

**SIGNATURE DOCUMENT FOR  
HEALTH AND HUMAN SERVICES COMMISSION  
CONTRACT NO. 529-16-0011 - 00001**

**I. PURPOSE**

The Health and Human Services Commission (“HHSC”), an administrative agency within the executive department of the State of Texas and having its principal office at 4900 N. Lamar, Austin, Texas 78751 and Public Consulting Group (“PCG”), a Boston, Massachusetts corporation and having its principal place of business at 148 State Street, Boston, Massachusetts 02109 (each a “Party” and collectively “the Parties”) enter into the following Contract for Data Broker services (the “Contract”).

**II. LEGAL AUTHORITY**

In addition to Article 5 of the Uniform Terms and Conditions 1.5 (“UTC”), the administration of the Contract will be in compliance with the provisions of the following laws and regulations:

- a. Chapter 531 and Chapter 2155.144 Texas Government Code, as amended, and any administrative rules adopted thereunder;
- b. 1 T.A.C. Chapter 391;
- c. 1. T.A.C. Chapter 213;
- d. 15 U.S.C. § 1681 et seq.;
- e. 44 U.S.C. §3541 et seq.;
- f. Titles XIX, IV and XXI of the Social Security Act; and
- g. Any other pertinent provisions of federal or state law.

PCG will be solely responsible for compliance with applicable state and federal laws, regulations and administrative rules as set forth in Section 5.02 of the UTC, Request For Proposal 529-16-0011 (“RFP”), and elsewhere in this Contract.

**III. DURATION**

The Contract is effective on September 1, 2016 or the signature date of the latter of the Parties to sign this document, whichever occurs first, and terminates on the 5<sup>th</sup> anniversary unless renewed, extended, or terminated pursuant to the terms and conditions of this Contract. HHSC, in its sole discretion, may extend this Contract for an additional two (2) years or as necessary to complete the mission of the procurement.

**IV. CONTRACT ELEMENTS**

This Contract between the Parties consists of: this Signature Document; HHSC’s Uniform Contract Terms and Conditions 1.5, inclusive of HHSC’s Data Use Agreement set as Attachment A thereto (Appendix “A”); Modified Key Performance Requirements (Appendix

“B”); RFP 529-16-0011 and all attachments and addenda as clarified and modified by vendor questions and HHSC’s response thereto (Appendix “C”); PCG’s Revised Business Proposal (Appendix “D”); and PCG’s Revised Cost Proposal (Appendix “E”). This Contract constitutes the entire agreement between the Parties with respect to the subject matter of Request for Proposal 529-16-0011 and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter of this Contract.

#### **V. NO IMPLIED ASSUMPTIONS**

The Parties acknowledge and agree that any assumptions contained in PCG’s original Proposal or its revisions, including but not limited to, financial assumptions, general business assumptions, assumptions concerning key performance requirements, and comments concerning the UTC, are rejected by HHSC and will not be a part of this Contract unless and only to the extent the Parties have expressly agreed to incorporate them as an exhibit to the Contract and specifically referenced in Section IV.

#### **VI. ORDER OF ATTACHMENTS**

This section supersedes Section 3.01 of the UTC. The Contract between the Parties will consist of the following documents, which, in the event of any conflict or contradiction between or among these documents, will control in the following order of precedence:

- a. This Signature Document;
- b. HHSC’s Uniform Contract Terms and Conditions 1.5, inclusive of HHSC’s Data Use Agreement set as Attachment A thereto (Appendix “A”);
- c. Modified Key Performance Requirements (Appendix “B”);
- d. RFP 529-16-0011 and all attachments and addenda as clarified and modified by vendor questions and HHSC’s response thereto (Appendix “C”);
- e. PCG’s Revised Business Proposal (Appendix “D”); and
- f. PCG’s Revised Cost Proposal (Appendix “E”).

#### **VII. SCOPE OF WORK**

PCG is expected to meet or exceed the contractual responsibilities and obligations set forth in this Contract. PCG understands that all areas of responsibility and all requirements listed in this Contract are subject to performance evaluation by HHSC. PCG’s failure to meet its contractual responsibilities and obligations set forth in this Contract is subject to HHSC’s application or pursuit of any or all of the remedies set forth in Article 11 of the UTC and Appendix B. Specifically, and without limitation, PCG will perform in accordance with the specifications contained in Sections 1.15, 2, and 4 of the RFP, this Section VII and PCG’s Proposal as modified.

## **VIII. INVOICING AND PAYMENT**

The Contract's not to exceed amount is projected to be Seventy-Three Million Fifty-Six Thousand and Seven Hundred and Nine Dollars (\$73,056,709.00). Payment for proper performance will be based on several pricing structures, depending on the specific component, the specific service, and/or deliverable required which include: Recurring and Non-Recurring Maintenance, Modifications, and Additional Periodic Activities; Pass-Through Items; Administrative Services; and fixed Administrative Fees (collectively "Fees"). PCG will be entitled to the Fees earned for correct performance of the services and/or completion of the deliverables in the amounts or at the rates, as applicable, set forth in Fee Schedules included in Appendix E. Payments of invoices by HHSC under this Contract will be made in accordance with Chapter 2251 of the Texas Government Code. HHSC reserves the right to process only a portion of a submitted invoice if only a portion can be verified and validated by the information submitted. If HHSC disputes payment of an invoice for purposes of enforcing a remedy or obtaining set-off against payments due, HHSC may limit payments in accordance with Article 9 of the UTC. HHSC reserves the right to recoup any overpayments, improper payments, unsupported payments, or otherwise do not meet the requirements of the Contract. PCG must repay HHSC any such recoupment within the timeframe specified by HHSC or, at HHSC's sole option, HHSC may offset the overpayment by reducing subsequent payment(s) to PCG by such amount.

## **IX. REQUIRED INSURANCE**

HHSC requires the following minimum insurance coverages during the term of the Contract:

- a. Commercial General Liability with \$2 Million per occurrence and with a \$5 Million aggregate with waiver of subrogation and HHSC as an additional insured;
- b. Commercial Auto with \$1 Million per occurrence and with a waiver of subrogation;
- c. Worker's Compensation at the statutory limits under the Texas Worker Compensation Act with a waiver of subrogation and indorsed on the policy and Employer's Liability of \$1 Million;
- d. Errors and Omissions/Professional Liability of \$5 Million; and
- e. Commercial Crime Coverage of \$5 Million;
- f. Cyber Liability Coverage of \$5 Million.

PCG will provide proof of such coverages upon HHSC request.

## **X. CONTRACT REPRESENTATIVES**

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

**HHSC**

Kay Hart  
Health and Human Services Commission  
909 West 45th St, Bldg. 2  
Mail Code 2099  
Austin, Texas 78751  
Tel: (512) 206-5680  
Fax: (512) 205-4529  
Email: Kay.Hart@hhsc.state.tx.us

**PCG**

Thomas Aldridge  
148 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109  
Tel: (617) 426-2026  
Fax: (617) 426-4632  
Email: [taldridge@pcgus.com](mailto:taldridge@pcgus.com)

All communications concerning this Contract should be in written form. However, HHSC may provide oral notice when circumstances are such that immediate notification should be provided, and will be deemed to have been given when the oral communication has been delivered in person, by telephone, or otherwise to the Contract Representatives identified in this Section provided that additional written notice is submitted within 3 business days thereafter. Written Notice will be deemed to have been given:

- a. Upon the expiration of three (3) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested;
- b. When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
- c. When delivered if delivered personally or sent by express courier service.

Routine communications, or those that are administrative in nature, should be sent to the Contract Representatives identified in this Section. All other contract notices will be sent to the other Party at its address set forth in Section XI.

**XI. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**HHSC**

Charles Smith  
Executive Commissioner  
Health & Human Services Commission  
P.O. Box 13247

Austin, Texas 78711-3247

**With Required Copy to:**

Karen Ray  
Chief Counsel  
P.O. Box 13247  
Austin, Texas 78711-3247  
Fax: (512) 424-6586

**PCG**

Thomas Aldridge  
148 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109  
Tel: (617) 426-2026  
Fax: (617) 426-4632  
Email: [taldridge@pcgus.com](mailto:taldridge@pcgus.com)

Either Party may change the above-referenced designees or address with five days written notice to the other Party.

**XII. INCORPORATION OF DEFINITIONS**

Except as specified in this Contract, the acronyms and definitions contained in the RFP govern the use and meanings of the terms and conditions of this Contract. The Parties agree that the acronyms and definitions contained in the RFP may, by mutual agreement, be added to, subtracted from, or modified from time to time as necessary to achieve the objectives and mission of the RFP and this Contract. Except as specified in this Contract, the definitions contained in Article 2 of the UTC govern the use and meanings of terms and conditions of this Contract. In the event of conflict between the definitions, the conflict will be resolved in favor of HHSC.

**XIII. TERMINATION OF CONTRACT**

This Contract may be terminated as provided in Section 11.03 of the UTC or as set forth in Section XIV below.

**XIV. REQUIRED FEDERAL APPROVAL**

This Contract requires approval by the Centers for Medicare & Medicaid Services ("CMS"). The Parties agree that during the pendency of such approval, neither Party is obligated to perform under the Contract and any expenses, costs, or liabilities incurred as a result of execution, or reliance thereon, of the Contract will be at the incurring Party's sole risk. The Parties agree to act in good faith and, if needed, to take reasonable steps to modify the Contract in order to secure CMS approval. If HHSC is unable to secure CMS approval, HHSC will not be responsible for any expense or loss occasioned by such failure and this Contract will terminate upon notice to PCG of such failure. While HHSC agrees to act in good faith and

reasonably pursue CMS approval, the length and substance of that pursuit will be in HHSC's sole discretion. This section is intended to be an additional funding contingency to those set forth in Section 3.02 of Appendix A.

#### **XV. AMENDMENTS, MODIFICATIONS, AND CHANGE ORDERS**

The Parties may amend this Contract by mutual written agreement. Changes in the contracted services or deliverables must be authorized in accordance with this Section and Article 7 of the UTC. HHSC's Contract Representative is authorized to provide written approval of agreed to Minor Administrative Changes to PCG's Proposal or the RFP that do not alter the Contract price or term. Changes to PCG's Proposal or the RFP that affects the Contract price or term must be accomplished through a formal amendment procedure in accordance with Article 7 of the UTC. Upon approval of a Minor Administrative Change, HHSC's Contract Representative will provide PCG with written notice the change has been accepted. Both Parties must maintain copies of such notices with their contract files.

#### **XVI. NO THIRD PARTY BENEFICIARIES**

No provision of this Contract confers third-party beneficiary status on a person or entity. Nothing contained in this Contract is intended, or will be construed, to confer upon any person or entity other than the Parties any rights, benefits or remedies of any kind or character whatsoever, and no person or entity will be deemed a third-party beneficiary under or by reason of this Contract.


#### **XVII. NEUTRAL CONSIDERATION**

The Parties have negotiated this Contract and all of the terms and conditions contained in this Contract at "arms" length, and each Party has had the opportunity to be represented by counsel during such negotiations. No term, condition, or provision contained in this Contract will be construed against any Party, or in favor of any Party, because such Party or such Party's counsel drafted, revised, commented upon, or did not comment upon, such term, condition, or provision; or because of any presumption as to any inequality of bargaining power between or among the Parties.

#### **XVIII. FURTHER ASSURANCES**

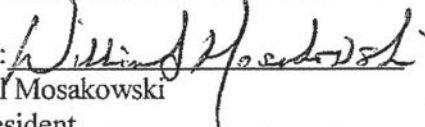
HHSC and PCG agree that, subsequent to the execution and delivery of this Contract and without any additional consideration, HHSC and PCG will execute and deliver any further legal instruments and perform any acts that are or may become reasonably necessary to effectuate the purposes of this Contract.

**HHSC**

By:   
Charles Smith  
Executive Commissioner

Date of Execution: 6-13-2016

**PUBLIC CONSULTING GROUP**

By:   
Bill Mosakowski  
President

Date of Execution: 5/27/2016

**THE FOLLOWING ARE ATTACHED TO HHSC CONTRACT NO. 529-16-0011.**

**APPENDIX A - HHSC'S UNIFORM CONTRACT TERMS AND CONDITIONS 1.5,  
INCLUSIVE OF HHSC'S DATA USE AGREEMENT SET AS  
ATTACHMENT A THERETO;**

**APPENDIX B - MODIFIED KEY PERFORMANCE REQUIREMENTS;**

**APPENDIX C - RFP 529-16-0011 AND ALL ATTACHMENTS AND ADDENDA AS  
CLARIFIED AND MODIFIED BY VENDOR QUESTIONS AND HHSC'S  
RESPONSE THERETO;**

**APPENDIX D - PCG'S REVISED BUSINESS PROPOSAL**

**APPENDIX E - PCG'S REVISED COST PROPOSAL**

**APPENDICES FOLLOW**

## **Appendix A**

HHSC's Uniformed Terms and Conditions 1.5,  
inclusion of HHSC's Data Use Agreement

DATA BROKER SERVICES AGREEMENT  
BETWEEN THE  
HEALTH AND HUMAN SERVICES COMMISSION  
AND  
PUBLIC CONSULTING GROUP



HHSC Uniform Terms and Conditions Version 1.5  
Published and Effective: April 01, 2015  
Responsible Office: Chief Counsel



**Health and Human Services Commission**

**HHSC Uniform Terms and Conditions  
Version 1.5**

**CONTENTS**

<b>Article 1. Introduction .....</b>	<b>1</b>
Section 1.01 Inducements .....	1
Section 1.02 Construction of Agreement .....	1
(a) Scope of Introductory Article .....	1
(b) References to the "State." .....	1
(c) Severability .....	1
(d) Survival of terms .....	1
(e) Headings .....	1
(f) Global drafting conventions .....	1
Section 1.03 No implied authority .....	2
Section 1.04 Legal Authority .....	2
<b>Article 2. Definitions .....</b>	<b>2</b>
<b>Article 3. General Terms and Conditions .....</b>	<b>4</b>
Section 3.01 Agreement elements .....	4
(a) Entire Agreement .....	4
(b) Order of precedence .....	4
Section 3.02 Funding .....	4
Section 3.03 Delegation of authority .....	4
Section 3.04 No waiver of sovereign immunity .....	4
Section 3.05 Force majeure .....	4
Section 3.06 Other Health and Human Services Agencies' participation in the Agreement .....	4
Section 3.07 Most favored customer .....	5
Section 3.08 Publicity .....	5
(a) No Use .....	5
(b) Limited Exception .....	5
Section 3.09 Assignment .....	5
(a) Assignment by CONTRACTOR .....	5
(b) Assignment by HHSC .....	5
(c) Assumption .....	5
Section 3.10 Cooperation with other vendors and prospective vendors .....	5
(a) Supplemental Contracts .....	5
(b) Access .....	5
Section 3.11 Renegotiation and reprocurement rights .....	5
(a) Renegotiation of Agreement terms .....	5
(b) Reprocurement of the services or procurement of additional services .....	6
(c) Termination rights upon reprocurement .....	6
Section 3.12 Solicitation errors and omissions .....	6
Section 3.13 Attorneys' fees .....	6
Section 3.14 Preferences under service contracts .....	6
Section 3.15 Ensuring timely performance .....	6
<b>Article 4. Contractor Personnel Management .....</b>	<b>6</b>
Section 4.01 Qualifications, retention and replacement of CONTRACTOR employees .....	6
Section 4.02 Responsibility for CONTRACTOR personnel .....	6
(a) Employment and Agency .....	6
(b) E-Verify System .....	6
(c) Liability .....	7
Section 4.03 Cooperation with HHSC and state administrative agencies .....	7
(a) Cooperation with HHSC contractors .....	7
(b) Cooperation with state and federal administrative agencies .....	7

Section 4.04 Conduct of and responsibility for CONTRACTOR personnel.....	7
(a) Conduct .....	7
(b) Removal .....	7
(c) Sole Control .....	7
Section 4.05 Responsibility for subcontractors.....	8
Section 4.06 HHSC’s ability to contract with subcontractors.....	8
<b>Article 5. Governing Law and Regulations .....</b>	<b>8</b>
Section 5.01 Governing law and venue.....	8
Section 5.02 CONTRACTOR responsibility for compliance with laws and regulations.....	8
Section 5.03 Compliance with immigration laws.....	9
Section 5.04 Compliance with anti-discrimination laws, regulations, and rules.....	9
Section 5.05 Compliance with environmental protection laws.....	9
(a) Pro-Children Act of 1994.....	9
(b) National Environmental Policy Act of 1969.....	10
(c) Clean Air Act and Water Pollution Control Act regulations.....	10
(d) State Clean Air Implementation Plan.....	10
(e) Safe Drinking Water Act of 1974.....	10
Section 5.06 Compliance with Fraud, Waste, and Abuse requirements.....	10
Section 5.07 Electronic and Information Resources Accessibility Standards.....	10
(a) Applicability.....	10
(b) Definitions.....	10
(c) Evaluation, Testing, and Monitoring.....	10
(d) Representations and Warranties.....	11
(e) Remedies.....	11
Section 5.08 Prohibition Against Performance Outside the United States.....	11
(a) Authority.....	11
(b) Prohibition.....	12
(c) Meaning of “within the United States” and “outside the United States.”.....	12
(d) Maintenance of Confidential Information.....	12
(e) Performance of Work under Agreement.....	12
(f) Exceptions.....	12
(g) Disclosure.....	13
(h) Remedy.....	13
<b>Article 6. Service Levels and Performance Measurement .....</b>	<b>13</b>
Section 6.01 Performance measurement.....	13
<b>Article 7. Amendments, Modifications, and Change Order Requests .....</b>	<b>13</b>
Section 7.01 Amendments and modifications.....	13
(a) Amendments and modifications resulting from changes in law or contract.....	13
(b) Modifications resulting from imposition of remedies.....	13
Section 7.02 Required compliance with amendment modification procedures.....	13
<b>Article 8. Audit and Financial Compliance.....</b>	<b>13</b>
Section 8.01 Record retention and audit.....	13
Section 8.02 Access to records, books, and documents.....	14
(a) Notice.....	14
(b) Access.....	14
(c) Entities.....	14
(d) Accommodations.....	14
Section 8.03 Audits and inspections of Services and Deliverables.....	14
Section 8.04 Response/compliance with audit or inspection findings.....	14
Section 8.05 Audit of CONTRACTOR fees.....	15
Section 8.06 SAO Audit.....	15

<b>Article 9. Terms and Conditions of Payment.....</b>	<b>15</b>
Section 9.01 Rights of set-off.....	15
(a) General right of set-off.....	15
(b) Duty to make payments.....	15
Section 9.02 Expenses.....	15
Section 9.03 Disputed fees.....	15
Section 9.04 Liability for taxes.....	16
Section 9.05 Liability for employment-related charges and benefits.....	16
Section 9.06 No additional consideration.....	16
Section 9.07 No increase in rates.....	16
<b>Article 10. Disclosure and Confidentiality of Information .....</b>	<b>16</b>
Section 10.01 Confidentiality.....	16
(a) HHSC Data Use Agreement.....	16
Section 10.02 Requests for public information.....	16
Section 10.03 Privileged Work Product.....	16
Section 10.04 Unauthorized acts.....	17
Section 10.05 Legal action.....	17
<b>Article 11. Remedies and Disputes.....</b>	<b>17</b>
Section 11.01 Understanding and expectations.....	17
Section 11.02 Tailored remedies.....	17
(a) Understanding of the Parties.....	17
(b) Notice and opportunity to cure for non-material breach.....	17
(c) Corrective action plan.....	18
(d) Administrative remedies.....	18
(e) Damages.....	19
(f) Equitable Remedies.....	19
(g) Suspension of Agreement.....	19
Section 11.03 Termination of Agreement.....	20
(a) Termination by mutual agreement of the Parties.....	20
(b) Termination in the best interest of the State.....	20
(c) Termination for cause.....	20
Section 11.04 Effective date of termination.....	21
Section 11.05 Extension of termination effective date.....	21
Section 11.06 Payment and other provisions at Agreement termination.....	21
Section 11.07 Modification of Agreement in the event of remedies.....	21
Section 11.08 Turnover assistance.....	21
Section 11.09 Rights upon termination or expiration of Agreement.....	22
Section 11.10 CONTRACTOR responsibility for associated costs.....	22
Section 11.11 Dispute resolution.....	22
(a) General agreement of the Parties.....	22
(b) Duty to negotiate in good faith.....	22
(c) Claims for breach of Agreement.....	22
Section 11.12 Liability of CONTRACTOR.....	23
<b>Article 12. Assurances and Certifications .....</b>	<b>23</b>
Section 12.01 Proposal certifications.....	23
Section 12.02 Conflicts of interest.....	23
(a) Representation.....	23
(b) General duty regarding conflicts of interest.....	23
Section 12.03 Organizational conflicts of interest.....	23
(a) Definition.....	23
(b) Warranty.....	23
(c) Continuing duty to disclose.....	24

(d) Remedy .....	24
(e) Flow down obligation .....	24
Section 12.04 HHSC personnel recruitment prohibition .....	24
Section 12.05 Anti-kickback provision .....	24
Section 12.06 Debt or back taxes owed to the State of Texas .....	24
Section 12.07 Certification regarding status of license, certificate, or permit .....	24
Section 12.08 Outstanding debts and judgments .....	24
Section 12.09 Anti-trust .....	24
<b>Article 13. Representations and Warranties .....</b>	<b>25</b>
Section 13.01 Authorization .....	25
Section 13.02 Ability to perform .....	25
Section 13.03 Workmanship and performance .....	25
Section 13.04 Warranty of deliverables .....	25
Section 13.05 Manufacturers' warranties .....	25
Section 13.06 Compliance with Agreement .....	25
<b>Article 14. Intellectual Property .....</b>	<b>25</b>
Section 14.01 Infringement and misappropriation .....	25
Section 14.02 Exceptions .....	26
<b>Article 15. Liability .....</b>	<b>26</b>
Section 15.01 Property damage .....	26
Section 15.02 Risk of Loss .....	26
Section 15.03 Limitation of HHSC's Liability .....	26
<b>Article 16. Special Terms and Conditions .....</b>	<b>27</b>
Section 16.01 HHSC Data Use Agreement Not Required .....	27
Section 16.02 Financial/performance audits .....	28
Section 16.03 Audit software .....	28
Section 16.04 Ownership and licenses .....	28
(a) Custom software .....	28
(b) Ownership rights .....	28
(c) License Rights .....	29
(d) Proprietary Notices .....	29
(e) Third Party Software and Documentation Licenses .....	29
(f) State and Federal Governments .....	29
Section 16.05 Insurance Coverage .....	29
(a) Required Coverage .....	29
(b) Proof of Insurance Coverage .....	30
Section 16.06 Background Checks .....	30
Section 16.07 Historically Underutilized Business Participation Requirements .....	31
(a) Definitions .....	31
(b) HUB Requirements .....	31

## Article 1. Introduction

### Section 1.01 Inducements.

In making the award of the Agreement, the Health and Human Services Commission (HHSC) relies on CONTRACTOR's assurances of the following:

(1) CONTRACTOR and its subcontractors are established providers of the types of services described in the Solicitation;

(2) CONTRACTOR and its subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to perform the services described in the Solicitation, CONTRACTOR's Proposal, and the Agreement in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;

(3) CONTRACTOR has thoroughly reviewed, analyzed, and understood the Solicitation, has timely raised all questions or objections to the Solicitation, and has had the opportunity to review and fully understand the HHSC's current program and operating environment for the activities that are the subject of the Agreement and the needs and requirements of the State during the Agreement term;

(4) CONTRACTOR has had the opportunity to review and understand the State's stated objectives in entering into the Agreement and, based on such review and understanding, CONTRACTOR currently has the capability to perform in accordance with the terms and conditions of the Agreement;

(5) CONTRACTOR also has reviewed and understands the risks associated with the HHSC Programs as described in the Solicitation, including the risk of non-appropriation of funds.

Accordingly, HHSC desires to engage CONTRACTOR to perform the services described in the Agreement under the terms and conditions set forth in the Agreement.

### Section 1.02 Construction of Agreement.

#### (a) *Scope of Introductory Article.*

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

#### (b) *References to the "State."*

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

#### (c) *Severability.*

If any provision of the Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

#### (d) *Survival of terms.*

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

(1) The Parties agree will survive the termination or expiration; or

(2) Remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

#### (e) *Headings.*

The article and section headings in the Agreement are for reference and convenience only and may not be considered in the interpretation of the Agreement.

#### (f) *Global drafting conventions.*

(1) The terms "include," "includes," and "including" are terms of inclusion and enlargement, and where used in the Agreement, should be read as if followed by the phrase "without limitation."

(2) Any references to "sections," "appendices," or "attachments" are references to sections, appendices, or attachments of the Agreement.

(3) Any references to agreements, contracts, statutes, or administrative rules or regulations in the Agreement are references to these documents as amended, modified, or supplemented from time to time during the term of the Agreement.

### **Section 1.03 No implied authority.**

The authority delegated to CONTRACTOR by HHSC is limited to the terms of the Agreement. HHSC is the state agency designated by the Texas Legislature to administer the HHSC Programs, and no other state agency grants CONTRACTOR any authority related to the Agreement unless directed through HHSC. CONTRACTOR may not rely upon implied authority and is not delegated authority under the Agreement to:

- (1) make public policy;
- (2) promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of HHSC Programs; or
- (3) unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of HHSC regarding HHSC Programs or the Agreement.

To the fullest extent possible, CONTRACTOR is required to assist HHSC in communications and negotiations with state and federal governments and agencies as directed by HHSC.

### **Section 1.04 Legal Authority.**

(a) HHSC is authorized to enter into the Agreement under Chapter 531 or 533, Texas Government Code; Section 2155.144, Texas Government Code; or Chapter 62, Texas Health & Safety Code. CONTRACTOR is authorized to enter into the Agreement pursuant to the authorization of its governing board or controlling owner or officer.

(b) The person or persons signing and executing the Agreement on behalf of the Parties, or representing themselves as signing and executing the Agreement on behalf of the Parties, warrant and guarantee that he, she, or they have been duly authorized to execute the Agreement and to validly and legally bind the Parties to all of its terms, performances, and provisions.

## **Article 2. Definitions**

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

**"Agreement"** means the formal, written, and legally enforceable agreement and amendments between the Parties.

**"Change"** means any alteration, adjustment, exchange, substitution, or modification of the Services under the Agreement that are authorized in accordance with Article 7 of the Agreement.

**"Change Order Request"** means a request to make a change in the Services or Deliverables under the Agreement.

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

**"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) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (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; and
- (9) Other Confidential Information as designated in the Agreement.

**"CONTRACTOR"** means the Party identified in the Agreement as the individual or entity that is required to perform the Services and related obligations under the Agreement.

**"Corrective Action Plan"** means the detailed written plan required by HHSC to correct or resolve a material deficiency or breach of the Agreement.

**"Deliverable"** means a work product prepared, developed, or procured by CONTRACTOR as part of the Services under the Agreement for the use or benefit of HHSC or the State of Texas.

**"Disability"** means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

**“Effective Date”** means the date of complete execution of the Agreement unless another date is agreed to by the Parties as the date on which the Agreement takes effect. For purposes of the Agreement, the term includes any period under which work is performed in accordance with a properly executed Letter of Intent between HHSC and CONTRACTOR.

**“Electronic and information resources (EIR)”** --Includes information technology and any equipment or interconnected system or subsystem of equipment used to create, convert, duplicate, or deliver data or information. EIR includes telecommunications products (such as telephones), information kiosks and transaction machines, web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, thermostats or temperature control devices, and medical equipment that contain information technology that is integral to its operation, are not information technology. If the embedded information technology has an externally available web or computer interface, that interface is considered EIR. Other terms such as, but not limited to, Information and Communications Technology (ICT), Electronic Information Technology (EIT), etc. can be considered interchangeable terms with EIR for purposes of the Agreement.

**“Health and Human Services Commission”** or **“HHSC”** means the administrative agency within the executive department of Texas state government established under Chapter 531, Texas Government Code or its designee, including, but not limited to, the Texas Health and Human Services Agencies.

**“HHSC Programs”** means the public health and human service programs administered by HHSC, including but not limited to Medicaid and CHIP.

**“Initial Term”** means the period between the Effective Date and the original expiration date of the Agreement.

**“Material Subcontract”** means any Subcontract that exceeds, or is reasonably expected to exceed, \$100,000 per year. Any Subcontracts between the CONTRACTOR and a single entity that are split into separate agreements by time period, program, or service area, etc., may be consolidated for the purpose of this definition.

**“Material Subcontractor (or Major Subcontractor)”** means any entity with a Material Subcontract with CONTRACTOR.

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

**“Other 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 HHSC that is expressly designated as Other Confidential Information in the Agreement.

**“Parties”** means HHSC and CONTRACTOR, collectively.

**“Party”** means either HHSC or CONTRACTOR, individually.

**“Proposal”** means the proposal submitted by the CONTRACTOR in response to the Solicitation.

**“Public information”** means information that:

- (1) Is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body;
- (2) The governmental body owns or has a right of access to; and
- (3) Is not Confidential Information.

**“Solicitation”** means the written invitation for bids, request for offers, request for proposals, or similar instrument that is posted on the HHSC Website and/or Electronic State Business Daily, seeking responses from qualified vendors for needed goods and services. This term also includes "price requests" and "pricing requests" sent to Department of Information Resources vendors to get pricing, based on a specific scope of work, through a Cooperative Contract or DBITS contract. and any addendums under which the Agreement was awarded and is executed.

**“Scope of Work”** means the description of Services and Deliverables specified in the Agreement, the Solicitation, and any agreed modifications.

**“Services”** means the tasks, functions, and responsibilities assigned and delegated to CONTRACTOR under the Agreement.

**“Software”** means all operating system and applications software used or created by CONTRACTOR to provide the Services under the Agreement.

**“Subcontract”** means any written agreement between CONTRACTOR and other party to fulfill the requirements of the Agreement. All subcontracts are required to be in writing.

**“Subcontractor”** means any individual or entity that has entered into a subcontract with CONTRACTOR.



**“Turnover Plan”** means the written plan developed by CONTRACTOR, approved by HHSC, and to be employed in the event that the work described in the Agreement transfers to the State or another vendor from CONTRACTOR. HHSC may require CONTRACTOR to develop a Turnover Plan at any time during the term of the Agreement at HHSC’s discretion. The Turnover Plan describes CONTRACTOR’s policies and procedures that will assure:

- (1) The least disruption in the delivery of services during the transition to a substitute vendor; and
- (2) Cooperation with HHSC and the substitute vendor in transferring information and services to a substitute vendor.

### **Article 3. General Terms and Conditions**

#### **Section 3.01 Agreement elements.**

(a) *Entire Agreement.*

The Agreement between the Parties will consist of the document bearing the signatures of the Parties, Exhibits, or Attachments to that document, these Uniform Terms and Conditions, the Solicitation (CONTRACTOR’s Proposal and any agreed to modifications (incorporated by reference).

(b) *Order of precedence.*

Unless otherwise agreed, in the event of any conflict or contradiction between or among these documents, the documents will control in the following order of precedence:

- (1) The final executed document that bears the signature of the Parties, including any Exhibits or attachments, and all amendments to that document;
- (2) These Uniform Terms and Conditions, including any attachments;
- (3) The Solicitation and any addendums, corrections, and clarifications. ;
- (4) CONTRACTOR’s Proposal and any agreed to modifications.

#### **Section 3.02 Funding.**

The Agreement is conditioned on the availability of state and federal appropriated funds. CONTRACTOR will have no right of action against HHSC in the event that HHSC is unable to perform its obligations under the Agreement as a result of the suspension, termination, withdrawal of funding to HHSC, the failure to fund HHSC, or lack of sufficient funding of HHSC for any activities or functions contained within the scope of the Agreement. If funds become unavailable, the provisions of Article 11 (Remedies and Disputes) will apply. HHSC will use all reasonable efforts to ensure that such funds are available, and will negotiate in good faith with CONTRACTOR to resolve any CONTRACTOR claims for payment that represent accepted Services or Deliverables that are pending at the time funds become unavailable. HHSC will make best efforts to provide reasonable written advance notice to CONTRACTOR upon learning that funding for the Agreement may be discontinued.

#### **Section 3.03 Delegation of authority.**

Whenever, by any provision of the Agreement, any right, power, or duty is imposed or conferred on HHSC, the right, power, or duty so imposed or conferred is possessed and exercised by HHSC’s Executive Commissioner unless any right, power, or duty is delegated to the duly appointed agents or employees of HHSC. HHSC’s Executive Commissioner will reduce any delegation of authority to writing and provide a copy to CONTRACTOR on request.

#### **Section 3.04 No waiver of sovereign immunity.**

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

#### **Section 3.05 Force majeure.**

A Party will not be liable for any failure or delay in performing its obligations under the Agreement if such failure or delay is due to any cause beyond the reasonable control of the Party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a force majeure event as described above or otherwise waive this right as a defense.

#### **Section 3.06 Other Health and Human Services Agencies’ participation in the Agreement.**

In addition to providing the Services specified for HHSC, CONTRACTOR agrees to allow other Health and Human Service Agencies the option to participate in the Agreement under the same terms and conditions. Each

agency that elects to obtain services under this section will issue a purchase order to CONTRACTOR, referring to, and incorporating by reference, the terms and conditions specified in the Agreement.

**Section 3.07 Most favored customer.**

The CONTRACTOR agrees that if during the term of the Agreement, the CONTRACTOR enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, the Agreement will, at HHSC's option, be amended to accord equivalent advantage to HHSC.

**Section 3.08 Publicity.**

(a) *No Use*

Except as provided in the paragraphs below, CONTRACTOR must not use the name of, or directly or indirectly refer to, HHSC, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Agreement or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to HHSC, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the Federal government).

(b) *Limited Exception*

CONTRACTOR may publish, at its sole expense, results of CONTRACTOR performance under the Agreement with HHSC's prior review and approval, which HHSC may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from HHSC and any Federal agency, as appropriate. CONTRACTOR will provide HHSC at least three (3) copies of any such publication prior to public release. CONTRACTOR will provide additional copies at the request of HHSC. CONTRACTOR may include information concerning the Agreement's terms, subject matter, and estimated value in any report to a governmental body to which the CONTRACTOR is required by law to report such information.

**Section 3.09 Assignment.**

(a) *Assignment by CONTRACTOR.*

CONTRACTOR will not assign all or any portion of its rights under or interests in the Agreement or delegate any of its duties without prior written consent of HHSC. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by HHSC, assignment or delegation will not release CONTRACTOR from its obligations under the Agreement.

(b) *Assignment by HHSC.*

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

(c) *Assumption.*

Each party to whom a transfer is made must assume all or any part of CONTRACTOR'S or HHSC's interests in the Agreement, the product, and any documents executed with respect to the Agreement, including, without limitation, the assignor's obligation for all or any portion of the purchase payments, in whole or in part.

**Section 3.10 Cooperation with other vendors and prospective vendors.**

(a) *Supplemental Contracts*

HHSC may award supplemental contracts for work related to the Agreement, or any portion thereof. HHSC reserves the right to award the Contract as a joint venture between two or more potential vendors, if such an arrangement is in the best interest of HHSC. CONTRACTOR agrees to cooperate with such other vendors, and will not commit or permit any act that may interfere with the performance of work by any other vendor.

(b) *Access*

At HHSC's request, CONTRACTOR will allow parties interested in responding to HHSC Solicitations to have reasonable access during normal business hours to software, systems documentation, and site visits to the CONTRACTOR's facilities. All such parties inspecting the facilities and software and systems documentation may be required to agree to use the information so obtained only in the State of Texas and only for the purpose of responding to the Solicitation.

**Section 3.11 Renegotiation and reprocurement rights.**

(a) *Renegotiation of Agreement terms.*

Notwithstanding anything in the Agreement to the contrary, HHSC may at any time during the term of the Agreement exercise the option to notify CONTRACTOR that HHSC has elected to renegotiate certain terms of the

Agreement within the scope of the Agreement and as permitted by law. Upon CONTRACTOR's receipt of any notice under this Section, CONTRACTOR and HHSC will undertake good faith negotiations of the subject terms of the Agreement.

(b) *Reprocurement of the services or procurement of additional services.*

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

(c) *Termination rights upon reprocurement.*

If HHSC elects to procure the Services or any portion of the Services from another vendor in accordance with this Section, HHSC will have the termination rights set forth in Article 11.

**Section 3.12 Solicitation errors and omissions.**

CONTRACTOR will not take advantage of any errors or omissions in the Solicitation or the resulting Agreement. CONTRACTOR must promptly notify HHSC of any errors or omissions that are discovered. Failure to notify HHSC of any errors will constitute a waiver of those errors.

**Section 3.13 Attorneys' fees.**

In the event of any litigation, appeal, or other legal action to enforce any provision of the Agreement, CONTRACTOR agrees to pay all expenses of such action, including attorneys' fees and costs if HHSC is the prevailing or substantially prevailing Party.

**Section 3.14 Preferences under service contracts.**

CONTRACTOR is required in performing the Agreement to purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside the State.

