HEALTH AND HUMAN SERVICES COMMISSION
UNIFORM TERMS AND CONDITIONS AND AFFIRMATIONS
FOR PRICE REQUESTS UNDER DIR COOPERATIVE CONTRACTS (HHS OCC Version 1, 3-01-23)

1. PRICE REQUEST (PR)

1.1 In accordance with Section 2157.068(e-1) of the Texas Government Code, the Price Request (PR) is being issued to vendors that provide commodity items under Department of Information Resources (DIR) Contracts.

1.2 The Texas Health and Human Services (HHS) System is comprised of more than 41,000 public servants under two agencies: the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). HHSC and DSHS are each a System Agency (Agency) with independent procurement authority. Unless DSHS is specified as the ordering agency in the specifications or purchase order, HHSC is the ordering agency.

2. RESPONSE REQUIREMENTS

2.1 By submitting a Response, Respondent agrees to comply with all terms of the Price Request (PR) issued by Agency.

2.2 In its Response, Respondent must specify the DIR Contract under which the Response is submitted.

2.3 Respondent must price per unit shown. Unit prices shall govern in the event of extension errors.

2.4 Respondent pricing is firm for Agency acceptance for ninety (90) calendar days from Response due date.

2.5 If an early payment discount is available to Agency, then Respondent in its Response must describe with specificity the early payment discount offered and the discount percentage that would apply to early payment within ten, fifteen, twenty, or twenty-five calendar days after receipt of a correct invoice.

2.6 Respondent acknowledges that the contract is not exclusive, and that Agency may solicit the same or similar commodity items from other service providers at any time.

2.7 Agency makes no guarantee of volume or usage of work under the contract.

2.8 Respondent is responsible for all expenses related to the preparation and submission of its Response.

2.9 A Response that is late, illegible, incomplete, or otherwise non-responsive will not be considered. If the Response is submitted electronically, Agency shall not be responsible for failure of electronic equipment or operator error.

2.10 A Response that does not meet all of the requirements or contain all of the required documentation specified in the PR may be rejected as non-responsive.

3. IT COMMODITY REQUIREMENTS

3.1 Unless otherwise indicated in the specifications, the commodity item(s) shall be new and unused and of current production.

3.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

3.3 Manufacturer's standard warranty shall apply unless otherwise stated in the specifications or Respondent's DIR Contract.

3.4 Respondent will use commercially reasonable efforts to perform services in a timely manner and devote adequate resources to meet its obligations under the contract.

3.5 Respondent will convey to Agency clear title, ownership and licenses, whichever is applicable, to each commodity item provided under the contract.

3.6 For each software product, Respondent represents that it has sufficient right, title, and interest in the software to grant the license required by the contract.

3.7 If Respondent is a software publisher, Respondent represents that the software does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right.

3.8 Respondent represents that the software and equipment provided under the contract will have the functionality specified in the associated technical documentation.

3.9 For a Respondent hosted service, Respondent shall, unless otherwise specified in the specifications or contract, provide to Agency for no additional compensation all Agency Data in a commercially standard database export format within thirty (30) calendar days following the date of contract expiration or termination.

3.10 In accordance with 45 C.F.R. 95.617, Respondent will provide requisite ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation.

3.11 For purposes of a contract for software where HHSC is the ordering agency, HHSC is the licensee. HHSC, as authorized by applicable statute, provides administrative support to certain state agencies. For the avoidance of doubt, HHSC's internal business use of software includes any activities consistent with HHSC's statutory authority and such activities shall not be construed to be a service bureau, application service provider, provider of services to third parties, distribution outside of HHSC's organization, or similar activity. Respondent

acknowledges and agrees that HHSC's internal business use is within the scope of the license granted in the contract.

3.12 During the contract term, Agency may be presented with the requirement to "agree" to a click through agreement before accessing software provided under the contract. Respondent expressly agrees that the terms of any such click through agreement shall be considered null and void and shall not apply in any manner to Agency. For the avoidance of doubt, the terms of the contract supersede any clickwrap, shrinkwrap, browsewrap, terms of service, or similar agreement which may accompany the software.

