



**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BY AND BETWEEN  
THE HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

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- A. DATA USE AGREEMENT**
- B. UNIFORM CONTRACT TERMS AND CONDITIONS 1.4.1, AS MODIFIED BY THE PARTIES**
- C. STATEMENT OF WORK**
- D. COST PROPOSAL**
- E. CONTRACTOR'S PROPOSAL**
- F. MASTER OPERATING LEASE AGREEMENT**
- G. FORM OF LEASE SCHEDULES**

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**Article 1. INTRODUCTION**

This Agreement for Information Technology Hardware Acquisition and Leasing (the “**Agreement**”) is entered into between the Texas 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 North Lamar Boulevard, 4<sup>th</sup> Floor, Austin Texas 78751, and SHI Government Solutions, Inc. (“**Contractor**”), a Texas corporation organized under the laws of the State of Texas and having its principal place of business at 1301 Mo-Pac Expressway, Suite 100, Austin, TX 78746. HHSC and the Contractor may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

The Parties agree that the following terms and conditions apply to the Services and Deliverables to be provided by the Contractor under this Agreement in consideration of certain payments to be made by HHSC.

**Article 2. BACKGROUND, OBJECTIVES, AND INDUCEMENTS**

**Section 2.01 Background.**

This Agreement is entered into in connection with HHSC’s procurement of a contractor to perform hardware acquisition and leasing services for the Texas health and human services agencies, including HHSC, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, the Texas Department of Family and Protective Services, and the Texas Department of State Health Services (collectively, the “**HHS Agencies**”).

On March 23, 2015, HHSC released the Statement of Work No. 529-2000135059 (“**SOW**”). After reviewing all bidder responses, HHSC determined that Contractor’s proposal to the SOW (“**Proposal**”) represented the best demonstrated competence, knowledge and qualifications under the criteria set forth in the SOW. HHSC made its final award to Contractor through its execution of this Agreement.

Contractor understands that the desired benefit to HHSC of this Agreement is to secure the services of a qualified vendor to assist the HHSC in the hardware acquisition and leasing services more fully described in the SOW (“**Services**”).

**Section 2.02 Inducements.**

**(a) General Considerations**

As a condition of the award of this Agreement, HHSC requested Contractor to provide written assurances to HHSC with respect to a number of facts that HHSC deems material to the subject matter of this Agreement or significant to HHSC.

Contractor has made certain representations to HHSC that the statements contained in this Section, as well as those contained elsewhere in this Agreement (collectively “**Other Assurances**”), are true, accurate, and complete to the best of Contractor’s knowledge in all respects.

HHSC is relying, and will continue to rely throughout the Term of this Agreement, upon the truthfulness, accuracy and completeness of such written assurances and Other Assurances, as inducements made by Contractor to HHSC to enter into this Agreement. Moreover, HHSC would not have entered into this Agreement with Contractor but for such assurances.

*(b) Contractor’s Representations*

Contractor acknowledges that HHSC is relying upon all assurances and acknowledges their materiality and significance. In light of the foregoing, Contractor unequivocally represents to HHSC that the following statements of fact are true, accurate and complete to the best of Contractor’s knowledge in all respects:

1. Contractor is an established provider of hardware acquisition and leasing services;
2. Contractor and, if applicable, its subcontractors have the skills, qualifications, financial resources and experience necessary to perform the Services and provide deliverables, if any (“**Deliverables**”) described in the this Agreement in an efficient and cost-effective manner, with the highest degree of quality and responsiveness within the context of the requirements of this Agreement, and has performed similar services for other public or private entities;
3. Contractor has thoroughly reviewed, analyzed and understood the SOW and has had the opportunity to review and fully understand HHSC’s needs, requirements and operating environment for the activities that are the subject of this Agreement;
4. Contractor has thoroughly reviewed, analyzed, and understood the SOW, and has timely raised all questions or objections to the SOW; and
5. Contractor also reviewed and understands the risks associated with the SOW, including the risk of non-availability of funds.

Contractor further represents and warrants that it is an expert in performance of the Services and production of Deliverables described in the SOW.

*(c) Contractor’s Commitment and Understanding*

In entering into this Agreement, Contractor has had the opportunity to review and understand HHSC’s mission and objective, and based on such review and understanding, Contractor currently has the capacity to perform in accordance with the terms and conditions of this Agreement.

*(d) Engagement*

Accordingly, in light of and in reliance on the foregoing representations by Contractor, HHSC engages Contractor to perform the Services and provide the Deliverables described in this Agreement under the terms and conditions set forth in this Agreement.

**Section 2.03 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 fully support HHSC’s missions and objectives. This Agreement describes what is required of Contractor in terms of Services, Deliverables, performance measures and outcomes, and unless otherwise noted in the Agreement, places the responsibility for how they are accomplished on Contractor.

### Article 3. DEFINITIONS

#### **Section 3.01 *Incorporation of Definitions***

(a) *SOW Definitions*

Except as specified in this Agreement, the acronyms and definitions contained in the SOW govern the use and meanings of the terms and conditions of this Agreement. The Parties agree that the acronyms and definitions contained in the SOW 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 SOW and this Agreement.

(b) *UTC Definitions*

Except as specified in this Agreement, the definitions contained in Article 2 of the Uniform Contract Terms and Conditions 1.4.1, as modified by the Parties in this Agreement ("UTC") govern the use and meanings of terms and conditions of this Agreement. The defined terms "Request for Proposals" and "RFP" used in the UTC are deemed to mean the SOW for purposes of this Agreement.

(c) *Conflict*

In the event of conflict between the SOW Definitions, the UTC definitions, or other definition in this Agreement, the conflict will be resolved in favor of HHSC.

### Article 4. GENERAL TERMS AND CONDITIONS

#### **Section 4.01 *Contract Documents and Order of Precedence***

This section supersedes Section 3.01 of the UTC. The entire agreement 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 (subject to Section 3.01 above):

A. The Contract for Services between Contractor and the State of Texas Department of Information Resources (DIR-SDD-1922), as amended and including all attachments thereto ("**DIR Contract**");

B. This document and any amendments thereto;

C. The Data Use Agreement executed by the Parties, a copy of which is attached hereto as **Exhibit A** ("**DUA**");

D. The UTC, as modified by the "Revisions to HHSC Uniform Contract Terms and Conditions 1.4.1)", all of which are attached hereto as **Exhibit B**;

E. The SOW, including all attachments and addenda as clarified and modified by vendor questions and HHSC's response thereto, as well as HHSC's follow up questions and Contractor's answers thereto, all of which is attached hereto as **Exhibit C**;

F. Contractor's Cost Proposal, attached hereto as **Exhibit D** ("**Cost Proposal**");

G. The Proposal, including the finally agreed clarifications and modifications, all of which is attached as **Exhibit E**;

H. The Master Lease Agreement executed by Contractor and HHSC on behalf of all HHS Agencies attached hereto as **Exhibit F** ("**Master Lease Agreement**"); and

I. The Lease Schedules executed by Contractor and each HHS Agency under the Master Lease Agreements in the form attached as **Exhibit G** ("**Lease Schedules**").

All of the foregoing documents are incorporated into the Agreement by reference.

