Dental Program Contract, based on the number of eligible enrolled Members. HHSC will calculate the monthly Premium Payments by multiplying the number of Members in each Rate Cell category by the Premium Rate for each Rate Cell. In consideration of the Monthly Premium Payments, the Dental Contractor agrees to provide the Services and Deliverables described in this Contract.
- (b) The Dental Contractor must provide timely financial and statistical information necessary in the Premium Rate determination process. Encounter Data provided by Dental Contractor must conform to all HHSC requirements. Encounter Data containing non-compliant information, including, but not limited to, inaccurate Member identification numbers, inaccurate provider identification numbers, or diagnosis or procedure codes insufficient to adequately describe the diagnosis or procedure performed, will not be considered in the Dental Contractor’s experience for rate-setting purposes.
- (c) Information or data, including complete and accurate Encounter Data, as requested by HHSC for rate-setting purposes, must be provided to HHSC: (1) within 30 days of receipt of the letter from HHSC requesting the information or data; and (2) no later than March 31st of each year.
- (d) The fixed monthly Premium Rate consists of the following components:
 - (1) An amount for the dental services performed during the month;
 - (2) An amount for administering the program, and
 - (3) An amount for the Dental Contractor’s risk margin.

Premium Rates for each Program may vary by Dental Contractor. HHSC will employ or retain qualified actuaries to perform data analysis and calculate the Premium Rates for each rate period.

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- (e) Dental Contractor understands and expressly assumes the risks associated with the performance of the duties and responsibilities under this Contract, including the failure, termination or suspension of funding to HHSC, delays or denials of required approvals, and cost overruns not reasonably attributable to HHSC.

Section 10.02 Time and Manner of Payment.

- (a) During the Contract Term and beginning after the Operational Start Date, HHSC will pay the monthly Premium Payments by the 10th Business Day of each month.
- (b) The Dental Contractor must accept Premium Payments by direct deposit into the Dental Contractor's account.
- (c) HHSC may adjust the monthly Premium Payment to the Dental Contractor in the case of an overpayment to the Dental Contractor, for Experience Rebate amounts due and unpaid (including any interest thereon), or if money damages (including any associated interest) are assessed in accordance with **Article 12**, "Remedies and Disputes."
- (d) HHSC's payment of monthly Premium Payments is subject to availability of appropriations. If appropriations are not available to pay the full monthly Premium Payment, HHSC may:
- (1) Equitably adjust the Premium Payments for all participating Dental Contractors, and reduce scope of service requirements as appropriate in accordance with **Article 8** "Amendments and Modifications," or
 - (2) Terminate the Contract in accordance with **Article 12** "Remedies and Disputes."

Section 10.03 Certification of Premium Rates.

HHSC will employ or retain a qualified actuary to certify the actuarial soundness of the Premium Rates, and all revisions or modifications thereto.

Section 10.04 Modification of Premium Rates.

The Parties expressly understand and agree that the agreed Premium Rates are subject to modification in accordance with **Article 8** "Amendments and Modifications," if changes in state or federal laws, rules, regulations, guidelines, policies, or court orders affect the rates or the actuarial soundness of the rates. HHSC will provide the Dental Contractor notice of a modification to the Premium Rates at least 60 days prior to the effective date of the change, unless HHSC determines that circumstances warrant a shorter notice period. If the Dental Contractor does not accept the rate change, either Party may terminate the Contract in accordance with **Article 12** "Remedies and Disputes."

Section 10.05 CHIP Premium Rates Structure.

- (a) CHIP Rate Cells.

CHIP Premium Rates are defined on a per Member per month basis by the Rate Cells. CHIP Rate Cells are based on the Member's age group as follows:

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- (1) Under age one;
- (2) Ages one through 5;
- (3) Ages 6 through 14; and
- (4) Ages 15 through 18.

These Rate Cells are subject to change after Rate Period 1.

(b) CHIP Premium Rates for Rate Period1.

The CHIP Premium Rates for Rate Period 1 will be included in the negotiated HHSC Dental Program Contract.

(c) CHIP Premium Rate development.

HHSC will establish base Premium Rates by analyzing Encounter Data and financial data. This analysis will include a review of historical enrollment and claims experience information; any changes to Medically Necessary Covered Dental Services and covered populations; rate changes specified by the Texas Legislature; and any other relevant information. HHSC may modify the base Premium Rates using diagnosis based risk adjusters to yield the final Premium Rates.

(d) Acuity Adjustment

HHSC may evaluate and implement an acuity adjustment methodology, or alternative reasonable methodology, that appropriately reimburses the Dental Contractor for acuity and cost differences that deviate from that of the community average, if HHSC in its sole discretion determines that such a methodology is reasonable and appropriate. The community average is a uniform rate for all Dental Contractor s in a Service Area, and is determined by combining all the experience for all Dental Contractors in a Service Area to get an average rate for the Service Area.

(e) Value-Added Services.

Value-added Services will not be included in the rate-setting process.

(f) Case-by-case Services.

Case-by-case Services will not be included in the rate setting process.

Section 10.06 Medicaid Premium Rates Structure.

(a) Medicaid Rate Cells.

Medicaid Premium Rates are defined on a per Member per month basis by the Rate Cells. Medicaid Rate Cells are:

- (1) Under age one;
- (2) Ages one through 5;

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- (3) Ages 6 through 14;
- (4) Ages 15-18; and
- (5) Ages 19 through 20.

(b) Medicaid Premium Rate development.

HHSC will establish base Premium Rates by analyzing historical Medicaid Encounter Data and financial data. This analysis will include a review of historical enrollment and claims experience information; any changes to Covered Services and covered populations; rate changes specified by the Texas Legislature; and any other relevant information.

(c) Acuity adjustment.

HHSC may evaluate and implement an acuity adjustment methodology, or alternative reasonable methodology, that appropriately reimburses the Dental Contractor for acuity and cost differences that deviate from that of the community average, if HHSC in its sole discretion determines that such a methodology is reasonable and appropriate. The community average is a uniform rate for all Dental Contractors in a Service Area, and is determined by combining all the experience for all Dental Contractors in a Service Area to get an average rate for the Service Area.

(d) Value-Added Services.

Value-added Services will not be included in the rate-setting process.

(e) Case-by-case Services.

Case-by-case Services will not be included in the rate setting process

Section 10.07 Adjustments to Premium Payments

(a) Adjustment.

HHSC may adjust a payment made to the Dental Contractor for a Member if:

- (1) A Member’s eligibility status or program type is changed, corrected as a result of error, or is retroactively adjusted;
- (2) The Member is enrolled into the Dental Contractor in error;
- (3) The Member moves outside the United States;
- (4) The Member dies before the first day of the month for which the payment was made; or
- (5) The payment has been denied by the CMS in accordance with the requirements of 42 C.F.R. § 438.730.

(b) Appeal of adjustment.

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The Dental Contractor may appeal the adjustment of premiums in the above circumstances using the HHSC dispute resolution process set forth in **Section 12.13**, (“Dispute Resolution”).

Section 10.08 Experience Rebate.

(a) Dental Contractor's duty to pay.

At the end of each FSR Reporting Period, the Dental Contractor must pay an Experience Rebate for the Program to HHSC as detailed in **Section 10.08 (b)**, b. The Net Income Before Taxes and total Revenues are as measured by the Financial-Statistical Report (FSR) as reviewed and confirmed by HHSC. The final amount used in the calculation of the percentage may be impacted by the Loss Carry Forward; see **Section 10.08, (d)**.

With the exception of the Dual Demonstration, the percentages are calculated on a Consolidated Basis, and include the consolidated Net Income Before Taxes for all of the Dental Contractor's HHSC capitated managed care contracts, including any separate capitated managed care contracts with the Dental Contractor's parent or other affiliated legal entities.

(b) Net Income Before taxes.

(1) The Dental Contractor must compute the Net Income Before Taxes in accordance with the HHSC UCMC's “Cost Principles for Expenses” and “FSR Instructions for Completion” and applicable federal regulations. The Net Income Before Taxes will be confirmed by HHSC or its agent for the FSR Reporting Period relating to all Revenues and Allowable Expenses incurred pursuant to the Contract. HHSC reserves the right to modify the “Cost Principles for Expenses” and “FSR Instructions for Completion” found in HHSC's UCMC, in accordance with **Section 8.05**, “Modification of the HHSC Uniform Managed Care Manual.”

(2) For purposes of calculating Net Income Before Taxes, certain items are omitted from the calculation, as they are not Allowable Expenses; these include:

- (i) The payment of an Experience Rebate;
- (c) Any interest expense associated with late or underpayment of the Experience Rebate;
- (d) Any financial incentives;
- (e) Any financial disincentives, including without limitation any incentives described in **Section 2.6** of the RFP; and
- (f) The liquidated damages, and any interest expense associated, as described in Exhibit “C.”

See UCMC Chapter 6.1 “Cost Principles for Expenses.”

(1) Financial incentives will not be reduced by potential increased Experience Rebate payments. Financial disincentives will not be offset in whole or in part by potential decreases in Experience Rebate payments.

(2) For FSR reporting purposes, any financial incentives incurred must not be reported as an increase in Revenues or as an offset to costs, and any award of such will not increase

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reported income. Any financial disincentives incurred must not be included as reported expenses, and must not reduce reported income. The reporting or recording of any of these incurred items will be done on a memo basis, which is below the income line, and will be listed as separate items.

(g) Carry forward of prior FSR Reporting Period losses.

(1) General.

Losses incurred on a Consolidated Basis by the Dental Contractor for one FSR Reporting Period may be carried forward to the next FSR Reporting Period and applied as an offset against pre-tax net income. Prior losses may be carried forward for up to two contiguous FSR Reporting Periods.

When a loss in a given FSR Reporting Period is carried forward and applied against profits in both of the next two FSR Reporting Periods, the loss must first be applied against the first subsequent FSR Reporting Period. The profit in the first subsequent FSR Reporting Period is reduced to a zero pre-tax income; any additional loss then remaining unapplied may be carried forward to any profit in the next subsequent FSR Reporting Period. In this case, the revised income in the third FSR Reporting Period would be equal to the cumulative income of the three contiguous FSR Reporting Periods. The loss cannot be carried forward to the fourth FSR Reporting Period or beyond.

The Admin Cap may impact losses carried forward. See **Section 10.09 (f)**.