3.13 Any software deployment verification activities conducted by Respondent will be (i) not more often than once each year, unless Respondent has a reasonable basis to believe that a violation of the license terms has occurred, (ii) in a manner that minimizes disruption to Agency's business operations, and (iii) during Agency's normal business hours. Respondent will comply with applicable Agency confidentiality requirements as well as information security, building access, and health and safety policies and procedures. Respondent, at its sole expense, may use an independent auditor to assist with such verification, provided Respondent has a written confidentiality agreement in place with such auditor that is no less stringent than the confidentiality obligations set forth in the contract. Respondent will provide written notice if any verification activity indicates that Agency has used any software in excess of Agency's use authorizations or Agency is otherwise not in compliance with the license terms. Respondent will afford Agency at least thirty (30) days to review the findings, correct any factual errors, and annotate the findings with Agency's position as part of Respondent's verification activities. In the event that a non-compliance determination is made, Respondent shall submit an invoice for any overuse of the software to Agency under Chapter 2251 of the Texas Government Code at rates provided to public sector entities, provided such rates do not exceed retail prices. Respondent understands that Agency will comply with applicable state procurement law in the acquisition of additional licenses subject to this section.

4. AWARD OF CONTRACT

4.1 A Respondent's Response to the PR is an offer to contract based upon the terms, conditions and specifications contained herein. A Response does not become binding and enforceable until accepted by the Agency, followed by issuance of a purchase order to Respondent to award the contract.

4.2 Agency reserves the right to accept or reject all or any part of the Response, waive minor technicalities, and award the contract to best serve the interests of the State.

4.3 No terms or conditions advanced by Respondent, by way of exception, assumption or other means, are included as part of the contract unless expressly agreed in writing by Agency.

4.4 Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in a formal signed agreement or the purchase order resulting from the PR, the entire contract between Agency and successful Respondent shall consist of the following documents: (1) the purchase order and purchase order change notices; (2) the PR; (3) the successful Respondent's DIR Contract, (4) successful Respondent's Response, and (5) if applicable, a formal signed agreement. Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or purchase order resulting from the PR, in the event of conflicting terms or provisions in the contract, the PR and the purchase order and the purchase order change notices, if any, will control.

5. DELIVERY

5.1 No substitutions are permitted without written approval of Agency.

5.2 Delivery shall be made during normal working hours only, unless prior approval has been obtained from Agency.

5.3 If delivery will be delayed, Respondent must notify Agency. Default in promised delivery or failure to meet specifications authorizes Agency to purchase the commodity items elsewhere, pursue financial remedies available under Respondent's DIR Contract, and terminate the contract for cause.

5.4 A commodity item that is delivered and fails to meet specifications or is not the actual item awarded on the contract shall be rejected and may be returned at Respondent's expense.

6. PAYMENT, INVOICING, DISCOUNTS

6.1 Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

6.2 An itemized invoice must be submitted showing order number to the address indicated on the purchase order.

6.3 If Respondent at any time during the term of the contract provides a discount on the contract costs, Respondent will notify Agency in writing at least ten (10) calendar days prior to effective date of discount. Agency will generate a purchase order change notice and send a revised purchase order to Respondent.

6.4 Reimbursement for travel, meals, lodging or other related expenses shall not be made unless specifically provided for in the contract. When the reimbursement of travel expenses is authorized by the contract and approved in writing by the Agency, all such expenses will be reimbursed in accordance with the rates set by the State of Texas *Textravel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

6.5 Agency shall pay no costs or other amounts incurred by any entity in responding to the PR or incurred prior to the effective date of the contract.

6.6 Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Tax Exemption Certificates will be furnished upon written request.

7. LEGAL NOTICES

7.1 Respondent shall send legal notices to the applicable Agency at the address below and provide a copy to the Agency Contract Representative identified in the contract:

To HHSC:

Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe Street, MC-1100
Austin, Texas 78751

To DSHS:

Department of State Health Services
Attn: Office of General Counsel
1100 West 49th Street, MC-1919
Austin, Texas 78714

With Copy To:
Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe Street, MC-1100
Austin, Texas 78751

7.2 Agency may change the designated notice address in Section 7.1 by written notice to Respondent.

7.3 Legal notices given by Respondent to Agency may be deposited in the United States mail or sent by common carrier, and such notices shall be deemed delivered when received by Agency.

7.4 Agency shall send legal notices to Respondent's representative in accordance with the provisions of Respondent's DIR Contract.