#### **Section 4.02 *Term of the Agreement***

##### *(a) General Provisions*

This Section 4.02 will govern the period for performance of this Agreement (the "**Term**"). No commitment of funds is permitted prior to the first day or subsequent to the last day of the Initial Term and any properly executed extension of the Initial Term. The Term of the Agreement may be extended or shortened by amendment.

##### *(b) Initial Term*

Subject to the provisions for termination set forth in Section 11.03 of the UTC, the Agreement begins on the earlier of: (i) the date of full execution of this document by both Parties or (ii) September 1, 2015 (the "**Effective Date**") and ends four (4) years later (the "**Initial Term**").

##### *(c) Optional Extensions of Agreement*

The Initial Term may be extended by HHSC for two (2) one-year periods, at the sole and absolute discretion of the HHSC. HHSC will notify Contractor of its decision to extend the Agreement at least one hundred twenty (120) days before the expiration of then-current term. Any extension of the Agreement will be commemorated in an amendment to this Agreement, subject to the requirements of Article 12 of this Agreement. Except as provided in Section (d) below, prices for such extensions will be calculated according to the prices in effect under the existing Agreement.

Contractor agrees that HHSC may require continued performance, beyond the initial or any optional renewal Contract terms, of any of the within described services at the rates specified in the Agreement. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed ninety (90) days. Such extension of services shall be subject to the requirements of the Agreement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. HHSC may exercise this option upon one hundred twenty (120) days written notice to Contractor.

##### *(d) Modifications upon extension or renewal of Agreement*

(1) If HHSC seeks modifications to the Agreement as a condition of any extension, HHSC's notice to the Contractor will specify those modifications to the Scope of Work, the modification pricing terms, or other terms and conditions of the modification HHSC seeks.

(2) Contractor must respond to HHSC's proposed modification within 30 days of receipt.

(3) Upon receipt of Contractor's response to the proposed modifications, HHSC may enter into negotiations with Contractor to arrive at mutually agreeable Agreement modifications.

(4) If Contractor does not respond to HHSC's proposed modification within 30 days of receipt, HHSC may, in its sole discretion:

(a) Deem such proposed modifications accepted;

(b) Obtain the Services or Deliverables that are the subject of the proposed modifications from another vendor and claim and recover appropriate relief and damages; or

(c) Terminate the Agreement in whole or in part.

(5) Any modifications will be within the scope of the SOW.

**Section 4.03 No Implied Assumptions**

The Parties acknowledge and agree that any assumptions contained in the Proposal, including but not limited to, financial assumptions, general business assumptions, assumptions concerning key performance requirements, and comments concerning the UTC, will be deemed to have been rejected by HHSC and will not be a part of the Agreement unless and only to the extent the Parties have expressly agreed to incorporate them within this Agreement or as an Exhibit to the Agreement.

**Section 4.04 Project Managers**

The following Project Managers will serve as the primary contacts for all administrative issues:

**Contractor**

John Haines  
SHI Government Solutions, Inc.  
1301 South Mopac Expressway, Suite 375  
Austin, Texas 78746

**HHSC**

Terri Ware  
Texas Health and Human Services Commission  
ECSS Director  
701 W 51st  
Austin, Texas 78751

**Section 4.05 Notice**

**(a) Oral Notice**

All communications concerning this Agreement 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 project managers identified in Section 4.04 above and provided that additional written notice is submitted within 3 business days thereafter.

**(b) Written Notice**

Written Notice will be deemed to have been given:

1. 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;
2. When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
3. 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 Project Managers identified in Section 4.04. All other contract notices will be sent to the other Party at its address set forth in this Agreement or such other address as is provided by a Party in accordance with the provisions of this Section:

**If to HHSC:**

Chris Traylor  
Executive Commissioner  
Health & Human Services Commission



P.O. Box 13247  
Austin, Texas 78711-3247

**Physical Address:**

4900 North Lamar Boulevard  
Austin Texas 78751

**With Required Copy to:**

Carey E. Smith  
Senior Counsel  
P.O. Box 13247  
Austin, Texas 78711-3247  
Fax: 512-424-6586

**If to Contractor:**

Natalie Slowik  
SHI Government Solutions, Inc.  
290 Davidson Avenue  
Somerset NJ 08873

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

## **Article 5. SCOPE OF WORK**

### **Section 5.01 Overview**

Contractor will perform and assume certain responsibilities in support of state and federally funded programs in accordance with the specifications contained in the SOW, this Article 5 and the Proposal as modified and clarified.

### **Section 5.02 Contractor Responsibilities**

Contractor will perform all actions required to meet the goals and objectives in the SOW. The Scope of Work specifically includes the Services and Deliverables in the Proposal and any clarifications and modifications thereto.

Both the SOW and the Proposal and any agreed-upon modifications and clarifications thereto are hereby incorporated into this Agreement for the purposes of determining the Scope of Work and all other purposes as though they were set out word-for-word in this document along with amendments to this Agreement that may be executed from time to time.

### **Section 5.03 State Responsibilities**

HHSC will monitor all Contractor responsibilities, assess performance and determine satisfaction with the requirements of this Agreement. HHSC reserves the right to waive the review and approval of Contractor work products or processes. Any failure to monitor or waiver by HHSC will not relieve Contractor from responsibility for errors and omissions in the work products or processes. In addition, HHSC approval of Contractor work products or processes will not relieve Contractor of liability for errors and omissions in the work products or processes.

**Section 5.04 Lease of Computer Equipment**

Pursuant to the SOW, Contractor and HHSC, on behalf of all of the HHS Agencies, entered into the Master Lease Agreement attached to the Agreement as **Exhibit F**. At the option of each HHS Agency and in accordance with the procedure set forth in the SOW and Master Lease Agreement, Contractor and each HHS Agency will enter into Lease Schedules for the lease of certain computer equipment, which will be more specifically described in the Lease Schedules. Each Lease Schedule will constitute a separate lease and, along with the Master Lease Agreement, will survive the expiration or early termination of the Agreement as necessary. Notwithstanding the foregoing, the Master Lease Agreement and each Lease Schedule is subject to the relevant terms and conditions of the remainder of the Agreement, including the SOW and DUA, and will remain subject to such terms and conditions after the expiration or termination of the Agreement. Any modifications, deletions, or additions to the terms and conditions of the Master Lease Agreement and the Lease Schedules, other than completing the blank fields of the forms attached as **Exhibits F** and **G** hereto, will only be effective by written amendment executed by Contractor and the applicable HHSC Agency.

**Article 6. FINANCIAL TERMS AND CONDITIONS OF PAYMENT****Section 6.01 General**

During the term of this Agreement, Contractor will perform the Services and provide the Deliverables specified in the Agreement in accordance with the Cost Proposal. Contractor understands and expressly assumes all risks associated with the commitment of delivery of the contracted Services and Deliverables including the failure, termination or suspension of funding to HHSC, delays or denials of required third party approvals, and cost overruns not reasonably attributable to HHSC.

**Section 6.02 Invoices**

Contractor will submit an invoice to the HHSC Project Manager, in a manner acceptable to HHSC and in accordance with Section 10 of the SOW and the payment period established in the Lease Schedules. Upon HHSC request, Contractor will provide any additional information to the degree of detail necessary to resolve any review, examination, inquiry or audit by HHSC or any other responsible authority.

**Section 6.03 Time and Manner of Payment**

Payments of invoice by HHSC under this Agreement will be made in accordance with Chapter 2251 of the Texas Government Code. 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.