**Section 3.15 Ensuring timely performance.**

The Parties acknowledge the need to ensure uninterrupted and continuous performance of the Scope of Work under the Agreement, therefore, HHSC may terminate the Agreement or apply any other remedy as noted in Article 11 (Remedies and Disputes) if CONTRACTOR's performance is not timely.

**Article 4. Contractor Personnel Management**

**Section 4.01 Qualifications, retention and replacement of CONTRACTOR employees.**

CONTRACTOR agrees to maintain the organizational and administrative capacity and capabilities to carry out all duties and responsibilities under the Agreement. The personnel CONTRACTOR assigns to perform the duties and responsibilities under the Agreement will be properly trained and qualified for the functions they are to perform. CONTRACTOR does not warrant the quality of training for which the State is responsible. Notwithstanding transfer or turnover of personnel, CONTRACTOR remains obligated to perform all duties and responsibilities under the Agreement without degradation and in accordance with the terms of the Agreement.

**Section 4.02 Responsibility for CONTRACTOR personnel.**

(a) *Employment and Agency*

CONTRACTOR's employees and subcontractors will not in any sense be considered employees of HHSC or the State of Texas, but will be considered CONTRACTOR's employees for all purposes. Except as provided in the Agreement, neither CONTRACTOR nor any of CONTRACTOR's employees or subcontractors may act in any sense as agents or representatives of HHSC or the State of Texas.

(b) *E-Verify System*

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

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

(c) *Liability*

CONTRACTOR's employees must be paid exclusively by CONTRACTOR for all services performed. CONTRACTOR is responsible for and must comply with all requirements and obligations related to such employees under local, state or federal law, including minimum wage, social security, unemployment insurance, state and federal income tax, and workers' compensation obligations. CONTRACTOR assumes sole and full responsibility for its acts and omissions and the acts and omissions of its personnel and subcontractors.

**CONTRACTOR AGREES THAT ANY CLAIM ON BEHALF OF ANY PERSON ARISING OUT OF EMPLOYMENT OR ALLEGED EMPLOYMENT (INCLUDING, BUT NOT LIMITED TO, CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS) ARE THE SOLE RESPONSIBILITY OF CONTRACTOR AND ARE NOT THE RESPONSIBILITY OF HHSC, AND THAT CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE STATE FROM ANY AND ALL SUCH CLAIMS ASSERTED AGAINST THE STATE.**

CONTRACTOR understands that any person who alleges a claim arising out of employment or alleged employment by CONTRACTOR will not be entitled to any compensation, rights, or benefits from HHSC (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

***Section 4.03 Cooperation with HHSC and state administrative agencies.***

(a) *Cooperation with HHSC contractors.*

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

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

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

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

***Section 4.04 Conduct of and responsibility for CONTRACTOR personnel.***

(a) *Conduct*

While performing the Services or Deliverables, CONTRACTOR's personnel and subcontractors must:

- (1) Comply with applicable Agreement terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and
- (2) Otherwise conduct themselves in a businesslike and professional manner.

(b) *Removal*

If HHSC determines in good faith that a particular employee or subcontractor is not conducting himself or herself in accordance with this Section, HHSC may provide CONTRACTOR with notice and documentation concerning such conduct. Upon receipt of such notice, CONTRACTOR must promptly investigate the matter and, at HHSC's request, take appropriate action that may include:

- (1) Removing the employee from the project;
- (2) Providing HHSC with written notice of such removal; and
- (3) Replacing the employee with a similarly qualified individual acceptable to HHSC.

Nothing in the Agreement will prevent CONTRACTOR, at the request of HHSC, from replacing any personnel who HHSC determines are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHSC's Project Director, after consultation with CONTRACTOR, are unable to work effectively with the members of the HHSC's staff. In such event, CONTRACTOR will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of Key Personnel will be subject to HHSC review and approval. The Parties will work together in the event of any such required replacement so as not to disrupt the overall project schedule.

(c) *Sole Control*

CONTRACTOR agrees that anyone employed by CONTRACTOR to fulfill the terms of the Agreement is an employee of CONTRACTOR and remains under CONTRACTOR's sole direction and control.

CONTRACTOR agrees to be responsible for the following with respect to its employees:

- (1) Any and all employment taxes or other payroll withholding;
- (2) Damages caused by CONTRACTOR's employees acting within or outside the scope of their duties under the Agreement; and
- (3) Determination of the hours to be worked and the duties to be performed by CONTRACTOR's employees.

CONTRACTOR agrees and will inform its employees and subcontractor(s) that there is no right of action against HHSC for any duty owed by CONTRACTOR under the Agreement. CONTRACTOR understands that HHSC does not assume liability for the actions of, or judgments rendered against, the CONTRACTOR, its employees, agents or subcontractors. CONTRACTOR agrees that it has no right to indemnification or contribution from HHSC for any judgments rendered against CONTRACTOR or its subcontractors. HHSC's liability to the CONTRACTOR's employees, agents and subcontractors, if any, will be governed by the Texas Tort Claims Act, as amended or modified (Tex. Civ. Pract. & Rem. Code § 101.001 *et seq.*).

#### **Section 4.05 Responsibility for subcontractors.**

CONTRACTOR remains fully responsible for obligations, services, and functions performed by its subcontractors to the same extent as if such obligations, services, and functions were performed by CONTRACTOR'S employees, and for purposes of the Agreement such work will be deemed work performed by CONTRACTOR. HHSC reserves the right to require the replacement of any subcontractor found by HHSC to be unacceptable.

CONTRACTOR must not disclose Confidential Information of HHSC or the State of Texas to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of CONTRACTOR under the Agreement.

CONTRACTOR must identify any subcontractor that is a newly-formed subsidiary or entity, whether or not an affiliate of CONTRACTOR, substantiate the proposed subcontractor's ability to perform the subcontracted Services, and certify to HHSC that no loss of service will occur as a result of the performance of such subcontractor. The CONTRACTOR will assume responsibility for all contractual responsibilities whether or not the CONTRACTOR performs them. Further, HHSC considers the CONTRACTOR to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Agreement.

At least 30 days prior to executing a Material Subcontract or other agreement with a third party with a value greater than \$100,000.00, CONTRACTOR must submit a copy of the agreement to HHSC for HHSC's review at HHSC's option. HHSC reserves the right to: (1) reject the agreement or require changes to any provisions that do not comply with the requirements or duties and responsibilities of the Agreement or create significant barriers for HHSC in monitoring compliance with the Agreement; (2) object to the selection of the subcontractor; or (3) object to the subcontracting of the Services and Deliverables proposed to be subcontracted.

#### **Section 4.06 HHSC's ability to contract with subcontractors.**

The CONTRACTOR may not limit or restrict, through a covenant not to compete, employment agreement or other contractual arrangement, HHSC's ability to contract with subcontractors or former employees of the CONTRACTOR.

### **Article 5. Governing Law and Regulations**

#### **Section 5.01 Governing law and venue.**

The Agreement is governed by the laws of the State of Texas and interpreted in accordance with Texas law. Provided CONTRACTOR first complies with the procedures set forth in Section 11.11, Dispute Resolution, proper venue for a claim arising from the Agreement will be in a court of competent jurisdiction in Travis County, Texas.

#### **Section 5.02 CONTRACTOR responsibility for compliance with laws and regulations.**

CONTRACTOR is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

CONTRACTOR is responsible for ensuring each of its employees, agents, or subcontractors who provide Services or Deliverables under the Agreement are properly licensed, certified, or have proper permits to perform any activity related to the Services.

CONTRACTOR warrants that the Services and Deliverables comply with all applicable Federal, State, and County laws, regulations, codes, ordinances, guidelines, and policies. **CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM AND AGAINST ANY LOSSES, LIABILITY, CLAIMS, DAMAGES, PENALTIES, COSTS, FEES, OR EXPENSES ARISING FROM OR IN CONNECTION WITH CONTRACTOR'S NEGLIGENCE OR**

**CONTRACTOR'S FAILURE TO COMPLY WITH OR VIOLATION OF ANY SUCH LAW, REGULATION, CODE, ORDINANCE, OR POLICY.**

**Section 5.03 Compliance with immigration laws.**

CONTRACTOR must comply with the requirements of the Immigration and Nationality Act (8 U.S.C § 1101 et seq.) and all subsequent immigration laws and amendments.

**Section 5.04 Compliance with anti-discrimination laws, regulations, and rules.**

CONTRACTOR must comply with state and federal anti-discrimination laws, including:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794);
- (c) Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*);
- (d) Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107);
- (e) Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688);
- (f) Food Stamp Act of 1977 (7 U.S.C. § 200 *et seq.*); and
- (g) HHSC's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to the Agreement.

CONTRACTOR must comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued under 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.

CONTRACTOR must comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 and 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. CONTRACTOR must ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. CONTRACTOR also must 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.

CONTRACTOR must 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 will not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Upon request, CONTRACTOR will provide HHSC with copies of all of the CONTRACTOR'S civil rights policies and procedures.

CONTRACTOR must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under the Agreement. This notice must be delivered no more than ten calendar days after receipt of a complaint. Notice provided under this section must be directed to:

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

**Section 5.05 Compliance with environmental protection laws.**

CONTRACTOR must comply with state and federal environmental laws, including, without limitation:

- (a) *Pro-Children Act of 1994.*

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

(b) *National Environmental Policy Act of 1969.*

CONTRACTOR must comply with any applicable provisions relating to the institution of environmental quality control measures contained in the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and Executive Order 11514 (“Protection and Enhancement of Environmental Quality”).

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

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

(d) *State Clean Air Implementation Plan.*

CONTRACTOR must comply with any applicable provisions requiring conformity of federal actions to State (Clean Air) Implementation Plans under §176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 *et seq.*).

(e) *Safe Drinking Water Act of 1974.*

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

**Section 5.06 Compliance with Fraud, Waste, and Abuse requirements.**

CONTRACTOR, CONTRACTOR’s personnel, and all subcontractors must comply with all fraud, waste, and abuse requirements found in [HHS Circular C-027](#).

**Section 5.07 Electronic and Information Resources Accessibility Standards.**

(a) *Applicability.*

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

(b) *Definitions.*

For purposes of this Section:

“**Accessibility Standards**” means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 Tex.Admin. Code Texas Administrative Code, Chapter 206 and/or Chapter 213

“**Electronic and Information Resources**” means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

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

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

“**Web Site Accessibility Standards/ Specifications**” means standards contained in Volume 1 Tex. Admin. Code Chapter 206.(c) Accessibility Requirements.

Under Tex. Gov’t Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, CONTRACTOR must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

(c) *Evaluation, Testing, and Monitoring.*

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

Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor (2) the absence of review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR's assertion of compliance with the Accessibility Standards.

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

(d) *Representations and Warranties.*

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

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

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

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

(e) *Remedies.*

(1) Under Tex. Gov't Code § 2054.465, neither CONTRACTOR nor any other person has cause of action against HHSC for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.

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

**Section 5.08 Prohibition Against Performance Outside the United States.**

(a) *Authority*

(1) HHSC is responsible for administering several public programs that require the collection and maintenance of information relating to persons who apply for and receive services from HHSC programs. This information consists of, among other things, personal financial and medical information and information designated "Confidential Information". Some of this information may, within the limits of the law and this Agreement, be shared from time to time with CONTRACTOR or a subcontractor for purposes of performing the Services or providing the Deliverables under this Agreement.

(2) HHSC is also responsible for collecting and maintaining personal information, including personal financial and medical information, concerning persons employed by HHSC and other health and human services agencies. Some of this information may be shared from time to time with CONTRACTOR or a subcontractor or collected and maintained by CONTRACTOR or a subcontractor for purposes of performing the Services or providing the Deliverables under this Agreement.

(3) HHSC is legally responsible maintaining the confidentiality and integrity of information relating to applicants and recipients of HHSC services and employees of HHS agencies and ensuring that any person or entity that receives such information, including CONTRACTOR and any subcontractor, is similarly bound by these obligations.

(4) HHSC also is responsible for the development and implementation of computer software and hardware to support HHSC programs. These items are paid for, in whole or in part, with state and federal funds. The federal agencies that fund these items maintain a limited interest in the software and hardware so developed or acquired.

(5) Some of the software used or developed by HHSC may also be subject to statutory restrictions on the export of technology to foreign nations, including but not limited to the Export Administration Regulations, 15 C.F.R. Parts 730-774.



(b) *Prohibition*

(1) In view of these obligations, and to ensure accountability, integrity, and the security of the information maintained by or for HHSC and the work performed on behalf of HHSC

**HHSC DETERMINES THAT IT IS NECESSARY AND APPROPRIATE TO REQUIRE THAT:**

**(A) ALL WORK PERFORMED UNDER THIS AGREEMENT MUST BE PERFORMED EXCLUSIVELY WITHIN THE UNITED STATES; AND**

**(B) ALL INFORMATION OBTAINED BY CONTRACTOR OR A SUBCONTRACTOR UNDER THIS AGREEMENT MUST BE MAINTAINED WITHIN THE UNITED STATES.**

(2) HHSC, without prior written approval, forbids the performance of any work or the maintenance of any information relating or obtained pursuant to this Agreement to occur outside of the United States except as specifically authorized or approved by HHSC.

(c) *Meaning of "within the United States" and "outside the United States."*

(1) As used in this Section 17.01, the term "within the United States" means any location inside the territorial boundaries comprising the republic of the United States of America, including of any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

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

(d) *Maintenance of Confidential Information*

(1) CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must not allow any Confidential Information that CONTRACTOR receives from or on behalf of HHSC to leave the United States by any means (physical or electronic) at any time, for any period of time, for any reason.

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

(e) *Performance of Work under Agreement*

(1) Unless otherwise approved in advance by HHSC in writing, and subject to the exceptions specified in paragraph (e) of this Section 17.01, CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must perform all services under this Agreement, including all tasks, functions, and responsibilities assigned and delegated to CONTRACTOR under this Agreement, within the United States.

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

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

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

(f) *Exceptions*

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

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

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

(g) *Disclosure*

CONTRACTOR must disclose all Services and Deliverables under or related to this Agreement that CONTRACTOR intends to perform or has performed outside the United States, whether directly or via subcontractors, vendors, agents, or service providers.

(h) *Remedy*

(1) CONTRACTOR's violation of this Section will constitute a material breach of the Agreement. CONTRACTOR will be liable to HHSC for all actual and consequential damages in accordance with the UTC.

(2) For breach of the requirements under this Section, HHSC may terminate the Agreement with Notice to CONTRACTOR at least 1 calendar day before the effective date of such termination.

## **Article 6. Service Levels and Performance Measurement**

### **Section 6.01 Performance measurement.**

Satisfactory performance of the Agreement will be measured by:

- (1) Adherence to the Agreement, including all representations and warranties;
- (2) Compliance with project work plans, schedules, and milestones as proposed by CONTRACTOR in its Proposal and as revised by CONTRACTOR and finally approved by HHSC;
- (3) Delivery of the Services and Deliverables in accordance with the service levels and availability proposed in Contractor's Proposal and as finally approved or accepted by HHSC;
- (4) Results of audits performed by HHSC or its representatives in accordance with Article 8;
- (5) Timeliness, completeness, and accuracy of required Deliverables; and
- (6) Achievement of performance measures developed by CONTRACTOR and HHSC and as modified from time to time by written agreement during the Initial Term of the Agreement.

## **Article 7. Amendments, Modifications, and Change Order Requests**

### **Section 7.01 Amendments and modifications.**

(a) *Amendments and modifications resulting from changes in law or contract.*

The Agreement may be amended by mutual written agreement of the Parties if changes in federal or state laws, rules, regulations, policies, guidelines or circumstances affect the performance of the work. The Parties will develop a business plan for negotiating appropriate change order and amendment procedures.

(b) *Modifications resulting from imposition of remedies.*

The Agreement may be modified under the terms of Article 11 (relating to Remedies and Disputes).

### **Section 7.02 Required compliance with amendment modification procedures.**

No different or additional services, work, or products will be authorized or performed except those that are within scope and that are memorialized in an amendment or modification of the Agreement that is executed in compliance with this article. No waiver of any term, covenant, or condition of the Agreement will be valid unless executed in compliance with this article. CONTRACTOR will not be entitled to payment for any services, work or products that are not authorized by a properly executed Agreement amendment or modification, or through the express authorization of HHSC.

## **Article 8. Audit and Financial Compliance**

### **Section 8.01 Record retention and audit.**

CONTRACTOR must maintain, and require its subcontractors to maintain, supporting information and documents that are adequate to ensure that payments are made and paid in accordance with applicable Federal and State requirements, and are sufficient to ensure the accuracy and validity of CONTRACTOR invoices. These documents, including all original claims forms, will be maintained and retained by CONTRACTOR or its subcontractors for a period of seven years after the date of submission of the final billing or until the resolution of all litigation, claim, financial management review, or audit pertaining to the Agreement, whichever is longer. CONTRACTOR agrees to timely repay any undisputed audit exceptions taken by HHSC in any audit of the Agreement.

**Section 8.02 Access to records, books, and documents.**

(a) *Notice*

Upon reasonable notice, CONTRACTOR must provide, and cause its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of the Agreement.

(b) *Access*

CONTRACTOR and its subcontractors must provide the access described in this Section upon HHSC's request. This request may include the following purposes:

- (1) Examination;
- (2) Audit;
- (3) Investigation;
- (4) Contract administration; or
- (5) The making of copies, excerpts, or transcripts.

(c) *Entities*

The access required must be provided to the following officials or entities:

- (1) The United States Department of Health and Human Services or its designee;
- (2) The Comptroller General of the United States or its designee;
- (3) Medicaid program personnel from HHSC or its designee;
- (4) The Office of Investigations and Enforcement of HHSC;
- (5) Any independent verification and validation contractor or quality assurance contractor, when acting on behalf of HHSC;
- (6) The Office of the State Auditor of Texas or its designee;
- (7) A State or Federal law enforcement agency;
- (8) A special or general investigating committee of the Texas Legislature or its designee; and
- (9) Any other entity identified by HHSC.

(d) *Accommodations*

CONTRACTOR agrees to provide the access described wherever CONTRACTOR maintains the books, records, and supporting documentation described above. CONTRACTOR further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. CONTRACTOR will require its subcontractors to provide comparable access and accommodations.

Upon request, CONTRACTOR must provide copies of the information described in this Section free of charge to HHSC and the entities described in subsection (c).

**Section 8.03 Audits and inspections of Services and Deliverables.**

Upon notice from HHSC where possible, CONTRACTOR will provide, and will cause its subcontractors to provide, such auditors and inspectors as HHSC may from time to time designate, with access to:

- (1) CONTRACTOR service locations, facilities, or installations;
- (2) CONTRACTOR Software and Equipment; and
- (3) CONTRACTOR records.

CONTRACTOR must provide as part of the Services any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

**Section 8.04 Response/compliance with audit or inspection findings.**

(a) CONTRACTOR must take action to ensure its or a subcontractor's compliance with a correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under the Agreement. This action will include CONTRACTOR'S delivery to HHSC, for HHSC'S approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

(b) CONTRACTOR must bear the expense of compliance with any finding of noncompliance under the Agreement that is:

- (1) Required by a Texas or Federal law, regulation, rule or other audit requirement relating to CONTRACTOR's business;
- (2) Performed by CONTRACTOR as part of the Services and Deliverables; or
- (3) Necessary due to CONTRACTOR's noncompliance with any law, regulation, rule or audit requirement imposed on CONTRACTOR.

(c) As part of the Services, CONTRACTOR must provide to HHSC upon request a copy of those portions of CONTRACTOR's and its subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Agreement.

**Section 8.05 Audit of CONTRACTOR fees.**

(a) CONTRACTOR will provide, and will cause its subcontractors to provide, to HHSC and its designees access to financial records and supporting documentation reasonably requested by HHSC.

(b) In addition to the normal monthly review and payment of administrative vouchers, HHSC may audit the Fees charged to HHSC to determine whether such Fees are accurate and in accordance with the Agreement.

(c) If, as a result of such audit, HHSC determines that CONTRACTOR has overcharged the State, HHSC will notify CONTRACTOR of the amount of such overcharge and CONTRACTOR will promptly pay to HHSC the amount of the overcharge, plus interest. Interest on such overpayment amount will be calculated from the date of receipt by the CONTRACTOR of the overcharged amount until the date of payment to HHSC, and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed, but in no event to exceed the highest lawful rate of interest. In the event any such audit reveals an overcharge to HHSC, CONTRACTOR will reimburse HHSC for the cost of such audit.

**Section 8.06 SAO Audit.**

The CONTRACTOR understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. The CONTRACTOR further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The CONTRACTOR will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through CONTRACTOR and the requirement to cooperate is included in any subcontract it awards.

**Article 9. Terms and Conditions of Payment**

**Section 9.01 Rights of set-off.**

(a) *General right of set-off.*

With respect to any undisputed amount that a Party in good faith determines should be reimbursed to it or is otherwise payable to it by the other Party under the Agreement, the Party seeking the set-off may deduct the entire amount owed against the charges otherwise payable or expenses owed to it under the Agreement until such time as the entire amount determined to be owed has been paid.

(b) *Duty to make payments.*

HHSC will be relieved of its obligation to make any payments to the CONTRACTOR until such time as all set-off amounts have been credited to HHSC and the CONTRACTOR will be relieved of its obligation to make any payments to HHSC until such time as such amounts have been credited to the CONTRACTOR.

**Section 9.02 Expenses.**

Except as provided in the Agreement, all other expenses incurred by the CONTRACTOR in connection with its provision of the Services or Deliverables will not be reimbursed by HHSC unless agreed to by HHSC. CONTRACTOR will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its Staff. In addition, the costs associated with transportation, delivery, and insurance for each Deliverable will be paid by CONTRACTOR.

**Section 9.03 Disputed fees.**

If HHSC disputes payment of all or any portion of an invoice from the CONTRACTOR, HHSC will notify the CONTRACTOR of the dispute and both Parties will attempt in good faith to resolve the dispute. HHSC will not be required to pay any disputed portion of a CONTRACTOR invoice unless and until the dispute is resolved. Notwithstanding any such dispute, the CONTRACTOR must continue to perform the Services and produce Deliverables in compliance with the terms of the Agreement pending resolution of such dispute so long as all undisputed amounts continue to be paid to CONTRACTOR.

**Section 9.04 Liability for taxes.**

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

**Section 9.05 Liability for employment-related charges and benefits.**

CONTRACTOR will perform work under the Agreement as an independent contractor and not as agent or representative of HHSC. CONTRACTOR is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of the Agreement. HHSC will not be liable for any employment-related charges or benefits of CONTRACTOR, such as workers compensation benefits, unemployment insurance and benefits, or fringe benefits.

**Section 9.06 No additional consideration.**

CONTRACTOR will not be entitled to nor receive from HHSC any additional consideration, compensation, salary, wages, or any other type of remuneration for services rendered under the Agreement. CONTRACTOR will not be entitled by virtue of the Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, the costs associated with transportation, delivery, and insurance relating to the CONTRACTOR'S performance of the Agreement will be paid for by the CONTRACTOR.

**Section 9.07 No increase in rates.**

CONTRACTOR will not increase rates during the term of the Agreement, except as authorized in Article 7.

**Article 10. Disclosure and Confidentiality of Information**

**Section 10.01 Confidentiality.**

(a) *HHSC Data Use Agreement*

The HHSC Data Use Agreement, Attachment A to these UTCs, is incorporated into the Agreement and describes 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.

**Section 10.02 Requests for public information.**

(a) HHSC agrees that it will promptly notify CONTRACTOR of a request for disclosure of public information filed in accordance with the Texas Public Information Act, Texas Government Code Chapter 552, which consists of the CONTRACTOR'S Confidential Information, including information to which CONTRACTOR believes it has a proprietary or commercial interest. HHSC will deliver a copy of the request for public information to CONTRACTOR.

(b) With respect to any information that is the subject of a request for disclosure, CONTRACTOR is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under law. CONTRACTOR will provide HHSC with copies of all such communications.

(c) CONTRACTOR must make information defined as public information not otherwise excepted from disclosure under the Texas Public Information Act, Texas Government Code Chapter 552, available to HHSC in a format agreeable to HHSC, accessible by the public, and at no additional charge to HHSC.

(d) To the extent authorized under the Texas Public Information Act, HHSC agrees to safeguard from disclosure information received from CONTRACTOR that the CONTRACTOR believes to be Confidential Information. CONTRACTOR must clearly mark such information as Confidential Information or provide written notice to HHSC that it considers the information confidential.

(e) To the extent allowed under the Texas Public Information Act, Texas Government Code Chapter 552, CONTRACTOR agrees that any consultant reports received by HHSC in connection with the Agreement, may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC'S website or the website of a standing committee of the legislature.

**Section 10.03 Privileged Work Product.**

(a) CONTRACTOR acknowledges that HHSC asserts that Privileged Work Product may be prepared in anticipation of litigation and that CONTRACTOR is performing the Services with respect to Privileged Work Product as an agent of HHSC, and that all matter related thereto is protected from disclosure by the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure, or Federal Rules of Evidence.

(b) HHSC will notify CONTRACTOR of any Privileged Work Product to which CONTRACTOR has or may have access. After the CONTRACTOR is notified or otherwise becomes aware that such documents, data, database, or communications are Privileged Work Product, only CONTRACTOR personnel for whom such access is necessary for the purposes of providing the Services may have access to Privileged Work Product.

(c) If CONTRACTOR receives notice of any judicial or other proceeding seeking to obtain access to HHSC's Privileged Work Product, CONTRACTOR will:

- (1) Immediately notify HHSC; and
- (2) Use all reasonable efforts to resist providing such access.

(d) If CONTRACTOR resists disclosure of HHSC's Privileged Work Product in accordance with this Section, HHSC will, to the extent authorized under Civil Practices and Remedies Code or other applicable State law, have the right and duty (i) to represent CONTRACTOR in such resistance; (ii) to retain counsel to so represent CONTRACTOR; or (iii) to reimburse CONTRACTOR for reasonable attorneys' fees and expenses incurred in resisting such access. HHSC will make the sole determination as to which of the preceding duties it will undertake.

(e) If a court of competent jurisdiction orders CONTRACTOR to produce documents, disclose data, or otherwise breach Contractor's confidentiality obligations or maintenance obligations regarding the confidentiality, proprietary nature, and secrecy of Privileged Work Product, CONTRACTOR will not be liable for breach of such obligation.

#### **Section 10.04 Unauthorized acts.**

Each Party agrees to:

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

#### **Section 10.05 Legal action.**

A party may not commence any legal action or proceeding with a third party with respect to any unauthorized possession, use, or knowledge, or attempt thereof, of the other Party's Confidential Information by any person or entity, if that action or proceeding identifies the other Party or its Confidential Information without such Party's consent.

### **Article 11. Remedies and Disputes**

#### **Section 11.01 Understanding and expectations.**

The remedies described in this Article are directed to CONTRACTOR's timely and responsive performance of the Services and Deliverables, and to the creation of a flexible and responsive relationship between the Parties.

#### **Section 11.02 Tailored remedies.**

##### **(a) Understanding of the Parties.**

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

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

(1) HHSC will notify CONTRACTOR in writing of specific areas of CONTRACTOR performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of HHSC, do not result in a material deficiency or delay in the implementation or operation of the Services.

(2) CONTRACTOR will, within three business days (or another date approved by HHSC) of receipt of written notice of a non-material deficiency, provide HHSC a written response that:

(A) Explains the reasons for the deficiency, CONTRACTOR's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or

(B) If CONTRACTOR disagrees with HHSC's findings, explains its reasons for disagreeing with HHSC's findings.

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

(c) *Corrective action plan.*

(1) At its option, HHSC may require CONTRACTOR to submit to HHSC a detailed written plan (the "Corrective Action Plan") to correct or resolve a material deficiency or breach of the Agreement.

(2) The Corrective Action Plan must provide:

- (A) A detailed explanation of the reasons for the cited deficiency;
- (B) CONTRACTOR's assessment or diagnosis of the cause;
- (C) A specific proposal to cure or resolve the deficiency; and
- (D) CONTRACTOR's timeline for cure or resolution of the deficiency

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

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

- (A) Condition such approval on completion of tasks in the order or priority that HHSC may prescribe;
- (B) Disapprove portions of CONTRACTOR's proposed Corrective Action Plan; or
- (C) Require additional or different corrective action(s).

(5) At any time during this remedial process, HHSC reserves the right to:

- (A) Suspend all, or part of, the Agreement, and to withhold further payment for the suspended portions of the Agreement; or
- (B) Prohibit CONTRACTOR from incurring additional obligations of funds during investigation of the pending corrective action, if necessary, by CONTRACTOR or a decision by HHSC to terminate the Agreement for cause.

(6) If HHSC rejects CONTRACTOR's written explanation or proposed Corrective Action Plan, HHSC may issue a Stop Work Order to CONTRACTOR or any of its subcontractors or suppliers. HHSC may delay the implementation of the Stop Work Order if it affects the completion of any of the Services in accordance with the approved schedule or work plan.

(7) HHSC's acceptance of a Corrective Action Plan under this Section will not:

- (A) Excuse CONTRACTOR's prior substandard performance;
- (B) Relieve CONTRACTOR of its duty to comply with performance standards; or
- (C) Prohibit HHSC from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.

(d) *Administrative remedies.*

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

- (A) Assess liquidated damages in accordance with the terms of the Agreement if provided in the Agreement;
- (B) Conduct accelerated monitoring of the CONTRACTOR. Accelerated monitoring includes more frequent or more extensive monitoring by HHSC or its agent;
- (C) Require additional, more detailed, financial or programmatic reports to be submitted by CONTRACTOR;
- (D) Decline to renew or extend the Agreement;
- (E) Withhold or recoup payment for the noncompliant Service or Deliverable; or
- (F) Terminate the Agreement in accordance with Section 11.03.

(2) For purposes of the Agreement, an item of noncompliance means a specific action of CONTRACTOR that:

- (A) Violates a provision of the Agreement;
- (B) Fails to meet an agreed measure of performance; or
- (C) Represents a failure of CONTRACTOR to be reasonably responsive to a reasonable request of HHSC relating to the Services and Deliverables for information, assistance, or support within the timeframe specified by HHSC.

(3) HHSC will provide notice to CONTRACTOR of the imposition of an administrative remedy in accordance with this Section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require CONTRACTOR to file a written response as part of the Tailored Remedy approach.

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

(e) *Damages.*

(1) HHSC will be entitled to actual and consequential damages resulting from the CONTRACTOR's failure to comply with any of the terms of the Agreement.

(2) In some cases, the actual damage to HHSC or the State of Texas as a result of CONTRACTOR's failure to meet any aspect of the responsibilities of the Agreement or to meet specific performance standards set forth in the Agreement are difficult or impossible to determine with precise accuracy. Therefore, liquidated damages may be assessed in writing against and paid by the CONTRACTOR for failure to meet any aspect of the responsibilities of the Agreement or to meet the specific performance standards identified by the HHSC. Liquidated damages may be assessed if HHSC determines such failure is the fault of the CONTRACTOR (including the CONTRACTOR's subcontractors or consultants) and is not materially caused or contributed to by HHSC or its agents. If at any time, HHSC determines the CONTRACTOR has not met any aspect of the responsibilities of the Agreement or the specific performance standards due to mitigating circumstances, HHSC reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and be signed by the appropriate executive of HHSC.

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

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

(4) HHSC may elect to collect liquidated damages:

(A) Through direct assessment and demand for payment delivered to CONTRACTOR; or

(B) By deduction of amounts assessed as liquidated damages as set-off against payments then due to CONTRACTOR for the Services or Deliverables or that become due at any time after assessment of the liquidated damages. HHSC will make deductions until the full amount payable by the CONTRACTOR is received by the State.

(f) *Equitable Remedies*

(1) CONTRACTOR acknowledges that, if CONTRACTOR breaches (or attempts or threatens to breach) its obligation under the Agreement, the State will be irreparably harmed. In such a circumstance, HHSC may proceed directly to court.

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

(g) *Suspension of Agreement*

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

(A) HHSC determines that CONTRACTOR has committed a material breach of the Agreement;

(B) HHSC has reason to believe that CONTRACTOR has committed, assisted in the commission of, or failed to take appropriate action concerning fraud, abuse, malfeasance, misfeasance, or nonfeasance by any party concerning the Agreement; or

(C) HHSC determines that suspension of the Agreement in whole or in part is convenient or in the best interests of the State of Texas or the HHSC Programs.

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

(A) Be delivered in writing to CONTRACTOR;

(B) Include a concise description of the facts or matter leading to HHSC's decision; and



(C) Unless HHSC is suspending the contract for convenience, request a Corrective Action Plan from CONTRACTOR or describe actions that CONTRACTOR must take to avoid the contemplated suspension of the Agreement.

### **Section 11.03 Termination of Agreement.**

In addition to other provisions of this article allowing termination, the Agreement will terminate upon the expiration date unless extended in accordance with the terms of the Agreement, or terminated sooner under the terms of the Agreement. Prior to completion of the Initial Term and any extensions or renewal thereof, all or a part of the Agreement may be terminated for any of the following reasons:

(a) *Termination by mutual agreement of the Parties.*

The Agreement may be terminated by mutual agreement of the Parties. Such agreement must be in writing.

(b) *Termination in the best interest of the State.*

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

(c) *Termination for cause.*

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

(1) *Assignment for the benefit of all or substantially all of its creditors, appointment of receiver, or inability to pay debts.*

HHSC may terminate the Agreement if CONTRACTOR:

(A) Makes an assignment for the benefit of its creditors;

(B) Admits in writing its inability to pay its debts generally as they become due; or

(C) Consents to the appointment of a receiver, trustee, or liquidator of CONTRACTOR or of all or any part of its property.

(2) *Failure to adhere to laws, rules, ordinances, or orders.*

HHSC may terminate the Agreement if a court of competent jurisdiction finds CONTRACTOR failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of CONTRACTOR's duties under the Agreement.

(3) *Breach of confidentiality.*

HHSC may terminate the Agreement if CONTRACTOR breaches confidentiality obligations with respect to the Services and Deliverables provided under the Agreement.

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

HHSC may terminate the Agreement if, after providing notice and an opportunity to correct, HHSC determines that CONTRACTOR has failed to supply personnel or resources and such failure results in CONTRACTOR's inability to fulfill its duties under the Agreement.

(5) *Termination for gifts and gratuities.*

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

(B) CONTRACTOR must include a similar provision in each of its subcontracts and will enforce this provision against a subcontractor who has offered or given anything of value to any of the persons or entities described in this Section, whether or not the offer or gift was in CONTRACTOR's behalf.

(C) Termination of a subcontract by CONTRACTOR under this provision will not be a cause for termination of the Agreement unless:

(1) CONTRACTOR fails to replace such terminated subcontractor within a reasonable time.

(D) For purposes of this Section, a "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with State or Federal law.

(6) *Termination for non-appropriation of funds.*

Notwithstanding any other provision of the Agreement, if funds for the continued fulfillment of the Agreement by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then HHSC will have the right to terminate the Agreement at no additional

cost and with no penalty whatsoever. HHSC will make best efforts to provide reasonable written advance notice to CONTRACTOR upon learning that funding for the Agreement may be discontinued.

*(7) Termination for lack of financial viability.*

HHSC may terminate the Agreement if, in its sole discretion, HHSC has a good faith belief that CONTRACTOR no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform the Agreement.

*(8) Judgment and execution.*

(A) HHSC may terminate the Agreement if judgment for the payment of money in excess of \$500,000.00 that is not covered by insurance, is rendered by any court or governmental body against CONTRACTOR, and CONTRACTOR does not:

- (1) Discharge the judgment or provide for its discharge in accordance with the terms of the judgment;
- (2) Procure a stay of execution of the judgment within 30 days from the date of entry thereof; or
- (3) Perfect an appeal of such judgment and cause the execution of such judgment to be stayed during the appeal, providing such financial reserves as may be required under generally accepted accounting principles.

(B) If a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of CONTRACTOR, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry, HHSC may terminate the Agreement in accordance with this Section.

*(8) Termination for CONTRACTOR's material breach of the Agreement.*

HHSC will have the right to terminate the Agreement in whole or in part if HHSC determines, at its sole discretion, that CONTRACTOR has materially breached the Agreement.

**Section 11.04 Effective date of termination.**

Except as otherwise provided in the Agreement, termination will be effective as of the date specified in the notice of termination.

**Section 11.05 Extension of termination effective date.**

HHSC may extend the effective date of termination one or more times as it elects, in its sole discretion.

**Section 11.06 Payment and other provisions at Agreement termination.**

(a) If HHSC terminates the Agreement, HHSC will pay CONTRACTOR on the effective date of termination (or as soon as possible thereafter taking into account appropriation and fund accounting requirements) any undisputed amounts due for all completed, approved, and accepted Services or Deliverables.

(b) HHSC further agrees to negotiate in good faith with CONTRACTOR to equitably adjust and settle any accrued or outstanding liabilities for any unaccepted Service or deliverable and Change Order Requests that

- (1) Is due or delivered prior to or upon contract termination;
- (2) Is complete or substantially complete, or for which CONTRACTOR can document to the satisfaction of HHSC substantial progress; and
- (3) Benefits HHSC or the State of Texas, notwithstanding its unaccepted status.