8. TEXAS REQUIRED CONTRACT CLAUSES

8.1 General. The terms in this Section 8 are required by Section 2262.051(d)(1) of the Texas Government Code. In the event of conflict or inconsistency between a term in this Section 8 and a term in Respondent's DIR Contract, the term of the DIR Contract supersedes and controls.

8.2 Antitrust Affirmation. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of the Response to any competitor or any other person engaged in the same line of business as Respondent.

8.3 Assignment by Respondent. In accordance with Section 2262.056 of the Texas Government Code, Respondent may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of Agency, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

8.4 Buy Texas Affirmation. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, relating to use of service contracts and the purchase of products and materials produced in the State of Texas.

8.5 Child Support Obligation Affirmation. Under Section 231.006 of the Family Code, Respondent certifies that the individual or business entity named in the contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Respondent may be liable for additional costs and damages set out in Section 231.006(f) of the Family Code.

8.6 Cloud Computing State Risk and Authorization Management Program. Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

8.7 Computer Equipment Recycling Program. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

8.8 Contracting Information Responsibilities. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and Respondent agrees that the contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

8.9 COVID-19 Vaccine Passport Prohibition. Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract.

8.10 Critical Infrastructure Affirmation. Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

8.11 Cybersecurity Training. If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to Agency pursuant to and in accordance with Section 2054.5192 of the Government Code.

8.12 Data Management and Security Controls. In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under the contract and will maintain records and make them available to Agency as evidence of Respondent's compliance with the required controls.

8.13 Dealings with Public Servants Affirmation. Respondent has not given, offered to give, 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 in connection with the submitted Response.

8.14 Debts and Delinquencies Affirmation. Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the contract may be applied toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency.

8.15 Disaster Recovery Plan. Upon request of Agency, Respondent shall provide the descriptions of its business continuity and disaster recovery plans.

8.16 Dispute Resolution. Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.

8.17 Energy Company Boycotts. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

8.18 Entities that Boycott Israel. If Respondent is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.

8.19 E-Verify Program. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:

a. all persons employed by Respondent to perform duties within Texas; and
b. all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

8.20 Excess Obligations Prohibited. The contract shall not be construed as creating a debt on behalf of Agency in violation of Article III, Section 49a of the Texas Constitution. Respondent understands that all obligations of Agency under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by Agency.

8.21 Excluded Parties. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control.

8.22 Executive Head of a State Agency Affirmation. Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Respondent represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in the contract. If Respondent employs or has used the services of a former executive of Agency, then Respondent shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.

8.23 False Statements. If Respondent signs the Response with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Response, Respondent will be in default under the contract and Agency may terminate or void the contract.

8.24 Financial Participation Prohibited Affirmation. Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from Agency to participate in the preparation of the specifications or solicitation on which the Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

8.25 Firearm Entities and Trade Associations Discrimination. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

8.26 Foreign Terrorist Organizations. Section 2252.152 of the Texas Government Code prohibits Agency from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Respondent certifies that it is not ineligible to receive the contract.

8.27 Governing Law and Venue. The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

8.28 Human Trafficking Prohibition. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

8.29 Indemnification (General). **RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

8.30 Indemnification (IP). **RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY RESPONDENT OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO**

SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

8.31 National Anthem Verification. Respondent will play the United States national anthem at the beginning of each team sporting event held at the Respondent's home venue or other venue controlled by Respondent for the event. Failure to comply with this obligation constitutes a default of the contract, and immediately subjects Respondent to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Respondent may be debarred from contracting with the State. Agency or the Attorney General may strictly enforce this provision.

8.32 No Conflicts of Interest. Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

8.33 Prior Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

8.34 Public Information Act. Respondent understands that Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with the PR or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

8.35 Signature Authority. By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of the Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Response.

8.36 State Auditor's Right to Audit. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.37 Suspension and Debarment. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

8.38 Television Equipment Recycling Program. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

8.39 Terms and Conditions Attached to Response. Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

9. HHSC REQUIRED CONTRACT CLAUSES

9.1 Abortion Funding Limitation**.** Respondent understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

a. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
b. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
c. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract, to receive appropriated funding pursuant to Article IX.

9.2 Funding Eligibility. Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff.

Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

9.3 Prohibition on Abortions**.** Respondent understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract, to receive appropriated funding pursuant to Article II.