**Section 6.04 Failure, Termination or Suspension of HHSC Funding**

Contractor will have no right of action or claim against HHSC in the event that HHSC is unable to perform its obligations under this Agreement as a result of the suspension, termination, withdrawal, or failure of funding as set forth in Section 3.02 of the UTC.

**Article 7. TERMINATION OF AGREEMENT**

In addition to the other termination and suspensions provisions set forth in this Agreement, this Agreement may be terminated as provided in Section 11.03 of the UTC.

## **Article 8. DISPUTE RESOLUTION**

The Parties will attempt to resolve contract disputes in accordance with Section 11.11 of the UTC.

## **Article 9. CONTRACTOR PERSONNEL MANAGEMENT**

Contractor will manage personnel as provided in Article 4 of the UTC and as required by the SOW.

## **Article 10. GOVERNING LAWS AND REGULATIONS**

### **Section 10.01 *Law and regulations governing administration of the Agreement***

In addition to Article 5 of the UTC, the administration of the Agreement will be in accordance with the following laws and regulations:

- (1) The Health and Insurance Portability and Accountability Act (“HIPAA”) of 1996, Public Law 104-191, as amended and modified;
- (2) Chapter 531, Chapter 2155.144, Chapter 2157 and Chapter 2254, Texas Government Code, as amended and any administrative rules adopted thereunder;
- (3) 1 T.A.C. Chapter 391;
- (4) HHS Circular C-027 – Health and Human Services Enterprise Fraud, Waste, and Abuse; and
- (5) Any other pertinent provisions of federal law or state law.

Contractor will be solely responsible for compliance with pertinent state and federal laws, regulations and administrative rules as set forth in Section 5.02 of the UTC and this Agreement.

## **Article 11. SERVICE LEVELS AND PERFORMANCE MEASUREMENT**

### **Section 11.01 *Performance Measurement***

Contractor’s performance will be measured in accordance with Section 6.01 of the UTC and as set forth in this Article 11. Contractor is expected to meet or exceed the objectives and standards set forth in this Agreement. Any and all responsibilities and requirements not fulfilled may be subject to the remedies set forth in Article 11 of the UTC and Article 14 of this Agreement. Contractor will meet or exceed the performance requirements of this Agreement, consistent with the provisions of the SOW and the Proposal as clarified and modified.

## **Article 12. AMENDMENTS, MODIFICATIONS, AND CHANGE ORDERS**

### **Section 12.01 *Expectations and Understandings***

The Parties may amend this Agreement by mutual written agreement. Changes in the contracted Services or Deliverables must be authorized in accordance with this Article. Any such changes must be within the scope of the SOW.

### **Section 12.02 *Amendments and Modifications***

This Agreement may be amended as provided in Article 7 of the UTC and Section 12.03 of this Agreement.

**Section 12.03 Business Plan for Change Orders and Amendments**

This Section 12.03 represents the Parties' Business Plan for negotiating amendments and modifications to the Agreement, as required by Article 7 of the UTC.

(a) Formal Amendment Procedure.

Except as provided below, all modifications to the Agreement must be accomplished through the formal amendment process set forth herein.

(1) HHSC or Contractor may propose changes in the Services, Deliverables or other aspects of this Agreement.

(2) If HHSC proposes a change, it will deliver a written notice to Contractor describing the proposed change. Contractor must prepare a response, at no additional cost to HHSC, within 30 calendar days. The response must specify:

(A) The effect, if any, of the proposed change on the amounts payable by HHSC under this Agreement and the manner used to calculate such effect;

(B) The effect, if any, of the proposed changes on Contractor's performance of its obligations under this Agreement, including the effect on the Services or Deliverables;

(C) The anticipated time schedule for implementing the proposed changes; and

(D) Any other information requested by HHSC or reasonably necessary for HHSC to make an informed decision regarding the proposal.

(3) If HHSC accepts Contractor's response, Contractor must indemnify and hold harmless HHSC from and against any losses, costs or expenses resulting from any inaccurate or incomplete information contained in the response. The response constitutes an irrevocable proposal by Contractor to implement the proposed changes on the terms set forth in the response.

(4) If Contractor desires to propose a change, it must deliver a change request to HHSC that includes the information described in Section 12.03(a)(2) above.

(5) If HHSC accepts Contractor's proposal or change request, the Parties will execute an amendment to this Agreement. The amendment must be signed by HHSC's Executive Commissioner or his designee and a duly authorized Contractor representative.

(b) Truth In Negotiations Act

Contractor agrees to conduct negotiations with HHSC in accordance with the standards set forth in federal truth in negotiation laws. The Truth in Negotiations Act (10 USC §2306a, and 41 USC §254b) requires government contractors of contracts exceeding \$500,000 to submit cost or pricing data and to certify that such data is current, accurate and complete on the date of final agreement on price. Submission of defective pricing data can result in significant penalties for Contractor, including interest on the amount of the overpayment. If the submission of defective pricing data is a knowing submission, penalties can include an additional amount equal to the amount of the overpayment.

**Article 13. AUDIT AND FINANCIAL COMPLIANCE**

**Section 13.01 Audits**

Audits and Financial Compliance measures will be conducted as provided by Article 8 of the UTC.

## **Article 14. REMEDIES AND DISPUTES**

### **Section 14.01 *Understanding and expectation of the Parties***

#### **(a) *Acknowledgement***

The Parties acknowledge and agree that:

(1) This Agreement represents a substantial commitment to improve the health of Texans by ensuring quality, accuracy, responsiveness, and efficiency in HHSC processes and data management systems; and

(2) HHSC's objective is to establish a flexible and responsive relationship with Contractor.

### **Section 14.02 *Contractor's agreement and acceptance of HHSC objectives.***

Contractor is expected to meet or exceed the contractual responsibilities and obligations set forth in this Agreement. Contractor understands that all areas of responsibility and all requirements listed in this Agreement are subject to performance evaluation by HHSC. Contractor's failure to meet its contractual responsibilities and obligations set forth in this Agreement is subject to HHSC's application or pursuit of any or all of the remedies set forth in Article 11 of the UTC. Contractor agrees:

(a) To meet or exceed the responsibilities and tasks set forth in this Agreement, the performance requirements specified in the SOW, perform the Services and Deliverables detailed in Contractor's Proposal as modified and clarified and actively pursue the achievement of the Mission Objectives described in the SOW and this Agreement;

(b) That HHSC's expectations, as documented in the SOW and this Agreement, are reasonable, within normally acceptable business practices, and in the best interest of the State;

(c) That the remedies described in this Article 14 are directed to Contractor's timely and responsive performance of the Services and production of Deliverables; and

(d) That HHSC may, in accordance with this Article 14:

(1) Pursue contractual remedies for any instance of noncompliance;

(2) In its discretion and at any time, impose or pursue one or more remedies for each item of noncompliance; and

(3) Determine remedies on a case-by-case basis.

## **Article 15. REPRESENTATIONS AND WARRANTIES**

### **Section 15.01 *Authorization***

Contractor reaffirms its current compliance, and the intent to continue to comply, with Section 13.01 of the UTC.

### **Section 15.02 *Ability to Perform***

Contractor represents and warrants it is in compliance with Section 13.02 of the UTC.

### **Section 15.03 *Workmanship and Performance***

Contractor will perform all Services and provide all Deliverables in at least the manner required by Section 13.03 of the UTC.