(c) CONTRACTOR must provide HHSC all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under the Agreement.

(d) CONTRACTOR must prepare a turnover plan, which is acceptable to and approved by HHSC. That turnover plan will be implemented during the time period between receipt of notice and the termination date.

**Section 11.07 Modification of Agreement in the event of remedies.**

HHSC may propose a modification of the Agreement in response to the imposition of a remedy under this article. Any modifications under this Section must be reasonable, limited to the matters causing the exercise of a remedy, within the scope of the Agreement, and in writing. CONTRACTOR must negotiate such proposed modifications in good faith.

**Section 11.08 Turnover assistance.**

Upon receipt of notice of termination of the Agreement by HHSC, CONTRACTOR will provide any turnover assistance reasonably necessary to enable HHSC or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself.

**Section 11.09 Rights upon termination or expiration of Agreement.**

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

**Section 11.10 CONTRACTOR responsibility for associated costs.**

If HHSC terminates the Agreement for Cause, the CONTRACTOR will be responsible to HHSC for all costs incurred by HHSC, the State of Texas, or any of its administrative agencies to replace the CONTRACTOR. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation that is reasonably attributable to CONTRACTOR's failure to perform any Service in accordance with the terms of the Agreement

**Section 11.11 Dispute resolution.**

**(a) General agreement of the Parties.**

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Agreement. The Parties mutually commit to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Article, unless HHSC immediately terminates the Agreement in accordance with the terms and conditions of the Agreement.

**(b) Duty to negotiate in good faith.**

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

**(c) Claims for breach of Agreement.**

(1) *General requirement.* As required by Chapter 2260, Government Code, CONTRACTOR's claim for breach of the Agreement must resolved in accordance with the dispute resolution process established by HHSC in accordance with Chapter 2260, Government Code.

(2) *Negotiation of claims.* The Parties agree that the CONTRACTOR's claim for breach of the Agreement that the Parties cannot resolve in the ordinary course of business or through the use of all reasonable and informal means will be submitted to the negotiation process provided in Chapter 2260, Subchapter B, Government Code.

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

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

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

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

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

(5) *CONTRACTOR's duty to perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by CONTRACTOR of any duty or obligation with respect to the performance of the Agreement. Any changes to the Agreement as a result of a Dispute Resolution will be implemented in accordance with Article 8, Amendments, Modifications and Change Order Requests.

**Section 11.12 Liability of CONTRACTOR.**

(a) CONTRACTOR bears all risk of loss or damage due to:

- (1) Defects in products, Services or Deliverables;
- (2) Unfitness or obsolescence of products, Services or Deliverables; or

(3) The negligence or intentional misconduct of CONTRACTOR or its employees, agents, subcontractors, or representatives.

**(b) CONTRACTOR MUST, AT THE CONTRACTOR'S OWN EXPENSE, DEFEND WITH COUNSEL APPROVED BY THE STATE, INDEMNIFY, AND HOLD HARMLESS THE STATE AND STATE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, AND EXPENSES FROM ANY CLAIM OR ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH, TO THE EXTENT CAUSED BY OR ARISING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR AND ITS EMPLOYEES, OFFICERS, AGENTS, OR SUBCONTRACTORS.**

(c) CONTRACTOR will not be liable to HHSC for any loss, damages or liabilities attributable to or arising from:

- (1) The failure of HHSC or any state agency or HHSC CONTRACTOR to perform a service or activity in connection with the Agreement; or
- (2) CONTRACTOR's prudent and diligent performance of the Services in compliance with instructions given by HHSC in accordance with Section 1.03 (relating to implied authority) and Section 3.03 (relating to delegation of authority) of the Agreement.

(d) CONTRACTOR will ship all Equipment and Software purchased and Third Party Software licensed under the Agreement, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the Equipment and Software and hazards of transportation. Regardless of FOB point, CONTRACTOR agrees to bear all risks of loss, damage, or destruction of Deliverables, in whole or in part, ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to HHSC's fault or negligence; and such loss, damage, or destruction will not release CONTRACTOR from any obligation hereunder. After Acceptance, the risk of loss or damage will be borne by HHSC, except loss or damage attributable to CONTRACTOR's fault or negligence.

**Article 12. Assurances and Certifications**

**Section 12.01 Proposal certifications.**

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

**Section 12.02 Conflicts of interest.**

(a) *Representation.*

CONTRACTOR agrees to comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under the Agreement. CONTRACTOR warrants that it, its subcontractors, and employees, officers, directors and agents of Contractor and Contractor's subcontractors have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under the Agreement.

(b) *General duty regarding conflicts of interest.*

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

**Section 12.03 Organizational conflicts of interest.**

(a) *Definition.*

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

- (1) Impairs or diminishes the offeror's, contractor's, or subcontractor's ability to render impartial or objective assistance or advice to HHSC; or
- (2) Provides the contractor or subcontractor an unfair competitive advantage in future HHSC procurements.

(b) *Warranty.*

Except as otherwise disclosed and approved by HHSC prior to the Effective Date of the Contract, CONTRACTOR warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to organizational conflict of interest affecting the Agreement.

CONTRACTOR affirms that it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant state and federal law.

(c) *Continuing duty to disclose.*

(1) CONTRACTOR agrees that, if after the Effective Date, CONTRACTOR discovers is made aware of an organizational conflict of interest, CONTRACTOR will immediately and fully disclose such interest in writing to the HHSC project manager. In addition, CONTRACTOR must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by CONTRACTOR or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of conflicts of interest, and CONTRACTOR agrees to abide by HHSC's decision.

(2) The disclosure will include a description of the action(s) that CONTRACTOR has taken or proposes to take to avoid or mitigate such conflicts.

(d) *Remedy.*

If HHSC determines that an organizational conflict of interest exists, HHSC may, at its discretion, terminate the contract. If HHSC determines that CONTRACTOR was aware of an organizational conflict of interest before the award of the Agreement and did not disclose the conflict to the contracting officer, such nondisclosure will be considered a material breach of the Agreement. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or Federal law enforcement officials for further action.

(e) *Flow down obligation.*

CONTRACTOR must include the provisions of this Section 12.03 in all subcontracts for work to be performed similar to the service provided by CONTRACTOR, and the terms "Agreement," "CONTRACTOR," and "project manager" modified appropriately to preserve the State's rights.

***Section 12.04 HHSC personnel recruitment prohibition.***

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

CONTRACTOR will not recruit or employ any HHSC professional or technical personnel who have worked on projects relating to the subject matter of the Agreement, or who have had any influence on decisions affecting the subject matter of the Agreement, for two (2) years following the completion of the Agreement.

***Section 12.05 Anti-kickback provision.***

CONTRACTOR certifies that it will comply with the Anti-Kickback Act of 1986, 41 USC §51-58 and Federal Acquisition Regulation 52.203-7.

***Section 12.06 Debt or back taxes owed to the State of Texas.***

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

***Section 12.07 Certification regarding status of license, certificate, or permit.***

Article IX, Section 163 of the General Appropriations Act for the 1998/1999 state fiscal biennium prohibits an agency that receives an appropriation under either Article II or V of the General Appropriations Act from awarding an Agreement with the owner, operator, or administrator of a facility that has had a license, certificate, or permit revoked by another Article II or V agency. CONTRACTOR certifies it is not ineligible for an award under this provision.

***Section 12.08 Outstanding debts and judgments.***

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

***Section 12.09 Anti-trust.***

In submitting a proposal, and in accepting the Contract or purchase order, Contractor certifies and agrees as follows:

(1) Neither the CONTRACTOR, nor the person represented by the CONTRACTOR, nor any person acting for the represented person has:

(a) violated the antitrust laws codified by Chapter 15, Business & Commerce Code, or the federal antitrust laws; or

(b) directly or indirectly communicated the bid/offer associated with this contract to a competitor or other person engaged in the same line of business.

(2) CONTRACTOR assigns to HHSC all of CONTRACTOR's rights, title, and interest in and to all claims and causes of action CONTRACTOR may have under the antitrust laws of Texas or the United States for overcharges associated with this contract.

## **Article 13. Representations and Warranties**

### ***Section 13.01 Authorization.***

(a) The execution, delivery and performance of the Agreement has been duly authorized by CONTRACTOR and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for CONTRACTOR to enter into the Agreement and perform its obligations under the Agreement.

(b) CONTRACTOR has obtained and will maintain all licenses, certifications, permits, and authorizations necessary to perform the Services under the Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of CONTRACTOR's performance of the Agreement. CONTRACTOR will maintain all required certifications, licenses, permits, and authorizations to remain in good standing during the term of the Agreement.

### ***Section 13.02 Ability to perform.***

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

### ***Section 13.03 Workmanship and performance.***

(a) All Services and Deliverables provided under the Agreement will be provided in a manner consistent with the standards of quality and integrity as outlined in the Agreement, the Solicitation, and CONTRACTOR's Proposal.

(b) All Services and Deliverables must meet or exceed the required levels of performance specified in or under the Agreement, and will meet or exceed HHSC's Missions and Objectives, as set forth in the Solicitation.

(c) CONTRACTOR will perform the Services in a workmanlike manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the services described in the Agreement.

### ***Section 13.04 Warranty of deliverables.***

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

### ***Section 13.05 Manufacturers' warranties.***

CONTRACTOR assigns to HHSC all of the manufacturers' warranties and indemnities relating to all products, including without limitation, Third Party Software to the extent CONTRACTOR is permitted by the manufacturers to make such assignments to HHSC. Such assignment is subject to all of the terms and conditions imposed by the manufacturers with respect thereto.

### ***Section 13.06 Compliance with Agreement.***

CONTRACTOR will not take any action substantially or materially inconsistent with any of the terms and conditions set forth in the Agreement without the written approval of HHSC.

## **Article 14. Intellectual Property**

### ***Section 14.01 Infringement and misappropriation.***

(a) CONTRACTOR warrants that all Deliverables provided by CONTRACTOR will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.

(b) **CONTRACTOR WILL, AT ITS EXPENSE, DEFEND WITH COUNSEL APPROVED BY HHSC, INDEMNIFY, AND HOLD HARMLESS HHSC, ITS EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES, FROM ANY CLAIM OR ACTION AGAINST HHSC THAT IS BASED ON A CLAIM OF BREACH OF THE WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH. HHSC WILL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF THE CLAIM, PROVIDE CONTRACTOR A COPY OF ALL INFORMATION RECEIVED BY HHSC WITH RESPECT TO THE CLAIM, AND COOPERATE WITH CONTRACTOR IN DEFENDING OR SETTLING THE CLAIM.**

(c) In case the Deliverables, or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to CONTRACTOR to be likely to be brought, CONTRACTOR will, at its own expense, either:

- (1) Procure for HHSC the right to continue using the Deliverables; or
- (2) Modify or replace the Deliverables to comply with the Specifications and to not violate any intellectual property rights.

If neither of the alternatives set forth in (1) or (2) above are available to the CONTRACTOR on commercially reasonable terms, CONTRACTOR may require that HHSC return the allegedly infringing Deliverable(s) in which case CONTRACTOR will refund all amounts paid for all such Deliverables and reimburse HHSC for any related direct and indirect damages incurred by HHSC due to the infringing Deliverable(s).

#### **Section 14.02 Exceptions.**

CONTRACTOR is not responsible for any claimed breaches of the warranties set forth in Section 14.01 to the extent caused by:

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

### **Article 15. Liability**

#### **Section 15.01 Property damage.**

(a) CONTRACTOR will protect HHSC's real and personal property from damage arising from CONTRACTOR's, its agent's, employees' and subcontractors' performance of the Agreement, and CONTRACTOR will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by CONTRACTOR's, its agents', employees' or subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, CONTRACTOR will notify the HHSC Project Manager thereof and, subject to direction from the Project Manager or her or his designee, will take all reasonable steps to protect that property from further damage.

(b) CONTRACTOR agrees to observe and require its employees and agents to observe safety measures and proper operating procedures at HHSC sites at all times.

(c) CONTRACTOR will distribute a policy statement to all of its employees and agents that directs the employee or agent to immediately report to HHSC or to CONTRACTOR any special defect or unsafe condition encountered while on HHSC premises. CONTRACTOR will immediately report to HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

#### **Section 15.02 Risk of Loss.**

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

#### **Section 15.03 Limitation of HHSC's Liability.**

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

**HHSC'S LIABILITY TO CONTRACTOR UNDER THE AGREEMENT WILL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY HHSC TO CONTRACTOR UNDER THE AGREEMENT, INCLUDING CHANGE ORDER REQUEST PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.**

**Article 16. Special Terms and Conditions**

**Section 16.01 HHSC Data Use Agreement Not Required**

The HHSC Data Use Agreement is not required to be incorporated into the Agreement because:

CONTRACTOR does not Access Confidential Information; or

CONTRACTOR accesses Other Confidential Information as defined in the Agreement and CONTRACTOR agrees:

CONTRACTOR and all subcontractors, consultants, or agents under the Agreement will treat all information that is obtained through performance of the Services under the Agreement, including, but not limited to, information relating to applicants or recipients of HHSC Programs as Other Confidential Information to the extent that such information is considered Other Confidential Information in the Agreement.

(a) CONTRACTOR is responsible for understanding the degree to which information obtained through performance of the Agreement is confidential under state and federal law, regulations, or administrative rules as applicable.

(b) CONTRACTOR and all subcontractors, consultants, or agents under the Agreement will not use any information obtained through performance of the Agreement in any manner except as is necessary to the proper discharge of obligations and securing of rights under the Agreement.

(c) CONTRACTOR will have a system in effect to protect all records, documents, or Other Confidential Information under the Agreement that is obtained or maintained in connection with the activities funded under the Agreement. Any disclosure or transfer of Other Confidential Information by CONTRACTOR, including information required by HHSC, will be in accordance with the Agreement. If the CONTRACTOR receives a request for information deemed Other Confidential Information under the Agreement, CONTRACTOR will immediately notify the State of the request, and will make reasonable efforts to protect the information from public disclosure until further instructed by HHSC.

(d) In addition to the requirements stated in this Section, CONTRACTOR must comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of Other Confidential Information relating to HHSC Programs recipients, CONTRACTOR'S operations, or the CONTRACTOR performance of the Agreement.

(e) Upon expiration of the Agreement, or termination of the Agreement for any reason, all Other Confidential Information of a Party disclosed to, and all copies made by the other Party, will be returned to the disclosing Party or, at the disclosing Party's option, erased or destroyed, subject to laws governing the destruction of public information. The recipient of the Other Confidential Information must provide the disclosing Party certificates evidencing this erasure or destruction.

(f) CONTRACTOR will immediately report to HHSC any and all unauthorized disclosures or uses of Other Confidential Information upon it or its subcontractor(s), consultant(s), or agent(s) becoming aware or acquiring knowledge of the disclosure. CONTRACTOR acknowledges that any publication or disclosure of Other Confidential Information may cause immediate and irreparable harm to HHSC and may constitute a violation of State or federal laws. If CONTRACTOR, its subcontractor(s), consultant(s), or agent(s) should publish or disclose such Other Confidential Information to others without authorization, HHSC will immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period as described in Article 11. HHSC will have the right to recover from CONTRACTOR all damages and liabilities caused by or arising from Contractor's, its subcontractors', consultants', or agents' failure to protect HHSC's Confidential Information. **CONTRACTOR WILL DEFEND WITH COUNSEL APPROVED BY HHSC, INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM CONTRACTOR'S OR ITS SUBCONTRACTORS', CONSULTANTS' OR AGENTS' FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION.**

(g) CONTRACTOR will require its subcontractor(s), consultant(s), and agent(s) to comply with the terms of this provision.

(h) The obligations in this Section do not restrict any disclosure by a Party under any applicable law, or by order of any court or government agency, provided that the disclosing Party must give prompt notice to the non-disclosing Party of such order.



(i) With the exception of HHSC Program recipient or client information, Other Confidential Information of a Party will not be afforded the protection of the Agreement if this data was:

- (1) Already known to the receiving Party without restrictions at the time of its disclosure by the furnishing Party;
- (2) Independently developed by the receiving Party without reference to the furnishing Party's confidential Information;
- (3) Rightfully obtained by the other Party without restriction from a third party after its disclosure by the furnishing Party;
- (4) Publicly available other than through the fault or negligence of the other Party; or
- (5) Released without restriction to anyone.

**Section 16.02 Financial/performance audits.**

(a) Texas Health and Safety Code Section 12.0123 directs HHSC to contract with an independent auditor to perform annual independent external financial and performance audits of any Medicaid contractor used by HHSC in HHSC's operation of a part of the State Medicaid program. "Medicaid contractor" means an entity that, under a contract with or otherwise on behalf of HHSC, performs one or more administrative services in relation to HHSC's operation of a part of the State Medicaid program, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims. The independent auditor will deliver to the CONTRACTOR and to HHSC a report of the findings and recommendations within 30 calendar days of the close of each audit. The report will be prepared in accordance with generally accepted auditing standards.

(b) CONTRACTOR agrees to deliver to HHSC, for HHSC's approval, a Corrective Action Plan that addresses deficiencies identified in the audit within 30 calendar days of the delivery of the independent auditor's report.

(c) CONTRACTOR understands that the independent auditor ("the auditor") will make specific inquiries of CONTRACTOR's management for information, including but not limited to information concerning the representations embodied in the financial statements and reports CONTRACTOR is required to furnish the State as per any financial report requirements in the Agreement. CONTRACTOR understands that as part of the auditor's audit procedures, the auditor will request, and CONTRACTOR's management will provide to the auditor a representation letter;

- (1) Acknowledging management's responsibility for the preparation of the financial statements and reports;
- (2) Acknowledging management's responsibility for compliance with laws and regulations; and

(3) Affirming management's belief that the effects of any uncorrected financial statement or report misstatements aggregated by the auditor during the current audit engagement and pertaining to the period presented are immaterial, both individually and in the aggregate, to the financial statements and reports taken as a whole.

(d) CONTRACTOR understands and agrees that the auditor will also request that CONTRACTOR's management confirm certain representations made to the auditor during the audit. The responses to those inquiries, and the related written representations of management required by generally accepted auditing standards, are part of the evidential matter that the auditor will rely on in forming its opinion on the CONTRACTOR's financial statements and reports.

**Section 16.03 Audit software.**

As part of the Services, CONTRACTOR must operate and maintain audit software that HHSC or its designees may provide to CONTRACTOR from time to time during the Term of the Agreement.

**Section 16.04 Ownership and licenses.**

(a) *Custom software.*

The Parties agree that any Deliverable, including any software, developed by CONTRACTOR in connection with the Agreement (the "Custom Software"), will be the exclusive property of HHSC.

(b) *Ownership rights.*

(1) HHSC will own all right, title, and interest in and to its Confidential Information and the Deliverables provided by CONTRACTOR, including without limitation the specifications, a work pan, and the Custom Software, except that the Deliverables will not include the third party software and the associated Documentation for purposes of this Section. CONTRACTOR will take all actions necessary and transfer ownership of the Deliverables to HHSC,

including the Custom Software and associated Documentation on final acceptance or as otherwise provided in the Agreement.

(2) CONTRACTOR will furnish Custom Software and Documentation, upon request of HHSC, in accordance with applicable State law. All Deliverables, in whole and in part, will be deemed works made for hire of HHSC for all purposes of copyright law, and copyright will belong solely to HHSC. To the extent that any Deliverable under this Section does not qualify as a work for hire under applicable law, and to the extent that the Deliverable includes materials subject to copyright, patent, trade secret, or other proprietary right protection, CONTRACTOR assigns all right, title, and interest in and to Deliverables, including all copyrights, inventions, patents, trade secrets, and other proprietary rights in the Deliverables (including any proprietary right renewals) to HHSC.

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

(c) *License Rights*

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

(d) *Proprietary Notices*

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

(e) *Third Party Software and Documentation Licenses*

(1) CONTRACTOR grants HHSC a non-exclusive, perpetual, license for HHSC to use the Third Party Software and its associated Documentation for its internal business purposes. HHSC will be entitled to use the Third Party Software on the Equipment or any replacement equipment used by HHSC, and with any replacement Third Party Software chosen by HHSC, without additional Charges. Terms in any licenses for Third Party Software will be consistent with the requirements of this Section.

(2) The licenses hereunder are granted as of the date when such Third Party Software is installed and certified by CONTRACTOR as operational, and the licenses will continue until HHSC permanently discontinues the use of the Third Party Software.

(3) Prior to utilizing any Third Party Software product that may be included as part of a Software Deliverable to HHSC, CONTRACTOR will provide to HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to pre-approve the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Agreement. CONTRACTOR will assign to HHSC the licenses for the Third Party Software upon Final Acceptance.

(4) CONTRACTOR will, during the project, maintain any and all Third Party Software products at their most current version or no more than one version back from the most current version. However, CONTRACTOR will not maintain any Third Party Software versions, including one version back, if any such version would prevent HHSC from using any functions, in whole or in part, or would cause deficiencies in the system.

(f) *State and Federal Governments*

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



**Section 16.05 Insurance Coverage.**

(a) *Required Coverage.*

(1) CONTRACTOR will procure, at CONTRACTOR's own expense, during the Term of the Agreement and until final acceptance of all Services and Deliverables, the following insurance coverage. CONTRACTOR will

provide HHSC with proof of the following insurance coverage within 10 calendar days after the Agreement is awarded upon HHSC's request:

- (A) Standard Worker's Compensation Insurance coverage;
- (B) Automobile Liability; and
- (C) Commercial General Liability Insurance including Bodily Injury coverage of \$100,000.00 per each occurrence and Property Damage Coverage of \$25,000.00 per each occurrence.

(2) If CONTRACTOR's current Commercial General Liability insurance coverage does not meet the above stated requirements, CONTRACTOR will obtain excess liability insurance to compensate for the difference in the coverage amounts prior to effective date of the Agreement.

(3) CONTRACTOR is responsible for all deductibles stated in the policies. Insurance will be maintained at all times during the performance of the Agreement. Insurance coverage will be issued by insurance companies with "A" rating from Best that are authorized by applicable law to conduct business and provide the required coverage in the State of Texas, and must name HHSC as an additional insured.

(4) The policy will have an extended reporting period of two years. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement.

(b) *Proof of Insurance Coverage*

(1) CONTRACTOR will furnish the HHSC Project Manager original Certificates of Insurance evidencing the required coverage to be in force on the date of award, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of the Agreement. The failure of HHSC to obtain this evidence from CONTRACTOR before permitting CONTRACTOR to commence work will not be deemed to be a waiver by HHSC and CONTRACTOR will remain under continuing obligation to maintain and provide proof of the insurance coverage.

(2) The insurance specified above will be carried until all services required to be performed under the terms of the Agreement are satisfactorily completed. Failure to carry or keep such insurance in force will constitute a violation of the Agreement, and HHSC maintains the right to stop work until proper evidence of insurance is provided.

(3) The insurance will provide for 30 calendar days prior written Notice to be given to HHSC in the event coverage is substantially changed, canceled, or non-renewed. CONTRACTOR must submit a new coverage binder to HHSC to ensure no break in coverage.

(4) CONTRACTOR will require all subcontractors operating in Texas to carry the same or more coverage as CONTRACTOR is required to carry under the Agreement. CONTRACTOR may provide the coverage for any subcontractor, and, if provided, the evidence of insurance submitted will so stipulate.

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

(6) CONTRACTOR and each subcontractor will require that insurer will waive their rights of subrogation against HHSC.

(7) CONTRACTOR understands and agrees that any insurance maintained by HHSC will apply in excess of and not contribute with insurance provided by CONTRACTOR under the Agreement.

(8) If CONTRACTOR, or its subcontractor(s), desire additional coverage, higher limits of liability, or other modifications for its own protection, CONTRACTOR and each of its subcontractors will be responsible for the acquisition and cost of this additional protection at no additional cost to HHSC.

(9) CONTRACTOR may not transport a client or conduct any other official business on behalf of HHSC without the required coverage of the Agreement. CONTRACTOR agrees and understands that HHSC will not be liable for any accident or death due to an automobile accident involving the CONTRACTOR or CONTRACTOR's employee, even if the accident or death occurs in the course of performing any work under the Agreement. Failure to meet this provision may be considered a material breach of the Agreement.

**Section 16.06 Background Checks.**

CONTRACTOR must obtain a criminal background check, including fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation, on any Contractor's employees or agents, including Subcontractors and Subcontractor employees or agents, who would be placed in direct contact with a resident or client.

CONTRACTOR must also perform checks against the Nurse Aide Registry and the Employee Misconduct Registry maintained on DADS' Employability Status Check Search website. CONTRACTOR must perform any criminal background checks at its expense and should limit its search to the United States of America.

CONTRACTOR will not utilize an employee, Subcontractor, or Subcontractor's employee to perform a site visit or have any contact with stakeholders, patients, residents, or their family members if:

(a) CONTRACTOR determines, as a result of a criminal background check, that the person has been convicted of an offense listed in Tex. Health & Safety Code § 250.006 that bars employment or if the Consultant makes a reasonable determination that a conviction may pose a risk to any stakeholders, patients, residents, or their family members; or

(b) the employee or Subcontractor or Subcontractor's employee is listed in the Nurse Aide Registry or the Employee Misconduct Registry.

**Section 16.07 Historically Underutilized Business Participation Requirements**

This Subsection applies if HHSC determined that sub-contracting opportunities were probable for the procurement/contract.

(a) Definitions.

For purposes of this Section:

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

(2) "**HSP**" means a HUB Subcontracting Plan.

(b) HUB Requirements.

(1) Contractor must submit an HSP for HHSC's approval.

(2) Contractor must report to HHSC's contract manager and HUB Office monthly, in the format required by the HUB Office, its use of HUB subcontractors to fulfill the subcontracting opportunities identified in the HSP.

(3) If the Parties amend the Agreement to include additional funds or a change to the Scope of Work, the Contractor must submit a revised HSP to the HHSC HUB Office, when a determination is made for additional subcontracting opportunities. All proposed changes to the HSP must comply with the requirements of **Section 16.07(b)(4)**.

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


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

(34 Tex. Admin. Code Chapter 20, Subchapter C), and subject to remedies for Breach.

## **Appendix B**

### **Modified Key Performance Requirements**

**DATA BROKER SERVICES AGREEMENT  
BETWEEN THE  
HEALTH AND HUMAN SERVICES COMMISSION  
AND  
PUBLIC CONSULTING GROUP**




VERSION 1  
MAY 11, 2016

# Data Broker Services Agreement

## KEY PERFORMANCE REQUIREMENTS (KPRS)

PRESENTED BY: HHSC  
BUSINESS OPERATIONS AND SUPPORT  
CONTRACT MANAGEMENT DIVISION



## REVISION HISTORY

<b>REVISION DATE</b>	<b>VERSION</b>	<b>AUTHOR</b>	<i>SUMMARY OF CHANGE</i>

### Purpose

The purpose of this document is to replace Exhibit 2 of the Data Broker Services RFP No. 529-16-0011 Key Performance Requirement (KPR).

<b>THE CONTRACT KPR 1</b>	
<b>Reporting Period</b>	One-time
<b>Service/Component</b>	Final Transition Phase Work Plan
<b>Performance Standard</b>	CONTRACTOR must submit a final Transition Phase Work Plan for approval within fifteen (15) calendar days after contract execution, or date specified by HHSC
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Final Transition Phase Work Plan via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	



<b>THE CONTRACT KPR 2</b>	
<b>Reporting Period</b>	One-time
<b>Service/Component</b>	Transition Activities Completion
<b>Performance Standard</b>	CONTRACTOR must implement and complete all transition activities identified in the Transition Plan and the Transition Phase Status Report prior to operational start date, assuming reasonable access to data and cooperation from the incumbent vendor.
<b>Liquidated Damages Value</b>	\$5,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Transition Activities Completion Report via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 3</b>	
<b>Reporting Period</b>	One-time
<b>Service/Component</b>	Security Incident Response Plan
<b>Performance Standard</b>	CONTRACTOR must develop, submit and implement a Security Incident Response Plan within forty (40) calendar days after contract execution or the date specified by HHSC.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Security Incident Response Plan via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR SME</b>	
<b>HHSC Owner</b>	Information Technology (IT) Security, Eligibility Operations-Field, Eligibility Operations-Vendor, Business Operations and Support (BOS) Data Broker Services (DBS) Contract Management
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 4</b>	
<b>Reporting Period</b>	Annually
<b>Service/Component</b>	Disaster Recovery and Business Continuity Plan
<b>Performance Standard</b>	CONTRACTOR must submit, implement and maintain a Disaster Recovery and Business Continuity Plan specific to the transition and on-going operations within fifty (50) calendar days after contract execution or by the date specified by HHSC; and annually thereafter within thirty (30) calendar days prior to the end of each operational and fiscal year.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Disaster Recovery and Business Continuity Plan via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	IT Security, Infrastructure and Operations, Eligibility Operation-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 5</b>	
<b>Reporting Period</b>	One-time/Annually
<b>Service/Component</b>	Final Risk Management Plan
<b>Performance Standard</b>	CONTRACTOR must submit a final Risk Management Process, including an issue resolution and notification process, within twenty (20) calendar days after contract execution or by the date specified by HHSC and anytime thereafter when specified by HHSC.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Final Risk Management Plan via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	IT Security, Eligibility Operation-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 6</b>	
<b>Reporting Period</b>	Annually
<b>Service/Component</b>	Final Turnover Plan
<b>Performance Standard</b>	CONTRACTOR must submit a final Turnover Plan within six (6) months after the initiation of the contract or date specified by HHSC, and annually thereafter within thirty (30) calendar days prior to the end of each operational and fiscal year or date specified by HHSC, including any extension for HHSC approval.
<b>Liquidated Damages Value</b>	\$500 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Final Turnover Plan via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 7</b>	
<b>Reporting Period</b>	Monthly
<b>Service/Component</b>	Monthly Status Report
<b>Performance Standard</b>	CONTRACTOR must submit a Monthly Status Report within ten (10) business days following the last day covered by the report.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Monthly Status Report via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 8</b>	
<b>Reporting Period</b>	Monthly
<b>Service/Component</b>	Key Performance Requirements Report
<b>Performance Standard</b>	CONTRACTOR must submit a monthly Key Performance Requirements Monitoring Report to HHSC on the actual performance measures and standards results for each Key Performance Requirements by the tenth (10) business day of each month. HHSC must be able to validate at any time. CONTRACTOR may submit within the Monthly Status Report.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Key Performance Requirements Report via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 9</b>	
<b>Reporting Period</b>	Ad Hoc
<b>Service/Component</b>	Ad Hoc Reports
<b>Performance Standard</b>	CONTRACTOR must provide ad hoc reports as defined by HHSC including but not limited to usage of the Data Broker System by user detail (e.g., HHSC Region, office mail-code, user ID, training data, etc.)
<b>Liquidated Damages Value</b>	\$500 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Ad Hoc Report via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor
<b>Distribution Medium</b>	



<b>THE CONTRACT KPR 10</b>	
<b>Reporting Period</b>	As Required
<b>Service/Component</b>	Security Features – Systems and Confidential Information
<b>Performance Standard</b>	CONTRACTOR must maintain adequate security features for all CONTRACTOR-supported automation systems (voice and data) to protect the systems and all confidential information against any security incidents, unauthorized access, or other violation of state and federal regulations. Each event of a security incident, unauthorized access or other violation will be treated independently and will be subject to separate assessment of liquidated damages.
<b>Liquidated Damages Value</b>	\$2,000 per security incident, unauthorized access or other violation
<b>Measurement of Noncompliance</b>	Each event that results in a security incident, unauthorized access or other violation
<b>Calculation/ Reporting Process</b>	As needed.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	IT Security, HHSC Privacy, Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 11</b>	
<b>Reporting Period</b>	As Required
<b>Service/Component</b>	Security Systems Incidents Reports
<b>Performance Standard</b>	CONTRACTOR will be required to follow ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS of the DUA relating to reporting of security incidents
<b>Liquidated Damages Value</b>	\$5,000 per calendar day after the incident
<b>Measurement of Noncompliance</b>	Each security incident that is not reported according to the DUA requirements
<b>Calculation/ Reporting Process</b>	As needed.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	IT Security, Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 12</b>	
<b>Reporting Period</b>	As Required
<b>Service/Component</b>	Major Systems Outages
<b>Performance Standard</b>	CONTRACTOR must report all major system outages and fatal errors to HHSC via e-mail or telephone (if e-mail is unavailable) within five (5) minutes after CONTRACTOR determines a major system outage or fatal error has occurred. The CONTRACTOR must submit a Major System Outage Report to HHSC via the official correspondence process within 24 hours of reported system outages and fatal errors detailing the incident, when and how it was discovered, system and operational impacts, and corrective measures to detect and prevent future major systems outages or fatal errors.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each incident that is not reported to the HHSC Owner within required timeframes
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Major Systems Outages Report via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 13</b>	
<b>Reporting Period</b>	As Required
<b>Service/Component</b>	Incident Report
<b>Performance Standard</b>	CONTRACTOR must report all incidents (excluding security incidents) to HHSC via e-mail or telephone (if e-mail is unavailable) within five (5) minutes after CONTRACTOR determines an incident has occurred. The CONTRACTOR must submit an Incident Report to HHSC via the official correspondence process within 24 hours of reported system outages detailing the incident, when and how it was discovered, system and operational impacts, and corrective measures to detect and prevent future incidents.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each incident that is not reported to the HHSC Owner within required timeframes
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Incident Report via the vendor formal communication process to the established due date.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 14</b>	
<b>Reporting Period</b>	As Needed
<b>Service/Component</b>	Transaction Response Time
<b>Performance Standard</b>	CONTRACTOR guarantees online response times will not exceed eight (8) seconds. The transaction response time is measured from user request to delivery of the response to the requestor.
<b>Liquidated Damages Value</b>	\$1000 per day
<b>Measurement of Noncompliance</b>	The response time is measured and calculated on a daily basis. While response times for HHSC contracted third party data sources may be outside the control of PCG, compliance with KPR 14 requires a notice to the end user of third party data source delays.
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the daily average of the Transaction Response Time for each data source for all end users.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 15</b>	
<b>Reporting Period</b>	As Required
<b>Service/Component</b>	Scheduled System Maintenance
<b>Performance Standard</b>	<p>CONTRACTOR must ensure 99.5% availability of the Data Broker System. The maintenance must not interfere with system availability and required response time levels of the system.</p> <p>Schedule maintenance during non-hours of operation unless approval is granted by HHSC.</p>
<b>Liquidated Damages Value</b>	\$1,000 per occurrence
<b>Measurement of Noncompliance</b>	Each occurrence when maintenance interferes with system availability of the Data Broker System
<b>Calculation/ Reporting Process</b>	CONTRACTOR must meet 99.5% availability of Data Broker System on a monthly basis.
<b>THE CONTRACT SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 16</b>	
<b>Reporting Period</b>	As Needed
<b>Service/Component</b>	Timely notification of deactivated user access
<b>Performance Standard</b>	CONTRACTOR must ensure user accounts are deactivated and are completed within twenty-four (24) hours of HHSC request.
<b>Liquidated Damages Value</b>	\$5,000 per day
<b>Measurement of Noncompliance</b>	Each day per user not deactivated
<b>Calculation/ Reporting Process</b>	As needed.
<b>THE CONTRACTOR SME</b>	
<b>HHSC Owner</b>	Eligibility Operations-Field, Eligibility Operations-Vendor, BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 17</b>	
<b>Reporting Period</b>	As-Needed
<b>Service/Component</b>	Official Correspondence State Action Request
<b>Performance Standard</b>	CONTRACTOR must submit complete and accurate responses to any State Action Request (SAR) memos no later than thirty (30) calendar days after the CONTRACTOR's receipt of the request or by the date specified in the request.
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the SAR via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR Owner</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager
<b>Distribution Medium</b>	



<b>THE CONTRACT KPR 18</b>	
<b>Reporting Period</b>	As-Needed
<b>Service/Component</b>	Official Correspondence State Action Request Extensions
<b>Performance Standard</b>	<p>CONTRACTOR must submit written request for extension of a State Action Request (SAR) deadline that specifies the estimated date of completion and reasons for the extension no later than three (3) business days after CONTRACTOR receives the SAR.</p> <p><i>Note: CONTRACTOR must submit written request for extension of a High Priority deadline that specifies the estimated date of completion and reasons for extension no later than three (3) hours after CONTRACTOR receives the SAR.</i></p>
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each business day for each instance of late request for extension
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the SAR Extensions via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR Owner</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager
<b>Distribution Medium</b>	

<b>THE CONTRACT KPR 19</b>	
<b>Reporting Period</b>	As Needed
<b>Service/Component</b>	Key Personnel – Timely Notification
<b>Performance Standard</b>	CONTRACTOR must submit notification to HHSC in writing within ten calendar (10) days whenever Key Personnel are temporarily redirected to perform functions other than the responsibilities of their current position.
<b>Liquidated Damages Value</b>	\$500 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Key Personnel - Timely Notification via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR Owner</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

<b>THE CONTRACTOR KPR 20</b>	
<b>Reporting Period</b>	Quarterly
<b>Service/Component</b>	Data Dictionary
<b>Performance Standard</b>	<p>CONTRACTOR must develop, implement, and maintain a Data Dictionary that describes the various interfaces required between all trading partners (i.e., HHSC, DSHS, TWC, OAG, eDRS, etc.)</p> <ul style="list-style-type: none"> <li>• 45 days after contract execution and</li> <li>• Quarterly within 15 business days after the end of the calendar quarter.</li> </ul> <p>The quarter is based on the scheduled operational start date.</p>
<b>Liquidated Damages Value</b>	\$1,000 per day
<b>Measurement of Noncompliance</b>	Each calendar day for each instance of late, unacceptable or no response
<b>Calculation/ Reporting Process</b>	Compliance with this KPR is determined by comparing the submission date of the Data Dictionary via the vendor formal communication process to the established due date.
<b>THE CONTRACTOR Owner</b>	
<b>HHSC Owner</b>	BOS DBS Contract Manager, Eligibility Operations, Eligibility Operations-Vendor
<b>Distribution Medium</b>	

HHSC may assess a liquidated damage of up to \$1,000 per calendar day for each instance of CONTRACTOR breach of non-performance of a duty that is not explicitly identified in the Key Performance Requirements.