9.4 Enterprise Information Management Standards. Respondent shall conform to HHS standards for data management as described by the policies of the HHS Office of Data, Analytics, and Performance. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

9.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)**.** Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract or funding pursuant to 2 C.F.R. 200.216.

9.6 Enforcement of Certain Federal Firearms Laws Prohibited. In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Respondent, Respondent certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

9.7 Civil Rights.

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

b. Respondent 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.

c. Respondent 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. 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. Respondent agrees to take reasonable steps to provide services and information, both orally and in 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.

d. Respondent agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters.

e. Respondent 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 shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

f. Upon request, Respondent shall provide HHSC's Civil Rights Office with copies of the Respondent's civil rights policies and procedures.

g. Respondent must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under the contract. This notice must be delivered no more than ten (10) 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 CodeW206
   Austin, Texas 78751
   Phone Toll Free: (888) 388-6332
   Phone: (512) 438-4313
   Fax: (512) 438-5885
   Email: HHSCivilRightsOffice@hhsc.state.tx.us

10. GENERAL TERMS

10.1 DIR Contract Terms. The terms and conditions of the PR may not weaken or diminish any terms and conditions of the Respondent's DIR Contract. To the extent that the DIR Contract provides more favorable terms to Agency or imposes more rigorous obligations on Respondent, the DIR Contract terms supersede and control over the PR. As permitted by the DIR Contract, Agency may add additional terms and negotiate written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to the contract.

10.2 Confidentiality. Respondent shall maintain as confidential and shall not disclose to third parties without Agency's prior written consent, any Agency information including but not limited to Agency Data, Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of the contract. The obligations of Respondent under this section will survive termination or expiration of the contract. This requirement must be included in all subcontracts awarded by Respondent.

10.3 Agency Data.

a. As between Agency and Respondent, all data and information acquired, accessed, or made available to Respondent by, through, or on behalf of Agency or Agency contractors, including all electronic data generated, processed, transmitted, or stored by Respondent in the course of providing data processing services in connection with Respondent's performance hereunder (the "Agency Data"), is owned solely by Agency.
b. Respondent has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process Agency Data except as required for Respondent to fulfill its obligations under the contract or as authorized in advance in writing by Agency.
c. For the avoidance of doubt, Respondent is expressly prohibited from using, and from permitting any third party to use, Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of Agency.
d. Respondent shall make Agency Data available to Agency, including to Agency's designated vendors, as directed in writing by Agency. The foregoing shall be at no cost to Agency.
e. Furthermore, the proprietary nature of Respondent's systems that process, store, collect, and/or transmit Agency Data shall not excuse Respondent's performance of its obligations hereunder.

10.4 Agency Confidential Information Remains Within United States. Respondent shall ensure that all Agency Confidential Information, including such information residing on back-up systems, remains and is stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States.

10.5 Use of State Property.

a. Respondent is prohibited from using State Property for any purpose other than performing services authorized under the contract.
b. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (*e.g.,* laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any Agency-issued software, and Agency Virtual Private Network (VPN client)), and any other resources of Agency.
c. Respondent shall not remove State Property from the contiguous United States. In addition, Respondent may not use any computing device to access Agency's network or e-mail while outside of the contiguous United States.
d. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services.
e. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for: (1) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear, and (2) all charges attributable to Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) calendar days of Respondent's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by the contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

10.6 Agency's Right to Audit. Respondent shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

10.7 Record Maintenance and Retention.

a. Respondent shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of the contract and all state and federal rules, regulations, and statutes.

b. Respondent shall maintain and retain legible copies of the contract and all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Respondent for a minimum of seven (7) years after the contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the contract are resolved, whichever is later.

10.8 Independent Contractor. Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor Agency is an agent of the other and neither may make any commitments on the other party's behalf. Respondent shall have no claim against Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Respondent and Agency.

10.9 Limitation on Authority. Respondent shall not have any authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power, or use is granted or implied. Respondent may not incur any debt, obligation, expense, or liability of any kind on behalf of Agency or the State of Texas.

10.10 No. Felony Criminal Convictions. Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency in writing of the facts and circumstances surrounding the conviction(s).

10.11 No Public Announcements or Marketing Activities. Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases, public announcements, or marketing activities pertaining to the contract or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instruction from Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Respondent's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Respondent under the contract.

