**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.