## **Appendix C**

Request for Proposal 529-16-0011, all attachments and addenda

DATA BROKER SERVICES AGREEMENT  
BETWEEN THE  
HEALTH AND HUMAN SERVICES COMMISSION  
AND  
PUBLIC CONSULTING GROUP



**Chris Traylor, Executive Commissioner**

**Request for Proposals (RFP) for  
Data Broker Services**

**RFP No. 529-16-0011**

**Date of Release: September 29, 2015**

**CPA Class/Item Codes: 920-41**

## Table of Contents

Table of Contents.....	2
<b>1. General Information .....</b>	<b>7</b>
<b>1.1. Scope.....</b>	<b>7</b>
<b>1.2. HHSC Point of Contact.....</b>	<b>7</b>
<b>1.3. Procurement Schedule.....</b>	<b>7</b>
<b>1.4. Mission Statement .....</b>	<b>7</b>
<b>1.5. Mission Objectives .....</b>	<b>7</b>
<b>1.6. Background.....</b>	<b>8</b>
1.6.1. Overview of the Health and Human Services Commission .....	8
1.6.2. Project Overview.....	8
<b>1.7. Strategic Elements.....</b>	<b>9</b>
1.7.1. Contract Type and Term .....	9
1.7.2. Contract Elements .....	9
1.7.3. HHSC’s Basic Philosophy: Contracting for Results .....	9
1.7.4. Data Use Agreement (DUA).....	9
<b>1.8. External Factors</b> 10	
<b>1.9. Legal and Regulatory Constraints .....</b>	<b>10</b>
1.9.1. Delegation of Authority .....	10
1.9.2. Conflicts of Interest.....	10
1.9.3. Former Employees of a State Agency .....	10
<b>1.10. HHSC Amendments and Announcements Regarding this RFP .....</b>	<b>11</b>
<b>1.11. RFP Cancellation/Partial Award/Non-Award.....</b>	<b>11</b>
<b>1.12. Right to Reject Proposals or Portions of Proposals.....</b>	<b>11</b>
<b>1.13. Costs Incurred.....</b>	<b>11</b>
<b>1.14. Protest Procedures.....</b>	<b>11</b>
<b>1.15. Vendor Standards of Conduct.....</b>	<b>11</b>
<b>1.16. Interpretive Conventions .....</b>	<b>11</b>
<b>2. Project Scope - Data Broker Services.....</b>	<b>12</b>
<b>2.1. General Project Requirements .....</b>	<b>13</b>
<b>2.2. Financial and Performance Audits.....</b>	<b>15</b>
<b>2.3. Reporting Requirements.....</b>	<b>15</b>
2.3.1. Formal Communications Requirements .....	15
2.3.2. Deliverables .....	16

2.3.3.	Reports.....	17
<b>2.4.</b>	<b>Performance Measures and Associated Remedies.....</b>	<b>17</b>
<b>2.5.</b>	<b>Key Personnel and Organizational Requirements .....</b>	<b>18</b>
<b>2.6.</b>	<b>Transition Phase Work Plan.....</b>	<b>19</b>
<b>2.7.</b>	<b>Risk Management &amp; Issue Resolution Process .....</b>	<b>21</b>
<b>2.8.</b>	<b>Business Operations Plan.....</b>	<b>22</b>
<b>2.9.</b>	<b>Readiness Assessment Process.....</b>	<b>23</b>
<b>2.10.</b>	<b>Quality Management Plan .....</b>	<b>24</b>
<b>2.11.</b>	<b>System Security .....</b>	<b>24</b>
<b>2.12.</b>	<b>Security Incident Response Plan.....</b>	<b>25</b>
<b>2.13.</b>	<b>Acceptance Testing Plan .....</b>	<b>25</b>
<b>2.14.</b>	<b>Disaster Recovery and Business Continuity Plan .....</b>	<b>26</b>
<b>2.15.</b>	<b>Reporting Major Systems Outage and Incidents .....</b>	<b>27</b>
<b>2.16.</b>	<b>Change Management Plan.....</b>	<b>27</b>
<b>2.17.</b>	<b>System Maintenance.....</b>	<b>28</b>
<b>2.18.</b>	<b>System Development .....</b>	<b>29</b>
<b>2.19.</b>	<b>Potential System Enhancements .....</b>	<b>29</b>
<b>2.20.</b>	<b>System Availability.....</b>	<b>29</b>
<b>2.21.</b>	<b>Transaction Response Times.....</b>	<b>30</b>
<b>2.22.</b>	<b>Technology and Technical Operations .....</b>	<b>30</b>
<b>2.23.</b>	<b>Training Requirements.....</b>	<b>31</b>
2.23.1.	Continuous Improvement.....	32
<b>2.24.</b>	<b>Operational Status .....</b>	<b>32</b>
<b>2.25.</b>	<b>Turnover Requirements .....</b>	<b>32</b>
2.25.1.	Turnover Phases .....	32
2.25.2.	Turnover Plan.....	33
<b>2.26.</b>	<b>Financial Reporting Requirements .....</b>	<b>35</b>
2.26.1.	Business Objective .....	36
<b>2.27.</b>	<b>Financial: Accounting and Reporting Requirements.....</b>	<b>36</b>
2.27.1.	Financial Accounting Requirements .....	37
<b>2.28.</b>	<b>General Access to Accounting Records .....</b>	<b>38</b>
<b>2.29.</b>	<b>Financial Report Requirements .....</b>	<b>39</b>
<b>2.30.</b>	<b>Financial Payment Structure and Provisions.....</b>	<b>39</b>
<b>2.31.</b>	<b>Overview of Financial Payment Structures.....</b>	<b>39</b>

2.31.1.	Non-Recurring Maintenance, Modifications, and Additional Periodic Activities .....	39
2.31.2.	Payment for Pass-Through Items.....	40
2.31.3.	Payment for Administrative Services.....	40
2.31.4.	Fixed Administrative Fees .....	41
<b>2.32.</b>	<b>Payment for Implementation and Modifications .....</b>	<b>41</b>
2.32.1.	Transition Costs.....	41
<b>3.</b>	<b>General Instructions and Proposal Requirements.....</b>	<b>42</b>
<b>3.1.</b>	<b>Vendor Conference .....</b>	<b>42</b>
<b>3.2.</b>	<b>Questions and Comments.....</b>	<b>43</b>
<b>3.3.</b>	<b>Modification or Withdrawal of Proposal .....</b>	<b>43</b>
<b>3.4.</b>	<b>News Releases .....</b>	<b>43</b>
<b>3.5.</b>	<b>Incomplete Proposals.....</b>	<b>43</b>
<b>3.6.</b>	<b>State Use of Ideas.....</b>	<b>43</b>
<b>3.7.</b>	<b>Property of HHSC.....</b>	<b>44</b>
<b>3.8.</b>	<b>Copyright Restriction .....</b>	<b>44</b>
<b>3.9.</b>	<b>Additional Information .....</b>	<b>44</b>
<b>3.10.</b>	<b>Multiple Responses .....</b>	<b>44</b>
<b>3.11.</b>	<b>No Joint Proposals.....</b>	<b>44</b>
<b>3.12.</b>	<b>Use of Subcontractors .....</b>	<b>44</b>
<b>3.13.</b>	<b>Texas Public Information Act.....</b>	<b>44</b>
3.13.1.	General Requirement for the Release of Proposals .....	44
3.13.2.	Publication of Major Contracts .....	45
<b>3.14.</b>	<b>Instructions for Submitting Proposals .....</b>	<b>45</b>
3.14.1.	Number of Copies .....	45
3.14.2.	Submission .....	45
3.14.3.	Additional Requirements .....	45
<b>3.15.</b>	<b>Format and Content .....</b>	<b>46</b>
3.15.1.	Part 1 – Business Proposal .....	46
3.15.1.1	Section 1 – Executive Summary .....	46
3.15.1.2	Section 2 -- Corporate Background and Experience .....	46
3.15.1.3	Section 3 – Project Work Plan.....	47
3.15.1.4	Section 4 – Value-added Benefits .....	47
3.15.1.5	Section 5 – Assumptions.....	47
3.15.1.6	Section 6 – Appendices.....	48



3.15.1.7	Section 7 – HUB Subcontracting Plan .....	48
3.15.1.8	Section 8 – Certifications and Other Required Forms .....	48
3.15.2.	Part 2 – Technical Proposal.....	48
3.15.2.1	Section 1 -- Technology Architecture.....	48
3.15.2.2	Section 2 – System Availability and Capacity.....	49
3.15.2.3	Section 3 -- Software and Hardware Components .....	49
3.15.2.4	Section 4 – Systems Integration.....	49
3.15.2.5	Section 5 -- System Administration, Support, and Maintenance .....	49
3.15.2.6	Section 6 – System Security and Disaster Recovery .....	49
3.15.2.7	Section 7 -- Performance Monitoring and Management .....	49
3.15.2.8	Section 8 - Value-added Benefits.....	49
3.15.2.9	Section 9 – Assumptions.....	49
3.15.2.10	Section 10 – Appendices.....	50
3.15.3.	Part 3 – Cost Proposal.....	50
3.15.4.	Cost Proposal and Price Summary .....	50
3.15.5.	Pricing Schedules and Price Sheets.....	50
3.15.6.	Cost Proposal - Assumptions .....	55
3.15.7.	Financial Capacity and Financial Solvency .....	56
<b>4.</b>	<b>Historically Underutilized Business Participation.....</b>	<b>56</b>
<b>4.1.</b>	<b>Introduction.....</b>	<b>56</b>
<b>4.2.</b>	<b>HHSC’s Administrative Rules .....</b>	<b>56</b>
<b>4.3.</b>	<b>Statewide Annual HUB Utilization Goal .....</b>	<b>56</b>
<b>4.4.</b>	<b>Required HUB Subcontracting Plan .....</b>	<b>57</b>
<b>4.5.</b>	<b>CPA Centralized Master Bidders List .....</b>	<b>57</b>
4.5.1.	National Institute of Governmental Purchasing (NGIP) Class/Item Code(s): .....	57
<b>4.6.</b>	<b>HUB Subcontracting Procedures – If a Respondent Intends to Subcontract .....</b>	<b>58</b>
4.6.1.	Identify Subcontracting Areas and Divide Them into Reasonable Lots.....	58
4.6.2.	Notify Potential HUB Subcontractors .....	58
	<u>Method 1</u> : Respondent Intends to Subcontract with <u>only</u> HUBs:.....	58
	<u>Method 2</u> : Respondent Intends to Subcontract with HUB Protégé(s): .....	58
	<u>Method 3</u> : Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):.....	59
	<u>Method 4</u> : Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal): .....	59
4.6.3.	Written Justification of the Selection Process .....	59
	<u>Method 5</u> : Respondent Does Not Intend to Subcontract.....	60

4.7.	Post-award HSP Requirements.....	60
5.	Proposal Evaluation.....	<b>61</b>
5.1.	Evaluation Criteria.....	61
5.2.	Initial Compliance Screening.....	61
5.3.	Competitive Range Determinations .....	62
5.4.	Oral Presentations and Site Visits .....	62
5.5.	Discussions with Respondents.....	62

Attachments (Package 2 on the ESBD):

A. Cost Proposal Forms

- Appendix A-1: Transitional Pricing Schedules
- Appendix A-2: Operational Pricing Schedules
- Appendix A-3: Predictive Analytics Operational Pricing Schedules
- Appendix A-4: Pricing Summary Sheets

Exhibits (Package 3 on the ESBD):

1. Deliverables
2. Key Performance Requirements

## 1. General Information

### 1.1. Scope

The State of Texas, by and through the Texas Health and Human Services Commission (HHSC), seeks a qualified vendor to provide Data Broker Services in accordance with the specifications contained in this Request for Proposals (RFP).

### 1.2. HHSC Point of Contact

The sole point of contact for inquiries concerning this RFP is:

Kevin Warren, CTPM  
HHSC Procurement and Contracting Services (PCS)  
1100 W 49<sup>th</sup> St  
MC 2020  
Austin, TX 78756  
Phone: 512-406-2539  
[kevin.warren@hhsc.state.tx.us](mailto:kevin.warren@hhsc.state.tx.us)

All communications relating to this RFP must be directed to the HHSC contact person named above. All communications between respondents and other HHSC staff members concerning this RFP are strictly prohibited. **Failure to comply with these requirements may result in proposal disqualification.**

### 1.3. Procurement Schedule

The following table documents the critical pre-award events for the procurement. All dates are subject to change at HHSC's discretion.

Procurement Schedule	
RFP Release Date	September 29, 2015
Vendor Conference	October 7, 2015, 10 a.m. CST
Vendor Questions Due	October 14, 2015, 5 p.m. CST
HHSC Posts Responses to Vendor Questions	November 3, 2015
Deadline for Proposal Withdrawal	November 30, 2015, 2 p.m. CST
Proposals Due	November 30, 2015, 2 p.m. CST
External Review	TBD
Anticipated Contract Start Date	TBD
Award Announcement	TBD
Anticipated Transition Period	TBD

### 1.4. Mission Statement

We connect Texans to services. HHSC's mission in this procurement is to acquire services that will assist in its efforts to continue to modernize the eligibility system and improve Texans' timely access to health and human service programs in a manner that assures the highest levels of quality, accuracy and efficiency.

### 1.5. Mission Objectives

HHSC's objectives for this competitive procurement are in compliance with (Title 10, Sub-chapter C, Section 2155.144, Texas Government Code, and Title 1, Part 15, Chapter 391, Texas Administrative Code.)

Objectives include:

- Obtain a qualified respondent to provide and improve data broker services;
- Assist HHSC in detecting and avoiding fraud, waste, and abuse in eligibility programs;
- Provide services and technology that will assist HHSC in the determination of client eligibility and verification of information provided by clients applying for or receiving HHSC administered client services (such as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Medicaid, Children's Health Insurance Program (CHIP), and Medicaid for the Elderly and People with Disabilities (MEPD));
- Provide a solution that assists HHSC staff in determining the risk associated with recertification of eligibility by using third party information, in determining if clients: 1) can be re-certified with only a brief interview, 2) do not require a personal interview for recertification, and/or 3) require additional information or verification from a client to complete recertification; and
- Support HHSC's efforts to continually improve business processes and take advantage of emerging technologies that promote efficiency and improved service delivery.

Respondents are also expected to propose a predictive analytics solution that employs data mining and analysis to predict/indicate the potential eligibility determination outcome or the probability of fraud using data provided by applicants on the application for assistance. The proposed solution uses data sources already captured in the overall solution and employs technology to detect fraud, waste and abuse prior to further eligibility determination processing. HHSC will use the initial analysis in case processing and routing.

In its response, the respondent must clearly explain how it will fulfill all needs and requirements contained in this section in relation to the service component(s) to which the respondent is responding. Mere recitation of HHSC responsibilities and respondent requirements will not be considered as an adequate response. Responses which only regurgitate, acknowledge, or reiterate the requirements of this RFP will be considered non-responsive.

## **1.6. Background**

### **1.6.1. Overview of the Health and Human Services Commission**

Since 1991, the Texas Health and Human Services Commission (HHSC) has overseen and coordinated the planning and delivery of health and human service programs in Texas. HHSC is established in accordance with Texas Government Code Chapter 531, and is responsible for the oversight of all Texas health and human service agencies (HHS Agencies). HHSC's chief executive officer is Chris Traylor, Executive Commissioner of Health and Human Services.

As a result of the consolidation due to House Bill 2292 (HB 2292), some of the contracting and procurement activities for the HHS Agencies have been assigned to the Procurement and Contracting Services (PCS) Division of HHSC. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including RFP announcement and publication, handling of communications from the Respondent, as well as managing the receipt and handling of valid responses for final review and evaluation. PCS directs the execution of the contract after the awarded vendor has been selected.

### **1.6.2. Project Overview**

HHSC seeks to obtain the most comprehensive, easy to use solution with a robust set of data to enhance program integrity and the eligibility determination process. Data Broker Services provides HHSC staff with financial and other background information on applicants and current recipients of

SNAP, Medicaid, CHIP, and TANF benefits. The information provided includes credit, residence, driver's license, vehicle and boat ownership, employment and other information that will allow staff to verify information in an efficient and timely manner and generate savings by maximizing these efficiencies.

HHSC has been enhancing the eligibility system by increasing the quality of client access to services provided by HHSC while implementing more efficient business processes and a simplified application and enrollment process. HHSC is seeking to continue enhancing integrity and reducing fraud in the programs while ensuring compliance with applicable federal law and rules.

## **1.7. Strategic Elements**

### **1.7.1. Contract Type and Term**

HHSC will award one contract for Data Broker Services under this RFP. The initial contract period will be five (5) years. HHSC reserves the option to amend the term of the contract for up to two (2) extensions of one (1) year each, or as necessary to complete the mission of the procurement.

### **1.7.2. Contract Elements**

The term "contract" means the contract awarded as a result of this RFP and all exhibits thereto. At a minimum, the following documents will be incorporated into the contract: this RFP and all attachments and exhibits; any modifications, addendum or amendments issued in conjunction with this RFP; HHS Uniform Contract Terms and Conditions (UTCs), Version 1.5 contained in Package 5 on the Electronic State Business Daily (ESBD); and the successful respondent's proposal.

One or more of the "Special Terms" located in Article 16 of the UTCs may apply to the contract, and HHSC reserves the right to negotiate additional contract terms and conditions. Respondents are responsible for reviewing the UTCs and noting any exceptions, reservations, and limitations on the Respondent Information and Disclosures form.

### **1.7.3. HHSC's Basic Philosophy: Contracting for Results**

HHSC's fundamental commitment is to contract for results. HHSC defines a successful result as the generation of defined, measurable, and beneficial outcomes that satisfy the contract requirements and support HHSC's missions and objectives. This RFP describes what is required of the contractor in terms of services, deliverables, performance measures and outcomes, and unless otherwise noted in the RFP, places the responsibility for how they are accomplished on the contractor.

### **1.7.4. Data Use Agreement (DUA)**

By entering into contract, or purchase order, with a Texas Health & Human Services agency, you agree to be bound by the terms of the HHS Data Use Agreement (HHS-GC.DUA) Data Use Agreement: This is the general version that should be used for all contractors who access agency confidential information. It is available on the [HHSC Business Opportunities webpage](#).

Information that explains the terms of the DUA and what laws require us to protect and safeguard agency confidential data can be found at: <http://hhscx.hhsc.state.tx.us/data-use-agreement-compliance/docs/understanding-dua.pdf>

If this box is checked, Section 1.7.3 does not apply to the contract, or purchase order, because the contractor will not have access to confidential information.

## **1.8. External Factors**

External factors may affect the project, including budgetary and resource constraints. Any contract resulting from the RFP is subject to the availability of state and federal funds. As of the issuance of this RFP, HHSC anticipates that budgeted funds will be available to reasonably fulfill the project requirements. If, however, funds are not available, HHSC reserves the right to withdraw the RFP or terminate the resulting contract without penalty.

## **1.9. Legal and Regulatory Constraints**

### **1.9.1. Delegation of Authority**

State and Federal laws generally limit HHSC's ability to delegate certain decisions and functions to a vendor, including but not limited to: (1) policy-making authority, and (2) final decision-making authority on the acceptance or rejection of contracted services.

### **1.9.2. Conflicts of Interest**

A conflict of interest is a set of facts or circumstances in which either a respondent or anyone acting on its behalf in connection with this procurement has past, present or currently planned personal, professional or financial interests or obligations that, in HHSC's determination, would actually or apparently conflict or interfere with the respondent's contractual obligations to HHSC. A conflict of interest would include circumstances in which a party's personal, professional or financial interests or obligations may directly or indirectly:

- Make it difficult or impossible to fulfill its contractual obligations to HHSC in a manner that is consistent with the best interests of the State of Texas;
- Impair, diminish or interfere with that party's ability to render impartial or objective assistance or advice to HHSC; or
- Provide the party with an unfair competitive advantage in future HHSC procurements.

Neither the respondent nor any other person or entity acting on its behalf, including but not limited to subcontractors, employees, agents and representatives, may have a conflict of interest with respect to this procurement. Before submitting a proposal, respondents should carefully review Article 12 of the Uniform Terms and Conditions for additional information concerning conflicts of interests.

A respondent must certify that it does not have personal or business interests that present a conflict of interest with respect to the RFP and resulting contract (see the Required Certifications form). Additionally, if applicable, the respondent must disclose all potential conflicts of interest. The respondent must describe the measures it will take to ensure that there will be no actual conflict of interest and that its fairness, independence and objectivity will be maintained (see the Respondent Information and Disclosures form). HHSC will determine to what extent, if any, a potential conflict of interest can be mitigated and managed during the term of the contract. **Failure to identify potential conflicts of interest may result in HHSC's disqualification of a proposal or termination of the contract.**

### **1.9.3. Former Employees of a State Agency**

Respondents must comply with Texas and federal laws and regulations relating to the hiring of former state employees (see, e.g Texas Government Code §572.054). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility.

As a result of such laws and regulations, a respondent must certify that it has complied with all applicable laws and regulations regarding former state employees (see the Required Certifications form). Furthermore, a respondent must disclose any relevant past state employment of the respondent's or its subcontractors' employees and agents in the Respondent Information and Disclosure form.

#### **1.10. HHSC Amendments and Announcements Regarding this RFP**

HHSC will post all official communication regarding this RFP to the Electronic State Business Daily (ESBD). HHSC reserves the right to revise the RFP at any time. Any changes, amendments, or clarifications will be made in the form of written responses to respondent questions will be made in the form of written responses to respondent questions, amendments, or addendum issued by HHSC on the ESBD. Respondents should check the website frequently for notice of matters affecting the RFP. To access the website, go to the ESBD search page and enter a search for this procurement.

#### **1.11. RFP Cancellation/Partial Award/Non-Award**

HHSC reserves the right to cancel this RFP, to make a partial award, or to make no award if it determines that such action is in the best interest of the State of Texas.

#### **1.12. Right to Reject Proposals or Portions of Proposals**

HHSC may, in its discretion, reject any and all proposals or portions thereof.

#### **1.13. Costs Incurred**

Respondents understand that issuance of this RFP in no way constitutes a commitment by HHSC to award a Contract or to pay any costs incurred by a respondent in the preparation of a response to this RFP. HHSC is not liable for any costs incurred by a respondent prior to issuance of or entering into a formal agreement, contract, or purchase order. Costs of developing proposals, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a respondent are entirely the responsibility of the respondent, and will not be reimbursed in any manner by the State of Texas.

#### **1.14. Protest Procedures**

[TAC Title 1, Part 15, Chapter 391, Subchapter D, subsection 391.401](#) outlines HHSC's protest procedures.

#### **1.15. Vendor Standards of Conduct**

In accordance with 1 TAC 391.505(a), any successful vendor and its subcontractors must implement standards of conduct for their own personnel and agents on terms at least as restrictive as those applicable to HHSC contracting personnel. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the Executive Commissioner of HHSC.

#### **1.16. Interpretive Conventions**

Whenever the terms "shall," "must," or "is required" are used in this RFP in conjunction with a specification or performance requirement, the specification or requirement is mandatory. A respondent's failure to address or meet any mandatory requirement in a proposal may be cause for HHSC's rejection of the proposal.

Whenever the terms "can," "may," or "should" are used in this RFP in conjunction with a specification or performance requirement, the specification or performance requirement is a desirable, but not mandatory, requirement. Accordingly, a respondent's failure to address or provide any items so referred to will not be the cause for rejection of the proposal, but will likely

result in a less favorable evaluation.

## 2. Project Scope - Data Broker Services

Each respondent must clearly explain how it will fulfill all needs and requirements contained in Section 2. Mere recitation of respondent requirements will not be considered as an adequate response. Responses which only regurgitate, acknowledge, or reiterate the requirements of the RFP will be considered non-responsive.

HHSC currently provides six methods or channels for clients/applicants to access services related to HHSC programs. Those services include but are not limited to submitting applications for benefits, recertifying benefits, obtaining benefit information, submitting required forms and documentation, reporting changes, and obtaining other information regarding eligibility for HHSC programs.

- **Internet** - through **YourTexasBenefits.com**, which is maintained by HHSC;
- **Mail** – applications and related forms for HHSC programs including, recertification packets, verification and other documents a client/applicant may submit, requests for verification of eligibility forms, and documents;
- **Fax** – applications and eligibility related forms;
- **Phone** – received at a call center, operated by a vendor;
- **Face-to-face** – at HHSC local eligibility offices; and
- **Mobile app** – in addition to the YourTexasBenefits.com website.

HHSC's goals are to:

- Support and increase clients'/applicants' use of self-service features where possible;
- Reduce the number of times an application or recertification is reviewed and processed by an eligibility worker;
- Reduce potential delays in eligibility determination processing due to lack of verifiable data;
- Decrease the time between application and eligibility determination outcome decisions;
- Increase the speed of recertification for benefits through the use of a robust data broker solution;
- Use predictive analytics from available data sources for predicting eligibility determination outcomes;
- Prevent fraud and increase integrity of eligibility determinations;
- Obtain a comprehensive easy to use solution;
- Obtain access to accurate and complete data sources;
- Obtain rapid response times to enable efficiency by HHSC eligibility staff;
- Have flexibility to modify presentation of data for adding data sources;
- Experience reliability in system up time and performance; and
- Maintain access through the channels listed above.

Currently, HHSC has multiple program efforts focused on increasing the use of YourTexasBenefits.com by both clients/applicants and community-based organizations. These ongoing efforts are intended to help support clients/applicants in ways that result in; decreased utilization of 2-1-1 eligibility support call centers, fewer required visits to local eligibility offices, and less reliance on mail to apply for or manage their benefits. YourTexasBenefits.com allows clients/applicants to manage their state benefits including applying, renewing, reporting major changes, uploading documents, choosing paperless correspondence and receiving alerts. HHSC provides scanning support in its local offices, and a number of community-based organizations are also trained to provide this support to applicants. The new Your Texas Benefits mobile app allows clients/applicants using Android, Apple phones or tables, the ability to report major changes, upload documents securely for eligibility verification, access the YourTexasBenefits.com website



to see basic information about their case, including key dates and their case status, and view paperless correspondence. Additional features will be added to the mobile app in the future.

In an effort to make it easier and more efficient for Texans to apply for and manage their state benefits, HHSC is partnering with community-based organizations, through the Community Partner Program (CPP), to help people learn how they can get the most out of the HHSC's benefits application and management website, YourTexasBenefits.com. The HHSC CPP is increasing the number of community-based organizations that are available to support Texans seeking to apply for benefits by providing computer access and scanning equipment at their locations throughout the State. Supporting clients'/applicants' access to eligibility services through self-service rather than through visits to local HHSC eligibility offices or mailing paper applications is a primary strategic goal for HHSC.

## **2.1. General Project Requirements**

In this procurement, HHSC, for its own use, and on behalf of HHS agencies, is seeking a qualified Vendor to provide Data Broker Services that meets the general design requirements listed below. Additional data sources may be needed or required during the term of the contract. HHSC expects the proposed solution to accommodate additional data sources, and the predictive analytics solution proposed should include additional data sources as appropriate. Respondents are encouraged to thoroughly review prohibition for performance outside of the United States in Section 5.08 of the UTCs.

1. Provides information via data sources and/or applications that interface with the Data Broker System to assist staff in client eligibility determination and recertification of benefits or other purposes. This information must include but is not limited to:

### **Data sources:**

- Information on credit history from at least two credit reporting agencies;
- Texas vehicle registration information (including vehicle value records);
- Texas criminal history;
- Texas property records;
- Social Security Number (SSN) death master file;
- Asset Verification System (AVS) for financial data;
- Systematic Alien Verification for Entitlements (SAVE) for verification of immigration status;
- Texas Driver's License Information;
- Department of State Health Service/Vital Statistics Unit for birth/death/marriage/divorce certificates;
- Texas Workers Compensation Commission for income claim information;
- Texas Workforce Commission Childcare System for childcare expense verification;
- Veterans Administration for income verification;
- Equifax-The Work Number (Formerly TALX);
- National Directory of New Hires for income information;
- Texas Lottery Commission for income information;
- Texas Department of Criminal Justice for state and local incarceration information;
- Industry standard web service interface with Texas Workforce Commission (TWC) Income Verification Data and claim information; and
- Industry standard web service interface with Office of Attorney General (OAG) Child Support Data.

Additional data sources can be identified and recommended by the respondent to HHSC for further consideration for inclusion.

**Applications that interface with Data Broker Services:**

The respondent is required to provide a solution that is a seamless data interface to the Texas Integrated Eligibility Redesign System (TIERS) and YourTexasBenefits.com applications via an industry standard web service.

**Separate Access Channels**

In addition to the TIERS interface the respondent is required to provide an alternative access solution that allows access to the Data Broker Service from alternative URL or other secure Internet access source. This is required in the event the interface to TIERS is not available.

2. Provides the required data elements for each data source via a web-based application, using IP Protocol, provided and maintained by the Vendor, as detailed in this RFP. This information will be provided to ensure information is provided accurately and timely to assist staff. See the procurement library for the required data elements for each data source;
3. Accesses each data source individually as well as combined reports including data sources specified by HHSC;
4. Operates and maintains the system to meet the needs of staff when information is needed to process applications;
5. Is predictable and reliable, and presents accurate data captured from the data sources and the system meets performance standards as required in the RFP;
6. Provides data security for sensitive and confidential information in accordance with the DUA, Federal Information Security Management Act (FISMA) (PL107-347, Title III, section 301); OMB M-06- 16 as it applies to electronic storage and transport of Personally Identifiable Information (PII) between systems and the internal processing of records; Tax Information Security Guidelines for Federal, State, and Local Agencies (Publication 1075); and Health and Human Services (HHS) Enterprise Information Security Standards and Guidelines (EISSG) Controls Catalog;
7. Complies with HHSC requirements to terminate user access within twenty-four (24) hours of the request to ensure system security; and
8. Effectively manages, distributes, and accounts for all information that is provided through Data Broker Services.

HHSC is seeking a predictive analytics that provides eligibility determination staff access to the results of data immediately available to the Data Broker solution on applicants/recipients in the household entered into TIERS from the application or redetermination forms. The results should be easy to access and to read without increasing the level of effort or time needed to determine eligibility. Respondents should indicate the timeframe for the predictive analytics solution to be operational and available to end users.

HHSC currently uses an identity authentication (ID Authentication) service for users of the yourtexasbenefits.com access channel when users request to view case and benefit information. The respondent is required to propose a solution that provides user ID Authentication at a minimum of the current levels of access by users, and may propose further solution options that will work in conjunction with HHSC's technology platform, currently web services, that invokes authentication at account creation and application submission.

To provide the ID Authentication service, HHSC will submit via a web services interface to the Vendor:

- client name;
- address;
- data of birth; and
- Social Security Number (SSN), if provided.

The vendor will:

- engage the ID Authentication service;
- match identity;
- create challenge questions; and
- return results in multiple choice format that the user is then required to answer online within a set amount of time.

Currently, users must correctly answer three out of four questions within a 180 second time period, sometimes known as “out-of-the-wallet” questions, where accessible data sources are used to obtain information only the authentic or legitimate user can answer.

The proposed solution must include but is not limited to the following features:

- Configurable allowing flexibility in question wording and presentation;
- Number of attempts allowed;
- Number of answer possibilities;
- Length of history for the question generation; and
- Scalable for future expansion and enhancements.

The solution proposed must:

- Not restrict individuals who fail authentication while creating an account from being able to submit an application. It is permissible for the solution to restrict detailed account information until user successfully authenticates. Once an account is created the solution must not present to the user any indication as to if they passed or failed the authentication test, but must pass to the state clear and concise information regarding the results and indicate further authentication steps to be taken by HHSC eligibility staff;
- Include options to allow eligibility staff to invoke the authentication solution in the event of a telephonic interaction which allows eligibility staff to input responses and subsequently displays authentication results and indications of further steps to be taken by eligibility staff; and
- Be compatible with current HHSC online and mobile application technology and be able to evolve as the technology changes.

## **2.2. Financial and Performance Audits**

Texas Health and Safety Code Section 12.0123 directs HHSC to contract with an independent auditor to performance annual independent external financial and performance audits of any Medicaid contractor used by HHSC in HHSC's operation of a part of the State Medicaid program. It is HHSC's anticipation that this cost will be borne by the vendor.

## **2.3. Reporting Requirements**

### **2.3.1. Formal Communications Requirements**

The vendor must establish formal communication with HHSC for receipt and response to requests for information, high level estimates of costs, work products, ad hoc reports, deliverables, updates and other required correspondence related to performance of contract requirements. HHSC will issue State Action Requests to the vendor following established procedures and timelines. The respondent's response should describe how the respondent will establish and manage formal communication with HHSC.

Specific requirements for each functional area are contained within the applicable section.

The vendor must perform all requirements outlined in this RFP, including but not limited to the

numbered items beginning with item number DB 001 below and continuing throughout this RFP. Requirements that call for the vendor to submit tangible or intangible products to HHSC ("Deliverables") as part of this RFP include the letter "D" at the end of the item number (for example, see item DB 009-D).

In addition to the requirements stated above, the vendor must:

- DB 001        Submit complete and accurate responses to any State Action Request (SAR) memos no later than thirty (30) calendar days after the vendor's receipt of the request unless a specific date is specified in the request.
  
- DB 002        Submit written request for extension of a State Action Request (SAR) deadline that specifies the estimated date of completion and reasons for the extension no later than three (3) business days after the vendor receives the SAR.
  
- DB 003        The vendor must provide ad hoc reports and respond to Legislative inquiries and other high priority requests within thirty six (36) hours from the time of the request or by the date specified by HHSC for data or reports that already exist and are produced.

### **HHSC Responsibilities**

At its discretion, HHSC may:

- Provide SAR and related communication procedural requirements;
- Define the criteria for data elements to be included in ad hoc reports and the information which will be included in the executed reports or other high priority requests; and
- Review, approve, or require modification to the respondent's proposed formal communication process.

### **2.3.2. Deliverables**

The vendor must provide tangible, measurable, verifiable work products to HHSC to ensure quality services are delivered timely, accurately and efficiently.

Deliverables are documents, processes, reports, plans and other products that are created by the vendor and delivered to HHSC in the course of performing its obligations under the contract. The deliverables will assist HHSC in connection with, among other things, the development and implementation of quality processes; monitoring the status of operations; tracking progress towards objectives; evaluating and validating performance; ensuring adherence to policy; and ensuring timeliness, accuracy, availability and access to services.

The deliverables reporting process must ensure that necessary and appropriate information and data is timely, consistent and an accurate reflection of operations and performance. As such, the reports, plans, processes and documents must be objective, clearly written and accurate so that they can be relied upon by HHSC in making decisions that relate to operations, policy and performance, and to the vendor's compliance with its obligations under the contract.

HHSC will define the content, acceptance criteria, and format of the deliverables, and will work with the vendor to clarify HHSC expectations. Each deliverable must meet the Acceptance Criteria for that deliverable as of the initial due date of its submission. Each Deliverable that does not meet the applicable Acceptance Criteria upon submission will be considered noncompliant and will be treated as a late submission for purposes of any applicable service level agreements or performance requirements. The deliverable will continue to be regarded as late until an acceptable deliverable is re-submitted by the vendor. HHSC may choose to exercise any remedies it may have in connection with the late submission of the deliverable. HHSC may review or require

modifications to the deliverables at its discretion.

HHSC reserves the right to waive the review and approval of vendor work products. HHSC approval of the vendor's work product will not relieve the vendor of liability for errors and omissions in the work product.