Losses incurred in the last or next-to-last FSR Reporting Period of a prior contiguous contract with HHSC may be carried forward up to two FSR Reporting Periods, into the first or potentially second FSR Reporting Period of this Contract, if the losses meet all other requirements of both the prior and current contracts.

(2) Basis of consolidation.

In order for a loss to be eligible for potential carryforward as an offset against future income, the Dental Contractor must have a negative Net Income Before Taxes for an FSR Reporting Period on a Consolidated Basis.

(h) Settlements for payment.

(1) There may be one or more Dental Contractor payment(s) of the State share of the Experience Rebate on income generated for a given FSR Reporting Period. The first scheduled payment (the "Primary Settlement") will equal 100 percent of the State share of the Experience Rebate as derived from the FSR, and will be paid on the same day the 90-day FSR Report is submitted to HHSC.

The "Primary Settlement," as utilized herein, refers strictly to what should be paid with the 90-day FSR, and does not refer to the first instance in which the Dental Contractor may tender a payment. For example, the Dental Contractor may submit a 90-day FSR indicating no Experience Rebate is due, but then submit a 334-day FSR with a higher income and a

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corresponding Experience Rebate payment. In such case, this initial payment would be subsequent to the Primary Settlement.

(2) The next scheduled payment will be an adjustment to the Primary Settlement, if required, and will be paid on the same day that the 334-day FSR Report is submitted to HHSC, if the adjustment is a payment from the Dental Contractor to HHSC. **Section 10.05(f)** describes the interest expenses associated with any such payment after the Primary Settlement.

The Dental Contractor may make non-scheduled payments at any time to reduce the accumulation of interest under **Section 10.05(f)**. For any nonscheduled payments prior to the 334-day FSR, the Dental Contractor is not required to submit a revised FSR, but is required to submit an Experience Rebate calculation form and an adjusted summary page of the FSR. The FSR summary page is labeled "Summary Income Statements (Dollars), All Coverage Groups Combined (FSR, Part I)."

(3) HHSC or its agent may audit or review the FSRs. If HHSC determines that corrections to the FSRs are required, based on an HHSC audit/review or other documentation acceptable to HHSC, then HHSC will make final adjustments. Any payment resulting from an audit or final adjustment will be due from the Dental Contractor within 30 days of the earlier of:

- (i) The date of the management representation letter resulting from the audit; or
- (ii) The date of any invoice issued by HHSC.

Payment within this 30-day timeframe will not relieve the Dental Contractor of any interest payment obligation that may exist under **Section 10.05(f)**.

(4) In the event that any Experience Rebates and/or corresponding interest payments owed to the State are not paid by the required due dates, then HHSC may offset such amounts from any future Capitation Payments, or collect such sums directly from the Dental Contractor. HHSC may adjust the Experience Rebate if HHSC determines the Dental Contractor has paid amounts for goods or services that are not reasonable, necessary, and allowable in accordance with the HHSC UCMCM's "Cost Principles for Expenses," the HHSC "FSR Instructions for Completion," the Federal Acquisition Regulations (FAR), or other applicable federal or state regulations. HHSC has final authority in auditing and determining the amount of the Experience Rebate.

(i) Interest on Experience Rebate.

(1) Interest on any Experience Rebate owed to HHSC will be charged beginning 35 days after the due date of the Primary Settlement, as described in **Section 10.05(e)(1)**. Thus, any Experience Rebate due or paid on or after the Primary Settlement will accrue interest starting at 35 days after the due date for the 90-day FSR Report. For example, any Experience Rebate payment(s) made in conjunction with the 334-day FSR, or as a result of audit findings, will accrue interest back to 35 days after the due-date for submission of the 90-day FSR.

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The Dental Contractor has the option of preparing an additional FSR based on 120 days of claims run-out (a “120- day FSR”). If a 120-day FSR, and an Experience Rebate payment based on it, are received by HHSC before the interest commencement date above, then such a payment would be counted as part of the Primary Settlement.

(2) If an audit or adjustment determines a downward revision of income after an interest payment has previously been required for the same State Fiscal Year, then HHSC will recalculate the interest and, if necessary, issue a full or partial refund or credit to the Dental Contractor.

(3) Any interest obligations that are incurred pursuant to **Section 10.05** that are not timely paid will be subject to accumulation of interest as well, at the same rate as applicable to the underlying Experience Rebate.

(4) All interest assessed pursuant to **Section 10.05** will continue to accrue until such point as a payment is received by HHSC, at which point interest on the amount received will stop accruing. If a balance remains at that point that is subject to interest, then the balance will continue to accrue interest. If interim payments are made, then any interest that may be due will only be charged on amounts for the time period during which they remained unpaid.

By way of example only, if \$100,000 is subject to interest commencing on a given day, and a payment is received for \$75,000 45 days after the start of interest, then the \$75,000 will be subject to 45 days of interest, and the \$25,000 balance will continue to accrue interest until paid.

The accrual of interest as defined under **Section 10.05(f)** will not stop during any period of dispute. If a dispute is resolved in the Dental Contractor's favor, then interest will only be assessed on the revised unpaid amount.

(5) If the Dental Contractor incurs an interest obligation pursuant to **Section 10.05**, HHSC will assess such interest at 12% per annum, compounded daily. If any interest rate stipulated hereunder is found by a court of competent jurisdiction to be outside the range deemed legal and enforceable, then in such specific case the rate hereunder will be adjusted as little as possible so as to be deemed legal and enforceable.

(6) Any such interest expense incurred pursuant to **Section 10.05** is not an Allowable Expense for reporting purposes on the FSR.

Section 10.09 Federal Disallowance.

If the federal government recoups money from the state for expenses and/or costs that are deemed unallowable by the federal government, the state has the right to, in turn, recoup payments made to the Dental Contractor for these same expenses or costs, even if they had not been previously disallowed by the state and were incurred by the Dental Contractor, and any such expenses or costs would then be deemed unallowable by the state. If the state retroactively recoups money from the Dental Contractor due to a federal disallowance, the state will recoup the entire amount paid to the Dental Contractor for the federally disallowed expenses or costs, not just the federal portion.

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Section 10.10 Payment by Members.

- (a) The Dental Contractor, Network Providers, and Out-of-Network Providers are prohibited from billing or collecting any amount from a Member for Covered Services, except that CHIP Network Providers and Out-of-Network Providers may collect copayments authorized in the CHIP State Plan from CHIP Members for Covered Services.
- (b) The Dental Contractor must inform Members of costs for non-covered services, and must require its Network Providers to:
 - (1) inform Members of costs for non-covered services prior to rendering such services; and
 - (2) obtain a signed Private Pay form from such Members.

Section 10.11 Restriction on Assignment of Fees.

During the Contract Term, Dental Contractor may not, directly or indirectly, assign to any third party any beneficial or legal interest of the Dental Contractor in or to any payments to be made by HHSC pursuant to this Contract. This restriction does not apply to fees paid to Subcontractors.

Section 10.12 Liability for Taxes.

HHSC is not responsible in any way for the payment of any Federal, state or local taxes related to or incurred in connection with the Dental Contractor's performance of this Contract. Dental Contractor must pay and discharge any and all such taxes, including any penalties and interest. In addition, HHSC is exempt from federal excise taxes, and will not pay any personal property taxes or income taxes levied on Dental Contractor or any taxes levied on employee wages.

Section 10.13 Liability for Employment-related Charges and Benefits.

Dental Contractor will perform work under this Contract as an independent contractor and not as agent or representative of HHSC. Dental Contractor is solely and exclusively liable for payment of all employment-related charges incurred in connection with the performance of this Contract, including but not limited to salaries, benefits, employment taxes, workers compensation benefits, unemployment insurance and benefits, and other insurance or fringe benefits for staff.

Section 10.14 No Additional Consideration.

- (a) Dental Contractor will not be entitled to nor receive from HHSC any additional consideration, compensation, salary, wages, charges, fees, costs, or any other type of remuneration for Services and Deliverables provided under the Contract, except by properly authorized and executed Contract amendments.

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- (b) No other charges for tasks, functions, or activities that are incidental or ancillary to the delivery of the Services and Deliverables will be sought from HHSC or any other State agency, nor will the failure of HHSC or any other party to pay for such incidental or ancillary services entitle the Dental Contractor to withhold Services and Deliverables due under the Agreement.
- (c) Dental Contractor will not be entitled by virtue of the Contract to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

Section 10.15 Adjustment to Capitation in Consideration of the ACA Section 9010.

The following applies only to Dental Contractors that are covered entities under Section 9010 of the PPACA, and thus required to pay the Health Insurance Providers Fee ("HIP Fee") for United States health risks.

Beginning in calendar year 2014, the PPACA requires the Dental Contractor to pay the HIP Fee no later than September 30th (as applicable to each relevant year, the "HIP Fee Year") with respect to premiums paid to the Dental Contractor in the preceding calendar year (as applicable to each relevant year, the "HIP Data Year"), and continuing similarly in each successive year. In order to satisfy the requirement for actuarial soundness set forth in 42 C.F.R. § 438.4 with respect to amounts paid by HHSC under this Agreement, the parties agree that HHSC will make a retroactive adjustment to capitation to the Dental Contractor for the full amount of the HIP Fee allocable to this Agreement, as follows:

Amount and method of payment: For each HIP Fee Year, HHSC will make an adjustment to capitation to the Dental Contractor for that portion of the HIP Fee that is attributable to the Capitation Payments paid by HHSC to the Dental Contractor for risks in the applicable HIP Data Year under the Agreement, less any applicable exclusions and appropriate credit offsets. This capitation adjustment will be determined by HHSC and will include the following:

- (1) The amount of the HIP Fee attributable to this Agreement;
- (2) The federal income tax liability, if any, that the Dental Contractor incurs as a result of receiving HHSC's payment for the amount of the HIP Fee attributable to this Agreement; and
- (3) Any Texas state premium tax attributable to the capitation adjustment.

The amount of the HIP Fee will not be determinable until after HHSC establishes the regular Capitation Rates for a rate period. HHSC therefore will perform an actuarial calculation to account for the HIP Fee within actuarially sound Capitation Rates each year, and apply this Capitation Rate adjustment to the regular Capitation Rates already paid to the Dental Contractor.

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The Dental Contractor's federal income tax rate will not be known prior to the end of the tax year. As a result, HHSC will make a tax rate assumption for purposes of developing the capitation adjustment. If the tax rate assumption later proves to be higher than the actual tax rate for one or more Dental Contractors, HHSC may re-determine the capitation adjustment for those Dental Contractors using the lower tax rate and reconcile the capitation amount paid.