**Section 15.04 *Compliance with Agreement***

Contractor will comply with the provisions of Section 13.06 of the UTC.

**Section 15.05 *Intellectual Property***

Any Services or Deliverables provided by Contractor will comply with the provisions of Article 14 of the UTC.

**Section 15.06 *Warranty of Deliverables***

Contractor will comply with the provisions of Section 13.04 of the UTC.

**Section 15.07 *Manufacturers' Warranties***

Contractor will assign all Manufacturers' Warranties as provided by Section 13.05 of the UTC.

**Article 16. LIABILITY**

**Section 16.01 *Limitation of Liability***

Contractor will be liable to HHSC for property damage and risk of loss as set forth in Article 15 of the UTC.

**Section 16.02 *Duty To Mitigate***

Each Party has a duty to mitigate the damages that would otherwise be recoverable from the other Party pursuant to this Agreement by taking such actions as may be required under Texas law to reduce or limit the amount of such damages.

**Article 17. CERTIFICATIONS**

**Section 17.01 *Child Support Obligations***

Pursuant to Section 231.006, Texas Family Code (relating to child support), the Contractor, by signing this Contract, certifies that it is not ineligible to receive a payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

**Section 17.02 *Financial Participation***

Pursuant to §2155.004, Texas Government Code, the Contractor certifies that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation documents, if applicable, or specifications for this Contract from a state agency.

**Section 17.03 *Debarment and Suspension***

Contractor certifies that it and its principals are eligible to participate in the Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement, if applicable, and contracting and that Contractor is not

listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>

Contractor certifies that neither it or its principals are debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program by any Federal department or agency. (See Executive Orders 12549 and 12689, 45 CFR part 76, 48 CFR part 9; 42 USC sect. 1320a-7). Contractor agrees to include this provision in any subcontracts related to this Contract.

#### **Section 17.04 Hurricane Relief**

Sections 2155.006 and 2261.053, Government Code, prohibit HHSC from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 of the Government Code, occurring after September 24, 2005. Under §2155.006, Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

#### **Section 17.05 Civil Rights**

Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity" as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity", and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor". Contractor shall ensure that all subcontracts comply with the above referenced provisions.

#### **Section 17.06 Environmental Protection**

Contractor certifies that, if the total Contract amount, including any Contract amounts for Renewal Terms, exceeds \$150,000, it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Contractor agrees to include this provision in any subcontracts related to this Contract exceeding \$150,000.

### **Article 18. MISCELLANEOUS PROVISIONS**

#### **Section 18.01 Prohibition Against Performance Outside the United States**

All work performed under this Agreement must be performed exclusively within the United States. All information obtained by Contractor or a subcontractor under this Agreement must be maintained within the United States.

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.

Contractor's violation of this Section 18.01 will constitute a material breach in accordance with Section 11.02 of version 1.4.1 of the UCTC. Contractor will be liable to HHSC for all actual and consequential damages in accordance with the UTC.

For breach of the requirements under this Section 18.01, HHSC may terminate this Agreement with notice to Contractor at least 1 calendar day before the effective date of such termination.

**Section 18.02 *Cooperation and Consent***

Each Party will cooperate with the other Party in good faith in the performance of its respective activities contemplated by this Agreement so that the purposes of this Agreement may be accomplished in a proper, timely and efficient manner.

**Section 18.03 *No Third Party Beneficiaries***

No provision of this Agreement expressly confers third-party beneficiary status on a person or entity. Nothing contained in this Agreement is intended or will be construed to confer upon any person or entity other than the Parties hereto 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 Agreement.

**Section 18.04 *Neutral Construction***

The Parties have negotiated this Agreement and all of the terms and conditions contained in this Agreement 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 Agreement will be construed against any Party or in favor of any Party:

- (a) because such Party or such Party's counsel drafted, revised, commented upon, or did not comment upon, such term, condition, or provision; or
- (b) because of any presumption as to any inequality of bargaining power between or among the Parties.

**Section 18.05 *Further Assurances***

HHSC and the Contractor covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, HHSC and the Contractor 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 Agreement.

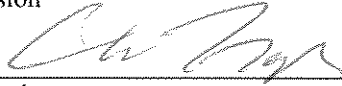
**Section 18.06 *Entire Agreement***

This Agreement, including the Master Lease Agreement and Lease Schedules entered into by Contractor and HHS Agencies pursuant to this Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof.



IN WITNESS HEREOF, HHSC and the Contractor have each caused this Agreement to be signed and delivered by its duly authorized representative.

Texas Health and Human Services  
Commission



Chris Traylor  
Executive Commissioner

8-28-15

Date

SHI Government Solutions, Inc.



Natalie Slowik  
Senior Manager – Contracts & RFPs

8/19/2015

Date

IN WITNESS HEREOF, HHSC and the Contractor have each caused this Agreement to be signed and delivered by its duly authorized representative.

Texas Health and Human Services  
Commission

SHI Government Solutions, Inc.



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Chris Traylor  
Executive Commissioner

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Natalie Slowik  
Senior Manager – Contracts & RFPs

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Date

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8/19/2015  
Date

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT A**

**Data Use Agreement**

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT B**

**Revisions to HHSC Uniform Contract Terms and Conditions (Version 1.4.1)**

HHSC and Contractor agree to the following revisions to the HHSC Uniform Contract Terms and Conditions (Version 1.4.1) ("UTC") with respect to that certain Agreement for Information Technology Seat Management Services to which this document and the UTC are attached:

1. The definition for the defined term "Deliverable" in Article 2 of the UTC is deleted and replaced with the following:

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

2. Section 8.05(c) of the UTC is deleted and replaced with the following:

(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, provided HHSC has furnished their audit results for CONTRACTOR's review. 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 a substantial overcharge to HHSC, CONTRACTOR will reimburse HHSC for the reasonable costs of such audit.

3. Sections 10.01(e) and (f) are deleted and replaced with the following:

(e) In addition to the requirements expressly stated in this Section, CONTRACTOR must comply with any policy, rule, or reasonable requirement of HHSC that (i) is provided to CONTRACTOR by HHSC pursuant to this Agreement and (ii) relates to the safeguarding or disclosure of information relating to HHSC Programs recipients, CONTRACTOR'S operations, or the CONTRACTOR performance of the Agreement.

(f) In the event of the expiration of the Agreement or termination of the Agreement for any reason, all Confidential Information of a Party disclosed to and all copies thereof made by the other Party shall be returned to the disclosing Party or, at the disclosing Party's option, destroyed in a manner agreed to by the Parties. The recipient of the Confidential Information shall provide the disclosing Party certificates evidencing such destruction.