### **2.3.3. Reports**

Timely, accurate, and meaningful reports are an essential functionality of the Data Broker System for management and oversight. The system must have the capability to report, at minimum, detail data sources information and detailed staff usage of the Data Broker System. The respondent proposal must include information on a reporting system that:

- Provides access, as defined by HHSC, to approved users during the hours of operation;
- Provides for the system to capture, retain, and store daily transaction logs as specified by HHSC for the term of the contract. HHSC will require access to daily reporting. The solution must capture user ID level reporting data. This report data will be defined by HHSC and available upon request and must be transferable to HHSC at the end of term of the contract;
- Is accessible by multiple concurrent users;
- Delivers on demand, ad hoc, periodic, and scheduled reports;
- Uses standardized report formats approved by HHSC; and
- Contains a catalogue of reports to include definitions on format, content, and search and filter parameter with identification of, or reference to, applicable reports in other systems and/or reporting tools.

DB 004 Design, develop, implement, and maintain a reporting solution to deliver, manage, store, and catalog reports.

DB 005 Provide HHSC the ability to validate data reported and supplied to HHSC.

### **2.4. Performance Measures and Associated Remedies**

HHSC will monitor the performance of the contract issued under this RFP. All services and deliverables under the contract shall be provided at a level of quality acceptable to HHSC. HHSC has identified a list of Key Performance Requirements (KPR), including definitions (see Exhibits 2 and 3 of this RFP) which HHSC will regularly monitor to ensure the vendor is achieving. Vendors may not include its own test transactions in KPR related data indicating production performance of the systems. This may be a measurement point, as a separate KPR or performance measure, but not in the overall system performance reporting for compliance. The reporting of all KPRs may be included within the Monthly Status Report (DB 068-D).

The Key Performance Requirements will be used to measure the vendor's successful performance of the Services and production of Deliverables. However, all areas of responsibility and all requirements in the contract will be subject to performance evaluation by HHSC. Any and all responsibilities or requirements not fulfilled may have remedies applied and either actual or liquidated damages assessed, as determined by HHSC.

The liquidated damages indicated in Exhibit 2 of this RFP may be used to assign financial responsibility if the vendor fails to achieve the performance standards required under the KPR's.

HHSC may assess a liquidated damage of up to \$1,000 per calendar day for each instance of vendor breach of non-performance of a duty that is not explicitly identified in Exhibit 2 of this RFP.

## 2.5. Key Personnel and Organizational Requirements

The respondent's proposal must demonstrate adequate staffing and must be flexible and scalable to meet the requirements of this contract and applicable state and federal requirements and as HHSC's needs change.

To establish strong vendor accountability controls, the respondent must propose and provide ongoing reporting of organizational structure and identification of Key Personnel, including resumes and references for HHSC approval.

In its proposal, the respondent must propose an organizational structure for successful fulfillment of contract and performance requirements. The respondent must identify the key personnel and propose an allocated percentage of their time that will be dedicated to this contract or up to 100% (i.e. not permitted to manage, oversee, or participate in other projects, contracts, etc). Resumes and references for Key Personnel must be provided to HHSC for evaluation and approval as part of the respondent's proposal. Additionally, the vendor must provide for HHSC approval prior written notice of any changes in Key Personnel during the term of the contract and any extension.

System performance and integrity are critical to HHSC's mission in this solution. HHSC also requests that the vendor's staff, with access to the data sources, data bases, analysis solution, TIERS, and any other state network or data systems, have a background check annually after the initial check at the beginning of their employment and the initiation of the contract term for current employees of the vendor. The background check should be comprehensive to, as reasonably practicable, ensure risk to HHSC client data compromise is eliminated.

Provide Key Personnel in respondent response and provide resumes and references for HHSC approval.

The vendor may not reduce the agreed upon organizational staffing levels without prior written approval by HHSC. The vendor must not replace any Key Personnel without notifying HHSC as specified by the requirements in this RFP. HHSC reserves the right to approve or reject any vendor staff and replacement staff.

After contract award, the vendor must report any organizational changes as specified by the requirements in this RFP that result in a restructure of the organization or redirection of Key Personnel to perform functions other than the responsibilities of their current position, either temporarily or permanently.

In addition to the requirements stated above, the vendor must:

- DB 006 Maintain a core staff sufficient for successful fulfillment of contract and performance requirements with experience in systems, operations, policy and procedures, and in the functional areas in which they work.
- DB 007 Allocate Key Personnel and their percentage of time to this contract approved by HHSC.
- DB 008-D Submit notification to HHSC in writing within fourteen (14) calendar days that a Key Personnel vacancy will occur for any reason or prior to making any changes in Key Personnel other than changes due to resignation, death, or military recall. Notification must include a plan to recruit Key Personnel.
- DB 009 Remove Key Personnel or any vendor employee or subcontractor employee found unacceptable to HHSC immediately upon request of removal by HHSC.

- DB 010 Replace any Key Personnel within an agreed timeframe with HHSC with personnel of equal or greater ability and qualifications.
- DB 011-D Submit resumes and references of proposed replacement Key Personnel within an agreed to timeframe for HHSC review prior to making a job offer.
- DB 012-D Submit an initial organizational chart within thirty (30) calendar days after contract execution or date specified by HHSC, including the names and positions of all personnel assigned to this contract. The organizational chart must designate who are Key Personnel.
- DB 013 Submit an updated organizational chart as changes in personnel occur or as specified by HHSC
- DB 014-D Submit notification to HHSC in writing within ten calendar (10) days whenever Key Personnel are temporarily redirected to perform functions other than the responsibilities of their current position.
- DB 015 Obtain appropriate background checks for all personnel and, on HHSC's request, for other personnel who by virtue of their access to information or facilities may, in HHSC's sole discretion, present a risk to the safety or security of clients/applicant and other persons or the integrity, confidentiality or security of HHSC information. The vendor must represent and warrant to HHSC that continued employment of such personnel by the vendor is contingent upon the vendor's compliance with these and other appropriate security measures that may be required by HHSC.
- DB 016 Annually obtain appropriate background checks for privileged users (such as data base administrators).
- DB 017 Ensure appropriate vendor staff is available to meet with HHSC and access to vendor staff by HHSC is not restricted.

### **HHSC Responsibilities**

At its discretion, HHSC may:

- Review, approve, or require modification to the respondent's proposed Key Personnel;
- Review, approve, or require modification to any changes in Key Personnel;
- Reserve the right to require replacement of Key Personnel or any vendor employee or subcontractor employee found unacceptable to HHSC;
- Review, approve, or require modification to the respondent's proposed initial chart and organizational changes; and
- Review and concur with technical systems staff qualification for positions.

### **2.6. Transition Phase Work Plan**

To ensure the mitigation of risk to HHSC, the vendor must establish a comprehensive Transition Phase Work Plan to track the project team's progress regarding project tasks, deliverables, management of risks and progress towards readiness for operations assumption. To ensure a successful transition of current operations to the vendor, HHSC is seeking proposals that include a comprehensive transition process. The Transition Plan must include those activities the awarded vendor must conduct between the effective date of the contract and the vendor's operational start date. The plan must describe the awarded vendor's roles and responsibilities. **The initial draft of the plan must be submitted with the respondent proposal.** The awarded vendor will be the lead in, and responsible for, coordinating and facilitating all transition activities with the outgoing

vendor.

HHSC and awarded vendor must work together throughout the Transition Phase to establish a detailed schedule for all activities and define expectations for the content and format of the contract deliverables. This detailed schedule must address continued business operations for all transition functions and requirements.

Proposals must include a work plan and examples of reports that support the progress on the work plan for the transition components including, but not limited to due dates and tasks associated with:

- Transition operations;
- Staffing;
- Training;
- Quality assurance and quality control activities;
- System equipment and testing;
- Systems and operations readiness assessment;
- Systems Implementation; and
- Coordination and communication.

For each of the above applicable components, include the following data elements within the work plan that the vendor is required to report on:

- A logical sequence of tasks and progress report;
- A clear definition of each task and progress report;
- Staff loading for each task and progress report;
- A specific target completion date for each task and progress report;
- Track and report completion of tasks within work plan; and
- Task and progress report relationships and dependencies.

In addition to the requirements stated above, the vendor must:

DB 018-D Submit a final Transition Phase Work Plan for approval within fifteen (15) calendar days after contract execution, or date specified by HHSC, addressing the business requirements detailed in the RFP and describe how the vendor will fulfill each of those requirements. The plan must include but is not limited to the following:

- An outline/schedule of key milestones and dates during the transition period including a proposed operations start date;
- Training activities to be performed by the incoming vendor;
- An outline of processes and procedures to be followed during the transition period;
- Identification of roles and responsibilities for the incoming vendor, the outgoing vendor, HHSC and additional stakeholders;
- Identification of issues that need to be addressed during a transition period, including but not limited to, meeting performance standards, training on the Data Broker System, which vendor operates the primary system, how disputes and issues will be resolved, and liability;
- Proposed method to identify, document and transfer property, tangible or intangible, and knowledge developed during the course of the outgoing vendor's contract;
- List of all subcontracts and related services;
- Stakeholders' roles and responsibilities; and
- A contact person, primary and secondary, and procedures for managing



problems or issues during the changeover period.

- DB 019-D Submit a weekly Transition Phase Status Report by 5:00 p.m. the Monday following the last day of the week covered by the report. HHSC will inform the vendor when the transition phase status report submission period begins and has ended. The status report must include but is not limited to the following:
- Accurate reflection of the status of work completed according to the outline/schedule of key milestones and dates;
  - Status of meeting activities and due dates;
  - Issues and resolution of issues, including the length of time from discovery to resolution;
  - Status of identified risks, mitigation strategies and activities, and contingency plans;
  - Identification Status of meeting activities and due dates; and
  - Status of requested corrective actions by HHSC.
- DB 020 Monitor, track and update work plan.
- DB 021 Implement and complete all transition activities identified in the Transition Plan and the Transition Phase Status Report prior to operational start date.
- DB 022 Meet all due dates contained within the Transition Plan and the Transition Phase Status Report or as otherwise directed by HHSC.

The Transition Phase Work Plan will be evaluated at the close of transition for vendor compliance and subsequently retired as a deliverable.

The Transition Phase Work Plan is a separate plan from the Business Operations Plan and will be submitted according to the requirements outlined in this RFP.

### **2.7. Risk Management & Issue Resolution Process**

To ensure the mitigation of risk to HHSC and clients/applicants, the vendor must establish a comprehensive risk management and issue resolution process for the Transition Phase, and after refinement during transition, continue as the process by which the vendor detects, manages, resolves and notifies HHSC of problems during the remainder of the contract life cycle. The respondent's proposal must include the methodology and approach to risk management and issue resolution. NIST Special Publication 800-39 provides guidance on the development and implementation of an integrated, organization-wide program for managing information security risk.

HHSC requires that where the vendor identifies risk, the vendor will identify actions to mitigate the risk or resolve the issue. The vendor must describe processes and procedures approved by and reported to HHSC, for reporting, tracking, monitoring, prioritizing, resolving, and escalating problems.

To ensure continuous improvement by the vendor and ensure a smooth transition and implementation, the vendor must develop, implement and maintain an issue resolution and notification process that will serve for the Transition Phase, and after refinement during transition, continue as the process by which the vendor detects, manages, resolves and notifies HHSC of problems during the remainder of the contract life cycle.

The vendor must develop, implement, and maintain a comprehensive risk management process

that identifies potential risks associated with each component of the Data Broker Service proposed. Vendors must include examples of previous risk management plans in their proposals.

The proposed risk management process must include:

- Risk identification methodology that identifies and classifies risk by severity, impact, and probability of occurrence;
- Operational and system implementation risks, including any that may pose a risk to the successful fulfillment of the contract;
- Process for communicating and updating HHSC; and
- A mitigation methodology, including examples of how the assessed risks will be managed, reported, monitored, and how any new risks will be identified, assessed, and mitigated.

In addition to the requirements stated above, the vendor must:

- DB 023        Develop a comprehensive risk management process and issue resolution process.
- DB 024-D     Submit a final Risk Management Process, including an issue resolution and notification process, within twenty (20) calendar days after contract execution or by the date specified by HHSC and anytime thereafter when specified by HHSC.
- DB 025        Implement and maintain the process upon receipt of HHSC approval, and revise as needed or at HHSC's direction.
- DB 026        Report progress of identified risks and mitigation activities throughout the transition phase within the weekly Transition Phase Status Report (DB 020-D).
- DB 027        Develop risk mitigation strategies and contingency plans for any identified risks that may impact business operations in sufficient time to prevent an adverse impact to current operations.
- DB 028        Document issue resolution and closures to the satisfaction of HHSC.
- DB 029        Report resolutions of issues to HHSC, including the length of time from discovery to resolution.
- DB 030        Develop steps to prevent recurrence.

## **2.8. Business Operations Plan**

To create strong vendor accountability controls and to ensure effective on-going operations with an emphasis on continuous improvement, the vendor must have strong management practices and an administrative and staffing structure sufficient to meet contractual responsibilities. Therefore, the vendor must submit a Business Operations Plan to HHSC for review and approval prior to the operational start date. The Business Operations Plan will not be implemented prior to HHSC approval. **The initial draft of the plan must be submitted with the respondent proposal.**

- DB 031-D     Submit a final Business Operations Plan within ninety (90) calendar days prior to the scheduled operational start date or by the date specified by HHSC and anytime thereafter when specified by HHSC. The Plan must include but is not limited to the following:
  - An outline (i.e. work plan) of all component activities (tasks, due dates, timelines and deliverables) planned for the upcoming year;

- The business improvement objectives, priorities, and outcomes for the upcoming year;
- The methodology for performing activities and meeting objectives;
- Plans for developing and implementing any necessary corrective actions;
- Methods for data source access and security;
- System performance monitoring and reporting; and
- Plans for maintaining current and updated user training materials.

A key component of the Business Operations Plan is an operational work plan. The operational work plan must be used to track the progress regarding tasks, timelines, deliverables, and the management of risk.

The Business Operations Plan must be an interactive and flexible working document that must be revised and updated as processes, procedures, structures, and/or organization changes occur. As a result, the vendor will be required to provide a detailed six-month evaluation report. The six-month evaluation serves as the primary basis for revisions, if any, to the business operations plan to reflect updated goals, activities, and processes. Therefore, the vendor is required to evaluate the actual activities performed as compared to HHSC approved Business Operations Plan.

In addition to the requirements stated above, the vendor must:

DB 032            Implement the Business Operations Plan after approval is obtained from HHSC.

DB 033-D        Submit a detailed six-month evaluation report of the Business Operations Plan within thirty (30) calendar days after the end of the six-month reporting period covered by the report.

### **HHSC Responsibilities**

At its discretion, HHSC may review, approve, or require modification to the respondent's proposed Business Operations Plan or establish the minimum requirements for the Business Operations Plan.

### **2.9. Readiness Assessment Process**

To ensure the mitigation of risk to HHSC and clients and assure a smooth transition, the vendor must establish a comprehensive Readiness Assessment Plan for all components of their proposal. The plan must specify how the vendor will prepare and test its staff, business practices, systems, and required system interfaces for the performance of business functions prior to the formal readiness review. **The initial draft of the plan must be submitted with the respondent proposal.**

DB 034-D        Submit, implement, and maintain a Readiness Assessment Plan for the operations and systems within twenty-five (25) calendar days after contract execution or by the date specified by HHSC. The plan must include but is not limited to the following:

- How the vendor will prepare and conduct rigorous systems testing in a tightly controlled and fully production-ready environment;
- How the vendor will test business practices, systems, and required system interfaces for the performance of business functions prior to the formal readiness review;
- How the readiness assessment will be conducted;
- How the results will be collected and presented; and
- How problems will be addressed, if identified.

DB 035-D Submit the results of the Readiness Assessment within fifteen (15) calendar days after the readiness assessment review has been completed but prior to the operational start date. The Report must address all requirements of the plan and must identify problems uncovered and indicate how and when the vendor will address and resolve the problems identified.

### 2.10. Quality Management Plan

The Quality Management plan provides the framework for a comprehensive, continuous, and measurable quality assurance program. The plan must embody the vendor endorsement of the fundamental importance of quality by promoting, reinforcing, and acknowledging quality management activities. **The initial draft of the plan must be submitted with the respondent proposal.**

DB 036-D Submit, implement, and maintain a Quality Management Plan including an overall approach for a comprehensive, continuous, and measurable quality management program within thirty (30) calendar days after contract execution or by the date specified by HHSC and annually thereafter within thirty (30) prior to the end of each operational year. The plan must include but is not limited to the following:

- Strategies and processes to promote quality;
- Procedures to periodically measure and report performance to the HHSC through the contract; and
- A requirement that the vendor shall supply to HHSC copies of all internal quality assurance audit reports when developed or received by the vendor.

### 2.11. System Security

To ensure system security of the Data Broker Services, the vendor must comply with the DUA and the Security and Privacy Initial Inquiry (SPI) requirements, which are the basic initial security controls necessary to protect the confidentiality, integrity and availability of HHS confidential information. In addition, to ensure system security, the vendor must terminate user access within twenty-four (24) hours of the HHSC request. **The respondent must submit the SPI as part of the respondent Proposal (Package 4 on the ESD).**

DB 037 In addition to the SPI initial security control requirements, the awarded vendor will be required to comply with HHSC's periodic security controls assessment and monitoring process as stated in the DUA. This is explained in the Enterprise Information Security Risk Assessment and Monitoring Procedure (EIS-RAMP) document available in the procurement library and at [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/BO\\_home.shtml](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml).

DB 038 The EIS-RAMP requires development of a System Security Plan (SSP) that will document required security controls, implementation and compliance status. The required security controls documented in the SSP will be determined by using the EIS-RAMP. HHS will coordinate the EIS-RAMP process with the awarded vendor. Compliance with the required security controls is on a risk-based approach where 100% compliance must be achieved over time.

The EIS-RAMP describes security control baselines contained in the SSP which align with and are derived from the controls prescribed in the Texas Department of Information Resources (DIR) Security Control Standards Catalog and the National Institute of Standards and Technology (NIST) Special Publication 800-53 Rev 4.

DB 039 Develop and implement a process for documenting, tracking, monitoring and reporting security issues to HHSC.

### **2.12. Security Incident Response Plan**

The vendor must develop and implement a Security Incident Response Plan that provides a coordinated approach to security incidents. The plan must contain a comprehensive approach to how the vendor would respond to a security breach or suspicion of unauthorized access. Handling elements of an incident plan would include preparation, detection and analysis, containment, eradication, and recovery. **The initial draft of the plan must be submitted with the respondent proposal.**

A **security incident** is defined as an occurrence that actually or potentially jeopardizes confidentiality, integrity, or availability of the vendor's information system and/or HHSC confidential information.

DB 040-D Develop and implement a Security Incident Response Plan within forty (40) calendar days after contract execution or the date specified by HHSC. The plan must include but is not limited to the following:

- Provides the organization with a roadmap for implementing its incident response capability;
- Describes the structure and organization of the incident response capability;
- Provides a high-level approach for how the incident response capability fits into the overall vendor organization;
- Meets the unique requirements of the vendor organization, which relate to mission, size, structure, and functions;
- Defines reportable incidents;
- Provides metrics for measuring the incident response capability within the organization;
- Defines the resources and management support needed to effectively maintain and mature an incident response capability;
- Is reviewed and approved by designated officials within vendor organization;
- Reviews the incident response plan as significant changes occur in the environment; and
- Updates the incident response plan to address system organizational changes or problems encountered during plan implementation, execution, or testing.

DB 041-D Vendor will be required to follow ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS of the DUA relating to reporting of security incidents.

### **2.13. Acceptance Testing Plan**

The Acceptance Testing Plan shall define the responsibilities of the vendor and HHSC, as well as all other parties. The Acceptance Testing Plan and supporting processes will be used throughout the term of the contract as changes occur to HHSC systems and the data broker services system. **The initial draft of the plan must be submitted with the respondent proposal.**

DB 042-D Submit, implement, and maintain an Acceptance Testing Plan within forty-five (40) calendar days after contract execution or the date specified by HHSC. The plan must include but is not limited to the following:

- Acceptance Test Work Plan -- Define the activities associated with the test,

- when they will begin and end, responsible parties;
- HHSC -- Describe the activities for which HHSC is responsible (i.e., creating test scenarios, performing the tests, and validating the test results);
- Acceptance Criteria -- Define acceptance testing criteria (metrics);
- Review and provide feedback on all relevant TIERS modifications and maintenance documentation within specified timeframes requested by HHSC;
- Support the following tests on TIERS releases:
  - System Integration Test
  - User Acceptance Test
- Ensure the Data Broker system is well integrated with TIERS, YourTexasBenefits.com, and the mobile app;
- Comply with testing requirements that ensure integration between the Data Broker system with TIERS, YourTexasBenefits.com, and the mobile app;
- Perform Data Broker System Compatibility Testing upon request; and
- Support service continuity testing.

#### **2.14. Disaster Recovery and Business Continuity Plan**

The vendor must provide a Disaster Recovery and Business Continuity Plan which addresses transition and ongoing operations. It is critical the plan provide for uninterrupted service delivery to the designated HHSC workers. **The initial draft of the plan must be submitted with the respondent proposal.**

The approved plan must be in place prior to the operational start date.

DB 043-D Submit, implement, and maintain a Disaster Recovery and Business Continuity Plan specific to the transition and on-going operations within fifty (50) calendar days after contract execution or by the date specified by HHSC; and annually thereafter within thirty (30) calendar days prior to the end of each operational year. The plan must include but is not limited to the following:

- An overall approach for reestablishing operations and service delivery within twenty-four (24) hours in the event of an unplanned system outage (e.g. hardware or software outages) and/or in the event a catastrophe occur affecting performance of operations;
- Any other systems required for operations;
- A description of potential issues that may realistically occur, including, but not limited to instances such as natural disasters, unplanned system outages, a facility is no longer available, etc., during the operations phase of a project and an outline of courses of action to address and resolve the anticipated problems;
- A description of the vendor's approach to determining disaster recovery site location, which must be located in the continental United States. Indicate the location of the disaster recovery site and the proximity to vendor's central site;
- A description of backup and recovery procedures specifying timeframes for restoring service and whether the service restored is full or partial;
- A contingency plan addressing interruptions to the established training plan and outlining communication processes, short and/or long term resolutions, action steps, and response time frames;
- A description of the documentation and tracking instruments that will allow HHSC to determine if performance measures are met;
- A proposed reporting mechanism specific to disaster recovery and contingency operations;
- The process for informing HHSC contacts of incidents and major system

- outages; and
- A commitment to participate in an enterprise-wide test of the disaster recovery solution annually or more frequently if required by HHSC.

## 2.15. Reporting Major Systems Outage and Incidents

To ensure timely recovery of critical business functions and information technology systems in the event they are impaired or lost, mitigation of risk and timely notification, the vendor must report all major systems outages and incidents to HHSC as specified under the requirements in Section 2. In addition the vendor must meet the following requirements:

An **incident** is defined as an event that may or may not result in a disruption of the workflow or degradation of Data Broker Services. This does not include a major systems outage.

An **Incident Report** is defined as a detailed report provided by the vendor on an outage of a system that supports the Data Broker Service.

A **major system outage** is defined as an outage that results in a disruption of the workflow or degradation of Data Broker Services of more than ten (10) minutes or an agreed upon percentage of failed transactions performed by the vendor or intended to be performed for or on behalf of HHSC clients or prospective beneficiaries of a Program.

A **major system outage report** is defined as a detailed report on all major systems outages of systems controlled by the vendor as well as systems controlled by HHSC that supports the Data Broker Service.

DB 044-D All major system outages must be reported to HHSC via e-mail or telephone (if e-mail is unavailable) within five (5) minutes after vendor determines a major system outage has occurred. The vendor must submit a Major System Outage Report to HHSC via the official correspondence process within 24 hours of reported system outages detailing the incident, when and how it was discovered, system and operational impacts, and corrective measures to detect and prevent future major systems outages.

DB 045-D All incidents (excluding security incidents) must be reported to HHSC via e-mail or telephone (if e-mail is unavailable) within five (5) minutes after vendor determines an incident has occurred. The vendor must submit an Incident Report to HHSC via the official correspondence process within 24 hours of reported system outages detailing the incident, when and how it was discovered, system and operational impacts, and corrective measures to detect and prevent future incidents.

DB 046 Vendor is required to notify HHSC when an incident or major systems outage is resolved. HHSC will define the timeframe and method of notification.

DB 047 Vendor is also required to report the status of all major systems outages and incidents within the DB 068-D Monthly Status Report.

## 2.16. Change Management Plan

The vendor must establish a comprehensive Change Management Plan with strategies, process and procedures to manage change and control scope. The vendor must provide a formalized methodology for handling change management including how changes will be proposed, reviewed, tracked, approved, and implemented. **The initial draft of the plan must be submitted with the respondent proposal.**

In the event there is a reason to change the project scope, HHSC will initiate the change request via the official correspondence process. The change request will provide information regarding the change comparable to the detail originally included in the RFP documentation.

HHSC and the vendor will endeavor to agree upon appropriate and mutually agreeable changes in cost, schedule or other terms associated with the change request. No change request shall be implemented unless set forth in writing and approved and signed by an authorized representative of each party.

DB 048-D Submit, implement, and maintain a Change Management Plan within fifty-five (55) calendar days after contract execution or by the date specified by HHSC. The plan must include but is not limited to the following:

- The methodology addressing how change requests will be received, analyzed and presented;
- Identification of the impact of the change to the schedule, quality, and cost structure; and
- Details regarding how resources (systems and people) will be managed to support change requests.

DB 049 Respond to change requests via a charter, impact assessment report and/or other requested artifacts based upon agreed methodologies and submit to HHSC for approval.

DB 050 Implement approved change requests within the agreed upon release schedule and/or operational implementation timeframe.

### 2.17. System Maintenance

The awarded vendor will be responsible for all Data Broker Services maintenance and will maintain, at optimized levels, all hardware and software at no additional cost to HHSC above what is included in the proposed fixed costs.

Software maintenance is defined as maintenance of the system products, including interfaces. At a minimum, maintenance must include; correcting hardware and software defects; patch implementation; adapting software to handle changes in the environment such as in the operating system or database management system; and perfecting the product's functionality, usability, reliability, performance, and security. Software maintenance does not include major rewrites of the product that substantially change the product's functionality. **The initial draft of the plan must be submitted with the respondent proposal.**

DB 051-D Submit, implement, and maintain a System Maintenance Plan within sixty (60) calendar days after contract execution or by the date specified by HHSC that ensures 99.5% availability of the Data Broker System. The maintenance must not interfere with system availability and required response time levels of the system.

DB 052 Ensure the proposed system will have procedures for communication and coordination with users about operating and applications systems software upgrades and for implementing these upgrades. This includes announcements of new applications, new releases, the fixing of errors, and fixes to custom software.

DB 053 Update of remote equipment for any and all upgrades, changes, etc. must be done from the vendor's central site. Vendor must describe the method of communication.



## 2.18. System Development

The vendor is to provide a system that meets the requirements of the RFP and complies with applicable state or federal laws, rules or regulations.

- DB 054 The proposed solution must detail how the vendor will provide instructions and documentation regarding the development as well as use of the proposed data sources in the Data Broker System in connection with each design requirement described in Section 2.1 General Project Requirements, as follows:
- Data descriptions;
  - Flow of data;
  - Processes and logic regarding the programming of each data source;
  - Maintenance schedules;
  - Guidelines for ensuring HHSC confidential information is protected in accordance with the requirements of the contract;
  - Guidelines ensuring data is virus free;
  - Overview of available data;
  - How the data is displayed to HHSC specifications;
  - How to read and use data; and
  - Limitations on the use of data.
- DB 055 Maintain and provide HHSC with up-to-date plans including but not limited to resources involved, schedules and goals.
- DB 056 Provide development and implementation schedules for all system components with periodic progress reports as defined by HHSC.
- DB 057 Provide the capability to interface with HHSC development and test/training systems using simulated data. Provide details regarding Acceptance Testing with HHSC for all systems development and modification processes.
- DB 058 Provide the ability for HHSC to add new related services or functionality, and to request additional data source development, if necessary.
- DB 059 Store data broker requests and resulting data, as well as provide a method to link to, and access to data from TIERS, in order to provide a history of activity.
- DB 060 Develop and maintain a predictive analytics solution.
- DB 061 Develop and maintain daily transaction logs and user ID level reporting data.

## 2.19. Potential System Enhancements

System enhancement is defined as a system development initiative that improves and/or adds functionality to a component. HHSC anticipates development of new data sources during the initial term of the contract.

- Alternative data sources; and
- Any other enhancements as defined by HHSC; or
- As required by Federal or state statute, and rule or policy.

## 2.20. System Availability

The respondent's proposal must include system availability which accommodates the two different

time zones in Texas and the occurrence of daylight saving time (DST). At a minimum, Vendor must provide system availability from 7:00 a.m. until 8:00 p.m. Central Time, Monday through Friday and 8:00 a.m. until 6:00 p.m. Central Time, designated Saturdays, and as specified by HHSC. The respondent's proposal must also include its notification procedures in the event hazardous conditions or other situations impair the vendor's ability to perform their normal functions in support of HHSC.

HHSC requires the vendor to perform system maintenance and upgrades during non-operational timeframes. This will include any processing of data sources that require batch processing or other systems processing to meet the requirements of the Data Broker Service.

- DB 062        The vendor must provide on-line access to the applications and functionality a minimum of 99.5% of user system availability in each calendar month.
- DB 063        Schedule maintenance during non-hours of operation unless approval is granted by HHSC.
- DB 064        Correct all incidents that may impact the HHSC user's ability to access the Data Broker System and the use of the system for eligibility determination.
- DB 065        Provide an alternative Data Broker Services solution that will provide access and performance when and if the main access method with HHSC is unavailable.

### **2.21. Transaction Response Times**

Respondents are required to propose Data Broker System response times to users that take into consideration the complexity of the data source processing and responses presentation as well as TIERS processing timeframes.

The Data Broker System must perform all inquiries requesting existing client record information (i.e. data sources, case history, usage, automated responses, etc.) with an online response time to be proposed by the respondent but not to exceed eight (8) seconds for each individual data source per request. The response time is measured and calculated on a daily basis. The awarded Vendor must measure response times during Acceptance Testing, as well as regularly thereafter, as the system expands, to monitor system compliance.

The proposed solution should provide for filtering of duplicative requests from users due to data source delayed response times. The filtering process should ensure the original request is retained until the data source responds but not allow multiple requests from the same data source for the same individual information to be processed.

### **2.22. Technology and Technical Operations**

HHSC will provide supporting system and related interfaces as follows:

- Integrated Eligibility Determination software application - Texas Integrated Eligibility Redesign System(TIERS);
- YourTexasBenefits.com applications via an industry standard web service;
- Mobile app; and
- Access and Security control.

The respondent's proposal must incorporate technology using web services, and access to such technology and website must meet all of the State of Texas accessibility requirements. The respondent proposal must also acknowledge that the final contract will include meet the requirements specified in Title 1 Texas Administrative Code Chapter 213.

The respondent proposal must include an optional technology refresh of hardware/software at no additional expense to HHSC. Proposals must describe methodology for assuring the proposed solution will remain technologically up-to-date and provide optimal functionality during the term of the contract. All refreshes of hardware/software must be approved by HHSC prior to initiation.

### 2.23. Training Requirements

The vendor must provide a Training Plan for HHSC staff, other HHS agency staff and subcontractors. The plan must support the HHSC functions and must be in accordance with vendor contractual responsibilities. The plan must also include processes for the approach to train the vendor's own staff. **The initial draft of the plan must be submitted with the respondent proposal.**

The vendor will design training for Data Broker Services specific user groups. The vendor must develop procedures for maintaining and updating the plan, training material, and modifications to the training, at the request of HHSC, throughout the contract term. HHSC will review for accuracy all training documents within the testing and production environments.

DB 066-D Submit, implement, and maintain a Training Plan within thirty (30) calendar days prior to the scheduled operational start date or by the date specified by HHSC. The plan must include, but is not limited to:

- A plan for HHSC staff, other HHS agency staff and subcontractors
  - Minimum hardware requirements;
  - Set up procedures;
  - An explanation of the functionality and appropriate use of the system;
  - Overview of available data;
  - Current HHSC policy/procedures;
  - How to read the data;
  - How to use the data;
  - How to protect HHSC Confidential Information;
  - Limitations on the use of data (for example permissible purpose);
  - Case scenarios provided by HHSC for appropriate use of the system;
  - Requirement that users achieve a minimum assessment score established by HHSC, or a Pass/Fail option; and
  - Refresher training.
- A plan for an electronic training repository of all training activities performed within the Data Broker System application with HHSC access via web services. The electronic training repository must be maintained throughout the contract term. All materials within the repository must be available upon request and must be transferable to HHSC at the end of term of the contract.
- A plan for the vendor's own staff training
  - Vendor will outline appropriate staff training method, including but not limited to vendor operations, processes, procedures and policy (existing as well as potential changes in law and/or policy), quality, security and privacy, and confidentiality.
  - Vendor will address staff training including but not limited to HIPAA, client/applicant confidentiality, and safeguarding client/applicant data. Vendor will follow the State's requirements for training guidelines and timeframes.
  - Vendor will design training plans for initial, remedial, corrective action, refresher/reinforcement, and continuous improvement for all new hires and

- existing staff, including supervisory/management staff.
- HHSC reserves the right to observe and participate in training sessions.

DB 067-D Provide any training materials including all updates or modifications for review and approval by HHSC forty-five (45) calendar days prior to implementation. Exceptions to timeframes must be approved by HHSC.

### **2.23.1. Continuous Improvement**

- Vendor will continuously develop and recommend processes that support ongoing employee excellence, growth and development in regards to Data Broker Training;
- Vendor will modify/change and provide updated Training versions as HHSC deems necessary for HHSC staff to perform their responsibilities when accessing the Data Broker System; and
- Vendor will provide ad hoc reports when deemed necessary by HHSC.

### **2.24. Operational Status**

During the life of the contract, the vendor will be required to carry out daily operational activities related to providing Data Broker Services as described under Section 2. To ensure the outcomes, products and services delivered are performed and meet or exceed federal, state, and HHSC requirements, a monthly status must be provided.

DB 068-D Submit a Monthly Status Report within ten (10) business days following the last day covered by the report. HHSC will inform the vendor when the monthly status report submission period begins. The monthly status report must include but is not limited to the following:

- Performance data and metrics, KPR compliance;
- Include the status of identified risks, mitigation strategies and activities, and contingency plans;
- Issues, resolution of issues, including the length of time from discovery to resolution;
- Requested corrective actions by HHSC and the status;
- Detailed description of all major systems outages and incidents, detailing the incident, when and how it was discovered, system and operational impacts, and corrective measures to detect and prevent future major systems outages/incidents;
- Summary data of Quality Management activities conducted; and
- Detailed report validating terminations of user accounts within the required timeframe for the month as a result of weekly HHSC termination requests submitted to the vendor and/or users terminated as a result of HHSC policies.

### **2.25. Turnover Requirements**

The following presents the turnover requirements to which the vendor must agree. Turnover is defined as those activities that are required for the vendor to perform in order to transition contract operations to a subsequent vendor or to HHSC.

#### **2.25.1. Turnover Phases**

At the commencement and during turnover, the vendor must ensure that HHSC and the clients/applicants do not experience any adverse impact from the transfer of services to another entity or to HHSC. The vendor must develop and implement an HHSC approved, comprehensive

Turnover Plan that details the processes to be followed, the proposed scheduled, activities including knowledge transfer, and resource requirements associated with the turnover tasks identified.

Turnover activities include, but are not limited to:

- Transfer of information including data and reference tables (if applicable); data entry software (if utilized); third-party software and modifications; documentation relating to software and interfaces; functional business process flows; and operational information concerning subcontractors;
- Transfer of all documentation pertaining to filling all requirements of the RFP that are necessary for successful turnover to another vendor,
- Transfer of all training materials in electronic format including but not limited to: development methodology including software package if used, curriculum materials, materials in development and supporting documentation, best practice materials, all other training and curriculum development documentation and data;
- Process and components of comprehensive and complete knowledge transfer to HHSC or to another entity of all components in this RFP and the contract; and
- The implementation of a quality assurance process to monitor turnover activities.

The vendor must not execute contracts, leasing or licensing agreements under the contract that are not transferable to another entity or HHSC upon Turnover.

HHSC will make the final determination regarding completion of knowledge transfer.

### **2.25.2. Turnover Plan**

To ensure smooth transition of turnover and mitigate risk to HHSC and clients, the vendor must prepare a comprehensive Turnover Plan that clearly identifies those activities that are required in order to transition contract operations to a subsequent vendor for HHSC. The vendor awarded a contract pursuant to this RFP is designated as the outgoing vendor for purposes of the Turnover Plan. The plan must acknowledge that the outgoing vendor will be responsive to incoming vendor.

The plan must be a comprehensive document detailing the processes, proposed schedule, activities and systems, and resource requirements associated with the turnover tasks. Additionally, the plan, must be provided in a format and media specified by HHSC.