Documentation Requirements: HHSC will pay the Dental Contractor after it receives sufficient documentation, as determined by HHSC, detailing the Dental Contractor's Texas Medicaid and CHIP-specific liability for the HIP Fee. The Dental Contractor will provide documentation that includes the following:

- (1) The preliminary and final versions of the IRS Form 8963;
- (2) Texas Medicaid/CHIP-specific premiums included in the premiums reported on Form 8963; and
- (3) The preliminary and final versions of the Fee statement provided by the IRS.

Payment by HHSC is intended to put the Dental Contractor in the same position as the Dental Contractor would have been had no HIP Fee been imposed upon the Dental Contractor.

This provision will survive the termination of the Agreement.

Article 11. Disclosure, Confidentiality, Privacy, and Security of Information.

Section 11.01 Confidentiality.

- (a) The Dental Contractor and all Subcontractors, consultants, or agents must treat all information that is obtained through performance of the Services under the Contract, including information relating to applicants or Dental Members as Confidential Information to the extent that confidential treatment is provided under law and regulations. The Dental Contractor must protect Confidential Information from unauthorized disclosure or public release based on state or federal law or other legal agreement. For purposes of this Contract, the Dental Contractor will treat Agency Sensitive Information as Confidential Information. Although Agency Sensitive Information may not be subject to specific legal, regulatory or other external requirements, it is considered HHS sensitive and is not readily available to the public. Agency Sensitive Information could be subject to disclosure under the Texas Public Information Act, but the Dental Contractor should control disclosure due to sensitivity.
- (b) The Dental Contractor is responsible for understanding the degree to which information obtained through performance of the Contract is confidential under State and Federal law, regulations, or administrative rules.
- (c) The Dental Contractor and all Subcontractors, consultants, or agents under the Contract must not use any information obtained through performance of the Contract in any manner except

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as is necessary for the proper discharge of obligations and securing of rights under the Contract.

- (d) The Dental Contractor must have a system in effect to protect all records and all other documents deemed confidential under the Contract maintained in connection with the activities under the Contract. Any disclosure or transfer of Confidential Information by the Dental Contractor, including information required by the HHSC, must be in accordance with applicable law. If the Dental Contractor receives a request for information deemed confidential under the Contract, the Dental Contractor must immediately notify HHSC of such request, and must make reasonable efforts to protect the information from public disclosure.
- (e) In addition to the requirements expressly stated in this section, the Dental Contractor must comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to Dental Members, the Dental Contractor's operations, or the Dental Contractor's performance of the Contract.
- (f) In the event of the expiration of the Contract or termination of the Contract for any reason, all Confidential Information disclosed to and all copies thereof made by the Dental Contractor must be returned to HHSC or, at HHSC's option, erased or destroyed. The Dental Contractor must provide HHSC certificates evidencing such erasure or destruction.
- (g) The obligations in this section shall not restrict any disclosure by the Dental Contractor pursuant to any applicable law, or by order of any court or government agency, provided that the Dental Contractor must give prompt notice to HHSC of such order.
- (h) With the exception of confidential Dental Member information, information provided under the Contract by one Party (the "Furnishing Party") to another Party (the "Receiving Party") will not be considered Confidential Information if such data was:
 - (1) Already known to the Receiving Party without restrictions at the time of its disclosure by the Furnishing Party;
 - (2) Independently developed by the Receiving Party without reference to the Furnishing Party's Confidential Information;
 - (3) Rightfully obtained by the Receiving Party without restriction from a third party after its disclosure to a third party by the Furnishing Party;
 - (4) Publicly available other than through the fault or negligence of the Receiving Party; or
 - (5) Lawfully released without restriction to anyone.

Section 11.02 Disclosure of HHSC's Confidential Information.

- (a) The Dental Contractor must report to HHSC any and all unauthorized disclosures or uses of HHSC's Confidential Information of which it or its Subcontractor(s), consultant(s), or

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agent(s) is aware or has knowledge in accordance with Section 11.08 of the Contract. The Dental Contractor acknowledges that any publication or disclosure of HHSC's Confidential Information to others may cause immediate and irreparable harm to HHSC and may constitute a violation of State or federal laws. If the Dental Contractor, its Subcontractor(s), consultant(s), or agent(s) should publish or disclose such Confidential Information to others without authorization, HHSC will immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. HHSC will have the right to recover from the Dental Contractor all damages and liabilities caused by or arising from the Dental Contractor's, its Subcontractors', consultants', or agents' failure to protect HHSC's Confidential Information. The Dental Contractor must defend, with counsel approved by HHSC, indemnify and hold harmless HHSC from all damages, costs, liabilities, and expenses, including reasonable attorneys' fees and costs, caused by or arising from the Dental Contractor's or its Subcontractors', consultants' or agents' failure to protect HHSC's Confidential Information. HHSC will not unreasonably withhold approval of counsel selected by the Dental Contractor.

- (b) The Dental Contractor must require its Subcontractors, consultants, and agents to comply with the terms of this provision.

Section 11.03 Member Records.

- (a) HHSC may require the transfer of Dental Member Records, upon written notice to the Dental Contractor, to another entity, as consistent with federal and state laws and applicable releases. The Dental Contractor must comply with the requirements of state and federal laws regarding the transfer of Dental Member Records.
- (b) The term "Dental Member Record" for this section means only those administrative, enrollment, case management, and other such records maintained by the Dental Contractor and is not intended to include patient records maintained by participating Providers.

Section 11.04 Requests for Public Information.

- (a) HHSC will promptly notify the Dental Contractor of a request for disclosure of information filed in accordance with the Texas Public Information Act, Tex. Gov't. Code Chapter 552 of the, that consists of the Dental Contractor's confidential information, including information or data to which the Dental Contractor has a proprietary or commercial interest. HHSC will deliver a copy of the request for Public Information to the Dental Contractor.
- (b) With respect to any information that is the subject of a request for disclosure, the Dental Contractor must demonstrate to the Texas Office of Attorney General the specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under law. The Dental Contractor must provide HHSC with copies of all such communications.
- (c) To the extent authorized under the Texas Public Information Act, HHSC agrees to safeguard from disclosure information received from the Dental Contractor that the Dental Contractor

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believes to be confidential information. The Dental Contractor must clearly mark such information as confidential information or provide written notice to HHSC that it considers the information confidential.

- (d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Dental Contractor agrees that this Contract can be terminated if the Dental Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 11.05 Privileged Work Product.

- (a) The Dental Contractor acknowledges that HHSC asserts that privileged work product may be prepared in anticipation of litigation and that the Dental Contractor is performing the Services with respect to privileged work product as an agent of HHSC, and that all matters related thereto are protected from disclosure by the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure, or Federal Rules of Evidence.
- (b) HHSC will notify the Dental Contractor of any privileged work product to which the Dental Contractor has or may have access. After the Dental Contractor is notified or otherwise becomes aware that such documents, data, database, or communications are privileged work product, only the Dental Contractor personnel, for whom such access is necessary for the purposes of providing the Services, may have access to privileged work product.
- (c) If the Dental Contractor receives notice of any judicial or other proceeding seeking to obtain access to HHSC's privileged work product, the Dental Contractor must:
- (1) Immediately notify HHSC; and
 - (2) Use all reasonable efforts to resist providing such access.
- (d) If the Dental Contractor resists disclosure of HHSC's privileged work product in accordance with this Section, HHSC will, to the extent authorized under Civil Practices and Remedies Code or other applicable State law, have the right and duty to:
- (1) Represent the Dental Contractor in such resistance;
 - (2) To retain counsel to represent the Dental Contractor; or
 - (3) To reimburse the Dental Contractor for reasonable attorneys' fees and expenses incurred in resisting such access.
- (e) If a court of competent jurisdiction orders the Dental Contractor to produce documents, disclose data, or otherwise Breach the confidentiality obligations imposed in the Contract, or otherwise with respect to maintaining the confidentiality, proprietary nature, and secrecy of privileged work product, the Dental Contractor will not be liable for Breach of such obligation.

Section 11.06 Unauthorized Acts.

Each Party agrees to:

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- (1) Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, by any person or entity that may become known to it, of any HHSC Confidential Information or any information identified by the Dental Contractor as confidential or proprietary;
- (2) Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;
- (3) Cooperate with the other Party in any litigation and investigation against third Parties deemed necessary by such Party to protect its proprietary rights; and
- (4) Promptly make reasonable efforts to prevent a reoccurrence of any such unauthorized possession, use, or knowledge such information.

Section 11.07 Legal Action.

Neither party may commence any legal action or proceeding in respect to any unauthorized possession, use, or knowledge, or attempt thereof by any person or entity of HHSC's Confidential Information or information identified by the Dental Contractor as confidential or proprietary, which action or proceeding identifies the other Party information without such Party's consent.

Section 11.08 Dental Contractor's Incident and Breach Notice, Reporting and Mitigation.

The Dental Contractor's obligation begins at Discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information (collectively "Incident") and continues until all effects of the Incident are resolved to HHSC's satisfaction, hereafter referred to as the "Incident Response Period".

For each Incident, the Dental Contractor must perform a risk analysis in accordance with HIPAA requirements to determine the probability of compromise of the Confidential Information.

Section 11.08.1 Notification to HHSC

- (a) The Dental Contractor must notify HHSC within the timeframes set forth in subsection (c) below unless HHSC has agreed in writing to an alternate timeframe for notification.
- (b) The Dental Contractor must require that its Subcontractors and Providers take the necessary steps to assure that the Dental Contractor can comply with all of the following Incident notice requirements.
- (c) Incident Notice:
 - (1) Initial Notice.

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Within 24 hours of Discovery of an Incident that the Dental Contractor's risk analysis has determined has more than a low probability of compromise, or when the Dental Contractor should have reasonably discovered such Incident, the Dental Contractor must preliminarily report on the occurrence of an Incident to the HHSC Privacy Officers via email at: privacy@HHSC.state.tx.us. This initial notice must, at a minimum, contain all information reasonably available to the Dental Contractor about the Incident, confirmation that the Dental Contractor has met any applicable one-hour Breach notification requirement for any Breach of information obtained from a federal system of records in accordance with OMB Memorandum M-17-12, and provide a single point of contact for the Dental Contractors for HHSC communications both during and outside of business hours during the Incident Response Period.