4. Section 10.04(a) of the UTC is deleted and replaced with the following:

- (a) CONTRACTOR acknowledges that HHSC asserts that material may be prepared in anticipation of litigation and that CONTRACTOR is performing the Services with respect of such material as an agent of HHSC, and that all matter related thereto ("Privileged Work Product") 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.
5. The following is added as Section 11.02(e)(5) of the UTC:
- (5) Notwithstanding the above, any consequential damages for which CONTRACTOR is responsible under this Agreement shall be limited to the total amount paid to CONTRACTOR under the Agreement during the twelve months immediately preceding the accrual of the claim or cause of action.
6. Section 11.03(c)(6) of the UTC is moved and renumbered as Section 11.03(d) of the UTC.
7. Section 11.09 of the UTC is deleted and replaced with the following:
- 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 Deliverables and/or Documentation in whatever form that they exist.
8. Sections 11.12(a) and (b) of the UTC are deleted and replaced with the following:
- (a) CONTRACTOR bears all risk of loss or damage due to:
- (1) Defects in Services or Deliverables; or
- (2) 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, SUBCONTRACTORS 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.**
9. Section 12.03(e) of the UTC is deleted and replaced with the following:
- (e) *Flow down obligation.*
- CONTRACTOR must include the provisions of this Section 12.03 in all subcontracts for Services provided by CONTRACTOR, and the terms "Agreement," "CONTRACTOR," and "project manager" modified appropriately to preserve the State's rights.

**Uniform Contract Terms and Conditions 1.4.1**

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**Subject: HHSC Uniform Contract Terms & Conditions**

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**Health & Human Services Commission  
Enterprise Project Office**

**Contractual Document**

**HHSC Uniform Contract Terms & Conditions  
Version 1.4.1**

**Subject: HHSC Uniform Contract Terms & Conditions****DOCUMENT HISTORY LOG**

| <b>STATUS<sup>1</sup></b>   | <b>DOCUMENT REVISION<sup>2</sup></b> | <b>EFFECTIVE DATE</b> | <b>DESCRIPTION<sup>3</sup></b>  |
|---|--------------------------------------|-----------------------|---|
| Baseline  | n/a                                  | 07/30/03              | Initial version of the Uniform Terms and Conditions   |
| Revision  | 1.1                                  | 8/25/03               | Revised HIPAA language.   |
| Revision  | 1.2                                  | 10/13/03              | Added Section 8.06, relating to State Auditor's Office audits.  |
| Revision  | 1.3                                  | 3/17/04               | Revised conflict of interest language in Section 12.02, and added new Section 12.03, regarding organizational conflicts of interest.    |
| Revision  | 1.4                                  | 1/15/07               | Revised anti-discrimination language in Section 5.04, and HIPAA language in Section 16.01. Added anti-trust provision in Section 12.09. |
| Revision  | 1.4.1                                | 2/03/11               | Added Section 10.07 Information Security and Section 16.08 Historically Underutilized Business Requirements.                            |
| <sup>1</sup> Status should be represented as "Baseline" for initial issuances, "Revision" for changes to the Baseline version, and "Cancellation" for withdrawn versions<br><sup>2</sup> Revisions should be numbered in accordance according to the version of the issuance and sequential numbering of the revision—e.g., "1.2" refers to the first version of the document and the second revision.<br><sup>3</sup> Brief description of the changes to the document made in the revision. |                                      |                       |   |



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## **Subject: HHSC Uniform Contract Terms & Conditions**

### **Article 1. Introduction**

#### **Section 1.01 Inducements.**

In making the award of this 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 Request for Proposals (RFP);
- (2) CONTRACTOR and its subcontractors have the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the RFP, CONTRACTOR's Proposal, and this 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 RFP, has timely raised all questions or objections to the RFP, 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 this Agreement and, based on such review and understanding, CONTRACTOR currently has the capability to perform in accordance with the terms and conditions of this Agreement;
- (5) CONTRACTOR also has reviewed and understands the risks associated with the HHSC Programs as described in the Request for Proposals, including the risk of non-appropriation of funds.

Accordingly, on the basis of the terms and conditions of this Agreement, HHSC desires to engage CONTRACTOR to perform the services described in this Agreement under the terms and conditions set forth in this 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" shall mean the State of Texas unless otherwise specifically indicated and shall 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 this Agreement is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated in this Agreement, but all other provisions will remain in full force and effect.

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

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

- (1) The Parties have expressly agreed shall survive any such 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 this Agreement are for reference and convenience only and may not be considered in the interpretation of this Agreement.

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

(1) The terms "include," "includes," and "including" are terms of inclusion, and where used in this Agreement, are deemed to be followed by the words "without limitation."

(2) Any references to "sections," "appendices," or "attachments" are deemed to be references to sections, appendices, or attachments to this Agreement.

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

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

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

CONTRACTOR is required to cooperate to the fullest extent possible 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 this Agreement under Chapter 531, Texas Government Code; Section 2155.144, Texas Government Code; and/or Chapter 62, Texas Health & Safety Code. CONTRACTOR is authorized to enter into this Agreement pursuant to the authorization of its governing board or controlling owner or officer.

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

### **Article 2. Definitions**

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

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

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

**"Change Order"** means an authorization to make a change in the Services or Deliverables under this 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) that consists of:

- (1) Confidential Client information, including Protected Health Information;
- (2) All non-public budget, expense, payment and other financial information;
- (3) All Privileged Work Product;
- (4) All information designated by HHSC or any other State agency as confidential, including all information designated as confidential under the Texas Public Information Act, Texas Government Code, Chapter 552;
- (5) Unless publicly disclosed by HHSC or the State, the pricing, payments, and terms and conditions of the Agreement; and
- (6) Information that is utilized, developed, received, or maintained by HHSC, the CONTRACTOR, or participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

**"Corrective Action Plan"** means the detailed written plan required by HHSC to correct or resolve a deficiency or event causing the assessment of a liquidated damage against CONTRACTOR.

**"Deliverable"** means a written or recorded work product prepared and developed by CONTRACTOR as part of the Services under this 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 this Agreement. For purposes of this Agreement, the term includes any period under which work is performed in accordance with a properly executed Letter of Intent between HHSC and CONTRACTOR.

**"Force majeure event"** means any failure or delay in performance of a duty by a Party under this Agreement that is caused by fire, flood, hurricane, tornadoes, earthquake, an act of God, an act of war, riot, civil disorder, or any similar event beyond the

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reasonable control of such Party and without the fault or negligence of such Party.

**“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 this Agreement.

**“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.

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

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

**“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; and

(2) The governmental body owns or has a right of access to.

**“Request for Proposals”** or **“RFP”** means the procurement solicitation instrument issued by HHSC under which this Agreement was awarded and is executed.

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

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

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

**“Subcontract”** means any written agreement between CONTRACTOR and other party to fulfill the requirements of this 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 this Agreement transfers to another vendor. 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) Agreement documentation.

The agreement between the Parties will consist of this Agreement, the RFP, and CONTRACTOR's Proposal.

##### (b) Order of documents.

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

(1) The final executed Agreement, and all amendments thereto;

(2) The Agreement Exhibits, and all amendments thereto;

(3) The RFP, as clarified by the vendor questions and HHSC's official responses thereto, which are incorporated for all purposes into this Agreement as Exhibit A to this Agreement; and

(4) CONTRACTOR's Proposal, which is incorporated for all purposes into this Agreement as Exhibit B to this Agreement.

#### Section 3.02 Funding.

This Agreement is expressly 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 this Agreement as a result of the suspension, termination, withdrawal, or failure of funding to HHSC or lack of sufficient funding of HHSC for any activities or functions contained within the scope of this 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 shall make best efforts to provide reasonable written advance notice to CONTRACTOR upon learning that funding for this Agreement may be discontinued.

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**Section 3.03 Delegation of authority.**

Whenever, by any provision of this 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 the Commissioner unless any such right, power, or duty is specifically delegated to the duly appointed agents or employees of HHSC. The Commissioner will reduce any such delegation of authority to writing and provide a copy to CONTRACTOR on request.