DB 069-D      Submit initial Turnover Plan within seventy (70) calendar days after contract execution or by the date specified by HHSC. The Turnover Plan must:

- Have a provision stating that copies of all relevant data and reference tables, documentation, or other pertinent information necessary to take over and successfully assume operational activities, including all works in progress will be provided to HHSC;
- Have a provision stating that current inventories, correspondence, documentation of outstanding issues, and other operations support documentation will be provided;
- Have a provision for the transfer of all written (electronic format) documentation, including work in progress pertaining to the business processes including but not limited to: work instructions, work process flows, system user instructions, process memos, plans, and any other materials used in the business process;
- Have a provision for detailed documentation describing all relevant information regarding the data sources used within the data broker solution and needed information for the combined report presented in TIERS;

- Have a provision for the transfer of all training materials in electronic format including but not limited to: development methodology including software package if used, curriculum materials in development and supporting documentation, best practice materials, all other training and curriculum development documentation and data;
- Include a provision for a Knowledge Transfer Plan that provides for the complete transfer to HHSC or to another entity of all components in this RFP and the contract. HHSC will make the final determination regarding completion of knowledge transfer;
- Include a quality assurance process to monitor turnover activities;
- Include a provision for a post Turnover Results Report;
- Include a provision for access by the incoming vendor or HHSC to a manager-level employee with significant experience with the contract and other technical and operational experts for up to ninety (90) days after the transition date for defect resolution, and turnover activities, including software maintenance; and
- Provide a description of the vendor's approach and schedule for transfer for all of the Transition Plan requirements to the incoming vendor.

- DB 070-D Submit a final Turnover Plan within six (6) months after the initiation of the contract or date specified by HHSC, and annually thereafter within thirty (30) calendar days prior to the end of each operational year or date specified by HHSC, including any extension for HHSC approval. The Turnover Plan must include all of the above requirements.
- DB 071-D Submit a comprehensive Knowledge Transfer Plan, including training products and subject matter experts within sixty (60) calendar days prior to the end of the contract operational year.
- DB 072-D Submit a Turnover Results Report within forty-five (45) calendar days after the completion of turnover activities or by the date specified by HHSC. Turnover will not be considered complete and final payment will not be made until the Turnover Results Report is received and approved by HHSC.
- DB 073 Appoint, with HHSC approval, a manager to manage and coordinate all turnover activities outlined in the Turnover Plan approved by HHSC.
- DB 074 Not reduce operational staffing levels during the turnover period without prior approval by HHSC.
- DB 075 Provide to HHSC or its designee upon request, copies of all relevant data and reference tables, documentation, systems, data entry software (if utilized); third party software and modifications; documentation relating to software; functional business process flows, or other pertinent information necessary to take over and successfully assume operational activities, including all works in progress.
- DB 076 Provide all relevant information and documentation regarding the Predicative Analytics and ID Authentication solutions will be provided, including the development process documentation if conducted during the term of this contract.
- DB 077 Turn over the operation and management of all business functions to HHSC or its designee. This turnover must be planned and managed in an orderly fashion so that no disruption of service to users.

- DB 078 Provide training to the successor vendor and HHSC prior to completion of turnover.
- DB 079 Work closely with HHSC to ensure that the turnover of responsibilities and the necessary knowledge transfer is completed by the end of the contract period.
- DB 080 Begin turnover activities ninety (90) calendar days prior to contract termination or by the date specified by HHSC.
- DB 081 Respond in a timely manner to all HHSC requests regarding turnover requirements.
- DB 082 Be responsible for any malfunctions that existed in the equipment, hardware, and software prior to turnover or that were caused by lack of vendor support during turnover, as may be determined by HHSC.
- DB 083 Propose and provide experienced vendor personnel to support HHSC during the entire post-turnover support period.
- DB 084 Vendor must agree to the final payment being withheld up to 180 calendar days following contract termination to assure the vendor's compliance with the agreed post-turnover support.

## **2.26. Financial Reporting Requirements**

The awarded vendor must submit a monthly invoice following the month in which the vendor provides services. HHSC will process and pay the monthly fixed prices plus one or more variable fee approach related to the administrative services in accordance with Chapter 2251, Texas Government Code (Prompt Payment Act).

HHSC, at its sole discretion, may choose to process only a portion of an invoice, if only a portion of the invoice can be verified and validated by the information submitted. If HHSC decides to process an invoice in this manner, an adjustment will be made by HHSC and only that portion of the invoice that can be verified and validated will be paid.

The vendor must submit supplemental invoice(s) along with any and all necessary corrections to be paid for the modification fee(s) previously denied or not processed by HHSC. HHSC intends to process and pay modification fee(s) billed on supplemental invoices in accordance with Chapter 2251, Texas Government Code. Each invoice will be processed and paid separately. .

- DB 085-D Prepare an invoice for payment for each month during the term of the agreement no later than thirty (30) calendar days following the end of the previous month. In addition, a vendor will supply detailed information in an electronic format that supports the monthly invoice. HHSC reserves the right to request financial information and supporting information in a format that will allow HHSC to most efficiently comply with its state and federal financial reporting requirements.
- DB 086 Maintain an accounting system that provides an audit trail containing sufficient financial documentation to allow for the reconciliation of billings, reports, and financial statements with all general ledger accounts and specific business functional areas within any applicable components.

## **HHSC Responsibilities**

HHSC will pay invoices in a timely manner in accordance with the Prompt Payment Act.

### **2.26.1. Business Objective**

The objective of the Financial Approach is to describe the financial components that will enable HHSC and the state programs included in this RFP to achieve the Mission Objectives described in Section 1.5 of the RFP and to ensure that all services required of the vendor are provided as efficiently and effectively as possible to assist HHSC in its responsibility for the efficient and effective administration of federal awards through the application of sound management practices.

### **2.27. Financial: Accounting and Reporting Requirements**

#### **Overview**

This section presents HHSC and vendor responsibilities for recording and reporting Contract transactions.

The need for greater public and financial accountability in the administration of critical taxpayer-funded programs has led to a demand for more information regarding government programs and services. Public officials, legislators, and citizens want and need to know whether government funds are handled properly and in compliance with laws and regulations.

The business objectives relating to Accounting and Reporting requirements include:

- A. Accumulating and reporting accounting data in accordance with the following standards (as they may be amended during the term of the Contract):
  - 1) Generally Accepted Accounting Principles (GAAP);
  - 2) Title 48 CFR, Chapter 1, Parts 30 and 31 and Chapter 99;
  - 3) Federal guidelines, rules and regulations applicable to programs within the scope of the RFP;
  - 4) HHSC guidelines, rules, regulations and provisions applicable to programs within scope of this procurement. Where HHSC guidelines, rules, regulations and provisions of this procurement are in conflict with GAAP, Title 48 CFR Chapter 99, Title 48 CFR, Chapter 1, Part 30 or Title 48 CFR Chapter 1, Part 31, then the HHSC guidelines, rules, regulations and provisions of this procurement will prevail; and
  - 5) Providing authorized governmental representatives of the State and the Federal government full access to all information needed to conduct financial reviews and audits required by law or by the contract resulting from this RFP in accordance with applicable standards.
- B. Effectively regulating costs. To this end, allowable costs are costs that, in HHSC's sole determination are:
  - 1) Necessary and reasonable for the proper and efficient performance and administration of applicable federal awards;
  - 2) Allocable to applicable federal awards under the provisions of the federal standards or any other accounting provisions include in the Contract resulting from this RFP;
  - 3) Authorized or not prohibited under state laws, state regulations or any provision included in the Contract resulting from this RFP;
  - 4) In conformity with any limitations or exclusions set forth in applicable accounting principles, federal laws, terms and conditions of the federal award(s) to HHSC and/or the Contract;
  - 5) Consistent with policies, regulations and procedures that apply uniformly to federal awards impacting the Contract;
  - 6) Determined in accordance with GAAP;
  - 7) Adequately documented; and



- 8) Consistent with a prospective Vendor's normal treatment of the expense. A cost may not be assigned to a federal award or a Contract resulting from this RFP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a federal award or a different contract with HHSC as an indirect cost.

#### **2.27.1. Financial Accounting Requirements**

Accruals of expenses or liabilities are subject to HHSC review and approval. HHSC will not recognize as valid costs, any accruals that it deems inappropriate. For example, lease agreement costs beyond the effective date of termination or completion of the Contract, or lease cancellation expenses resulting from termination or completion of the Contract, will not represent valid allowable costs.

Allowable and non-allowable direct and indirect costs wherever applicable to any payments to the Contractor will be governed by the principles set forth in the following regulations (as they may be amended during the term of the contract) and documents:

- Title 48 CFR, Chapter 1, Part 31 – Contract Cost Principles and Procedures;
- Title 48 CFR, Chapter 1, Part 30 – Cost Accounting Standards Administration; and
- Title 48 CFR, Chapter 99 – Cost Accounting Standards.

In addition to costs that are unallowable pursuant to the above accounting principles, HHSC has deemed some of the allowable costs to be specifically unallowable for the Contract resulting from this RFP. A list of additional unallowable costs is as follows:

- 1) Local and State taxes paid to local or state governments outside of Texas (other than hotel, airline and sales taxes expended specifically for the Contract resulting from this RFP);
- 2) Federal taxes (other than hotel, airline and sales taxes expended specifically for the contract resulting from this RFP);
- 3) Proposal costs of any type;
- 4) Employee bonuses in excess of 10% of the employee's base pay;
- 5) Public Relations and Selling costs;
- 6) Actual costs, remedies and/or damages due to HHSC as a result of the Contractor not meeting State performance requirements;
- 7) Actual costs, including interest expense due to HHSC or any other party as a result of the Contractor not meeting State performance requirements;
- 8) Any monies owed to the federal government by the State as a result of the Contractor not meeting federal performance requirements;
- 9) Dispute resolution and arbitration costs;
- 10) Contingency funding costs;
- 11) Pre-contract costs;
- 12) Indirect expenses (Overhead, General & Administrative charges, etc.) and administrative service fees related to Pass-Through Items; and
- 13) Inter-company profits and margins related to all transactions with any parent, affiliate, or subsidiary organization, including inter-company profits and margins related to all transactions the Contractor or the Contractor's subsidiary has with any parent, affiliate, or

subsidiary organization.

Any parent, affiliate, or subsidiary organization providing services associated with this procurement is required to comply with these requirements related to unallowable contract expenses.

As indicated in FAR 31.203, any indirect costs and associated profit applicable to subcontract costs where the Contractor does not provide “added value” (e.g., subcontract management functions) are considered excessive pass-through costs which are unallowable.

## **2.28. General Access to Accounting Records**

The awarded vendor must provide authorized governmental representatives of HHSC and the federal government full access to all financial and accounting records related to the performance of the contract resulting from this RFP, including all requested subcontractor financial and accounting records. The financial and accounting records shall be provided to the authorized governmental representatives of HHSC and the federal government in an electronic format when requested.

In addition to the requirements stated above, the vendor and its subcontractors must:

- DB 087 Cooperate with HHSC, HHSC auditors, Texas State Auditor’s Office (SAO) and the federal government in their inspections, audits, and/or reviews, and provide all necessary records and information. As required by Title 48 CFR, Chapter 1, Part 30, Title 48 CFR, Chapter 1, Part 31 and Title 48 CFR, Chapter 99, it is the responsibility of any awarded vendor to provide adequate documentation and justification to the authorized representatives of HHSC, HHSC auditors, Texas State Auditor’s Office (SAO) and the federal government during the inspection, audit and/or review process for all expenses included in the awarded vendor’s accounting records.
- DB 088 Permit authorized governmental representatives of HHSC and the federal government full access, both on-line (on a read-only basis) and in person, during normal business hours, to the accounting records that HHSC, HHSC auditors, Texas State Auditor’s Office (SAO) and/or the federal government determine are relevant to the contract resulting from this RFP.
- DB 089 Make accounting records or supporting documentation relevant to the resulting contract available to HHSC or its agents within 10 business days of receiving a written request from HHSC for specified records or information. At the request of HHSC or its agents, provide copies of any accounting records or supporting documentation HHSC determines is relevant to a resulting contract within 10 business days of receiving a written request from HHSC for copies of the specified records or information.
- DB 090 Deliver to HHSC any contractually relevant reports or records that cannot be accessed on-line by HHSC personnel.
- DB 091 Provide authorized governmental representatives of HHSC, HHSC auditors, Texas State Auditor’s Office (SAO) and the federal government with access to the accounting and financial records of the vendor’s parent company, vendor’s affiliates, vendor’s subsidiaries and to any individual, partnership, firm, subsidiary, affiliate, or corporation of the vendor or parent company of the vendor that transacts business with any department, board, commission, institution or other HHSC or federal agency connected with the contract resulting from this RFP. This

requirement is limited to those records that relate to the performance of the contract resulting from this RFP.

## **2.29. Financial Report Requirements**

HHSC will require the awarded vendor to provide financial reports to support contract monitoring and support any HHSC and federal reporting requirements.

In addition to the requirements stated above, the vendor must:

DB 092-D Provide financial statements no later than ninety (90) calendar days after contract execution, or date specified by HHSC, including, but not limited to an Annual Report or Income Statement, depicting the vendor's operation for the initial review of this RFP that ties back to the cost proposal. HHSC reserves the right to request financial information in a format that will allow HHSC to most efficiently comply with its state and federal financial reporting requirements under the contract resulting from this RFP.

## **HHSC Responsibilities**

At its discretion, HHSC may review financial reports provided by the vendor for accuracy and completeness.

## **2.30. Financial Payment Structure and Provisions**

The financial payment structure for the Data Broker Services contract relates to the Administrative Payments. The following sections describe the pricing structures and the major variables affecting the administrative payments.

## **2.31. Overview of Financial Payment Structures**

Payment for the contractual services described in this RFP will be based on several pricing structures, depending on the specific component, specific service and/or deliverable required and whether the vendor correctly performed the required service and/or deliverable. The vendor will receive payments monthly as compensation for correctly and appropriately performing the services required in the contract resulting from this RFP.

The methods by which the vendor will be paid for services under the Contract include:

### **2.31.1. Non-Recurring Maintenance, Modifications, and Additional Periodic Activities**

HHSC anticipates that, during the life of the Contract, implementation of federal and state mandates and other state initiatives will require additions or changes to the activities performed under the contract resulting from this RFP. If applicable, payment for costs associated with non-recurring modifications and additional periodic activities required after the Operational Start Date will be negotiated with the vendor. The costs for such non-recurring modifications will be based on the explicit fixed hourly rates proposed by a vendor as described in the instructions for completion of the pricing proposal forms (payment for additional activities - catalog pricing/all-inclusive hourly labor rates) and the actual number of hours worked on the specific modification by the vendor's staff or the staff of a vendor's subcontractor.

A vendor will employ the all-inclusive hourly labor rates proposed in developing pricing proposals for the performance of non-recurring modifications and additional periodic activities required after the Operational Start Date. Additional periodic activities are defined as the provision of any service(s), deliverable(s), or product(s) that will not be performed on a regular recurring basis. The all-inclusive hourly labor rates will be proposed for the first twelve (12) months of the resulting

contract. Rates for subsequent 12-month operational periods and for periods less than 12 months following the first 12 months of the contract will be determined by the application of a fixed annual price inflator/deflator proposed by the vendor and accepted by HHSC. The vendors application of the fixed annual price inflator/deflator to the all-inclusive hourly labor rates will be dependent on the States fixed annual inflator (if none is designated to the State workers then it will not apply to the vendor).

### **2.31.2. Payment for Pass-Through Items**

Actual expenditures for pass-through items made on HHSC's behalf will be paid without allocation of any indirect charges (general & administrative expenses, overhead, etc.) or the allowable administrative service fee. The vendor must utilize the detailed pricing schedules included in Attachment A, Appendix A-2 to depict the amount of pass-through expenses that will be paid without indirect charges or the allowable administrative service fee. Items designated as pass-through items include the following:

- Software license fees and software maintenance fees;
- Office rent (including leasehold improvements and lease pass-through expenses); and
- All HHSC approved printing and postage costs.

Actual expenditures for pass-through items made on HHSC's behalf will be paid without allocation of any indirect charges (general & administrative expenses, overhead, etc.) or the allowable administrative service fee for any proposed expenses submitted by the vendor and reviewed by HHSC to determine the appropriate fixed and/or variable fee adjustments included in the amendment executed to include the additional recurring activities in the applicable contract.

### **2.31.3. Payment for Administrative Services**

Payment to the awarded vendor for administrative services will be based on a combination of one or more fixed administrative fee(s) plus one or more variable administrative fee(s). HHSC reserves the right to determine the final percentage of fixed fees and variable fees in the contract for the Data Broker Services.

Any expenses incurred by a vendor after the commencement of the operational phase of the contract resulting from this RFP to complete transition activities or correct any defects from the Transition Phase must not be recorded as an operational expense and will not be considered an allowable expense for the respective contract.

HHSC will reduce the fixed and/or variable administrative payments for any services that become obsolete or no longer necessary during the contract resulting from this RFP.

HHSC will not recognize as valid costs any excessive charges or fees from the awarded vendor or any of the awarded vendor's subcontractors that HHSC deems inappropriate.

HHSC will reduce the fixed and/or variable administrative payments in any option year exercised by HHSC for any expenses that will not be applicable during the option year.

HHSC reserves the right to enter into negotiations to modify the fixed and variable fee payment methodologies to include fewer variable payment elements and/or additional variable payment elements in the administrative payment structure at any time during the contract resulting from this RFP.

The respondent's Cost Proposal and Price Summary Sheet(s) depicted below must be based on the respondent's proposed costs and an administrative service fee that will be included as part of

each proposed Fixed Fee, each proposed Variable Fee and each proposed Periodic Activity Fee. The final administrative service fee included in the contract resulting from this RFP will remain unchanged and be applicable for all fixed fees, variable fees, periodic activity fees, recurring activity fees and any change orders executed during the term of the contract.

#### **2.31.4. Fixed Administrative Fees**

Separate fixed administrative fees will be proposed for the first 12-month operational period of a resulting contract for the Data Broker Services subsequent contract years (12-month operational periods) and any applicable operational period less than 12 months, the fixed administrative fees will be determined by the application of a fixed annual inflator/deflator proposed by the vendor and subject to approval and acceptance by HHSC. The final annual fixed administrative fees included in the resulting contract will be paid in 12 equal monthly payments. Fixed administrative fees for an operational period less than 12 months will be paid in equal monthly payments based on the total number of applicable months included in the final operational period. Operational costs in excess of the final fixed price amount(s) included in the contract resulting from this RFP will not be paid by HHSC.

A vendor must submit one or more monthly invoice(s) following the month in which the vendor provides administrative services. HHSC will process and pay monthly fixed administrative fees in accordance with Chapter 2251, Texas Government Code.

A vendor will supply detailed information with the invoice(s) as directed by HHSC to enable HHSC to allocate costs for the services according to the various state and federal funding sources that support the contract for specific segments of the service component. Each invoice must show separate lines for each state funding source. The vendor must also provide supporting documentation for fixed administrative cost invoices, in an electronic format, subject to approval by HHSC, by state funding source.

HHSC, at its sole discretion, may choose to process only a portion of a fixed administrative fee invoice, if only a portion of the invoice can be verified and validated by the information submitted. If HHSC decides to process an invoice in this manner, an adjustment will be made by HHSC and only that portion of the fixed administrative invoice that can be verified and validated will be paid.

To be paid for the fixed administrative fees previously denied or not processed by HHSC, the vendor must submit supplemental invoice(s) along with any and all necessary corrections. HHSC will process and pay fixed administrative fees billed on supplemental invoices in accordance with Chapter 2251, Texas Government Code. Each invoice will be processed and paid separately.

### **2.32. Payment for Implementation and Modifications**

#### **2.32.1. Transition Costs**

Transition costs to meet the RFP requirements will be paid on a fixed fee basis.

Transition costs in excess of the final fixed price amount(s) included in the contract resulting from this RFP will not be paid by HHSC.

Transition costs will be proposed to allow the awarded vendor to assume the responsibilities of each Key Milestone included in the RFP effective with the operational start date included in this RFP applicable to the specific Key Milestone. Transition costs will not be paid as an element of operational administrative costs. Transition costs will be paid to the vendor retrospectively.

Any expenses incurred by a vendor after the operational start date of a specific Key Milestone to

complete transition activities or correct any defects from the Transition Phase of that specific Key Milestone must not be recorded as an operational expense and will not be considered an allowable expense.

HHSC intends to process and pay the transition costs in accordance with Chapter 2251, Texas Government Code. Separate invoices for each Key Milestone must be submitted by the vendor to HHSC in the format specified by HHSC. Each invoice will be processed and paid separately. As directed by HHSC, the vendor will separate the invoices according to the various state and federal funding sources that support the applicable contract that have responsibilities for specific Key Milestones and/or segments of the respective service components.

HHSC, at its sole discretion, may choose to process only a portion of a Key Milestone transition invoice, if only a portion of the invoice can be verified and validated by the information submitted. If HHSC decides to process an invoice in this manner, an adjustment will be made by HHSC and only that portion of the Key Milestone transition invoice that can be verified and validated will be paid.

A vendor must submit supplemental invoice(s) along with any and all necessary corrections to be paid for the Key Milestone transition fees previously denied or not processed by HHSC. HHSC will process and pay Key Milestone transition fee(s) billed on supplemental invoices in accordance with Chapter 2251, Texas Government Code. Each invoice will be processed and paid separately.

Proposed transition costs will be included in the pricing evaluation for each Key Milestone. Actual transition costs in excess of the amount included in the Contract for each Key Milestone will not be paid by HHSC. Transition requirements for each Key Milestone will be subjected to one or more performance measurement(s). Performance remedies, either liquidated damages and/or actual damages, may apply to each Key Milestone if the awarded vendor is not able to provide all of the necessary services and/or deliverables on the specified operational start date for the specific Key Milestone(s) included in the awarded vendor's contract resulting from this RFP.

### **3. General Instructions and Proposal Requirements**

#### **3.1. Vendor Conference**

HHSC will hold a vendor conference on October 7, 2015 at 10 a.m. (CST).

Location: Criss Cole Rehabilitation Center (CCRC) Auditorium  
4800 N. Lamar Blvd.  
Austin, Texas 78756

Vendor conference attendance is recommended, but is not required.

For directions to the CCRC go to <http://www.dars.state.tx.us/dbs/ccrc/index.shtml>.

Respondents may email questions for the conference to the HHSC Point of Contact (see Section 1.2) up until three (3) days prior to the conference. HHSC will also give respondents the opportunity to submit written questions at the conference. All questions should reference the appropriate RFP page and section number.

HHSC may respond to questions at the vendor conference, but responses are not official until posted in final form on the ESBD. HHSC reserves the right to amend answers prior to the proposal submission deadline.

Note: If attending the Vendor Conference, you are encouraged to arrive 20 minutes prior to the conference start time in order to obtain a visitor's pass from building security.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact the sole point of contact identified in the HHS RFP/solicitation at least 72 hours before the meeting so appropriate arrangements can be made.

### **3.2. Questions and Comments**

All questions and comments regarding this RFP should be sent to the HHSC Point of Contact (see Section 1.2). Questions must reference the appropriate RFP page and section number, and must be received by the HHSC Point of Contact by the deadline set forth in Section 1.3. HHSC may choose not to respond to questions received after the deadline. HHSC's responses to vendor questions will be posted on the ESBD. HHSC reserves the right to amend answers prior to the proposal submission deadline. Amended answers will be posted on the ESBD.

Respondents must notify HHSC of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the RFP and any referenced documents (e.g. UTCs, SPI, etc.) by the deadline for submitting questions and comments. If a respondent fails to notify HHSC of these issues, respondent will submit a proposal at its own risk, and if awarded a contract: (1) shall have waived any claim of error or ambiguity in the RFP or resulting contract, (2) shall not contest HHSC's interpretation of such provision(s), and (3) shall not be entitled to additional compensation, relief or time by reason of the ambiguity, error, or its later correction.

### **3.3. Modification or Withdrawal of Proposal**

Prior to the proposal submission deadline set forth in Section 1.3, a respondent may: (1) withdraw its proposal by submitting a written request to the HHSC Point of Contact, or (2) modify its proposal by submitting a written amendment to the HHSC Point of Contact. HHSC may request proposal modifications at any time.

HHSC reserves the right to waive minor informalities in a proposal and award a contract that is in the best interest of the State of Texas. A "minor informality" is an omission or error that, in HHSC's determination, if waived or modified when evaluating proposals, would not give a respondent an unfair advantage over other respondents or result in a material change in the proposal or RFP requirements. When HHSC determines that a proposal contains a minor informality, it may at its discretion provide the respondent with the opportunity to correct.

### **3.4. News Releases**

Prior to award, a respondent may not issue a press release or provide any information for public consumption regarding its participation in the procurement. Requests should be directed to the HHSC Point of Contact identified in Section 1.2.

This Section 3.4 does not preclude business communications necessary for a respondent to develop a proposal, or required reporting to shareholders or governmental authorities.

### **3.5. Incomplete Proposals**

HHSC may reject without further consideration a proposal that does not include a complete, comprehensive, or total solution as requested by the RFP.

### **3.6. State Use of Ideas**

HHSC reserves the right to use any and all ideas presented in a proposal unless the respondent presents a valid legal case that such ideas are trade secret or confidential information, and identifies the information as such in its proposal (see Section 3.13). A respondent may not object

to the use of ideas that are not the respondent's intellectual property and so designated in the proposal that: (1) were known to HHSC before the submission of the proposal, (2) were in the public domain through no fault of HHSC, or (3) became properly known to HHSC after proposal submission through other sources or through acceptance of the proposal.

### **3.7. Property of HHSC**

Except as otherwise provided in this RFP or the resulting contract, all products produced by a respondent, including without limitations the proposal, all plans, designs, software, and other contract deliverables, become the sole property of HHSC.

### **3.8. Copyright Restriction**

HHSC will not consider any proposal that bears a copyright.

### **3.9. Additional Information**

By submitting a proposal, the respondent grants HHSC the right to obtain information from any lawful source regarding the respondent's and its directors', officers', and employees': (1) past business history, practices, and conduct, (2) ability to supply the goods and services, and (3) ability to comply with contract requirements. By submitting a proposal, a respondent generally releases from liability and waives all claims against any party providing HHSC information about the respondent. HHSC may take such information into consideration in evaluating proposals.

### **3.10. Multiple Responses**

A respondent may only submit one proposal as a prime vendor. If a respondent submits more than one proposal, HHSC may reject one or more of the submissions. This requirement does not limit a subcontractor's ability to collaborate with one or more respondents submitting proposals.

### **3.11. No Joint Proposals**

HHSC will not consider joint or collaborative proposals that require it to contract with more than one respondent.

### **3.12. Use of Subcontractors**

Subcontractors providing services under the contract shall meet the same requirements and level of experience as required of the respondent. No subcontract under the contract shall relieve the respondent of the responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.

### **3.13. Texas Public Information Act**

#### **3.13.1. General Requirement for the Release of Proposals**

Proposals will be subject to the Texas Public Information Act (the Act), located in Chapter 552 of the Texas Government Code, and may be disclosed to the public upon request. Subject to the Act, respondents may protect trade secret and confidential information from public release. If the respondent asserts that information provided in the proposal is trade secrets or other confidential information, it must be clearly marked such information in boldface type and include the words "confidential" or "trade secret" at top of the page. Furthermore, the respondent must identify trade secret or confidential information, and provide an explanation of why the information is excepted from public disclosure, on the Respondent Information and Disclosures form.

HHSC will process any request from a member of the public in accordance with the procedures outlined in the Act. Respondents should consult the Texas Attorney General's website ([www.oag.state.tx.us](http://www.oag.state.tx.us)) for information concerning the Act's application to proposals and potential



exceptions to disclosure.

### 3.13.2. Publication of Major Contracts

[Texas Government Code §322.020](#) requires HHSC to provide copies of “major contracts” to the Legislative Budget Board (LBB). If the contract resulting from this procurement falls within the §322.020 definition of a “major contract,” the LBB will provide the public with access to all contract documents. This includes the proposal, unless the respondent can demonstrate that all or part of the proposal is exempted from disclosure under the Texas Public Information Act. In such cases, the respondent will be responsible for preparing, for HHSC’s approval, an appendix that describes the exempt information contained in the proposal without disclosing its content, as required by [Texas Government Code §322.020 \(d\)](#).

### 3.14. Instructions for Submitting Proposals

#### 3.14.1. Number of Copies

Submit one (1) original and five (5) hard of copies of the proposal. **An authorized representative must sign the original in ink.** In addition, submit ten (10) electronic copies of the proposal on a portable media, such as but not limited to compact disk, compatible with Microsoft Office 2010, and in the same format as the Business Proposal identified in Section 3.15.1. HHSC will not accept telephone and facsimile proposals. Any disparities between the contents of the original printed proposal and the electronic proposal will be interpreted in favor of HHSC.

#### 3.14.2. Submission

Submit all copies of the proposal to HHSC’s Procurement and Contracting Services (PCS) Division no later than 2:00 p.m. (CST) on November 30, 2015. All submissions will be date and time stamped when received by PCS. The clock in the PCS office is the official timepiece for determining compliance with the deadlines in this procurement. HHSC reserves the right to reject late submissions. It is the respondent’s responsibility to appropriately mark and deliver the proposal to HHSC by the specified date.

#### Physical Address for hand delivery and overnight and commercial mail:

Kevin Warren, CTPM  
HHSC Procurement and Contracting Services (PCS)  
1100 W 49<sup>th</sup> St  
MC 2020  
Austin, TX 78756  
Phone: 512-406-2539  
[kevin.warren@hhsc.state.tx.us](mailto:kevin.warren@hhsc.state.tx.us)

All proposals become the property of HHSC after submission.

#### 3.14.3. Additional Requirements

All proposals must be:

- clearly legible;
- sequentially page-numbered and include the respondent’s name at the top of each page;
- organized in the sequence outlined in Section 3.15;
- bound in a notebook or cover;
- correctly identified with the RFP number and submittal deadline;
- responsive to all RFP requirements;

- typed on 8½ by 11” paper; and
- in Arial or Times New Roman font, size 12 for normal text, no less than size 10 for tables, graphs and appendices.

Proposals may not include materials or pamphlets not specifically requested in this RFP

### **3.15. Format and Content**

The proposal must consist of the following parts:

- Part 1 – Business Proposal;
- Part 2 – Technical Proposal; and
- Part 3 – Cost Proposal

#### **3.15.1. Part 1 – Business Proposal**

The Business Proposal must include the following sections:

- Section 1 – Executive Summary;
- Section 2 – Corporate Background and Experience;
- Section 3 – Project Work Plan;
- Section 4 – Value-added Benefits;
- Section 5 – Assumptions;
- Section 6 – Appendices;
- Section 7 – HUB Subcontracting Plan;
- Section 8 – Certifications and Other Required Forms; and
- Section 9 -- RFP Section vs Proposal Response Crosswalk.

##### **3.15.1.1 Section 1 – Executive Summary**

In this section, condense and highlight the content of the Business Proposal to provide HHSC with a broad understanding of the respondent’s approach to meeting the RFP’s business requirements. The summary must demonstrate an understanding of HHSC’s goals and objectives for this procurement.

##### **3.15.1.2 Section 2 -- Corporate Background and Experience**

This section details the respondent’s corporate background and experience. If the respondent proposes to use subcontractor(s), it must describe any existing or ongoing relationships with the subcontractor(s), including project descriptions. The section should include the following information:

#### **1. Corporate Background and Experience**

Describe the respondent’s corporate background as it relates to projects similar in scope and complexity to the project described in this RFP.

Include a description and at least three (3) references from projects performed within the last five (5) years that demonstrate the respondent’s ability to perform the Scope of Work described in the RFP. Include contract dates and contact information (customer points of contact, address, telephone number and email address). The respondent must explain whether it performed the work as a prime vendor or subcontractor. If the respondent performed the work as a subcontractor, the respondent must describe the scope of subcontracted activities.

If the proposal includes the use of subcontractors, include a similar description of each subcontractor’s corporate background and experience.

## **2. Résumés**

Identify and describe the respondent's and its subcontractor's proposed labor skill set and provide résumés of all proposed Key Personnel (as defined by the respondent). Résumés must demonstrate experience germane to the position proposed. Résumés should include work on projects cited under the respondent's corporate experience (if applicable), and the specific functions performed on such projects. Each résumé should include at least three (3) references from recent projects. References may not be the respondent's or subcontractor's employees.

## **3. Financial Capacity**

A respondent must supply evidence of financial stability sufficient to demonstrate reasonable stability and solvency appropriate to the requirements of this procurement. Respondents must submit a current financial statement plus two (2) years of audited financial reports including all supplements, management discussion and analysis, and actuarial opinions. At a minimum, such financial statements and reports shall include: balance sheet; statement of income and expense; statement of changes in financial position; and cash flows. If the respondent is a corporation that is required to report to the Securities and Exchange Commission, it must submit its two most recent SEC Forms 10K, Annual Reports. If any change in ownership is anticipated during the twelve (12) months following the proposal due date, the respondent must describe the circumstances of such change and indicate when the change is likely to occur.

## **4. Corporate Guarantee**

If the respondent is substantially owned or controlled, in whole or in part, by one or more other legal entities, the respondent must submit the information required under the "Financial Capacity" section above for each such entity, including the most recent financial statement for each such entity. The respondent must also include a statement that the entity or entities will unconditionally guarantee performance by the respondent of each and every obligation, warranty, covenant, term and condition of the contract. If HHSC determines that an entity does not have sufficient financial resources to guarantee the respondent's performance, HHSC may require the respondent to obtain another acceptable financial instrument or resource from such entity, or to obtain an acceptable guarantee from another entity with sufficient financial resources to guarantee performance.

## **5. Bonding**

HHSC reserves the right to require the vendor to procure one or more performance, fidelity, payment or other bond, if during the term of the contract; HHSC in its sole discretion determines that there is a business need for such requirement.

### **3.15.1.3 Section 3 – Project Work Plan**

Describe the respondent's proposed processes and methodologies for providing all components of the Mission Results/Scope of Work described in Article 2, including the respondent's approach to meeting the Project Schedule.

### **3.15.1.4 Section 4 – Value-added Benefits**

Describe any services or deliverables that are not required by the RFP that the respondent proposes to provide to HHSC. Respondents are not required to proposed value-added benefits, but inclusion of such benefits may result in a more favorable evaluation.

### **3.15.1.5 Section 5 – Assumptions**

State any business, economic, legal, programmatic, or practical assumptions that underlie the respondent's response to the Business Proposal. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into the contract resulting from this RFP are deemed rejected by HHSC.

### **3.15.1.6 Section 6 – Appendices**

There are no additional appendices required for this section other than those which may be required elsewhere in the RFP.

### **3.15.1.7 Section 7 – HUB Subcontracting Plan**

Attach the respondent's Historically Underutilized Business (HUB) Subcontracting Plan. Instructions for completing this section are in Article 4 of the RFP. Package 6 on the ESBD contains a Quick Check List and HUB Subcontracting Plan that can be utilized to meet this submittal requirement.

Submit one (1) copy of the HUB Subcontracting Plan (HSP), in accordance with the RFP, in a separate sealed envelope, with the RFP submission, labeled: HUB Subcontracting Plan (HSP), and include all supporting documentation in accordance with the HSP.

### **3.15.1.8 Section 8 – Certifications and Other Required Forms**

Respondents must submit the following required forms with their proposals:

- Child Support Certification;
- Debarment, Suspension, Ineligibility, and Voluntary Exclusion of Covered Contracts;
- Federal Lobbying Certification;
- Nondisclosure Statement;
- Required Certifications; and
- Respondent Information and Disclosures.
- Security and Privacy Initial Inquiry (SPI) form

The forms listed above can be located by going to the [HHSC Business Opportunities](#) page and clicking on Required Forms for all HHSC Procurements.

The SPI form (and instructions) is located in the body of the HHSC Business Opportunities Page.

## **3.15.2. Part 2 – Technical Proposal**

Respondents must provide a detailed description of the proposed technical solution, which must support all business activities and requirements described in the RFP. The Technical Proposal must reflect a clear understanding of the nature of the work undertaken, and must include a detailed descriptions of the proposed system(s).

The Technical Proposal must include a description of the following system components, at a minimum:

- Section 1 – Technology Architecture;
- Section 2 – Capacity Management and System Availability; Section 3 – Software and Hardware Components;
- Section 4 -- Systems Integration;
- Section 5 – System Administration, Support, and Maintenance; Section 6 – System Security and Disaster Recovery;
- Section 7 – Performance Monitoring and Management;
- Section 8 – Value-added Benefits;
- Section 9 – Assumptions; and
- Section 10 – Appendices.

### **3.15.2.1 Section 1 -- Technology Architecture**

Provide a detailed description of the proposed technology architecture and include one or more diagrams that detail the relationships between key technical components.

### **3.15.2.2 Section 2 – System Availability and Capacity**

The respondent is responsible for delivering a cost-effective, high-availability environment that minimizes the frequency and impact of system failures, reduces downtime, and minimizes recovery time in the event of catastrophic failure. In this section, provide details on the respondent's approach to providing a highly available system. In addition, provide details on the proposed approach to monitoring system performance and use and planning, sizing and controlling the system as capacity needs change.

### **3.15.2.3 Section 3 -- Software and Hardware Components**

Provide details on the software and hardware components the respondent proposes to use in its system as applicable to the requirements contained in this RFP. This includes, but is not limited to, the proposed server topology, specifications for the hardware components, and data storage components. The respondent should also include details on the tools and utilities used to design, build, test, deploy, report, monitor, and operate the system and its components.