(2) Formal Notice.

No later than three Business Days after Discovery of an Incident that the Dental Contractor's risk analysis has determined has more than a low probability of compromise, or when the Dental Contractor should have reasonably Discovered such Incident, the Dental Contractor must provide written formal notification to HHSC using the Potential Privacy/Security Incident Form which is available on the HHSC website. The formal notification must include all available information about the Incident, and the Dental Contractor's investigation of the Incident.

(3) Annual Notice.

For an Incident that the Dental Contractor's risk analysis has determined has a low probability of compromise or only involves unauthorized disclosure of a single individual's Confidential Information to a single unauthorized recipient, the Dental Contractor must provide notice to HHSC of such Incident no later than 60 calendar days after the end of the calendar year in which the Incident occurred.

No later than 60 calendar days after the end of each calendar year, the Dental Contractor must provide the HHS Privacy Office with a comprehensive list of all incidents involving HHSC confidential information that were reported to the US Office for Civil Rights in accordance with the obligations under HIPAA.

Section 11.08.2 Dental Contractor Investigation, Response and Mitigation.

(a) The Dental Contractor must fully investigate and mitigate, to the extent practicable, any Incident. At a minimum, the Dental Contractor must:

- (1) Immediately commence a full and complete investigation;
- (2) Cooperate fully with HHSC in its response to the Incident;
- (3) Complete or participate in an initial risk analysis;
- (4) Provide a final risk analysis
- (5) Submit proposed corrective actions to HHSC for review and approval;
- (6) Commit necessary and appropriate staff and resources to expeditiously respond;

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- (7) Report to HHSC as required by HHSC and all applicable federal and state laws for Incident response purposes and for purposes of HHSC's compliance with report and notification requirements, to the satisfaction of HHSC;
- (8) Fully cooperate with HHSC to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
- (9) Fully cooperate with HHSC's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;
- (10) Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
- (11) Provide HHSC with a final report on the Incident explaining the Incident's resolution.

Section 11.08.3 Breach Notification to Individuals and Reporting to Authorities.

- (a) In addition to the notices required in Section 11.08.1, the Dental Contractor must provide Breach notification, in accordance with 45 C.F.R. §§ 164.400-414, or as specified by HHSC following an Incident.
- (b) The Dental Contractor must assure that the time, manner and content of any Breach notification required by this Section meets all federal and state regulatory requirements. Breach notice letters must be in the Dental Contractor's name and on the Dental Contractor's letterhead and must contain contact information to obtain additional information, including the name and title of the Dental Contractor's representative, an email address and a toll-free telephone number.
- (c) The Dental Contractor must provide HHSC with copies of all distributed communications related to the Breach notification.
- (d) The Dental Contractor must demonstrate to the satisfaction of HHSC that any Breach notification required by applicable law was timely made. If there are delays outside of the Dental Contractor's control, the Dental Contractor must provide written documentation to HHSC of the reasons for the delay.

Section 11.09 Information Security and Privacy Requirements.

(a) Compliance

The Dental Contractor will comply with all applicable state and federal security and privacy requirements, as well as implement industry best practices, governing the creation, collection, access, use, storage, maintenance, disclosure, safeguarding and destruction of HHS data including Agency Sensitive and Confidential Information.

(b) Protection.

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The Dental Contractor will implement, maintain, document, and use appropriate administrative, technical and physical security measures to protect all HHS Information Resources and data, including Agency Sensitive Information and Confidential Information.

(c) Reviews.

The Dental Contractor must comply with security and privacy controls compliance assessments, updates, and monitoring by HHS as required by state and federal law or at HHS' discretion. The security and privacy controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53 from the applicable state and federal requirements. The HHS process is described in the Information Security Risk Assessment and Monitoring Procedures (IS-RAMP) that is published on the HHS Internet website.

(d) Workforce.

The Dental Contractor must ensure that its workforce, including Subcontractors, who are granted specified HHS authorized access to internal HHS Information Resources, comply with the HHS Acceptable Use Policy (AUP) and sign the Acceptable Use Agreement (AUA) prior to access, in accordance with 1 Tex. Admin. Code Chapter 202.22.

(e) Information Security and Privacy Officials.

The Dental Contractor must designate an Information Security Official and a Privacy Official who will be responsible for managing the security and privacy programs and requirements. The Dental Contractor will provide HHS the names, phone numbers and email addresses of these officials. The Security Official and Privacy Official roles may be performed by the same individual.

(f) Program.

The Dental Contractor must establish an information security and privacy program and maintain information security and privacy policies and standards that are updated at least annually with respect to the management or handling of HHS Information Resources or data. The program will:

- (1) Comply with all applicable legal and regulatory requirements for Texas HHS data protection;
- (2) Comply with HHS Information Security Office's published or provided policies, standards, and controls (IS-Policy, IS-AUP, AUA, IS-Web and Mobile Minimum Security Standard, IS-RAMP, ISSG/IS-Controls);
- (3) Ensure the integrity, availability, and confidentiality by implementing technical, administrative and physical safeguards for HHS Agency Sensitive Information and Confidential Information;
- (4) Protect against any anticipated threats or hazards to the security or integrity of such information;

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(5) Protect and monitor against unauthorized access to or use of such information that could result in harm to the person that is the subject of such information both logically and physically;

(6) Routinely review, monitor, and remove unnecessary accounts that have access to HHS Agency Sensitive Information or Confidential Information;

(7) Coordinate with HHS to determine the HHS data types accessed, transmitted, stored, or maintained by the system and identify applicable state, federal and regulatory requirements;

(8) Document system accountability with an associated HHS Information Owner and, if provided by the Contractor, Information custodians;

(9) Encrypt the HHS Agency Sensitive Information and Confidential Information on end-user devices, on portable devices, in transit over public networks, and while stored in the cloud;

(10) FIPS 140-2 validated encryption will be used for federal protected data and access to HHS Confidential and Agency Sensitive Information will be controlled and monitored;

(11) Prohibit the use of free Cloud services with HHS Agency Sensitive or Confidential Information;

(12) Ensure that, prior to offshoring or using cloud services, the contractor must obtain the express prior written permission from the HHS agency and comply with the HHS agency conditions for safeguarding offshore HHS information;

(13) Provide the workforce security and privacy training, conduct appropriate background checks, ensure individual accountability, and implement appropriate sanctions for non-compliance;

(14) Establish a secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;

(15) Keep current on security update/patch releases and maintain up-to-date anti-virus/malware protection;

(16) Ensure security will be integrated into all phases including planning, development, and implementation and will include security testing and remediation of security vulnerabilities prior to production especially for online websites, applications and mobile applications;

(17) Establish standards and methods to securely return, destroy or dispose of HHS Agency Sensitive Information or Confidential Information;

(18) Provide documentation of information security and privacy policies/standards to HHS Information Security if requested;

(19) Ensure HHS websites provide the HHS privacy notice;

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(20) Develop and implement methods that ensure security for all components, including:

- (i) Environmental security;
- (ii) Physical site security;
- (iii) Computer hardware security;
- (iv) Computer software security;
- (v) Application security;
- (vi) Data access and storage;
- (vii) Client/user security;
- (viii) Secure processes and procedures;
- (ix) Telecommunications and network security; and
- (x) General support systems (GSS) security.

Article 12. Remedies and Disputes

Section 12.01 Understanding and Expectations.

The remedies described in this Section are directed to Dental Contractor's timely and responsive performance of the Services and production of Deliverables, and the creation of a flexible and responsive relationship between the Parties. The Dental Contractor is expected to meet or exceed all HHSC objectives and standards, as set forth in the Contract. All areas of responsibility and all Contract requirements will be subject to performance evaluation by HHSC. Performance reviews may be conducted at the discretion of HHSC at any time and may relate to any responsibility or requirement. All responsibilities or requirements not fulfilled may be subject to remedies set forth in the Contract.

Section 12.02 Tailored Remedies.

(a) Understanding of the Parties.

Dental Contractor agrees and understands that HHSC may pursue tailored contractual remedies for noncompliance with the Contract. At any time and at its discretion, HHSC may impose or pursue one or more remedies for each item of noncompliance and will determine remedies on a case-by-case basis. HHSC's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity.

(b) Notice and opportunity to cure for non-material breach.

- (1) HHSC will notify Dental Contractor in writing of specific areas of Dental Contractor performance that fail to meet performance expectations, standards, or

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schedules set forth in the Contract, but that, in the determination of HHSC, do not result in a material deficiency or delay in the implementation or operation of the Services.

(2) Dental Contractor will, within five Business Days, or another date approved by HHSC of receipt of written notice of a non-material deficiency, provide HHSC a written response that:

Explains the reasons for the deficiency, the Dental Contractor's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or

If Dental Contractor disagrees with HHSC's findings, its reasons for disagreeing with HHSC's findings.

(3) Dental Contractor's proposed cure of a non-material deficiency is subject to the approval of HHSC. Dental Contractor's repeated commission of non-material deficiencies or repeated failure to resolve any such deficiencies may be regarded by HHSC as a material deficiency and entitle HHSC to pursue any other remedy provided in the Contract or any other appropriate remedy HHSC may have at law or equity.

(c) Corrective Action Plan.

(1) At its option, HHSC may require Dental Contractor to submit to HHSC a written Corrective Action Plan to correct or resolve a material breach of the Contract, as determined by HHSC.

(2) The Corrective Action Plan must provide:

A detailed explanation of the reasons for the cited deficiency;

Dental Contractor's assessment or diagnosis of the cause; and

A specific proposal to cure or resolve the deficiency.

(3) The Corrective Action Plan must be submitted by the deadline set forth in HHSC's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by HHSC, which will not unreasonably be withheld.

(4) HHSC will notify Dental Contractor in writing of HHSC's final disposition of HHSC's concerns. If HHSC accepts Dental Contractor's proposed Corrective Action Plan, HHSC may:

Condition such approval on completion of tasks in the order or priority that HHSC may reasonably prescribe;

Disapprove portions of Dental Contractor's proposed Corrective Action Plan; or

Require additional or different corrective action(s).

Notwithstanding the submission and acceptance of a Corrective Action Plan, Dental Contractor remains responsible for achieving all written performance criteria.