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

The Parties expressly agree that no provision of this 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.**

Neither Party will 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 such 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 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) Except as provided in the paragraphs below, CONTRACTOR must not use the name of HHSC, the State of Texas, or any other State agency, or refer to HHSC or any such agency directly or indirectly in any media release, public announcement, or public disclosure relating to the Agreement or its subject matter, including, but not limited to, 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) 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.

(c) 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 shall 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 pursuant to the Agreement.

**(b) Assignment by HHSC.**

CONTRACTOR understands and agrees HHSC may in one or more transactions assign, pledge, transfer, or hypothecate 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 (an "Assignee") must assume all or any part of CONTRACTOR'S or HHSC's interests in the Agreement, the product, and any documents



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executed with respect to the Agreement, including, without limitation, its 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) 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 will agree 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) CONTRACTOR agrees that when HHSC so requests, the CONTRACTOR will allow parties interested in bidding for HHSC contracts, during the competitive procurement, 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 bidding on the contract.

### **Section 3.11 Renegotiation and repurchase 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. Upon CONTRACTOR's receipt of any notice pursuant to this Section, CONTRACTOR and HHSC will undertake good faith negotiations of the subject terms of the Agreement.

#### ***(b) Repurchase 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 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 repurchase.***

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 of the Agreement.

### **Section 3.12 RFP errors and omissions.**

CONTRACTOR will not take advantage of any errors and/or omissions in the RFP or the resulting Agreement. CONTRACTOR must promptly notify HHSC of any such errors and/or omissions that are discovered.

### **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 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 Time of the essence.**

In consideration of the need to ensure uninterrupted and continuous HHSC Program services, time is of the essence in the performance of the Services under the Agreement.

## **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 this Agreement. The personnel CONTRACTOR assigns to perform the duties and responsibilities under this 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 this Agreement without degradation and in accordance with the terms of this Agreement.

### **Section 4.02 Responsibility for CONTRACTOR personnel.**

(a) 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.

(b) Except as expressly provided in this Agreement, neither CONTRACTOR nor any of CONTRACTOR's employees or subcontractors may

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act in any sense as agents or representatives of HHSC or the State of Texas.

(c) 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.

(d) CONTRACTOR assumes sole and full responsibility for its acts and the acts of its personnel and subcontractors.

(e) 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 this 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) While performing the Services, CONTRACTOR's personnel and subcontractors must:

- (1) Comply with applicable State rules, and regulations and HHSC's requests regarding personal and professional conduct generally applicable to the service locations; and
- (2) Otherwise conduct themselves in a businesslike and professional manner.

(b) If HHSC determines in good faith that a particular employee or subcontractor is not conducting himself or herself in accordance with 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 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.

(c) Nothing in the Agreement will prevent CONTRACTOR, at the request of HHSC, from replacing any personnel who are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHSC's Project 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.

(d) 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.

(e) CONTRACTOR agrees to be responsible for the following in respect to its employees:

- (1) Any and all employment taxes and/or other payroll withholding;

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(2) Damages incurred by CONTRACTOR's employees within 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 pursuant to this 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.**

(a) 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 this 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.

(b) 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 this Agreement.

(c) 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.

(d) At least 30 days prior to executing a 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. 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 this Agreement or create significant barriers for HHSC in monitoring compliance with this Agreement, and (2) object to the selection of the subcontractor.

### **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.**

This 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 11.12, Dispute Resolution, proper venue claim arising from this Agreement will be in a court of competent jurisdiction in Travis County, Texas.

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

(a) CONTRACTOR is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including, but not limited to, all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

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

(c) CONTRACTOR warrants that the Services comply with all applicable Federal, State, and County laws, regulations, codes, ordinances, guidelines, and policies. CONTRACTOR will indemnify HHSC from and against any losses, liability, claims, damages, penalties, costs, fees, or expenses arising from or in connection with CONTRACTOR's failure to comply with or violation of any such law, regulation, code, ordinance, or policy.

### **Section 5.03 Immigration Reform and Control Act of 1986.**

CONTRACTOR shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C.

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§1101, *et seq.*) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Agreement.

### **Section 5.04 Compliance with state and federal anti-discrimination laws.**

(a) CONTRACTOR agrees to comply with state and federal anti-discrimination laws, including without limitation:

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

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

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

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

(c) CONTRACTOR agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(d) Upon request, CONTRACTOR will provide HHSC with copies of all of the CONTRACTOR'S civil rights policies and procedures.

(e) CONTRACTOR must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to 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 Environmental protection laws.**

CONTRACTOR agrees to comply with the applicable provisions of federal environmental protection laws as described in this Section:

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

CONTRACTOR agrees to 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 agrees to 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").

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

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

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

CONTRACTOR agrees to 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).

### Article 6. Service Levels and Performance Measurement

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

Satisfactory performance of this Agreement will be measured by:

- (a) Adherence to this Agreement, including all representations and warranties;
- (b) 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;
- (c) Delivery of the Services and Deliverables in accordance with the service levels and availability proposed in its Proposal and as finally approved or accepted by HHSC;
- (d) Results of audits performed by HHSC or its representatives in accordance with Article 8;
- (e) Timeliness, completeness, and accuracy of required reports; and
- (f) Achievement of performance measures developed by CONTRACTOR and HHSC and as modified from time to time by written agreement during the Initial Term of this Agreement.

### Article 7. Amendments, Modifications, and Change Orders

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

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

This 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.*

This 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 pursuant to an amendment or modification of this Agreement that is executed in compliance with this article. No waiver of any term, covenant, or condition of this 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 Financial record retention and audit.**

CONTRACTOR agrees to maintain, and require its subcontractors to maintain, supporting financial information and documents that are adequate to ensure that claims are made in accordance with applicable Federal and State requirements, and are sufficient to ensure the accuracy and validity of CONTRACTOR invoices. Such documents, including all original claims forms, will be maintained and retained by CONTRACTOR or its subcontractors for a period of seven (7) 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 this 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) 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 Scope of Work.

(b) CONTRACTOR and its subcontractors must provide the access described in this Section upon

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HHSC's request. This request may be for, but is not limited to, the following purposes:

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

(c) The access required must be provided to the following officials and/or entities:

- (1) The United States Department of Health and Human Services or its designee;
- (2) The Comptroller General of the United States or its designee;
- (3) 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) CONTRACTOR agrees to provide the access described wherever CONTRACTOR maintains such books, records, and supporting documentation. 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.

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

(a) Upon notice from HHSC, 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; and
- (2) CONTRACTOR Software and Equipment.

(b) 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 or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under this Article. This action will include 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 this Section 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; 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 such 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 that 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, provided HHSC has furnished their audit results for CONTRACTOR's review. Interest on such overpayment amount will be calculated from the date of receipt by the CONTRACTOR of the overcharged amount until the

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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 a substantial overcharge to HHSC, CONTRACTOR will reimburse HHSC for the reasonable costs 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 pursuant to this Agreement, the Party seeking the set-off may deduct the entire amount owed against the charges otherwise payable or expenses owed to it under this 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 such 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 its Cost Proposal, 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 upon 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 for 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 such dispute and both Parties will attempt in good faith to resolve the dispute. HHSC shall not be required to pay any disputed portion of a CONTRACTOR invoice. Notwithstanding any such dispute, the CONTRACTOR must continue to perform the Services and produce Deliverables in compliance with the terms of this 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 this 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 this 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 this 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. Specifically, 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 this Agreement will be paid for by the CONTRACTOR.