10.12 Safety Standards. Respondent, its employees, subcontractors, and agents shall observe all safety measures and proper operating procedures at Agency sites at all times. Respondent shall direct its employees, subcontractors, and agents to immediately report to HHSC any defect or unsafe condition encountered while on Agency premises.

10.13 Disaster Recovery Test Plan. Upon request of Agency, Respondent shall provide a copy of its most current disaster recovery test plan.

10.14 Rolling Estoppel. If Respondent is aware a problem exists and fails to report the problem to Agency, Respondent continues to be responsible for meeting the timelines and due dates established in the contract. Under these circumstances, Agency will not be liable for any detrimental consequences.

10.15 Assignment by Agency. Upon written notice, Agency may assign its interest in or duties or rights under the contract without prior written approval to another state agency as designated by the Texas Legislature.

10.16 No Agency Indemnification. **ANY REQUIREMENT THAT AGENCY DEFEND, INDEMNIFY, OR HOLD HARMLESS THE RESPONDENT OR OTHER ENTITY IS HEREBY DELETED FROM THE RESPONSE AND RESPONDENT DOCUMENTS.**

10.17 Termination by Non-Appropriation. In the event the contract is terminated due to non-appropriation of funds, such termination shall not affect Agency's right to use previously paid licensed software through the term of each such license and any maintenance and support paid prior to such termination.

10.18 No Waiver. The failure of Agency to object to or to take affirmative action with respect to any conduct of Respondent which is in violation or breach of the terms of the contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

10.19 Sovereign Immunity. Nothing in the contract shall be construed as a waiver of Agency's or the State's sovereign immunity. The contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency or the State of Texas.

10.20 Survival of Terms. Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES SYSTEM
AND
CONTRACTOR

This Data Use Agreement ("DUA") is effective as of the date of the Base Contract into which it is incorporated ("Effective Date"), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services ("HHS") and Contractor (the "Base Contract").

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor's rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS's remedies in the event of Contractor's noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as "business associate" is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

"Authorized Purpose" means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

"Authorized User" means a person:

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

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

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

"Breach" means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach

unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may 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 the Centers for Medicare and Medicaid Services 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.

"Destroy", "Destruction", for Confidential Information, means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

"Discover, Discovery" means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

"Legally Authorized Representative" of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

"Required by Law" means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

"Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

"Workforce" means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor

Contractor agrees that:

(A) With respect to PHI, Contractor shall:

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) With respect to ALL Confidential Information, Contractor shall:

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall

produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi**.** The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's

security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information *in motion* includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information *at rest* requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards ***if applicable to the type of Confidential Information and Contractor's Authorized Purpose***:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;

- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

(a) Disclosure is Required by Law;

(b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:

1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;

2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and

3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

(C) With respect to ALL Confidential Information, Contractor shall NOT:

(1) Attempt to re-identify or further identify Confidential Information that has been deidentified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.

(2) Engage in prohibited marketing or sale of Confidential Information.

(3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor's own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

Section 4.01. Cooperation and Financial Responsibility.

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information ***obtained from a federal system of records***, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, ***or in a timeframe otherwise approved by HHS in writing.*** Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor***:***
a. The date the Breach occurred;

b. The date of Contractor's and, if applicable, Subcontractor's Discovery;

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

d. A brief description of Contractor's investigation and the status of the investigation;

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

f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;

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

h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;

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

j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;

k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;

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

m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

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

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

(C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.

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

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

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

(B) Contractor must comply with all applicable legal and regulatory requirements in the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.

(C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.

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

(E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 5.02 HHS Commitment and Obligations

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

Section 5.03 HHS Right to Inspection

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

Section 5.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

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

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

(2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or

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

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

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

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

Section 5.05 Injunctive Relief

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

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

Section 5.06 Indemnification

Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require Contractor to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and noncontributory status.

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

Section 5.08 Entirety of the Contract

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

Section 5.09 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS

and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hhsc.state.tx.us.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM

HHS CONTRACT NUMBER

_____

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with_____ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR		**SUBCONTRACTOR**	
BY:	_____	**BY:**	_____
NAME:	_____	**NAME:**	_____
TITLE:	_____	**TITLE:**	_____
DATE	_____, _____	**DATE:**	_____

Attachment 2-
Security and Privacy Initial Inquiry
[Attach Completed SPI Here]