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(5) HHSC's acceptance of a Corrective Action Plan under this Section will not:
Excuse Dental Contractor's prior substandard performance;
Relieve Dental Contractor of its duty to comply with performance standards; or
Prohibit HHSC from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.

(d) Administrative remedies.

(1) At its discretion, HHSC may impose one or more of the following remedies for each item of material noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:

- (i) Assess liquidated damages in accordance with "Liquidated Damages Matrix;"
- (ii) Conduct accelerated monitoring of the Dental Contractor. Accelerated monitoring includes more frequent or more extensive monitoring by HHSC or its agent;
- (iii) Decline to renew or extend the Contract;
- (iv) Appoint temporary management under the circumstances described in 42 C.F.R. § 438.706;
- (v) Initiate disenrollment of a Member or Members;
- (vi) Suspend enrollment of Members;
- (vii) Withhold or recoup payment to Dental Contractor;
- (viii) Require forfeiture of all or part of the Dental Contractor's bond; or
- (ix) Terminate the Contract in accordance with Section 12.03, ("Termination by HHSC").

(2) For purposes of the Contract, an item of material noncompliance means a specific action of Dental Contractor that:

- (i) Violates a material provision of the Contract;
- (ii) Fails to meet an agreed measure of performance; or
- (iii) Represents a failure of Dental Contractor to be reasonably responsive to a reasonable request of HHSC for information, assistance, or support relating to the Services or Deliverables within the timeframe specified by HHSC.

(3) HHSC will provide notice to Dental Contractor of the imposition of an administrative remedy in accordance with this Section, with the exception of accelerated

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monitoring, which may be unannounced. HHSC may require Dental Contractor to file a written response in accordance with this Section.

(4) The Parties agree that a State or Federal statute, rule, regulation, or Federal guideline will prevail over the provisions of this Section unless the statute, rule, regulation, or guidelines can be read together with this Section to give effect to both.

(e) Damages.

(1) HHSC will be entitled to actual and/or consequential damages resulting from the Dental Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC or State of Texas as a result of Dental Contractor's failure to meet any aspect of the responsibilities of the Contract and/or to meet specific performance standards set forth in the Contract are difficult or impossible to determine with precise accuracy. Therefore, liquidated damages will be assessed in writing against and paid by the Dental Contractor in accordance with and for failure to meet any aspect of the responsibilities of the Contract and/or to meet the specific performance standards identified by HHSC in Attachment F, "Deliverables/Liquidated Damages Matrix." Liquidated damages will be assessed if HHSC determines such failure is the fault of the Dental Contractor, including the Dental Contractor's Subcontractors and/or consultants, and is not materially caused or contributed to by HHSC or its agents. If at any time, HHSC determines the Dental Contractor has not met any aspect of the responsibilities of the Contract and/or the specific performance standards due to mitigating circumstances, HHSC reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and be signed by the appropriate executive of HHSC.

(2) The liquidated damages prescribed in this Section are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of HHSC's projected financial loss and damage resulting from the Dental Contractor's nonperformance, including financial loss as a result of project delays. Accordingly, in the event Dental Contractor fails to perform in accordance with the Contract, HHSC may assess liquidated damages as provided in this Section.

(3) If Dental Contractor fails to perform any of the Services described in the Contract, HHSC may assess liquidated damages for each occurrence of a liquidated damages event, to the extent consistent with HHSC's tailored approach to remedies and Texas law.

(4) HHSC may elect to collect liquidated damages:

Through direct assessment and demand for payment delivered to Dental Contractor; or
By deduction of amounts assessed as liquidated damages as set-off against payments then due to Dental Contractor or that become due at any time after assessment of the liquidated damages. HHSC will make deductions until the full amount payable by the Dental Contractor is received by HHSC.

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(f) Equitable Remedies.

(1) Dental Contractor acknowledges that, if Dental Contractor breaches, or attempts or threatens to breach its material obligation under the Contract, HHSC may be irreparably harmed. In such a circumstance, HHSC may proceed directly to court to pursue equitable remedies.

(2) If a court of competent jurisdiction finds that Dental Contractor breached, or attempted or threatened to breach any such obligations, Dental Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by Dental Contractor and restraining it from any further breaches, or attempted or threatened breaches.

(g) Suspension of Contract.

(1) HHSC may suspend performance of all or any part of the Contract if:

- (i) HHSC determines that Dental Contractor has committed a material breach of the Contract;
- (ii) HHSC has reason to believe that Dental Contractor has committed, assisted in the commission of Fraud, Waste or, Abuse, malfeasance, misfeasance, or nonfeasance by any party concerning the Contract;
- (iii) HHSC determines that the Dental Contractor knew, or should have known of Fraud, Waste or, Abuse, malfeasance, or nonfeasance by any party concerning the Contract, and the Dental Contractor failed to take appropriate action; or
- (iv) HHSC determines that suspension of the Contract in whole or in part is in the best interests of the State of Texas or the HHSC Programs.

(2) HHSC will notify Dental Contractor in writing of its intention to suspend the Contract in whole or in part. Such notice will:

- (i) Be delivered in writing to Dental Contractor;
- (ii) Include a concise description of the facts or matter leading to HHSC's decision; and
- (iii) Unless HHSC is suspending the contract for convenience, request a Corrective Action Plan from Dental Contractor or describe actions that Dental Contractor may take to avoid the contemplated suspension of the Contract.

Section 12.03 Termination by HHSC.

Prior to completion of the Contract Term, all or a part of this Contract may be terminated for any of the following reasons:

(a) Termination in the best interest of HHSC.

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HHSC may terminate the Contract without cause at any time when, in its sole discretion, HHSC determines that termination is in the best interests of the State of Texas. HHSC will provide reasonable advance written notice of the termination, as it deems appropriate under the circumstances. The termination will be effective on the date specified in HHSC's notice of termination.

(b) Termination for cause.

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

- (1) Assignment for the benefit of creditors, appointment of receiver, or inability to pay debts.

HHSC may terminate the Contract at any time if Dental Contractor:

- (i) Makes an assignment for the benefit of its creditors;
 - (ii) Admits in writing its inability to pay its debts generally as they become due; or
 - (iii) Consents to the appointment of a receiver, trustee, or liquidator of Dental Contractor or of all or any part of its property.
- (2) Failure to adhere to laws, rules, ordinances, or orders.

HHSC may terminate the Contract if a court of competent jurisdiction finds Dental Contractor 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 Dental Contractor's duties under the Contract. HHSC will provide at least 30 Days advance written notice of such termination.

- (3) Breach of confidentiality.

HHSC may terminate the Contract at any time if Dental Contractor breaches confidentiality laws with respect to the Services and Deliverables provided under the Contract.

- (4) Failure to maintain adequate personnel or resources.

HHSC may terminate the Contract if, after providing notice and an opportunity to correct, HHSC determines that Dental Contractor has failed to supply personnel or resources and such failure results in Dental Contractor's inability to fulfill its duties under the Contract. HHSC will provide at least 30 Days advance written notice of such termination.

- (5) Termination for gifts and gratuities.

- (i) HHSC may terminate the Contract at any time following the determination by a competent judicial or quasi-judicial authority and Dental Contractor's exhaustion of all legal remedies that Dental Contractor, its employees, agents or representatives have either offered or given anything of value to an officer or employee of HHSC or the State of Texas in violation of state law.

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- (ii) Dental Contractor must include a similar provision in each of its Subcontracts and must enforce this provision against a Subcontractor who has offered or given anything of value to any of the persons or entities described in this Section, whether or not the offer or gift was in Dental Contractor’s behalf.
- (iii) Termination of a Subcontract by Dental Contractor pursuant to this provision will not be a cause for termination of the Contract unless:
 - (a) Dental Contractor fails to replace such terminated Subcontractor within a reasonable time; and
 - (b) Such failure constitutes cause, as described in this subsection 12.03(b).
- (iv) For purposes of this Section, a “thing of value” means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with State or Federal law.

(6) Termination for non-appropriation of funds.

Notwithstanding any other provision of the Contract, if funds for the continued fulfillment of the Contract by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then HHSC will have the right to terminate the Contract at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. HHSC will provide at least 30 Days advance written notice of such termination. HHSC will use reasonable efforts to ensure appropriated funds are available.

(7) Judgment and execution.

- (i) HHSC may terminate the Contract at any time if judgment for the payment of money in excess of \$500,000.00 that is not covered by insurance, is rendered by any court or governmental body against Dental Contractor, and Dental Contractor does not:
 - (a) Discharge the judgment or provide for its discharge in accordance with the terms of the judgment;
 - (b) Procure a stay of execution of the judgment within 30 days from the date of entry thereof; or
 - (c) Perfect an appeal of such judgment and cause the execution of such judgment to be stayed during the appeal, providing such financial reserves as may be required under generally accepted accounting principles.
- (ii) If a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Dental Contractor, and

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such writ or warrant of attachment or any similar process is not released or bonded within 30days after its entry, HHSC may terminate the Contract in accordance with this Section.

(8) Termination for Dental Contractor’s material breach of the Contract. HHSC will have the right to terminate the Contract in whole or in part if HHSC determines, at its sole discretion, that Dental Contractor has materially breached the Contract

(9) Termination for Criminal Conviction.

HHSC will have the right to terminate the Contract in whole or in part, or require the replacement of a Material Subcontractor, if the Dental Contractor or a Material Subcontractor is convicted of a criminal offense in a state or federal court:

- (i) Related to the delivery of an item or service;
- (ii) Related to the neglect or abuse of patients in connection with the delivery of an item or service;
- (iii) Consisting of a felony related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct, or
- (iv) Resulting in a penalty or fine in the amount of \$500,000 or more in a state or federal administrative proceeding.

(c) Pre-termination Process

The following process will apply when HHSC terminates the Contract for any reason set forth in Section 12.03(b), “Termination for Cause,” other than Subpart 6, “Termination for Non-appropriation of Funds.”

In accordance with 42 C.F.R. § 438.710, before terminating the Contract, HHSC will provide the Dental Contractor with 30 Days advance written notice of its intent to terminate. The pre-termination notice will include the following information: the reason for the termination; the proposed effective date of the termination; and the time and place of the pre-termination hearing. During the pre-termination hearing, the Dental Contractor may present written information explaining why HHSC should not terminate the Contract. After the pre-termination hearing, the State Medicaid Director will provide the Dental Contractor with a written notice of HHSC’s final decision affirming or reversing the proposed termination of the Contract and the effective date of termination if applicable.