### **3.15.2.4 Section 4 – Systems Integration**

Describe the respondent's approach to integrating the proposed system with other information systems.

### **3.15.2.5 Section 5 -- System Administration, Support, and Maintenance**

Detail the respondent's approach to administering the system and system components. Detail the proposed approach to system support, including the levels of support offered and the process for requesting support. In addition, provide a summary of the respondent's proposed strategy for maintaining and repairing the system.

### **3.15.2.6 Section 6 – System Security and Disaster Recovery**

Detail on the respondent's approach to security architecture, including the development and implementation measures that will provide security and protection for the system. Describe the proposed backup and recovery processing approach, and proposed virus protection strategy. Describe the respondent's general approach to reestablishing operations in the event of a catastrophe, as well as its approach to providing HHSC with a disaster recovery plan. Provide specifications on any hardware and software components utilized by the proposed security and disaster recovery solutions. Describe the respondent's approach to determining disaster recovery site location. Indicate whether the site is located in the continental United States and the proximity to respondent's main location.

### **3.15.2.7 Section 7 -- Performance Monitoring and Management**

Describe the respondent's proposed methodology for monitoring and reporting system performance, as well as the respondent's proposed approach to technology management. This includes the methods for centrally managing system resources such as servers, backup, archiving, and recovery equipment, databases and applications. Address methods for auditing, tracing and scanning the system. Provide details on the use of specialized tools the respondent will use to automate and track monitoring and management activities.

### **3.15.2.8 Section 8 - Value-added Benefits**

Describe any enhancements or additions to the system that are not required by the RFP that the respondent proposes. Respondents are not required to proposed Value-added benefits, but inclusion of such benefits may result in a more favorable evaluation.

### **3.15.2.9 Section 9 – Assumptions**

State any business, economic, legal, programmatic, or practical assumptions that underlie the respondent's response to the Technical Proposal. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into the contract

resulting from this RFP are deemed rejected by HHSC.

### **3.15.2.10 Section 10 – Appendices**

There are no additional appendices required for this section other than those which may be required elsewhere in the RFP.

### **3.15.3. Part 3 – Cost Proposal**

The respondent's Price Proposal and Price Summary Sheets must complete this form and place it in a separate, sealed package, clearly marked with the respondent's name, "original" or "copy", and the RFP submission date.

A cover letter referencing the Price Proposal and Price Summary Sheets must be included in the respondent's separate, sealed package, **and must be signed by an individual authorized to legally bind the vendor for the proposal and price summary sheet(s) submitted.** Respondents must base their Price Proposals on the Project Scope described in this RFP and must complete and sign and date the Price Proposal verifying that the enclosed information is valid for 180 days from date of submission.

Respondents must base their Cost Proposals on the Scope of Work described in Section 2. This section should include any business, economic, legal, programmatic, or practical assumptions that underlie the Cost Proposal. HHSC reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into the contract resulting from this RFP are deemed rejected by HHSC.

Respondents must separately identify value-added benefits, cost-savings and cost-avoidance methods and measures, and the effect of such methods on the Cost Proposal and Scope of Work.

**Cost Proposal Forms are contained in Package 2 on the ESBD.**

### **3.15.4. Cost Proposal and Price Summary**

The attached Transitional Pricing Schedules (Attachment A, Appendix A-1), Operational Pricing Schedules (Attachment A, Appendix A-2), Predictive Analytics and ID Authentication Pricing Schedules (Attachment A, Appendix A-3), and Price Summary Sheets (Attachment A, Appendix A-4), must include required supporting documentation to validate all costs included in the respondent's Cost Proposal. All assumptions associated with the price proposal must be documented.

### **3.15.5. Pricing Schedules and Price Sheets**

Forms substantially similar to those described in this section must provide the component costs of the Prices quoted for providing the services and deliverables set forth in this RFP. Attachment A, Appendix A-1 contains Transitional Pricing Schedules, Attachment A, Appendix A-2 contains Operational Pricing Schedules, Attachment A, Appendix A-3 contains the Predictive Analytics and ID Authentication Pricing Schedule and Attachment A, Appendix A-4 contains the formal Price Summary Sheets.

The respondent must structure its pricing quotation to allow HHSC a method to map the proposed costs for the cost proposal submitted back to the Vendor's Detailed Work Plan for the initial term of the Contract. For purposes of responding to this RFP, the respondent should provide separate Transitional Costs through the proposed transition period for the initial startup, Predictive Analytics and ID Authentication. For the Operations period, the respondent must provide the costs for the entire operations period. For Predictive Analytics and ID Authentication, the respondent must

provide the costs of development and the continued operation of the application.

### 1. Transition Pricing Schedules

The potential respondent's transitional cost proposal sheets must be delineated by the Transitional period (Appendix A-1) as listed below.

TRANSITIONAL PRICING SCHEDULES – APPENDIX A-1	
PRICING SCHEDULE	DESCRIPTION
1	All Inclusive Hourly Rate and number of hours by Key Milestone, Position Classification, and Month (For all months of Transition)
2	Summary of Pricing Schedule (by Key Milestone)
3	Subcontractor Listing
4	Consultant Listing

### 2. Operational Pricing Schedules

The Cost Proposal must contain the following operational pricing schedules found in Appendix A-2.

OPERATIONAL PRICING SCHEDULES – APPENDIX A-2	
PRICING SCHEDULE	DESCRIPTION
1	All-Inclusive Hourly Rate and number of hours by Functional Area, Position Classification, and Month (for all months of operations)
2	Summary of Pricing Schedule (by Contract Year)
3	Subcontractor(s) Listing
4	Consultant(s) Listing

The Cost Proposal must also contain the following Predictive Analytics and ID Authentication pricing schedules found in Appendix A-3. **Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

PREDICTIVE ANALYTICS and ID AUTHENTICATION PRICING SCHEDULES – APPENDIX A-3	
PRICING SCHEDULE	DESCRIPTION
1	Transitional/Development and Ongoing Operational Estimating Assumptions
2	Transitional Pricing – Milestone Chart
3	Summary of Budget Information (by Contract Year)
4	Operational Pricing - All Inclusive Hourly Rate and number of hours by Functional Area, Position Classification, and Month (for all months of operations)
5	Subcontractor(s) Listing
6	Consultant(s) Listing

The Price Summary must also contain the following price summary sheets found in Appendix A-4.

PRICE SUMMARY SHEETS – Appendix A-4	
PRICING SHEET	DESCRIPTION
1	Transitional Pricing Schedule: Fixed Administrative Fees
2	Operational Pricing Schedule: Fixed Administrative Fees
3	Operational Pricing Schedules : Variable Administrative Fees
4	Operational Pricing Schedule: Periodic Activity, Pass Thru Cost, All-Inclusive Hourly Labor Rates

Instructions for completing each schedule and the declaration form are given in the following sections. Summary forms should be supported by the detailed information contained on monthly schedules. Amounts shown on the monthly schedules must agree with the cumulative amounts shown on the summary forms. In addition to paper copies of the respondent's Cost Proposal and Price Summary sheets, respondents must submit electronic versions in MS Excel format. Any electronic version of the pricing forms must contain any and all formulas used to calculate pricing information contained on the forms and include any and all links to other worksheets/forms included in the respondent's Cost Proposal.

### 3. Transitional Pricing Schedules

A respondent must use the same set of transitional pricing schedules for submitting proposed pricing. Transitional pricing schedules must include the costs related to the required Transition Project Management Office.

#### 3.1 Transitional Pricing Schedules 1

Pricing Schedule 1 shows the all-inclusive hourly rate and the number of hours by Key Milestone, position classification, and month for the transitional phase of the Contract.

This schedule must present the respondent's transitional project staffing levels. It should detail the proposed staffing levels by Key Milestone, by position classification, and by month

#### 3.2 Transitional Pricing Schedule 2

Pricing Schedule 2 shows the respondent's total proposed costs for the transitional phase of the Contract by each Key Milestone that must be completed by the respondent. This schedule summarizes and totals the respondent's proposed transitional costs as detailed in Transitional Pricing Schedule 1 with designations for the Key Milestones that are applicable for the transitional phase. Each Key Milestone must be completed and accepted by HHSC before any payment will be due the vendor. No partial payments will be authorized.

#### 3.3 Transitional Pricing Schedule 3

Pricing Schedule 3 shows the respondent's list of proposed subcontractors-for the transition period. The respondent must provide the following for each proposed subcontractor:

- A detailed description of each type of service each subcontractor will provide;
- The subcontractor's name and contact information;
- The need for this subcontractor and the need for the subcontractor's services;
- All travel reimbursements proposed by each subcontractor;
- The deliverables the vendor expects from each subcontractor; and
- The total cost for each subcontractor.

HHSC reserves the right to have any subcontractor submit a complete set of pricing sheets



(Appendix A-1, Appendix A-2, and Appendix A-3).

### **3.4 Transitional Pricing Schedule 4**

Pricing Schedule 4 shows the respondent's list of proposed consultants for the transition period. The respondent must provide the following for each proposed consultant:

- A detailed description of each type of service each consultant will provide;
- The consultant's name and contact information;
- The need for this consultant and the need for the consultant's services;
- All travel reimbursements proposed by each consultant;
- The deliverables the vendor expects from each consultant; and
- The total cost for each consultant.

## **4. Operational Pricing Schedules**

### **4.1 Operational Pricing Schedule 1**

Pricing Schedule 1 shows all-inclusive hourly rate and the number of hours by business functional area, position classification, and month for the operational phase of the Contract.

This schedule must present the respondent's operational project staffing levels. Each schedule must detail the proposed staffing levels by business functional area, by position classification, and by month, and extend the totals of all personnel through the entire operational phase of the Contract. Operational Pricing Schedule 1 must show the same position classifications as those shown in Transitional Pricing Schedule 1.

### **4.2 Operational Pricing Schedule 2**

Pricing Schedule 2 shows the respondent's total proposed costs for the operational phase of the Contract. This schedule summarizes and totals the respondent's proposed operational costs as detailed in Operational Pricing Schedule 1.

### **4.3 Operational Pricing Schedule 3**

Pricing Schedule 3 shows the respondent's list of proposed subcontractors for the operational period. The respondent must provide the following for each proposed subcontractor:

- A detailed description of each type of service each subcontractor will provide;
- The subcontractor's name and contact information;
- The need for this subcontractor and the subcontractor's services;
- All travel reimbursements proposed by each subcontractor;
- The deliverables the vendor expects from each subcontractor; and
- The total cost for each subcontractor.

HHSC reserves the right to have any subcontractor submit a complete set of pricing sheets (Appendix A-1, Appendix A-2, and Appendix A-3).

### **4.4 Operational Pricing Schedule 4**

Pricing Schedule 4 shows the respondent's list of proposed consultants for the operational period. The respondent must provide the following for each proposed consultant:

- A detailed description of each type of service each consultant will provide;
- The consultant's name and contact information;
- The need for this consultant and the need for the consultant's services;
- All travel reimbursements proposed by the consultant;
- The deliverables the vendor expects from each consultant; and

- The total cost for each consultant.

## **5. Transitional and Operational Pricing Schedules for Predictive Analytics and ID Authentication**

A respondent must use the same set of transitional and operational pricing schedules for submitting proposed Predictive Analytics and ID Authentication solution pricing. Transitional pricing schedules must include the costs related to the required Transition Project Management Office. Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.

### **5.1 Transitional and Operational Pricing Schedule 1 for Predictive Analytics and ID Authentication**

Pricing Schedule 1 shows a detailed analysis of the respondent's estimating assumptions for Predictive Analytics and ID Authentication. The respondent must give a detailed analysis of each major assumption made while estimating work effort and assessing impacts to the contracts pricing shown in the Transitional Pricing Schedule 2 and Operational Pricing Schedule 4 within the same Excel workbook. The analysis of each of the respondent's estimating assumptions should take into account issues including but not limited to:

- How will HHSC be involved;
- What tasks is HHSC expected to perform;
- Factors not included in estimate;
- Assumptions of reusable assets including current knowledge;
- Define all risks identified as part of the estimate and impact assessment. The respondent should pay particular attention to risks that would change the development and operational estimate;
- Define all issues identified as part of the estimate and impact assessment including the amount(s) applicable for the development period and operational contract years 1 – 5; and
- An analysis of the impact this specific solution/component would have on the respondent's current Fixed and Variable pricing and indirect rate(s).

### **5.2 Transitional Pricing Schedule 2 for Predictive Analytics and ID Authentication**

Pricing Schedule 2 shows the all-inclusive hourly rate and number of hours by key milestone, position classification, and month for the transitional phase for each of the individual solutions.

### **5.3 Operational Pricing Schedule 3 for Predictive Analytics and ID Authentication**

Pricing Schedule 3 shows the respondent's total proposed costs for the operational phase of the Contract. This schedule summarizes and totals the respondent's proposed operational costs as detailed in the individual solutions in Operational Pricing Schedule 4.

### **5.4 Predictive Analytics and ID Authentication Operational Pricing Schedule 4**

For Predictive Analytics and ID Authentication, Pricing Schedule 4 shows the respondent's proposed all-inclusive hourly rate and number of hours by functional area and position classification.

### **5.5 Transitional and Operational Pricing Schedule 5 for Predictive Analytics and ID Authentication**

Pricing Schedule 5 shows the respondent's list of proposed subcontractors for the operational period. The respondent must provide the following for each proposed subcontractor:

- A detailed description of each type of service each subcontractor will provide;
- The subcontractor's name and contact information;
- The need for this subcontractor and the subcontractor's services;

- All travel reimbursements proposed by each subcontractor;
- The deliverables the vendor expects from each subcontractor; and
- The total cost for each subcontractor.

HHSC reserves the right to have any subcontractor submit a complete set of pricing sheets (Appendix A-1, Appendix A-2, and Appendix A-3).

### **5.6 Transitional and Operational Pricing Schedule 6 for Predictive Analytics and ID Authentication**

Pricing Schedule 6 shows the respondent's list of proposed consultants for the operational period. The respondent must provide the following for each proposed consultant:

- A detailed description of each type of service each consultant will provide;
- The consultant's name and contact information;
- The need for this consultant and the need for the consultant's services;
- All travel reimbursements proposed by the consultant;
- The deliverables the vendor expects from each consultant; and
- The total cost for each consultant.

## **6. Price Summary Sheets**

The Price Summary sheets are included in Appendix A-4. Instructions for completing each sheet and the declaration form are given in the following sections.

### **6.1 Price Summary Sheet 1**

Price Summary Sheet 1 shows the fixed administrative fees for the transitional period. The total fixed fees on this sheet must be consistent with the detailed Transitional Pricing Schedules in Appendix A-1.

### **6.2 Price Summary Sheet 2**

Price Summary Sheet 2 shows the fixed administrative fees for the five operational years. It must be consistent with the more detailed Operational Pricing Schedules in Appendices A-2 and Appendix A-3.

### **6.3 Price Summary Sheet 3**

Price Summary Sheet 3 shows the variable administrative fees for the five year operational period by the specific types of variable activities and will be calculated utilizing four decimal places (0.xxxx).

### **6.4 Price Summary Sheet 4**

Price Summary Sheet 4 shows the all-inclusive hourly labor rate(s) used to show costs associated with additional non-recurring and/or periodic activities to be performed by the vendor by service categories. The maximum fees associated with additional non-recurring and/or periodic activities to be performed by the vendor will be based on explicit fixed prices proposed for vendor inputs and the actual number of hours worked on the specific modification by the vendor's staff and/or the staff of a vendor's subcontractor. All-inclusive hourly labor rates are to be proposed for the applicable transition period and the five operational years, for each of the position classifications listed in Appendices A-1, A-2 and A-3.

### **3.15.6. Cost Proposal - Assumptions**

The respondent must provide a detailed explanation of any assumptions the respondent made in responding to the Cost Proposal(s) for the RFP.

### 3.15.7. Financial Capacity and Financial Solvency

#### Financial Statements

Evidence of adequate financial stability must be supplied. If the respondent is either substantially or wholly owned by another corporate (or other) entity, the respondent must also include the most recent detailed financial report of the parent organization and a statement that the parent organization will unconditionally guarantee performance by the vendor in each and every term, covenant, and condition of the contract resulting from this RFP as executed by the parties.

The respondent must submit a current financial statement plus two years of audited financial reports, including the United States Securities and Exchange Commission, Form 10K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, if applicable.

If any change of ownership of the company is anticipated during the 12 months following the proposal due date, the respondent must describe the anticipated circumstances of such change and indicate when the change may occur.

#### 4. Historically Underutilized Business Participation

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252 \(b\)](#) a proposal that does not contain a [HUB Subcontracting Plan](#) (HSP) is non-responsive; and in accordance with Texas Administrative Code [§20.14\(b\)\(3\)](#). Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, [§2161.252\(b\)](#).

##### 4.1. Introduction

#### The sole point of contact for HUB inquires:

**Texas Health and Human Services Commission**  
**Sherice Williams, HUB Coordinator**  
**Phone: (512) 406-2542**  
**E-mail: [sherice.williams@hhsc.state.tx.us](mailto:sherice.williams@hhsc.state.tx.us)**

HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. HHSC encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs and a [Policy on the Utilization of HUBs](#) which is located on HHSC's website.

Pursuant to Texas Government Code [§2161.181](#) and [§2161.182](#) and HHSC's HUB policy and rules, HHSC is required to make a good faith effort to increase HUB participation in its contracts. HHSC may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

##### 4.2. HHSC's Administrative Rules

HHSC has adopted the CPA's HUB rules as its own. HHSC's rules are located in the Texas Administrative Code [Title 1, Part 15, Chapter 391, Subchapter G](#) and the CPA rules are located in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B](#). If there are any discrepancies between HHSC's administrative rules and this RFP, the rules shall take priority.

##### 4.3. Statewide Annual HUB Utilization Goal

The CPA has established **statewide annual HUB utilization goals** for different categories of contracts in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.13](#) of the HUB rules. In order to meet or exceed the **statewide annual HUB utilization goals**, HHSC

encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This procurement is classified as an **All Other Services** procurement under the CPA rule and therefore has a **statewide annual HUB utilization goal** of **26%** per fiscal year.

#### **4.4. Required HUB Subcontracting Plan**

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252](#) each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

In accordance with Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.14 \(a\)\(1\)\(C\)](#) of the HUB Rule, state agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

HHSC has determined that subcontracting opportunities are probable for this RFP. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

**Submit one (1) copy of the HUB Subcontracting Plan (see Package 6 on the ESBD), in accordance with the RFP, in a separate sealed envelope, with the RFP submission, labeled: HUB Subcontracting Plan (HSP), and include all supporting documentation in accordance with the HSP.**

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

HHSC shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with solicitation and HSP requirements. During the good faith effort evaluation, HHSC may, at its discretion, allow revisions necessary to clarify and enhance information submitted in the original HSP.

If HHSC determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the procurement file.

#### **4.5. CPA Centralized Master Bidders List**

Respondents may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>. For this procurement, HHSC has identified the following class and item codes for potential subcontracting opportunities:

##### **4.5.1. National Institute of Governmental Purchasing (NGIP) Class/Item Code(s):**

- Codes: 920-41 (Retrieval Services)

Respondents are not required to use, nor limited to using, the class and item codes identified

above, and may identify other areas for subcontracting.

HHSC does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

Package 6 on the ESBD contains a list of certified HUBs that are associated with the above referenced NIGP code.

#### **4.6. HUB Subcontracting Procedures – If a Respondent Intends to Subcontract**

An HSP must demonstrate that the respondent made a good faith effort to comply with HHSC's HUB policies and procedures. The following subparts outline the items that HHSC will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

##### **4.6.1. Identify Subcontracting Areas and Divide Them into Reasonable Lots**

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

##### **4.6.2. Notify Potential HUB Subcontractors**

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, 3, 4 or 5:

##### **Method 1: Respondent Intends to Subcontract with only HUBs:**

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs; **or**,

##### **Method 2: Respondent Intends to Subcontract with HUB Protégé(s):**

The respondent must identify in the HSP the HUB Protégé(s) that will be utilized and should:

- include a fully executed copy of the Mentor Protégé Agreement, which must be registered with the CPA prior to submission to HHSC; and
- identify areas of the HSP that will be performed by the Protégé.

HHSC will accept a Mentor Protégé Agreement that has been entered into by a respondent (Mentor) and a certified HUB (Protégé) in accordance with Texas Government Code §2161.065. When a respondent proposes to subcontract with a Protégé(s), it does not need to provide notice to three (3) HUB vendors for that subcontracted area.

Participation in the Mentor Protégé Program, along with the submission of a Protégé as a

subcontractor in an HSP, constitutes a good faith effort for the particular area subcontracted to the protégé; **or**,

**Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit written documentation that one or more HUB subcontractors will be utilized and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. When utilizing this method, only HUB subcontractors that have existing contracts with the respondent for five years or less may be used to comply with the good faith effort requirements.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; **or**,

**Method 4: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to trade organizations and/or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.
- Respondents must give trade organizations and/or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of trade organizations and/or development centers is located on CPA's website under the Minority and Women Organization Links.
- Written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
  - a description of the scope of work to be subcontracted;
  - information regarding the location to review project plans or specifications;
  - information about bonding and insurance requirements;
  - required qualifications and other contract requirements; and
  - a description of how the subcontractor can contact the respondent.
- Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
- Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups, local, state and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program.

**4.6.3. Written Justification of the Selection Process**

HHSC will make a determination if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. HHSC may require the respondent to submit additional documentation explaining how the

respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders and did not reject qualified HUBs who were the best value responsive bidders.

#### **Method 5: Respondent Does Not Intend to Subcontract**

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the “Self Performance Justification” portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section 4.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by HHSC:

- provide evidence of sufficient respondent staffing to meet the RFP requirements;
- provide monthly payroll records showing the respondent staff fully dedicated to the contract;
- allow HHSC to conduct an on-site review of company headquarters or work site where services are to be performed and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

#### **4.7. Post-award HSP Requirements**

The HSP shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, HHSC will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP and must submit monthly subcontract reports to HHSC by completing the HUB HSP [Prime Contractor Progress Assessment Report](#). This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency’s Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, HHSC will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for HHSC review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from HHSC before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the Contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section 4. of this RFP (e.g., divide work into reasonable



lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, and/or participate in the Mentor Protégé Program).

For this reason, HHSC encourages respondents to identify, as part of their HSP, multiple subcontractors who are able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow HHSC to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract and will be subject to remedial actions. HHSC may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program.

## **5. Proposal Evaluation**

HHSC will use a formal evaluation process to select the successful respondent(s). HHSC will consider capabilities or advantages that are clearly described in the proposal, which may be confirmed by oral presentations, site visits, demonstrations, and references contacted by HHSC. HHSC reserves the right to contact individuals, entities, or organizations that have had dealings with the respondent or proposed staff, whether or not identified in the proposal.

HHSC will more favorably evaluate proposals that offer no or few exceptions, reservations, or limitations to the terms and conditions of the RFP, including HHSC's UTCs.

### **5.1. Evaluation Criteria**

HHSC will evaluate proposals based on the following best value criteria, listed in order of precedence:

- (1) The extent to which the services meet the agency's needs;
- (2) The quality and reliability of the respondent's services;
- (3) Indicators of probable respondent performance under the contract such as past respondent performance, the respondent's financial resources and ability to perform, the respondent's experience and responsibility, and the respondent's ability to provide reliable maintenance agreements;
- (4) The price proposal;
- (5) The extent to which the respondent has the administrative capacity to support HHSC's mission and goals; and
- (6) The extent that respondent's processes are designed to promote/provide efficiencies by providing data broker services that support eligibility determinations made by HHSC eligibility staff, including but not limited to providing:
  - a. A comprehensive user-friendly solution,
  - b. Acceptable response times to enable efficiencies by HHSC eligibility staff,
  - c. Flexibility to modify the presentation of data sources or add data sources, and
  - d. Access to accurate and complete data sources while providing reliability in system "up time" and performance.

### **5.2. Initial Compliance Screening**

HHSC will perform an initial screening of all proposals received. Unsigned proposals and proposals that do not include all required forms and sections are subject to rejection without further evaluation.

In accordance with Section 3.3, HHSC reserves the right to waive minor informalities in a proposal and award contracts that are in the best interest of the State of Texas.

### **5.3. Competitive Range Determinations**

HHSC may determine that certain proposals are within the competition range for consideration for negotiation and possible contract award which may consist of the proposals that receive the highest or most satisfactory ratings. HHSC may, in the interest of administrative efficiency, place reasonable limits on the number of proposals that will be included in the competitive range.

### **5.4. Oral Presentations and Site Visits**

HHSC may, at its sole discretion, request oral presentations, site visits, and/or demonstrations from one or more respondents admitted to the field of competition. HHSC will notify selected respondents of the time and location for these activities, and may supply agendas or topics for discussion. HHSC reserves the right to ask additional questions during oral presentations, site visits, and or demonstrations to clarify the scope and content of the written proposal.

The respondent's oral presentation, site visit, and/or demonstration must substantially represent material included in the written proposal, and should not introduce new concepts or offers unless specifically requested by HHSC.

### **5.5. Discussions with Respondents**

HHSC may, but is not required to, conduct discussions with all, some, or none of the respondents for the purpose of obtaining the best value for HHSC. HHSC may, but is not required to, permit respondents to prepare best and final offers. For this reason, respondents are encouraged to treat their original proposals, and any revised offers requested by HHSC, as best and final offers.

HHSC may make an award prior to the completion of discussions if HHSC determines that the award represents best value to the State of Texas.

# Appendix A-1

**Note:**

Rows, columns and cells highlighted in yellow contain live formulas that link the entire spreadsheet together. Please do not hardcode numbers into the yellow highlighted areas. If additional row, columns or cells are needed please ensure formulas are correctly linked.

Vendor's Company Name (Enter Here)

**Appendix A-1  
Transitional Pricing Proposals A-1**

	<b>All Inclusive Hourly Rate</b>	<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>	<b>Month 4</b>	<b>Month 5</b>	<b>Month 6</b>	<b>Total</b>
<b>Data Broker Services</b>		<b>Transitional Pricing Schedule 1 - Hourly Rates and Number of Hours by Key Milestones</b>						
<b>1. (Key Milestone)</b>								
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
(position classification)								-
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>2. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>3. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>4. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>5. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>6. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>7. (Key Milestone)</b>								
<b>Sub-Total</b>		-	-	-	-	-	-	-
<b>Grand Total</b>		-	-	-	-	-	-	-

**Expand Hidden Rows as Needed** (keep formulas consistent)

Positions in each Key Milestone should be aggregated by position classification. List all position classification that will be providing services for the specific Key Milestone. Please refer to the Key Milestones as defined elsewhere in this document. Include a written narrative and additional supporting schedules justifying the proposed position(s) including, but not limited to, the start date, the transitional milestones to be performed, and the number of weeks to perform readiness reviews with HHSC program staff, etc.

Vendor's Company Name (Enter Here)

**Appendix A-1  
Transitional Pricing Proposals  
Transitional Pricing Schedule 2**

**Summary Pricing Schedule**

<b>Data Broker Services</b>		
<b>By Key Milestones</b>		<b>Total Transition Fees</b>
1	<i>Key Milestone #1</i>	\$ -
2	<i>Key Milestone #2</i>	\$ -
3	<i>Key Milestone #3</i>	\$ -
4	<i>Key Milestone #4</i>	\$ -
5	<i>Key Milestone #5</i>	\$ -
6	<i>Key Milestone #6</i>	\$ -
7	<i>Key Milestone #7</i>	\$ -
<b>Total Transition Fees</b>		<b>\$ -</b>

Vendor's Company Name (Enter Here)

**Appendix A-1  
Transitional Pricing Proposals  
Transitional Pricing Schedule 3**

<b>Subcontractor(s) Listing</b>	
<b>1</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

Vendor's Company Name (Enter Here)

**Appendix A-1  
Transitional Pricing Proposals  
Transitional Pricing Schedule 4**

<b>Consultant(s) Listing</b>	
<b>1</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

# Appendix A-2 ----->

**Note:**

Rows, columns and cells highlighted in yellow contain live formulas that link the entire spreadsheet together. Please do not hardcode numbers into the yellow highlighted areas. If additional row, columns or cells are needed please ensure formulas are correctly linked.



Vendor's Company Name (Enter Here)

Appendix A 2
Operational Pricing Proposals
Operational Pricing Schedule 1
Hourly Rate and Number of Hours by Functional Area and Position Classification

Table with columns: All Inclusive Hourly Rate, Month 1-12, Operational Year 1 Sub-total. Rows are organized by functional areas (1-8) and position classifications (Job title - class func ion).

Expand Hidden Rows as Needed (keep formulas consistent)
(Functional area) should be aggregated by
posts on standardization. List all position
classification that will be providing services
for the specific functional area. Please refer
to the functional area as defined elsewhere
in this document. Include a written narrative
and additonal supporting schedules.





Vendor's Company Name (Enter Here)

**Appendix A-2**  
**Operational Pricing Proposals**  
**Operational Pricing Schedule 2**

Summary Pricing Schedule						
	Operational Year 1 (12 months)	Operational Year 2 (12 months)	Operational Year 3 (12 months)	Operational Year 4 (12 months)	Operational Year 5 (12 months)	Total Operational Fees
<b>Data Broker Services</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Vendor's Company Name (Enter Here)

**Appendix A-2  
Operational Pricing Proposals  
Operational Pricing Schedule 3**

<b>Subcontractor(s) Listing</b>	
<b>1</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

**Expand Schedule as Needed**

Vendor's Company Name (Enter Here)

**Appendix A-2  
Operational Pricing Proposals  
Operational Pricing Schedule 4**

<b>Consultant(s) Listing</b>	
<b>1</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

**Expand Schedule as Needed**

# Appendix A-3 ----->

**Note:**

Rows, columns and cells highlighted in yellow contain live formulas that link the entire spreadsheet together. Please do not hardcode numbers into the yellow highlighted areas. If additional row, columns or cells are needed please ensure formulas are correctly linked.

Vendor's Company Name (Enter Here)

Appendix A-3

Predictive Analytics and ID Authentication Operational Pricing Proposals

Predictive Analytics and ID Authentication Operational Pricing Schedule 1

Transitional/Developmental and Ongoing Operational Estimating Assumptions

**Predictive Analytics - Assumptions**

	Document major assumptions made while estimating work effort and assessing impacts. Things to consider:
	- How will HHSC be involved. What tasks are we expected to perform.
	- Factors not included in estimate
	- Assumption of reusable assets including current knowledge

**Risks**

	Define all risks identified as part of the estimate and impact assessment. Pay particular attention to risks that would change the estimate.
--	--

**Issues**

	Define all issues identified as part of the estimate and impact assessment.
--	---

**Questions**

	Define all open questions identified as part of the estimate and impact assessment.
--	---

Note that Predictive Analytics and ID Authentication must be as treated as individual stand-alone solutions and priced as such.



## ID Authentication - Assumptions

	Document major assumptions made while estimating work effort and assessing impacts. Things to consider: - How will HHSC be involved. What tasks are we expected to perform. - Factors not included in estimate - Assumption of reusable assets including current knowledge

### Risks

	Define all risks identified as part of the estimate and impact assessment. Pay particular attention to risks that would change the estimate.

### Issues

	Define all issues identified as part of the estimate and impact assessment.

### Questions

	Define all open questions identified as part of the estimate and impact assessment.

**Note that Predictive Analytics and ID Authentication must be as treated as individual stand-alone solutions and priced as such.**

Vendor's Company Name (Enter Here)

**Appendix A-3  
 Predictive Analytics and ID Authentication Solutions Transitional Pricing Proposals  
 Schedule 2**

	<b>All-Inclusive Hourly Rate</b>	<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>	<b>Total</b>
<b>Predictive Analytics</b>		<b>Transitional Pricing Schedule - Hourly Rates and Number of Hours by Key Milestones</b>			
<b>1. (Key Milestone)</b>					
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
<b>Sub-Total</b>		-	-	-	-
<b>2. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>3. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>4. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>5. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>6. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>7. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>Grand Total</b>		-	-	-	-

**Expand Rows as Needed** (keep formulas consistent)

Positions in each Key Milestone should be aggregated by position classification. List all position classification that will be providing services for the specific Key Milestone. Please refer to the Key Milestones as defined elsewhere in this document. Include a written narrative and additional supporting schedules justifying the proposed position(s) including, but not limited to, the start date, the transitional milestones to be performed, and the number of weeks to perform readiness reviews with HHSC program staff, etc.

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

Vendor's Company Name (Enter Here)

**Appendix A-3  
 Predictive Analytics and ID Authentication Solutions Transitional Pricing Proposals  
 Schedule 2**

	<b>All-Inclusive Hourly Rate</b>	<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>	<b>Total</b>
<b>ID Authentication</b>	<b>Transitional Pricing Schedule - Hourly Rates and Number of Hours by Key Milestones</b>				
<b>1. (Key Milestone)</b>					
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
(position classification)					-
<b>Sub-Total</b>		-	-	-	-
<b>2. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>3. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>4. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>5. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>6. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>7. (Key Milestone)</b>					
<b>Sub-Total</b>		-	-	-	-
<b>Grand Total</b>		-	-	-	-

**Expand Rows as Needed** (keep formulas consistent)

Positions in each Key Milestone should be aggregated by position classification. List all position classification that will be providing services for the specific Key Milestone. Please refer to the Key Milestones as defined elsewhere in this document. Include a written narrative and additional supporting schedules justifying the proposed position(s) including, but not limited to, the start date, the transitional milestones to be performed, and the number of weeks to perform readiness reviews with HHSC program staff, etc.

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

Vendor's Company Name (Enter Here)	
------------------------------------	--

**Appendix A-3**  
**Predictive Analytics and ID Authentication Operational Pricing Proposals**  
**Predictive Analytics and ID Authentication Operational Pricing Schedule 3**

Summary Budget Information by Component						
	Operational Year 1 (12 months)	Operational Year 2 (12 months)	Operational Year 3 (12 months)	Operational Year 4 (12 months)	Operational Year 5 (12 months)	Total Operational Fees
Predictive Analytics	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ID Authentication	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Contract Impact	
<b>Summary:</b>	
Predictive Analytics	\$
ID Authentication	\$
<b>Fixed Price:</b>	
Predictive Analytics	\$
ID Authentication	\$
<b>Variable Price:</b>	
Predictive Analytics	\$
ID Authentication	\$

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**



















Vendor's Company Name (Enter Here)

**Appendix A-3  
 Predictive Analytics and ID Authentication Operational Pricing Proposals  
 Predictive Analytics and ID Authentication Operational Pricing Schedule 5**

<b>Predictive Analytics Subcontractor(s) Listing</b>	
<b>1</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

**Expand Schedule as Needed**

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

Vendor's Company Name (Enter Here)

**Appendix A-3  
 Predictive Analytics and ID Authentication Operational Pricing Proposals  
 Predictive Analytics and ID Authentication Operational Pricing Schedule 5**

<b>ID Authentication Subcontractor(s) Listing</b>	
<b>1</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Subcontractor Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

**Expand Schedule as Needed**

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

Vendor's Company Name (Enter Here)

**Appendix A-3  
 Predictive Analytics and ID Authentication Operational Pricing Proposals  
 Predictive Analytics and ID Authentication Operational Pricing Schedule 6**

Predictive Analytics Consultant(s) Listing	
<b>1</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>2</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>3</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)
<b>4</b>	<b>(Consultants Name)</b>
	Types of Services
	Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor
	Subcontractor travel budget
	Expected deliverable(s) to be provided to prime contractor
	Subcontractor Cost (amount included in proposal)

**Expand Schedule as Needed**

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**

**Vendor's Company Name (Enter Here)**

**Appendix A-3  
 Predictive Analytics and ID Authentication Operational Pricing Proposals  
 Predictive Analytics and ID Authentication Operational Pricing Schedule 6**

<b>ID Authentication Consultant(s) Listing</b>	
<b>1 (Consultants Name)</b>	
Types of Services	
Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor	
Subcontractor travel budget	
Expected deliverable(s) to be provided to prime contractor	
Subcontractor Cost (amount included in proposal)	
<b>2 (Consultants Name)</b>	
Types of Services	
Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor	
Subcontractor travel budget	
Expected deliverable(s) to be provided to prime contractor	
Subcontractor Cost (amount included in proposal)	
<b>3 (Consultants Name)</b>	
Types of Services	
Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor	
Subcontractor travel budget	
Expected deliverable(s) to be provided to prime contractor	
Subcontractor Cost (amount included in proposal)	
<b>4 (Consultants Name)</b>	
Types of Services	
Detailed explanation of need for sub-contractor and service(s) to be provide to prime contractor	
Subcontractor travel budget	
Expected deliverable(s) to be provided to prime contractor	
Subcontractor Cost (amount included in proposal)	

**Expand Schedule as Needed**

**Note that Predictive Analytics and ID Authentication must be treated as individual stand-alone solutions and priced as such.**



# Appendix A-4 ----->

**Note:**

Rows, columns and cells highlighted in yellow contain live formulas that link the entire spreadsheet together. Please do not hardcode numbers into the yellow highlighted areas. If additional row, columns or cells are needed please ensure formulas are correctly linked.