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### **Section 9.07 No increase in charges.**

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

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

#### **Section 10.01 Confidentiality.**

(a) CONTRACTOR and all subcontractors, consultants, or agents under the Agreement must 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 Confidential Information to the extent that confidential treatment is provided under law and regulations.

(b) CONTRACTOR is responsible for understanding the degree to which information obtained through performance of this Agreement is confidential under State and Federal law, regulations, or administrative rules.

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

(d) CONTRACTOR must have a system in effect to protect all records and all other documents deemed confidential under this Agreement that are maintained in connection with the activities funded under the Agreement. Any disclosure or transfer of Confidential Information by CONTRACTOR, including information required by HHSC, will be in accordance with applicable law. If the CONTRACTOR receives a request for information deemed confidential under this Agreement, the CONTRACTOR will immediately notify the State of such request, and will make reasonable efforts to protect the information from public disclosure.

(e) In addition to the requirements expressly stated in this Section, CONTRACTOR must comply with any policy, rule, or reasonable requirement of HHSC that (i) is provided to CONTRACTOR by HHSC pursuant to this Agreement and (ii) relates to the safeguarding or disclosure of information relating to HHSC Programs recipients, CONTRACTOR'S operations, or the CONTRACTOR performance of the Agreement.

(f) In the event of the expiration of the Agreement or termination of the Agreement for any reason, all Confidential Information of a Party disclosed to and all copies thereof made by the other Party shall be returned to the disclosing Party or, at the disclosing Party's option, destroyed in a manner agreed to by the Parties. The recipient of the Confidential Information shall

provide the disclosing Party certificates evidencing such destruction.

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

(h) With the exception of confidential HHSC Program recipient or client information, Confidential Information of a Party shall not be afforded the protection of the Agreement if such data was:

- (1) Already known to the receiving Party without restrictions at the time of its disclosure by the furnishing Party;
- (2) Independently developed by the receiving Party without reference to the furnishing Party's Confidential Information;
- (3) Rightfully obtained by the 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 10.02 Disclosure of HHSC's Confidential Information.**

(a) CONTRACTOR will immediately report to HHSC any and all unauthorized disclosures or uses of HHSC's Confidential Information of which it or its subcontractor(s), consultant(s), or agent(s) is aware or has knowledge. CONTRACTOR acknowledges that any publication or disclosure of HHSC's Confidential Information to others may cause immediate and irreparable harm to HHSC and may constitute a violation of State or federal laws. If CONTRACTOR, its subcontractor(s), consultant(s), or agent(s) should publish or disclose such Confidential Information to others without authorization, HHSC will immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity 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 HHSC's Confidential Information.



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

**Section 10.03 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, Chapter 552 of the Texas Government Code, that consists of the CONTRACTOR'S Confidential Information, including data to which CONTRACTOR 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) 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.

**Section 10.04 Privileged Work Product.**

(a) CONTRACTOR acknowledges that HHSC asserts that material may be prepared in anticipation of litigation and that CONTRACTOR is performing the Services with respect of such material as an agent of HHSC, and that all matter related thereto ("Privileged Work Product") 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 to represent CONTRACTOR in such resistance or to retain counsel to so represent CONTRACTOR or to reimburse CONTRACTOR for reasonable attorneys' fees and expenses incurred in resisting such access.

(e) If a court of competent jurisdiction orders CONTRACTOR to produce documents, disclose data, or otherwise breach the confidentiality obligations imposed in the Agreement, or otherwise with respect to maintaining the confidentiality, proprietary nature, and secrecy of Privileged Work Product, CONTRACTOR will not be liable for breach of such obligation.

**Section 10.05 Unauthorized acts.**

Each Party agrees to:

(1) Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, of any 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 10.06 Legal action.**

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

**Section 10.07 Information Security**

(a) CONTRACTOR and all subcontractors, consultants, or agents under the Agreement (collectively "CONTRACTOR") must comply with the following:

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- (1) Health and Human Services Enterprise Information Security Standards and Guidelines and
- (2) Title 1, Sections 202.1 and 202.3 through 202.28, Texas Administrative Code.

(b) CONTRACTOR must comply with the following, as applicable:

- (1) The Federal Information Security Management Act of 2002 (FISMA);
- (2) The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (3) The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
- (4) Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- (5) National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- (6) NIST Special Publication 800-53 Revision 3 – Recommended Security Controls for Federal Information Systems and Organizations; and
- (7) NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems.

(c) In addition to the requirements expressly stated in this Section, CONTRACTOR must comply with any other State or Federal law, regulation, or administrative rule relating to the specific HHSC program area that CONTRACTOR supports.

(d) Upon reasonable notice, CONTRACTOR must provide, and cause its subcontractors and agents to provide, HHSC or its designee, prompt, reasonable, and adequate access to any information security records, books, documents, and papers that are directly pertinent to the performance of the Scope of Work including, but not limited to:

- (1) CONTRACTOR information security policies;
- (2) CONTRACTOR information security procedures;
- (3) CONTRACTOR information security standards;
- (4) CONTRACTOR information security guidelines;
- (5) CONTRACTOR security plan in compliance with NIST Special Publication 800-53 Revision 3;

- (6) CONTRACTOR security violation reports;
- (7) CONTRACTOR employee security acknowledgement agreements; and
- (8) Lists of CONTRACTOR's employees with authorized access to HHSC confidential information.

Items (1) through (5) above are subject to HHSC's review and approval. Neither HHSC's review or approval, nor its fail to review or approve, will relieve, waive or satisfy any of CONTRACTOR's obligations under this Agreement.

(e) CONTRACTOR will provide, and will cause its subcontractors and agents to provide, to HHSC periodic written certifications of compliance with controls and provisions relating to information security, including but not limited, those related to confidential data transfers and the handling and disposal of Protected Health Information (PHI), Electronic Protected Health Information (EPHI), and Personally Identifiable Information (PII). Acceptable forms of written compliance may be, but are not limited to:

- (1) Statement on Auditing Standards No.70, Service Organizations (SAS-70) Report;
- (2) General Security Controls Audit;
- (3) Application Controls Audit;
- (4) Vulnerability Assessment; and
- (5) Network/Systems Penetration Test.

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

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

The remedies described in this Section are directed to CONTRACTOR's timely and responsive performance of the Services and production of 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

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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 (3) business days (or another date approved by HHSC) of receipt of written notice of a non-material deficiency, provide the HHSC Project Manager 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, 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 breach of this 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; and

(C) A specific proposal to cure or resolve the deficiency.

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

(4) HHSC will notify CONTRACTOR in writing of HHSC's final disposition of HHSC's concerns. 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 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 alleged breach and pending corrective action, if necessary, by CONTRACTOR or a decision by HHSC to terminate 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 this 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 and/or programmatic reports to be submitted by CONTRACTOR;

(D) Decline to renew or extend the Agreement; or

(E) 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:

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(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 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 in accordance with this Section.