HHSC’s final decision to terminate the Contract is binding and is not subject to review by the State Office of Administrative Hearings under Chapter 2260, Texas Government Code.

The pre-termination process described herein will not limit or otherwise reduce the Dental Contractor’s rights and the Parties’ responsibilities under Section 12.13, “Dispute Resolution.”

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Section 12.04 Termination by Dental Contractor.

(a) Failure to pay.

Dental Contractor may terminate the Contract if HHSC fails to pay the Dental Contractor undisputed charges when due as required under the Contract. Retaining premium, recoupment, sanctions, or penalties that are allowed under the Contract or that result from the Dental Contractor's failure to perform or the Dental Contractor's default under the terms of the Contract is not cause for termination. Termination for failure to pay does not release HHSC from the obligation to pay undisputed charges for services provided prior to the termination date.

If HHSC fails to pay undisputed charges when due, then the Dental Contractor may submit a notice of intent to terminate for failure to pay in accordance with the requirements of Section 12.04(e). If HHSC pays all undisputed amounts then due within 30 Days after receiving the notice of intent to terminate, the Dental Contractor cannot proceed with termination of the Contract under this Section.

(b) Change to HHSC Uniform Managed Care Manual.

Dental Contractor may terminate this agreement if the Parties are unable to resolve a dispute concerning a material and substantive change to the HHSC UMCM, a change that materially and substantively alters the Dental Contractor's ability to fulfill its obligations under the Contract. Dental Contractor must submit a notice of intent to terminate due to a material and substantive change in the HHSC UMCM no later than 30 days after the effective date of the policy change. HHSC will not enforce the policy change during the period of time between the receipt of the notice of intent to terminate and the effective date of termination.

(c) Change to Premium Rate.

If HHSC proposes an initial Capitation Rate or a modification to the Premium Rate that is unacceptable to the Dental Contractor, the Dental Contractor may terminate the Contract. Dental Contractor must submit a written notice of intent to terminate due to a change in the Premium Rate no later than 30 Days after HHSC's notice of the proposed change. HHSC will not enforce the rate change during the period of time between the receipt of the notice of intent to terminate and the effective date of termination.

(d) Expiration of Contract.

If Dental Contractor rejects, or intends to reject, an amendment extending the term of the Contract, Dental Contractor is subject to the requirements of Section 12.04(e).

(e) Notice of intent to terminate or to allow the Contract to expire.

If the Dental Contractor intends to terminate the Contract pursuant to this Section, or intends to allow the Contract to expire, Dental Contractor must give HHSC at least 90 Days written notice of intent to terminate, or intent to allow the Contract to expire. The termination date will be calculated as the last day of the month following 90 Days from the date the notice of intent is received by HHSC.

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In the event the Dental Contractor fails to comply with this notice requirement, the Contract shall be extended under the same terms, conditions, and rates, for the period of time necessary to satisfy this notice requirement.

Section 12.05 Termination by Mutual Agreement.

The Contract may be terminated by mutual written agreement of the Parties.

Section 12.06 Effective Date of Termination

Except as otherwise provided in the Contract, termination will be effective as of the date specified in the notice of termination. The Turnover Phase obligations of Dental Contractor will continue to apply after the effective date of the Contract termination.

Section 12.07 Extension of Termination Effective Date.

The Parties may extend the effective date of termination one or more times by mutual written agreement.

Section 12.08 Payment and Other Provisions at Contract Termination.

(a) In the event of termination pursuant to this Article, HHSC will pay the Premium Payment for Services and Deliverables rendered through the effective date of termination. All pertinent provisions of the Contract will form the basis of settlement.

(b) Dental Contractor must provide HHSC all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services and Deliverables provided under the Contract.

(c) Dental Contractor must prepare a Turnover Plan, which is acceptable to and approved by HHSC. The Turnover Plan will be implemented during the time period between receipt of notice and the termination date.

Section 12.09 Modification of Contract in the Event of Remedies.

HHSC may propose a modification of this Contract in response to the imposition of a remedy under this Article. Any modifications under this Section must be reasonable, limited to the matters causing the exercise of a remedy, in writing, and executed in accordance with Article 8. Dental Contractor must negotiate such proposed modifications in good faith.

Section 12.10 Turnover Assistance.

Upon receipt of notice of termination of the Contract by HHSC or by the Dental Contractor, Dental Contractor will provide any Turnover assistance reasonably necessary to enable HHSC to effectively close out the Contract and move the work to another vendor or to perform the work itself.

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During the Turnover Phase, Dental Contractor must continue performing under the Contract, including rendering all Contracted services, until such time HHSC determines that the Dental Contractor has completed all requirements in accordance with the Turnover Plan.

Section 12.11 Rights upon Termination or Expiration of Contract.

In the event that the Contract is terminated for any reason, or upon its expiration, HHSC will, at HHSC's discretion, retain ownership of any and all associated work products, Deliverables or documentation in whatever form that they exist.

Section 12.12 Dental Contractor Responsibility for Associated Costs.

If HHSC terminates the Contract for Cause, the Dental Contractor will be responsible to HHSC for all reasonable costs incurred by HHSC, the State of Texas, or any of its administrative agencies to replace the Dental 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 Dental Contractor's failure to perform any Service in accordance with the terms of the Contract.

Section 12.13 Dispute Resolution.

(a) General Contract of the Parties.

The Parties mutually 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. The Parties express their mutual commitment to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Section.

(b) Duty to negotiate in good faith.

Any dispute that in the judgment of any Party to the Contract may materially or substantially affect the performance of any Party will be reduced to writing and delivered to the other Party. The Parties shall then negotiate in good faith and use every reasonable effort to resolve such dispute and the Parties must not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by Contract between the Parties shall be reduced to writing and delivered to all Parties within 10 Business Days.

(c) Claims for breach of Contract.

(1) General requirement. Dental Contractor's claim for breach of the Contract will be resolved in accordance with the dispute resolution process established by HHSC in accordance with Chapter 2260, Texas Government Code.

(2) Negotiation of claims. The Parties expressly agree that the Dental Contractor's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of

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business or through the use of all reasonable and informal means will be submitted to the negotiation process provided in Chapter 2260, Subchapter B, Texas Government Code.

To initiate the process, Dental Contractor must submit written notice to HHSC that specifically states that Dental Contractor invokes the provisions of Chapter 2260, Subchapter B, Texas Government Code. The notice must comply with the requirements of Title 1 Chapter 392, Subchapter B of the Texas Administrative Code.

The Parties expressly agree that the Dental Contractor's compliance with Chapter 2260, Subchapter B, Texas Government Code, will be a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

(3) Contested case proceedings. The contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, will be Dental Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC, if the Parties are unable to resolve their disputes under subsection(c)(2) of this section.

The Parties expressly agree that compliance with the contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, will be a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107, Civil Practices & Remedies Code. Neither the execution of this Contract by HHSC nor any other conduct of any representative of HHSC relating to this Contract must be considered a waiver of HHSC's sovereign immunity to suit.

(4) HHSC rules. The submission, processing, and resolution of Dental Contractor's claim is governed by the rules adopted by HHSC pursuant to Chapter 2260, Texas Government Code, found Title 1 Chapter 392, Subchapter B of the Texas Administrative Code.

(5) Dental Contractor's duty to perform. Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by Dental Contractor of any duty or obligation with respect to the performance of the Contract. Any changes to the Contract as a result of a dispute resolution will be implemented in accordance with Article 8 ("Amendments and Modifications").

Section 12.14 Liability of Dental Contractor.

- (a) Dental Contractor bears all risk of loss or damage due to:
- (1) Defects in products, Services or Deliverables;
 - (2) Unfitness or obsolescence of products, Services or Deliverables; or
 - (3) The negligence or intentional misconduct of Dental Contractor or its employees, agents, Subcontractors, or representatives.

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- (b) Dental Contractor must, at the Dental Contractor's own expense, defend with counsel approved by HHSC, indemnify, and hold harmless HHSC and State employees, officers, directors, contractors, and agents from and against any losses, liabilities, damages, penalties, costs, fees, including, without limitation, reasonable attorneys' fees, and expenses from any claim or action for property damage, bodily injury or death, to the extent caused by or arising from the negligence or intentional misconduct of the Dental Contractor and its employees, officers, agents, or Subcontractors. HHSC will not unreasonably withhold approval of counsel selected by Dental Contractor.
- (c) Dental Contractor will not be liable to HHSC for any loss, damages, or liabilities attributable to or arising from the failure of HHSC or any state agency to perform a service or activity in connection with this Contract.

Article 13. Assurances and Certifications

Section 13.01 Proposal Certifications.

Dental Contractor acknowledges its continuing obligation to comply with the requirements of the certifications contained in its Proposal, and will immediately notify HHSC of any changes in circumstances affecting the certifications.

Section 13.02 Conflicts of Interest.

- (a) Representation.

Dental Contractor agrees to comply with applicable state and federal laws, including 41 U.S.C. § 423, rules, and regulations regarding conflicts of interest in the performance of its duties under this Contract. Dental Contractor warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Contract.

- (b) General duty regarding conflicts of interest.

Dental Contractor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Dental Contractor will operate with complete independence and objectivity without actual, potential, or apparent conflict of interest with respect to the activities conducted under this Contract.

Section 13.03 Organizational Conflicts of Interest.

- (a) Definition.

An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which the Dental Contractor or a Subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly:

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- (1) Impairs or diminishes the Dental Contractor's or Subcontractor's ability to render impartial or objective assistance or advice to HHSC; or
- (2) Provides the Dental Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements, excluding the award of this Contract.

(b) Warranty.

Except as otherwise disclosed and approved by HHSC prior to the Effective Date of the Contract, Dental Contractor warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational conflict of interest affecting this Contract. Dental Contractor affirms that it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant, or any employee, or representative of same, at any time during the procurement process, or in connection with the procurement process, except as allowed under relevant state and federal law.

(c) Continuing duty to disclose.

- (1) Dental Contractor agrees that, if after the Effective Date, Dental Contractor discovers or is made aware of an organizational conflict of interest, Dental Contractor will immediately and fully disclose such interest in writing to the HHSC project manager. In addition, Dental Contractor must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by Dental 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 Dental Contractor agrees to abide by HHSC's decision.
- (2) The disclosure will include a description of the actions that Dental Contractor has taken or proposes to take to avoid or mitigate such conflicts.

(d) Remedy.