Vendor's Company Name: \_\_\_\_\_

**Appendix A-4  
Pricing Summary  
Pricing Summary 1**

<b>Fixed Administrative Fees for Transition</b>		
<b>Data Broker Services</b>		
<b>By Key Milestones</b>		<b>Fixed Fee (Transition Months)</b>
1	<i>Key Milestone #1</i>	
2	<i>Key Milestone #2</i>	
3	<i>Key Milestone #3</i>	
4	<i>Key Milestone #4</i>	
5	<i>Key Milestone #5</i>	
6	<i>Key Milestone #6</i>	
<b>Total Fixed Fees</b>		<b>\$ -</b>

**Expand Schedule as Needed** (keep formulas consistent)  
Please refer to the Key Milestones as defined elsewhere in this document. If more milestones are needed add rows and link appropriately

Vendor's Company Name:

**Appendix A-4  
Pricing Summary  
Pricing Summary 2**

<b>Fixed Administrative Fees for Operations</b>	
<b>Data Broker Services</b>	
	<b>Annual Fixed Fee</b>
<b>Operational Year 1</b> (include only fees for months after attaining "System Ready" status)	
<b>Operational Year 2</b>	
<b>Operational Year 3</b>	
<b>Operational Year 4</b>	
<b>Operational Year 5</b>	

<b>Fixed Administrative Fees for Predictive Analytics Operations (if any)</b>	
<b>Data Broker Services</b>	
	<b>Annual Fixed Fee</b>
<b>Operational Year 1</b> (include only fees for months after attaining "System Ready" status)	
<b>Operational Year 2</b>	
<b>Operational Year 3</b>	
<b>Operational Year 4</b>	
<b>Operational Year 5</b>	

<b>Fixed Administrative Fees for ID Authentication Operations (if any)</b>	
<b>Data Broker Services</b>	
	<b>Annual Fixed Fee</b>
<b>Operational Year 1</b> (include only fees for months after attaining "System Ready" status)	
<b>Operational Year 2</b>	
<b>Operational Year 3</b>	
<b>Operational Year 4</b>	
<b>Operational Year 5</b>	

<b>Total Fixed Administrative Fees for the Contract</b>	
<b>Data Broker Services</b>	
	<b>Annual Fixed Fee</b>
<b>Operational Year 1</b> (include only fees for months after attaining "System Ready" status)	\$ -
<b>Operational Year 2</b>	\$ -
<b>Operational Year 3</b>	\$ -
<b>Operational Year 4</b>	\$ -
<b>Operational Year 5</b>	\$ -

Vendor's Company Name:

**Appendix A-4  
Pricing Summary  
Pricing Summary 3**

<b>Variable Administrative Fees for Operations</b>	
<b>Data Broker Services</b>	
<b>Variable Fee Description</b>	<b>Monthly Variable Fee</b>
	\$ -
	\$ -
	\$ -
	\$ -

<b>Variable Administrative Fees for Predictive Analytics Operations</b>	
<b>Data Broker Services</b>	
<b>Variable Fee Description</b>	<b>Monthly Variable Fee</b>
	\$ -
	\$ -
	\$ -
	\$ -

<b>Variable Administrative Fees for ID Authentication Operations</b>	
<b>Data Broker Services</b>	
<b>Variable Fee Description</b>	<b>Monthly Variable Fee</b>
	\$ -
	\$ -
	\$ -
	\$ -

The Vendor must include assumptions utilized to calculate the monthly variable fees included above with the overall pricing assumptions required in Section 2.2.10.7.4

Vendor's Company Name:

**Appendix A-4  
Pricing Summary  
Pricing Summary 4**

<b>Catalog Pricing for Operations and Predictive Analytics Operations</b>	
<b>Activity</b>	<b>All-inclusive Hourly Labor Rate</b>
Non-technical Operations (individually list service levels)	\$ -
Other Administrative Services (individually list service levels)	\$ -

**Expand Schedule as Needed**



**HHS**  
**Enterprise Information Security**  
**Risk Assessment Monitoring**  
**Procedures**  
**(EIS-RAMP)**

***August 31, 2015***

**V 1.0**

## Table of Contents

<b>Table of Contents</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>3</b>
<b>2. Purpose</b> .....	<b>3</b>
<b>3. Scope</b> .....	<b>3</b>
<b>4. Audience</b> .....	<b>4</b>
<b>5. Background</b> .....	<b>4</b>
<b>6. How To Use This Document</b> .....	<b>4</b>
Small Workforce Operations.....	4
System Security Plan .....	4
Identifying the Security Control Baseline.....	5
<b>7. Risk Assessment and Compliance Monitoring</b> .....	<b>6</b>
<b>8. Enterprise Information Security Controls Mapping to NIST SP 800-53 rev 4</b> .....	<b>7</b>

## 1. Introduction

The Title 1, Texas Administrative Code (TAC), Chapter 202 <sup>1</sup>, RULE §202.24 Agency Information Security Program requires that all state agencies have an information security program consistent with the rules defined in the TAC 202 which includes protections, based on risk, for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the agency including outsourced resources to another agency, contractor, or other source (e.g., cloud computing). The program shall include periodic assessments of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency.

The HHS Data Use Agreement requires that Contractor/Third Parties accessing and/or managing confidential information comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law. Federal Law includes the Health Information Portability and Accountability Act (HIPAA) 45 CFR Part 164 and other federal regulations that require routine security risk analysis and risk management. These processes must include security control measures for reducing risk to an acceptable level as recommended by the National Institute of Standards and Technology (NIST).

For awarded contracts, the completion of the HHS Enterprise Data Use Agreement and Information Security and Privacy Initial Inquiry (SPI) satisfies an initial security risk assessment for Contractor/Third Parties.

The Information Security and Privacy Initial Inquiry (SPI) controls are the HHS minimally acceptable security controls baseline required prior to contract award for all Contractor/Third Parties that access and/or manage HHS confidential information with external Information Systems. The SPI baseline of security controls are identified in Section 8.

## 2. Purpose

The Enterprise Information Security Risk Assessment and Monitoring Procedures (EIS-RAMP) is designed to meet compliance with state and federal regulations to assess risk and accomplish the security monitoring requirement with the overall objective of reducing risk to a manageable level.

## 3. Scope

The EIS-RAMP applies to Contractor/Third Party external service providers that access or manage Health and Human Services (HHS) Confidential Information.

The EIS-RAMP does not apply to customers of HHS services.

---

<sup>1</sup> The Title 1, Texas Administrative Code (TAC), Chapter 202 can be found at:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=10&ch=202](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202)



## 4. Audience

The EIS-RAMP is primarily intended to be used by Contractor/Third Party Information Security Officers, staff, or officials who have been designated as responsible for the organizations information security and the protection of HHS Confidential Information.

## 5. Background

The security controls contained in Section 8 are designed to protect and meet the security objectives of confidentiality, integrity, and availability of information for the information system, reducing risk to a manageable level.

The security controls are derived from the controls prescribed in the Texas Department of Information Resources (DIR) Security Control Standards Catalog<sup>2</sup> and the NIST Special Publication 800-53<sup>3</sup> Revision 4 Moderate security control baseline. Reviewing these DIR and NIST documents will convey how these security controls are designed to meet the security objectives of confidentiality, integrity, and availability and protect information systems from unauthorized access, use, modification, and destruction.

## 6. How To Use This Document

### Small Workforce Operations

Small Workforce Operations will only be required to comply with the SPI Security Controls baseline identified in Section 8 of this document.

Small Workforce Operations typically involve small, informal home office types of information technology configurations that **may** also contain the following characteristics.

- Small, independent, family-owned, controlled, and operated business
- A minimum amount of employees
- Small amount of business volume, typically not franchised, therefore open for business only in a single location.
- Small business's operated out of the primary residence of the owner(s).

### System Security Plan

Following contract award, the HHS Information Owner or their designee will collaborate with the respective Agency ISO and Contractor/Third Party to identify required security controls for the information system.

---

<sup>2</sup> The DIR Security Control Standards Catalog can be found at:

<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Security%20Control%20Standards%20Catalog%20V1.2.docx>

<sup>3</sup> The NIST SP 800-53 can be found at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>

A System Security Plan (SSP) template, provided by the Agency ISO, will be used to document the required security controls as well as other information specific to the information system.

The SSP template will become the System Security Plan for the information system. The selection and implementation of required security controls documented in the SSP will be a risk-based approach, where 100% compliance will be achieved over time based on the control implementation timelines identified in Section 8.

## **Identifying the Security Control Baseline**

The SSP includes a Security Categorization (SC) process to determine the correct baseline of security controls for the information system.

Small Workforce Operations will only be required to comply with the SPI Security Controls baseline identified in Section 8 of this document.

There are 3 possible SC levels identified in the SSP which are Low, Moderate or High.

The SC levels map directly to the HHS Control Baseline of Low, Moderate or High contained in Section 8 of this document. For example a SC level of high will map to a security control baseline of high.

The security control baseline will map directly to and is primarily based on the 3 data classification levels of Public, Agency Sensitive or Confidential.

Although in some cases, based on the business impact of the information system, a higher SC level and control baseline may be more necessary than the data classification requires. For example, a climate control system in a data center would be considered critical and may require a high control baseline although it does not process confidential information.

The mapping of the SC level and impact to data classification security control baseline contained in Section 8 are indicated in the following table.

Security Categorization (SC) & Impact	Regulation Drivers	Data Classification	HHS Control Baseline	Control Source
Low	TAC 202	Public	Low	TAC 202 controls catalog (Low baseline controls).  Is for systems using HHS public data
Moderate	TAC 202	Agency Sensitive	Moderate	TAC 202 controls catalog (Low baseline controls) + Additional controls as necessary (SANS top 20 Critical Controls).  Is for systems using HHS agency sensitive data
High	TAC 202, Federal	Confidential	High	NIST SP 800-53 Rev 4 Moderate base controls +control enhancements (TAC 202 controls catalog Moderate controls) <ul style="list-style-type: none"> <li>Additional specific controls (e.g., HIPAA, SANS requirements mapped to NIST SP 800-53 rev4.</li> </ul> Is for systems using HHS confidential data

## 7. Risk Assessment and Compliance Monitoring

Contractor/Third Parties are required to follow the risk based approach of control implementation identified in their information system SSP's, with the objective of achieving 100% compliance of control implementation based on the implementation timelines of Section 8.

HHS Information Owners are responsible for ensuring information security risk assessments are performed. The information system SSP will be the primary document for the risk assessment and compliance monitoring.

HHS Agency Information Security Officers and Information Owners will identify on an annual basis, a schedule of which systems will be assessed for compliance monitoring.

Once notified by the Agency Information Security Officer and Information Owner that a system is scheduled for assessment, the Contractor/Third Party will have 90 days to return a completed SSP.

## 8. Enterprise Information Security Controls Mapping to NIST SP 800-53 rev 4

The National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 controls identified below will be assessed during the HHS annual risk assessment and monitoring process. The Information Security and Privacy Initial Inquiry (SPI) controls are the HHS minimally acceptable controls required for contractors that access and/or manage HHS confidential information. For contractors with small standalone computers (Small Workforce operations), only the SPI controls are required. All other systems and contractors will also be required to comply with the LOW, MOD or HIGH baselines control according to the type of HHS data they are using or per the determined system security categorization level. At a minimum, the control baseline of LOW is for systems using HHS public data, MOD is for systems using HHS agency sensitive data, and HIGH is for systems using HHS confidential data. Compliance with these controls will be on a risk-based approach where 100% compliance will be achieved over time.

ACCESS (AC) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AC-1	Access Control Policy and Procedures	P1	x	x	x		2015
AC-2	Account Management	P1	x	x	x	x	2015
AC-2(1)	Account Management (Automated System Account Management)	P1			x		2016
AC-2(2)	Account Management (Removal of Temporary Accounts)	P1			x		2015
AC-2(3)	Account Management (Disable Inactive Accounts)	P1			x		2015
AC-2(4)	Account Management (Automated Audit Actions)	P1			x		2015
AC-3	Access Enforcement	P1	x	x	x		2015
AC-4	Information Flow Enforcement	P1		x	x		2017
AC-5	Separation of Duties	P1		x	x		2015
AC-6	Least Privilege	P1		x	x		2017
AC-6(1)	Least Privilege (Authorize Access to Security Functions)	P1			x		2017

ACCESS (AC) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AC-6 (2)	Non- privileged access non-security functions	P1			x		2017
AC-6 (5)	Privileged Accounts	P1			x		2017
AC-6 (9)	Auditing use of privileged functions.	P1			x		2017
AC-6 (10)	Prohibit non-privileged users from executing privileged functions	P1			x		2017
AC-7	Unsuccessful Logon Attempts	P2	x	x	x	x	2015
AC-8	System Use Notification	P1	x	x	x		2015
AC-9	Previous Logon (Access) Notification	P0					TBD
AC-10	Concurrent Session Control	P3					TBD
AC-11	Session Lock	P3		x	x	x	2015
AC-11(1)	Session Lock (Pattern-Hiding Displays)	P3			x		2017
AC-12	Session Termination	P2		x	x		2017
AC-14	Permitted Actions without Identification or Authentication	P3	x	x	x		2017
AC-16	Security Attributes	P0					TBD
AC-17	Remote Access	P1	x	x	x	x	2015
AC-17(1)	Remote Access (Automated Monitoring / Control)	P1			x		2015
AC-17(2)	Remote Access (Protection of confidentiality/integrity using encryption)	P1			x	x	2015
AC-17(3)	Remote Access (Managed access control points)	P1			x		2015
AC-17(4)	Remote Access (Privileged commands/access)	P1			x		2015

ACCESS (AC) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AC-18	Wireless Access	P1	x	x	x	x	2015
AC-18(1)	Wireless Access (Authentication and Encryption)	P1			x	x	2015
AC-19	Access Control for Mobile Devices	P1	x	x	x		2016
AC-19(5)	Access Control for Mobile Devices (Full Device / Container-Based Encryption)	P1			x		2016
AC-20	Use of External Information Systems	P1	x	x	x		2016
AC-20(1)	Use of External Information Systems (Limits on Authorized Use)	P1			x		2016
AC-20(2)	Use of External Information Systems (Portable Storage Devices)	P1			x		2016
AC-21	Information Sharing	P2			x		TBD
AC-22	Publicly Accessible Content	P3	x	x	x		2017
AC-23	Data Mining Protection	P0					2017
AC-24	Access Control Decisions	P0					TBD
AC-25	Reference Monitor	P0					TBD

AWARENESS AND TRAINING (AT) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AT-1	Security Awareness and Training Policy and Procedures	P1	x	x	x		2015

AWARENESS AND TRAINING (AT) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AT-2	Security Awareness Training	P1	x	x	x	x	2015
AT-2(2)	Security Awareness (Insider Threat)	P1			x		2015
AT-3	Role-Based Security Training	P1	x	x	x		2016
AT-4	Security Training Records	P3	x	x	x		2017

AUDIT AND ACCOUNTABILITY (AU) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AU-1	Audit and Accountability Policy and Procedures	P1	x	x	x		2016
AU-2	Audit Events	P1	x	x	x		2015
AU-2(3)	Audit Events (Reviews and Updates)	P1			x		2015
AU-3	Content of Audit Records	P1	x	x	x		2016
AU-3(1)	Content of Audit Records (Additional Audit Information)	P1			x		2016
AU-4	Audit Storage Capacity	P1	x	x	x		2016
AU-5	Response to Audit Processing Failures	P1	x	x	x		2016
AU-6	Audit Review, Analysis, and Reporting	P1	x	x	x	x	2015
AU-6(1)	Audit Review, Analysis, and Reporting (Process Integration)	P1			x		2015

AUDIT AND ACCOUNTABILITY (AU) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
AU-6(3)	Audit Review, Analysis, and Reporting (Correlate Audit Repositories)	P1			X		2015
AU-7	Audit Reduction and Report Generation	P2		X	X		2017
AU-7(1)	Audit Reduction and Report Generation (Automatic Processing)	P2			X		2017
AU-8	Time Stamps	P1	X	X	X		2016
AU-8(1)	Time Stamps (Synchronization with Authoritative Time source)	P1			X		2016
AU-9	Protection of Audit Information	P1	X	X	X		2016
AU-9(4)	Protection of Audit Information (Access by Subset of Privileged Users)	P1			X		2016
*AU-10	Non-repudiation	P2					2017
AU-11	Audit Record Retention	P3	X	X	X		2017
AU-12	Audit Generation	P1	X	X	X		2016
AU-13	Monitoring for Information Disclosure	P0					2017
AU-14	Session Audit	P0					2017
AU-15	Alternate Audit Capability	P0					TBD
AU-16	Cross-Organizational Auditing	P0					TBD



SECURITY ASSESSMENT AND AUTHORIZATION (CA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
CA-1	Security Assessment and Authorization Policies and Procedures	P1	x	x	x		2016
CA-2	Security Assessments	P2	x	x	x		2015
CA-2(1)	Security Assessments (Independent Assessors)	P2			x		2015
CA-3	System Interconnections	P1	x	x	x		2016
CA-3 (5)	System Interconnections (Restrictions on External System Connections)	P1			x		2016
CA-5	Plan of Action and Milestones	P3	x	x	x		2017
CA-6	Security Authorization	P2	x	x	x		2017
CA-7	Continuous Monitoring	P2	x	x	x		2017
CA-7(1)	Continuous Monitoring (Independent Assessment)	P2			x		2017
CA-8	Penetration Testing	P2					TBD
CA-9	Internal System Connections	P2	x	x	x		2017

CONFIGURATION MANAGEMENT (CM) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
CM-1	Configuration Management Policy and Procedures	P1	x	x	x		2015
CM-2	Baseline Configuration	P1	x	x	x		2016
CM-2(1)	Baseline Configuration (Reviews and Updates)	P1			x		2016
CM-2(3)	Baseline Configuration (Retention of Previous Configurations)	P1			x		2016

CONFIGURATION MANAGEMENT (CM) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
CM-2(7)	Baseline Configuration (Configure Systems, Components, Or Devices For High-Risk Areas)	P1			x		2016
CM-3	Configuration Change Control	P1		x	x		2017
CM-3 (2)	Configuration Change Control (Test / Validate / Document Changes)	P1			x		2017
CM-4	Security Impact Analysis	P2	x	x	x		2015
CM-4(1)	Security Impact Analysis (Separate test environments)	P2			x		2015
CM-5	Access Restrictions for Change	P1		x	x		2017
CM-6	Configuration Settings	P1	x	x	x	x	2015
CM-7	Least Functionality	P1	x	x	x	x	2015
CM-7 (1)	Least Functionality (Periodic Reviews)	P1			x		2015
CM-7 (2)	Least Functionality (Prevent Program Execution)	P1			x		2015
CM-7 (4)	Least Functionality (Unauthorized Software / Blacklisting)	P1			x		2015
CM-8	Information System Component Inventory	P1	x	x	x		2016
CM-8 (1)	Information System Component Inventory (Updates During Installations / Removals)	P1			x		2016
CM-8 (3)	Information System Component Inventory (Automated Unauthorized Component Detection)	P1			x		2016
CM-8 (5)	Information System Component Inventory (No Duplicative Accounting of Components)	P1			x		2016
CM-9	Configuration Management Plan	P1		x	x		2017
CM-10	Software Usage Restrictions	P2	x	x	x		2017
CM-11	User-Installed Software	P1	x	x	x		2015

CONTINGENCY PLANNING (CP) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
CP-1	Contingency Planning Policy and Procedures	P1	x	x	x		2016
CP-2	Contingency Plan	P1	x	x	x		2015
CP-2 (1)	Contingency Plan (Coordinates with Related Plans)	P1			x		2015
CP-2 (3)	Contingency Plan (Resume Essential Missions / Business Functions)	P1			x		2015
CP-2 (8)	Contingency Plan (Identify Critical Assets)	P1			x		2015
CP-3	Contingency Training	P2	x	x	x		2017
CP-4	Contingency Plan Testing	P2	x	x	x		2015
CP-4 (1)	Contingency Plan Testing (Coordinate with Related Plans)	P2			x		2015
CP-6	Alternate Storage Site	P1		x	x		2015
CP-6(1)	Alternate Storage Site (Separation From Primary Site)	P1			x		2015
CP-6(3)	Alternate Storage Site (Accessibility)	P1			x		2015
CP-7	Alternate Processing Site	P1			x		TBD
CP-7 (1)	Alternate Processing Site (Separation From Primary Site)	P1			x		TBD
CP-7 (2)	Alternate Processing Site (Accessibility)	P1			x		TBD
CP-7(3)	Alternate Processing Site (Priority of Service)	P1			x		TBD
CP-8	Telecommunications Services	P1			x		TBD

CONTINGENCY PLANNING (CP) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
CP-8 (1)	Telecommunications Services (Priority of Service Provisions)	P1			X		TBD
CP-8 (2)	Telecommunications Services (Single Points of Failure)	P1			X		TBD
CP-9	Information System Backup	P1	X	X	X		2016
CP-9 (1)	Information System Backup ((Testing for Reliability / Integrity)	P1			X		2016
CP-10	Information System Recovery and Reconstitution	P1	X	X	X		2016
CP-10 (2)	Information System Recovery and Reconstitution (Transaction Recovery)	P1			X		2016
CP-11	Alternate Communications Protocols	P0					TBD
CP-12	Safe Mode	P0					TBD
CP-13	Alternative Security Mechanisms	P0					TBD

IDENTIFICATION AND AUTHENTICATION (IA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
IA-1	Identification and Authentication Policy and Procedures	P1	X	X	X		2015
IA-2	Identification and Authentication (Organizational Users)	P1	X	X	X	X	2015
IA-2 (1)	Identification and Authentication (Network Access to	P1			X		2015

IDENTIFICATION AND AUTHENTICATION (IA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
	Privileged Accounts)						
IA-2 (8)	Identification and Authentication (Network Access To Privileged Accounts - Replay Resistant)	P1			x		2015
IA-2 (11)	Identification and Authentication (Remote Access - Separate Device)	P1			x		2015
IA-3	Device Identification and Authentication	P1		x	x		2017
IA-4	Identifier Management	P1	x	x	x		2015
IA-5	Authenticator Management	P1	x	x	x	x	2015
IA-5 (1)	Authenticator Management (Password-based Authentication)	P1			x	x	2015
IA-5 (2)	Authenticator Management (PKI-based Authentication)	P1			x		2015
IA-5 (3)	Authenticator Management (In-person or Trusted Third-Party Registration)	P1			x		2015
IA-5 (11)	Authenticator Management (Hardware or Software Token-based Authentication)	P1			x		2015
IA-6	Authenticator Feedback	P2	x	x	x		2016
IA-7	Cryptographic Module Authentication	P1	x	x	x		2016
IA-8	Identification and Authentication (Non-Organizational Users)	P1	x	x	x		2016

IDENTIFICATION AND AUTHENTICATION (IA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
IA-9	Service Identification and Authentication	P0					TBD
IA-10	Adaptive Identification and Authentication	P0					2017
IA-11	Re-authentication	P0					TBD

INCIDENT RESPONSE (IR) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
IR-1	Incident Response Policy and Procedures	P1	x	x	x		2015
IR-2	Incident Response Training	P2	x	x	x		2017
IR-3	Incident Response Testing	P2		x	x		2017
IR-3(2)	Incident Response Testing (Coordinating with Related Plans)	P2			x		2017
IR-4	Incident Handling	P1	x	x	x		2016
IR-4(1)	Incident Handling (Automated Incident Handling Processes)	P1			x		2016
IR-5	Incident Monitoring	P1	x	x	x		2016
IR-6	Incident Reporting	P1	x	x	x		2015
IR-6(1)	Incident Reporting (Automated Reporting)	P1			x		2017
IR-7	Incident Response Assistance	P2	x	x	x		2017
IR-7(1)	Incident Response Assistance (Automation Support for Availability of Information / Support)	P2			x		2017

INCIDENT RESPONSE (IR) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
IR-8	Incident Response Plan	P1	x	x	x		2016
IR-9	Information Spillage Response	P0					2017
IR-10	Integrated Information Security Analysis Team	P0					2017

MAINTENANCE (MA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
MA-1	System Maintenance Policy and Procedures	P1	x	x	x		2016
MA-2	Controlled Maintenance	P2	x	x	x		2017
MA-3	Maintenance Tools	P3			x		2017
MA-3(1)	Maintenance Tools (Inspect Tools)	P3			x		2017
MA-3(2)	Maintenance Tools (Inspect Media)	P3			x		2017
MA-4	Nonlocal Maintenance	P2	x	x	x		2017
MA-4(2)	Nonlocal Maintenance (Document Nonlocal Maintenance)	P2			x		2017
MA-5	Maintenance Personnel	P2	x	x	x		2017
MA-6	Timely Maintenance	P2			x		TBD

MEDIA PROTECTION (MP) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
MP-1	Media Protection Policy and Procedures	P1	x	x	x		2016
MP-2	Media Access	P1	x	x	x		2016
MP-3	Media Marking	P2		x	x		2017
MP-4	Media Storage	P1		x	x	x	2015
MP-5	Media Transport	P1		x	x	x	2015
MP-5(4)	Media Transport (Cryptographic Protection)	P1			x		2015
MP-6	Media Sanitization	P1	x	x	x	x	2015
MP-7	Media Use	P1	x	x	x		2016
MP-7(1)	Media Use (Prohibit Use Without Owner)	P1			x		2016
MP-8	Media Downgrading	P0					TBD

PHYSICAL AND ENVIRONMENTAL PROTECTION (PE) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
PE-1	Physical and Environmental Protection Policy and Procedures	P1	x	x	x		2015
PE-2	Physical Access Authorizations	P1	x	x	x	x	2015
PE-3	Physical Access Control	P1	x	x	x	x	2015
PE-4	Access Control for Transmission Medium	P1			x		TBD
PE-5	Access Control for Output Devices	P2			x	x	2015
PE-6	Monitoring Physical Access	P1	x	x	x		2016
PE-6(1)	Monitoring Physical Access (Intrusion Alarms / Surveillance Equipment)	P1			x		2016
PE-8	Visitor Access Records	P3	x	x	x		2017
PE-9	Power Equipment and Cabling	P1			x		TBD



PHYSICAL AND ENVIRONMENTAL PROTECTION (PE) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
PE-10	Emergency Shutoff	P1			x		TBD
PE-11	Emergency Power	P1			x		TBD
PE-12	Emergency Lighting	P1	x	x	x		2016
PE-13	Fire Protection	P1	x	x	x		2015
PE-13 (3)	Fire Protection (Automatic Fire Suppression)	P1			x		2015
PE-14	Temperature and Humidity Controls	P1	x	x	x		2016
PE-15	Water Damage Protection	P1	x	x	x		2016
PE-16	Delivery and Removal	P2	x	x	x		2017
PE-17	Alternate Work Site	P2			x		TBD
PE-18	Location of Information System Components	P3					TBD
PE-19	Information Leakage	P0					TBD
PE-20	Asset Monitoring and Tracking	P0					TBD

PLANNING (PL) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
PL-1	Security Planning Policy and Procedures	P1	x	x	x		2016
PL-2	System Security Plan	P1	x	x	x		2015
PL-2(3)	System Security Plan (Plan / Coordinate With Other Organizational Entities)	P1			x		2015

PL-4	Rules of Behavior	P2	x	x	x	x	2015
PL-4(1)	Rules of Behavior/Acceptable Use (Social Media and Networking Restrictions)	P2			x	x	2015
*PL-7	Security Concept of Operations	P0					TBD
PL-8	Information Security Architecture	P1			x		TBD
*PL-9	Central Management	P0					TBD

PROGRAM MANAGEMENT (PM) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
PM-1	Information Security Program Plan	P1					2015
PM-2	Senior Information Security Officer	P1				X	2015
PM-3	Information Security Resources	P1					2015
PM-4	Plan of Action and Milestones Process	P1					2016
PM-5	Information System Inventory	P1					2016
PM-6	Information Security Measures of Performance	P1					2016
PM-7	Enterprise Architecture	P1					2016
PM-8	Critical Infrastructure Plan	P1					
PM-9	Risk Management Strategy	P1					
PM-10	Security Authorization Process	P1					
PM-11	Mission/Business Process Definition	P1					
PM-12	Insider Threat Program	P1					
PM-13	Information Security Workforce	P1					
PM-14	Testing, Training, and Monitoring	P1					
PM-15	Contacts with Security Groups and Associations	P3					
PM-16	Threat Awareness Program	P1					

PERSONNEL SECURITY (PS) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
PS-1	Personnel Security Policy and Procedures	P1	x	x	x		2016
PS-2	Position Risk Designation	P1	x	x	x		2015
PS-3	Personnel Screening	P1	x	x	x		2016
PS-4	Personnel Termination	P1	x	x	x		2016
PS-5	Personnel Transfer	P2	x	x	x		2017
PS-6	Access Agreements	P3	x	x	x		2017
PS-7	Third-Party Personnel Security	P1	x	x	x	x	2015
PS-8	Personnel Sanctions	P3	x	x	x		2017

RISK ASSESSMENT (RA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
RA-1	Risk Assessment Policy and Procedures	P1	x	x	x		2016
RA-2	Security Categorization	P1	x	x	x		2015
RA-3	Risk Assessment	P1	x	x	x		2015
RA-5	Vulnerability Scanning	P1	x	x	x		2016
RA-5(1)	Vulnerability Scanning (Update Tool Capability)	P1			x		2016
RA-5(2)	Vulnerability Scanning (Update by Frequency / Prior to New Scan / When Identified)	P1			x		2016
RA-5(5)	Vulnerability Scanning (Privileged Access)	P1			x		2016

*RA-6	Technical Surveillance Countermeasures Survey	P0					2017
-------	---	----	--	--	--	--	------

SYSTEM AND SERVICES ACQUISITION (SA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
SA-1	System and Services Acquisition Policy and Procedures	P1	x	x	x		2016
SA-2	Allocation of Resources	P1	x	x	x		2016
SA-3	System Development Life Cycle	P1	x	x	x		2015
SA-4	Acquisition Process	P1	x	x	x		2016
SA-4(1)	Acquisition Process (Functional Properties of Security Controls)	P1			x		2016
SA-4(2)	Acquisition Process (Design / Implementation Information For Security Controls)	P1			x		2016
SA-4(9)	Acquisition Process (Functions / Ports / Protocols / Services in Use)	P1			x		2016
SA-5	Information System Documentation	P2	x	x	x		2017
SA-8	Security Engineering Principles	P1			x		2017
SA-9	External Information System Services	P1	x	x	x	x	2015
SA-9(2)	External Information Systems (Identification of Functions / Ports)	P1			x		2015

SYSTEM AND SERVICES ACQUISITION (SA) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
	/ Protocols / Services)						
SA-9(5)	External Information Systems (Processing, Storage, and Service Location)	P1		x	x	x	2015
SA-10	Developer Configuration Management	P1		x	x		2015
SA-11	Developer Security Testing and Evaluation	P1		x	x		2017
SA-12	Supply Chain Protection	P1					TBD
SA-13	Trustworthiness	P0					2017
SA-14	Criticality Analysis	P0					TBD
SA-15	Development Process, Standards, and Tools	P2					2017
SA-16	Developer- Provided Training	P2					2017
SA-17	Developer Security Architecture and Design	P1					2017
SA-18	Tamper Resistance and Detection	P0					TBD
SA-19	Component Authenticity	P0					TBD
SA-20	Customized Development of Critical Components	P0					2017
SA-21	Developer Screening	P0					2017
SA-22	Unsupported System Components	P0					TBD

SYSTEM AND COMMUNICATIONS PROTECTION (SC) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
SC-1	System and Communications Protection Policy and Procedures	P1	x	x	x		2016
SC-2	Application Partitioning	P1			x		TBD
SC-3	Security Function Isolation	P1					TBD
SC-4	Information in Shared Resources	P1			x		TBD
SC-5	Denial of Service Protection	P1	x	x	x		2015
SC-6	Resource Availability	P0					TBD
SC-7	Boundary Protection	P1	x	x	x		2016
SC-7(3)	Boundary Protection (Access Points)	P1			x		2016
SC-7(4)	Boundary Protection (External Telecommunications Services)	P1			x		2016
SC-7(5)	Boundary Protection (Deny by Default / Allow by Exception)	P1			x		2016
SC-7(7)	Boundary Protection (Prevent Split Tunneling for Remote Devices)	P1			x		2016
SC-8	Transmission Confidentiality and Integrity	P1		x	x	x	2015
SC-8(1)	Transmission Confidentiality and Integrity (Cryptographic or Alternate Physical Protection)	P1			x		2015
SC-10	Network Disconnect	P2			x		TBD
SC-11	Trusted Path	P0					TBD
SC-12	Cryptographic Key Establishment and Management	P1	x	x	x		2016
SC-13	Cryptographic Protection	P1	x	x	x	x	2015
SC-15	Collaborative Computing Devices	P1	x	x	x		2016
SC-16	Transmission of Security Attributes	P0					2017
SC-17	Public Key Infrastructure Certificates	P1		x	x		2017
SC-18	Mobile Code	P2		x	x		2017
SC-19	Voice Over Internet Protocol	P1			x		TBD

SYSTEM AND COMMUNICATIONS PROTECTION (SC) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
SC-20	Secure Name /Address Resolution Service (Authoritative Source)	P1	x	x	x		2016
SC-21	Secure Name /Address Resolution Service ((Recursive or Caching Resolver)	P1	x	x	x		2016
SC-22	Architecture and Provisioning for Name/Address Resolution Service	P1	x	x	x		2016
SC-23	Session Authenticity	P1		x	x		2017
SC-24	Fail in Known State	P1					2017
SC-25	Thin Nodes	P0					TBD
SC-26	Honeypots	P0					TBD
SC-27	Platform-Independent Applications	P0					TBD
SC-28	Protection of Information at Rest	P1		x	x	x	2015
SC-29	Heterogeneity	P0					TBD
SC-30	Concealment and Misdirection	P0					TBD
SC-31	Covert Channel Analysis	P0					TBD
SC-32	Information System Partitioning	P0					2017
SC-34	Non-Modifiable Executable Programs	P0					2017
SC-35	Honeyclients	P0					TBD
SC-36	Distributed Processing and Storage	P0					TBD
SC-37	Out-of-Band Channels	P0					2017
SC-38	Operations Security	P0					TBD
SC-39	Process Isolation	P1	x	x	x		2016
SC-40	Wireless Link Protection	P0					2017
SC-41	Port and I/O Device Access	P0					TBD
SC-42	Sensor Capability and Data	P0					TBD
SC-43	Usage Restrictions	P0					TBD
SC-44	Detonation Chambers	P0					TBD



SYSTEM AND INFORMATION INTEGRITY( SI) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
SI-1	System and Information Integrity Policy and Procedures	P1	x	x	x		2016
SI-2	Flaw Remediation	P1	x	x	x	x	2015
SI-2(2)	Flaw Remediation (Automated Flaw Remediation Status)	P1			x		2015
SI-3	Malicious Code Protection	P1	x	x	x	x	2015
SI-3(1)	Malicious Code Protection (Central Management)	P1			x		2015
SI-3(2)	Malicious Code Protection (Automatic Updates)	P1			x		2015
SI-4	Information System Monitoring	P1	x	x	x		2015
SI-4(2)	Information System Monitoring (Automated Tools For Real-Time Analysis)	P1			x		2015
SI-4(4)	Information System Monitoring (Inbound and Outbound Communications Traffic)	P1			x		2015
SI-4(5)	Information System Monitoring (System-Generated Alerts)	P1			x		2015
SI-5	Security Alerts, Advisories, and Directives	P1	x	x	x	x	2015
SI-6	Security Function Verification	P1					2017
SI-7	Software, Firmware, and Information Integrity	P1			x		2017
SI-7(1)	Software, Firmware, And Information Integrity (Integrity Checks)	P1			x		2017

SYSTEM AND INFORMATION INTEGRITY( SI) CONTROLS							
(NIST SP 800-53 rev4)			HHS Control Baselines				
CNTL NO	CONTROL NAME	PRIORITY	LOW (Public)	MOD (Agency Sensitive)	HIGH (Confidential Information)	SPI (Standalone/Small Workforce)	Compliance by Date (Calendar Year)
SI-7(7)	Software, Firmware, And Information Integrity (Integration Of Detection And Response)	P1			x		2017
SI-8	Spam Protection	P2		x	x		2017
SI-8(1)	Spam Protection (Central Management)	P2			x		2017
SI-8(2)	Spam Protection (Automatic Updates)	P2			x		2017
SI-10	Information Input Validation	P1		x	x		2017
SI-11	Error Handling	P2		x	x		2017
SI-12	Information Handling and Retention	P2	x	x	x		2017
SI-13	Predictable Failure Prevention	P0					TBD
SI-14	Non-Persistence	P0					TBD
SI-15	Information Output Filtering	P0					2017
SI-16	Memory Protection	P1		x	x		2017
SI-17	Fail-Safe Procedures	P0					TBD