If HHSC determines that an organizational conflict of interest exists, HHSC may, at its discretion, terminate the Contract pursuant to Subsection 12.03(b)(9). If HHSC determines that Dental Contractor was aware of an organizational conflict of interest before the award of this Contract and did not disclose the conflict to the contracting officer, 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.

(e) Flow down obligation.

Dental Contractor must include the provisions of this Section in all Subcontracts for work to be performed similar to the service provided by Dental Contractor, and the terms "Contract," "Dental Contractor," and "project manager" modified appropriately to preserve the State's rights.

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Section 13.04 HHSC Personnel Recruitment Prohibition.

Dental Contractor has not retained or promised to retain any person or company, or utilized or promised to utilize a consultant that participated in HHSC's development of specific criteria of the RFP or who participated in the selection of the Dental Contractor for this Contract.

Unless authorized in writing by HHSC, Dental Contractor will not recruit or employ any HHSC personnel who have worked on projects relating to the subject matter of this Contract, or who have had any influence on decisions affecting the subject matter of this Contract, for two years following the completion of this Contract.

Section 13.05 Anti-kickback Provision.

Dental Contractor certifies that it will comply with the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 and Federal Acquisition Regulation 52.203-7, to the extent applicable.

Section 13.06 Debt or Back Taxes Owed to State of Texas.

In accordance with Section 403.055 of the Texas Government Code, Dental Contractor agrees that any payments due to Dental Contractor under the Contract will be first applied toward any debt or back taxes Dental Contractor owes the State of Texas. Dental Contractor further agrees that payments will be so applied until such debts and back taxes are paid in full.

Section 13.07 Outstanding Debts and Judgments.

Dental Contractor certifies that it is not presently indebted to the State of Texas, and that Dental Contractor is not subject to an outstanding judgment in a suit by State of Texas against Dental Contractor for collection of the balance. For purposes of this Section, an indebtedness is any sum of money that is past due, and owed to the State of Texas and is not currently under dispute. A false statement regarding Dental Contractor's status will be treated as a material breach of this Contract and may be grounds for termination at the option of HHSC.

Article 14. Representations and Warranties

Section 14.01 Authorization.

- (a) The execution, delivery and performance of this Contract has been duly authorized by Dental Contractor and no additional approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Dental Contractor to enter into this Contract and perform its obligations under this Contract.
- (b) Dental Contractor has obtained, or will obtain by the deadlines set forth in this Contract, all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Dental Contractor's performance of this Contract. Dental Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract.

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Section 14.02 Ability to Perform.

Dental Contractor warrants that it has the financial resources to fund the capital expenditures required under the Contract without advances by HHSC or assignment of any payments by HHSC to a financing source.

Section 14.03 Minimum Net Worth.

The Dental Contractor has and will maintain throughout the life of this Contract, minimum net worth that complies with standards adopted by TDI. Minimum net worth means the excess total admitted assets over total liabilities, excluding liability for subordinated debt issued in compliance with Chapter 843 of the Texas Insurance Code.

Section 14.04 Insurer Solvency.

- (a) The Dental Contractor must be and remain in full compliance with all applicable state and federal solvency requirements, including those set forth in 42 C.F.R. § 438.116, for basic-service indemnity insurance providers or DMOs, including but not limited to, all reserve requirements, net worth standards, debt-to-equity ratios, or other debt limitations. Provision against the risk of insolvency must be made by establishing adequate reserves, insurance or other guarantees in full compliance with all financial requirements of TDI. In the event the Dental Contractor fails to maintain such compliance, HHSC, without limiting any other rights it may have by law or under the Contract, may terminate the Contract.
- (b) If the Dental Contractor becomes aware of any impending changes to its financial or business structure that could adversely impact its compliance with the requirements of the Contract or its ability to pay its debts as they come due, the Dental Contractor must notify HHSC immediately in writing.
- (c) The Dental Contractor must have a plan and take appropriate measures to ensure adequate provision against the risk of insolvency as required by TDI. Such provision must be adequate to provide for the following in the event of insolvency:
 - (1) Payments to unaffiliated dental providers and affiliated dental providers whose Contracts do not contain Member “hold harmless” clauses acceptable to the TDI;
 - (2) Continuation of Medically Necessary Covered Dental Services for the duration of the Contract Term for which a premium has been paid for a Member;
 - (3) Provision against the risk of insolvency must be made by establishing adequate reserves, insurance or other guarantees in full compliance with all financial requirements of TDI and the Contract.

Should TDI determine that there is an immediate risk of insolvency or the Dental Contractor is unable to provide Medically Necessary Covered Dental Services to its Members, HHSC, without limiting any other rights it may have by law, or under the Contract, may terminate the Contract.

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Section 14.05 Workmanship and Performance.

- (a) All Services and Deliverables provided under this Contract will be provided in a manner consistent with the standards of quality and integrity as outlined in the Contract.
- (b) All Services and Deliverables must meet or exceed the required levels of performance specified in or pursuant to this Contract.
- (c) Dental Contractor will perform the Services and provide the Deliverables in a workmanlike manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the Services described in this Contract.

Section 14.06 Warranty of Deliverables.

Dental Contractor warrants that Deliverables developed and delivered under this Contract will meet in all material respects the specifications as described in the Contract during the period following its acceptance by HHSC, through the term of the Contract, including any subsequently negotiated by Dental Contractor and HHSC. Dental Contractor will promptly repair or replace any such Deliverables not in compliance with this warranty at no charge to HHSC.

Section 14.07 Compliance with Contract.

Dental Contractor will not take any action substantially or materially inconsistent with any of the terms and conditions set forth in this Contract without the express written approval of HHSC.

Section 14.08 Technology Access.

All technological solutions offered by the Dental Contractor must comply with the requirements of Texas Government Code § 531.0162. This includes providing technological solutions that meet federal accessibility standards for persons with disabilities, as applicable.

Section 14.09 Electronic & Information Resources Accessibility Standards.

- (a) Applicability.

The following Electronic and Information Resources (EIR) requirements apply to the Contract because the Dental Contractor performs services that include EIR that: (i) HHSC employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of EIR in the performance of a Contract, unless the Parties agree that the EIR will become property of the State or will be used by the HHSC’s clients or recipients after completion of the Contract. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

- (b) Definitions.

For purposes of this Section:

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Accessibility Standards means the Electronic and Information Resources Accessibility Standards and the Web Site Accessibility Standards/Specifications.

Electronic and Information Resources means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes, but is not limited to, telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

Electronic and Information Resources Accessibility Standards means the accessibility standards for electronic and information resources contained in 1 Tex. Admin. Code Chapter 213.

Web Site Accessibility Standards/ Specifications means standards contained in 1 Tex. Admin. Code Chapter 206.

Product means information resources technology that is, or is related to, EIR.

(c) Accessibility Requirements.

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, Dental Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

(d) Evaluation, Testing, and Monitoring.

(1) HHSC may review, test, evaluate and monitor Dental Contractor's Products and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

Neither the review, testing, including acceptance testing, evaluation or monitoring of any Product, nor the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Dental Contractor's assertion of compliance with the Accessibility Standards.

(2) Dental Contractor agrees to cooperate fully and provide HHSC and its representatives' timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing and monitoring.

(e) Representations and Warranties.

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(1) Dental Contractor represents and warrants that: (i) as of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS Agency's client or recipient after the Contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the Contract Term, unless HHSC and/or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.

(2) In the event Dental Contractor should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, Dental Contractor represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.

(3) Dental Contractor acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this Contract.

(4) Dental Contractor's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

(f) Remedies.

(1) Pursuant to Texas Government Code Sec. 2054.465, neither Dental Contractor nor any other person has cause of action against HHSC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.

(2) In the event of a breach of Dental Contractor's representations and warranties, Dental Contractor will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which HHSC may be entitled under this Contract and other applicable law. This remedy is cumulative of any and all other remedies to which HHSC may be entitled under this Contract and other applicable law.

Article 15. Intellectual Property

Section 15.01 Infringement and Misappropriation.

- (a) Dental Contractor warrants that all Deliverables provided by Dental Contractor will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.
- (b) Dental Contractor will, at its expense, defend with counsel approved by HHSC, indemnify, and hold harmless HHSC, its employees, officers, directors, contractors, and agents from and

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against any losses, liabilities, damages, penalties, costs, and fees from any claim or action against HHSC that is based on a claim of breach of the warranty set forth in the preceding paragraph. HHSC will promptly notify Dental Contractor in writing of the claim, provide Dental Contractor a copy of all information received by HHSC with respect to the claim, and cooperate with Dental Contractor in defending or settling the claim. HHSC will not unreasonably withhold, delay or condition approval of counsel selected by the Dental Contractor.

- (c) In case the Deliverables, or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Dental Contractor to be likely to be brought, Dental Contractor will, at its own expense, either:
- (1) Procure for HHSC the right to continue using the Deliverables; or
 - (2) Modify or replace the Deliverables to comply with the Specifications and to not violate any intellectual property rights.

If neither of the alternatives set forth in (1) or (2) above are available to the Dental Contractor on commercially reasonable terms, Dental Contractor may require that HHSC return the allegedly infringing Deliverable(s) in which case Dental Contractor will refund all amounts paid for all such Deliverables.

Section 15.02 Exceptions.

Dental Contractor is not responsible for any claimed breaches of the warranties set forth in Section 14.06 to the extent caused by:

- (a) Modifications made to the item in question by anyone other than Dental Contractor or its Subcontractors, or modifications made by HHSC or its contractors working at Dental Contractor's direction or in accordance with the specifications; or
- (b) The combination, operation, or use of the item with other items if Dental Contractor did not supply or approve for use with the item; or
- (c) HHSC's failure to use any new or corrected versions of the item made available by Dental Contractor.

Section 15.03 Ownership and Licenses

- (a) Definitions.

For purposes of this Section 15.03, the following terms have the meanings set forth below:

Custom Software means any software developed by the Dental Contractor: for HHSC; in connection with the Contract; and with funds received from HHSC. The term does not include Dental Contractor Proprietary Software or Third Party Software.

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Dental Contractor Proprietary Software means software: (i) developed by the Dental Contractor prior to the Effective Date of the Contract, or (ii) software developed by the Dental Contractor after the Effective Date of the Contract that is not developed: for HHSC; in connection with the Contract; and with funds received from HHSC.

Third Party Software means software that is: developed for general commercial use; available to the public; or not developed for HHSC. Third Party Software includes without limitation: commercial off-the-shelf software; operating system software; and application software, tools, and utilities.

(b) Deliverables.

The Parties agree that any Deliverable, including without limitation the Custom Software, will be the exclusive property of HHSC.

(c) Ownership rights

(1) HHSC will own all right, title, and interest in and to its Confidential Information and the Deliverables provided by the Dental Contractor, including without limitation the Custom Software and associated documentation. For purposes of this Section 15.03, the Deliverables will not include Dental Contractor Proprietary Software or Third Party Software. Dental Contractor will take all actions necessary and transfer ownership of the Deliverables to HHSC, including, without limitation, the Custom Software and associated documentation prior to Contract termination.

(2) Dental Contractor will furnish such Deliverables, upon request of HHSC, in accordance with applicable State law. All Deliverables, in whole and in part, will be deemed works made for hire of HHSC for all purposes of copyright law, and copyright will belong solely to HHSC. To the extent that any such Deliverable does not qualify as a work for hire under applicable law, and to the extent that the Deliverable includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Dental Contractor agrees to assign, and hereby assigns, all right, title, and interest in and to Deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein, including renewals thereof, to HHSC.

(3) Dental Contractor will, at the expense of HHSC, assist HHSC or its nominees to obtain copyrights, trademarks, or patents for all such Deliverables in the United States and any other countries. Dental Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to HHSC all the right, title, and interest in and to such Deliverables. Dental Contractor also agrees not to assert any moral rights under applicable copyright law with regard to such Deliverables.

(d) License Rights.

HHSC will have a royalty-free and non-exclusive license to access the Dental Contractor Proprietary Software and associated documentation during the term of the Contract. HHSC will

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also have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by Dental Contractor under or resulting from the Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Dental Contractor in the performance of the Services hereunder, including but not limited to all reports, surveys, plans, charts, recordings, video or sound, pictures, drawings, analyses, graphic representations, computer printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the Services performed as a result of the Contract.

(e) Proprietary Notices.

Dental Contractor will reproduce and include HHSC's copyright and other proprietary notices and product identifications provided by Dental Contractor on such copies, in whole or in part, or on any form of the Deliverables.

(f) State and Federal Governments.

In accordance with 45 C.F.R. § 95.617, all appropriate State and 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 Federal Government purposes all materials, the Custom Software and modifications thereof, and associated documentation designed, developed, or installed with federal financial participation under the Contract, including but not limited to those materials covered by copyright, all software source and object code, instructions, files, and documentation.

Article 16. Liability

Section 16.01 Property Damage.

- (a) Dental Contractor will protect HHSC's real and personal property from damage arising from Dental Contractor's, its agent's, employees' and Subcontractors' performance of the Contract, and Dental Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Dental Contractor's, its agents', employees' or Subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Dental Contractor will notify the HHSC Project Manager thereof and subject to direction from the Project Manager or her or his designee, will take all reasonable steps to protect that property from further damage.
- (b) Dental Contractor agrees to observe and encourage its employees and agents to observe safety measures and proper operating procedures at HHSC sites at all times.
- (c) Dental Contractor will distribute a policy statement to all of its employees and agents that directs the employee or agent to promptly report to HHSC or to Dental Contractor any special defect or unsafe condition encountered while on HHSC premises. Dental Contractor will promptly report to HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

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Section 16.02 Risk of Loss.

During the period Deliverables are in transit and in possession of Dental Contractor, its carriers or HHSC prior to being accepted by HHSC, Dental Contractor will bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of HHSC. After HHSC accepts a Deliverable, the risk of loss or damage to the Deliverable will be borne by HHSC, except loss or damage attributable to the negligence or intentional misconduct of Dental Contractor’s agents, employees or Subcontractors.

Section 16.03 Limitation of HHSC’s Liability

HHSC WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER CONTRACT, TORT INCLUDING NEGLIGENCE, OR OTHER LEGAL THEORY. THIS WILL APPLY REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF HHSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

HHSC’S LIABILITY TO THE DENTAL CONTRACTOR UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY HHSC TO THE DENTAL CONTRACTOR UNDER THE CONTRACT

Article 17. Insurance and Bonding

Section 17.01 Insurance Coverage.

(a) Statutory and General Coverage.

Dental Contractor will maintain, at Dental Contractor’s own expense, during the Term of the Contract and until final acceptance of all Services and Deliverables, the following insurance coverage. Dental Contractor will provide HHSC with proof of the following insurance coverage on or before the Contract Effective Date:

(1) Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles, for bodily injury and property damage;

(2) Comprehensive General Liability insurance of at least \$1,000,000.00 per occurrence and \$5,000,000.00 in the aggregate, including Bodily injury coverage of \$100,000.00 per each occurrence and Property Damage Coverage of \$25,000.00 per occurrence; and

(3) If Dental Contractor’s current Comprehensive General Liability insurance coverage does not meet the above stated requirements, Dental Contractor will obtain Umbrella Liability insurance to compensate for the difference in the coverage amounts. If Umbrella Liability insurance is provided it must follow the form of the primary coverage.

(b) Professional Liability Coverage.

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(c) Dental Contractor must maintain at its own expense, or cause its Network Providers to maintain, during the Term of the Contract and until final acceptance of all Services and Deliverables, the following insurance coverage:

(1) Professional Liability Insurance for each Network Provider of \$100,000.00 per occurrence and \$300,000.00 in the aggregate. Dental Contractor must provide proof of such coverage upon request to HHSC.

(2) An Excess Professional Liability (Errors and Omissions) Insurance Policy for the greater of \$3,000,000.00 or an amount, rounded to the nearest \$100,000.00 that represents the number of Dental Members enrolled in the Dental Contractor in the first month of the applicable Contract Year multiplied by \$150.00, not to exceed \$10,000,000.00. Dental Contractor will provide HHSC with proof of this insurance coverage on or before the Contract Effective Date.

(d) General Requirements for All Insurance Coverage.

(1) Except as provided herein, all exceptions to the Contract's insurance requirements must be approved in writing by HHSC. HHSC's written approval is not required in the following situation:

The Dental Contractor or a Network Provider is not required to obtain insurance coverage described in Section 16.01 if the Dental Provider or Network Provider qualifies as a state governmental unit or municipality under the Texas Tort Claims Act, and is required to comply with, and are subject to, the provision of the Texas Tort Claims Act.

(2) Dental Contractor or the Network Provider is responsible for any and all deductibles stated in the policies.

(3) Insurance coverage will be issued by insurance companies authorized by applicable law to conduct business in the State of Texas, and

(4) Insurance coverage must name HHSC as an additional insured, with the exception of Professional Liability insurance maintained by Providers. Insurance coverage must name HHSC as a loss payee, with the exception of Professional Liability insurance maintained by Providers and Business Automobile Liability insurance.

(5) Insurance coverage kept by the Dental Contractor must be maintained in full force at all times during the Term of the Contract, and until HHSC's final acceptance of all Services and Deliverables. Failure to maintain such insurance coverage will constitute a material breach of this contract.

(6) With the exception of Professional Liability Insurance maintained by Providers, the insurance policies described in this Section must have an extended reporting period of two years. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the Contract Effective Date.

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(7) With the exception of Professional Liability Insurance maintained by Providers, the insurance policies described in this Section must provide that prior written notice to be given to HHSC at least 30 calendar days before coverage is reduced below minimum HHSC contractual requirements, canceled, or non-renewed. Dental Contractor must submit a new coverage binder to HHSC to ensure no break in coverage. Each policy must include the following provision: "It is a condition of this policy that the company must furnish written notice to HHSC's designated contact at least 30 calendar days in advance of any reduction in cancellation, or non-renewal of this policy."

(8) The Parties expressly understand and agree that any insurance coverages and limits furnished by Dental Contractor will in no way expand or limit Dental Contractor's liabilities and responsibilities specified within the Contract documents or by applicable law.

(9) Dental Contractor expressly understands and agrees that any insurance maintained by HHSC will apply in excess of and not contribute to insurance provided by Dental Contractor under this contract.

(10) If Dental Contractor or its Providers, desire additional coverage, higher limits of liability, or other modifications for its own protection, Dental Contractor or its Providers will be responsible for the acquisition and cost of such additional protection. Such additional protection will not be an Allowable Expense under this Contract.

(11) Dental Contractor will require all insurers to waive their rights of subrogation against HHSC.

(e) Proof of Insurance Coverage.

(1) Except as provided in Section 17.01(d)(2), Dental Contractor must furnish HHSC original Certificates of Insurance evidencing the required insurance coverage on or before the Effective Date of the Contract. If insurance coverage is renewed during the term of the Contract, the Dental Contractor must furnish HHSC renewal certificates of insurance, or such similar evidence within five Business Days of renewal. Dental Contractor will submit evidence of insurance prior to Contract award. The failure of HHSC to obtain such evidence from Dental Contractor before permitting Dental Contractor to commence work will not be deemed to be a waiver by HHSC and Dental Contractor will remain under continuing obligation to maintain and provide proof of the insurance coverage.

(2) The insurance specified above will be carried until all Services and Deliverables required under the terms of the Contract are satisfactorily completed. Failure to carry or keep such insurance in force will constitute a violation of the Contract.

Section 17.02 Performance Bond.

Beginning on the Effective Date of the Contract, and each year thereafter, the Dental Contractor must obtain a performance bond with a one year term. The performance bond must be renewable, and renewal must occur no later than the first day of each subsequent State Fiscal

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Year. The performance bond must continue to be in effect for one year following the expiration of the final renewal period or the date the contract terminates. Dental Contractor must obtain and maintain the annual performance bonds in the form prescribed by HHSC and approved by TDI, naming HHSC as Obligee, and securing Dental Contractor's faithful performance of the terms and conditions of this Contract. The annual performance bond(s) must be issued in the amount of \$100,000.00. Performance bonds must be issued by a surety licensed by TDI, and specify cash payment as the sole remedy. Dental Contractor must deliver the initial performance bond to HHSC prior to or on the Effective Date of the Contract, and each renewal prior to the first day of the State Fiscal Year.

Section 17.03 TDI Fidelity Bond.

The Dental Contractor will secure and maintain throughout the life of the Contract a fidelity bond as required by the Texas Department of Insurance. The Dental Contractor must promptly provide HHSC with copies of the bond and any amendments or renewals thereto.