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

### (e) *Damages.*

(1) HHSC will be entitled to actual and consequential damages resulting from the CONTRACTOR'S failure to comply with any of the terms of the Agreement. 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 and/or to meet specific performance standards set forth in the Agreement are difficult or impossible to determine with precise accuracy. Therefore, liquidated damages will be assessed in writing against and paid by the CONTRACTOR for failure to meet any aspect of the responsibilities of the Agreement and/or to meet the specific performance standards identified by the HHSC. Liquidated damages will be assessed if HHSC determines such failure is the fault of the CONTRACTOR (including the CONTRACTOR'S subcontractors and/or consultants) and is not materially caused or contributed to by HHSC or its agents. If at any time, HHSC determines the CONTRACTOR has not met any aspect of the responsibilities of the Agreement and/or the specific performance standards due to mitigating circumstances, HHSC reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and be signed by the appropriate executive of HHSC.

(2) The liquidated damages prescribed in this Section are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of HHSC's projected financial loss and damage resulting from the 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.

(5) Notwithstanding the above, any consequential damages for which CONTRACTOR is responsible under this Agreement shall be limited to the total amount paid to CONTRACTOR under the Agreement during the twelve months immediately preceding the accrual of the claim or cause of action.

### (f) *Equitable Remedies*

(1) CONTRACTOR acknowledges that, if CONTRACTOR breaches (or attempts or threatens to breach) its obligation under this 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

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of the Agreement in whole or in part is  
convenient or in the best interests of the  
State of Texas or the HHSC Programs.

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(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 may 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, this Agreement will terminate upon the Expiration Date unless extended in accordance with the terms of this Agreement, or terminated sooner under the terms of this Agreement. Prior to completion of the Initial Term and any extensions or renewal thereof, all or a part of this Agreement may be terminated for any of the following reasons:

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

This 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.*

HHSC reserves the right to terminate this Agreement, in whole or in part, upon the following conditions:

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

HHSC may terminate this 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 this 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 this Agreement.

(3) *Breach of confidentiality.*

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

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

HHSC may terminate this 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 this Agreement.

(5) *Termination for gifts and gratuities.*

(A) HHSC may terminate this 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 any thing of value 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 shall enforce this provision against a subcontractor who has offered or given any thing 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 pursuant to 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; and
- (2) Such failure constitutes Cause as described in this Section.

(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.

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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 and/or Federal law.

(7) *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 insolvency.*

(A) HHSC may terminate the Agreement if CONTRACTOR:

(1) Files for bankruptcy;

(2) Becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency, or the appointment of a receiver or similar officer for it;

(3) Makes an assignment for the benefit of all or substantially all of its creditors; or

(4) Enters into an Agreement for the composition, extension, or readjustment of substantially all of its obligations.

(B) CONTRACTOR agrees to pay for all reasonable expenses of HHSC including the cost of counsel, incident to:

(1) The enforcement of payment of all obligations of the CONTRACTOR by any action or participation in, or in connection with a case or proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, or any successor statute;

(2) A case or proceeding involving a receiver or other similar officer duly appointed to handle the CONTRACTOR's business; or

(3) A case or proceeding in a State court initiated by HHSC when previous collection attempts have been unsuccessful.

(9) *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.

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

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this 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 this Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding.

**Section 11.04 Effective date of termination.**

Except as otherwise provided in this 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 this 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

Responsible Office: HHSC Office of General Counsel (OGC)

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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



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

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

Any dispute that in the judgment of any Party to this Agreement may materially or substantially affect the performance of any Party will be reduced to writing and delivered to the other Party. The Parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the Parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the Parties shall be reduced to writing and delivered to all Parties within ten (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 this Agreement must be resolved in accordance with the dispute resolution process established by HHSC in accordance with Chapter 2260, Government Code.

(2) *Negotiation of claims.* The Parties expressly agree that the CONTRACTOR's claim for breach of this 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 specifically 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 expressly 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 expressly agree that compliance with the contested case process

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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 this Agreement by HHSC nor any other conduct of any representative of HHSC relating to this Agreement shall be considered a waiver of the State's sovereign immunity to suit.

performance of the Services in compliance with

(4) *HHSC rules.* The submission, processing and resolution of CONTRACTOR's claim is governed by the rules adopted by HHSC pursuant to 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 this 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 Orders.

**Section 11.12 Liability of CONTRACTOR.**

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

(1) Defects in Services or Deliverables;

(2) 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, SUBCONTRACTORS 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 this Agreement; or

(2) CONTRACTOR's prudent and diligent

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instructions given by HHSC in accordance with Section 1.03 (relating to implied authority) and Section 3.03 (relating to delegation of authority) of this Agreement.

(d) CONTRACTOR will ship all Equipment and Software purchased and Third Party Software licensed pursuant to 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 the following certifications contained in its Proposal, and will immediately notify HHSC of any changes in circumstances affecting these certifications:

- (1) Federal lobbying;
- (2) Debarment and suspension;
- (3) Child support; and
- (4) Nondisclosure statement.

**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 this Agreement. CONTRACTOR warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this 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 this Agreement with the State of Texas.

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### **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 this 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 this 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 Services 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 this Agreement.

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

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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 this 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 hereby assigns to HHSC any and all claims for overcharges associated with this contract arising under the anti-trust laws of the United States, 15 U.S.C.A. Section 1, *et seq.* (1973), as amended, and the anti-trust laws of the State of Texas, TEX. BUS. & COMM. CODE ANN. Section 15.01, *et seq.* (1967), as amended.

**Article 13. Representations and Warranties****Section 13.01 Authorization.**

(a) The execution, delivery and performance of this 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 this Agreement and perform its obligations under this Agreement.

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

CONTRACTOR will maintain all required certifications, licenses, permits, and authorizations during the term of this 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 this Agreement will be provided in a manner consistent with the standards of quality and integrity as outlined in this Agreement, the RFP, and CONTRACTOR's Proposal.

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

(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 this Agreement.

**Section 13.04 Warranty of deliverables.**

CONTRACTOR warrants that Deliverables developed and delivered under this 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 this Agreement without the express written approval of HHSC.

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### **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.

#### **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 encourage 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

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CONTRACTOR UNDER THE AGREEMENT, INCLUDING CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

### Article 16. Special Terms and Conditions

If checked, the following provisions apply to this contract.

Note: Section 16.08 Historically Underutilized Business Participation Requirements APPLIES IF HHSC determined that sub-contracting opportunities were probable for the procurement/contract.



#### Section 16.01 HIPAA.

##### (a) *Definitions.*

For purposes of this Section:

(1) “**Business Associate**” has the meaning given the term under 45 C.F.R. §160.103.

(2) “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 U.S.C. §§1320d—1320d-8).

(3) “**Protected Health Information**” has the meaning given the term in 45 C.F.R. §164.501, limited to the information created or received by CONTRACTOR from or on behalf of HHSC.

All terms used in this Section that are not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule, 45 C.F.R. parts 160 and 164

##### (b) *Background.*

(1) Under the terms of this Agreement, HHSC may provide or make available to Contractor, or Contractor may create or receive on behalf of HHSC, certain HHSC Confidential Information that is and must be afforded special treatment and protection under HIPAA in conjunction with Services or Deliverables that are being provided to HHSC by Contractor.

(2) Contractor will have access to or receive from HHSC, or create or receive on behalf of HHSC, certain electronic Protected Health Information that must be safeguarded in accordance with this Agreement and the security rules adopted by the U.S. Department of Health and Human Services (HHS) under HIPAA, 45 C.F.R. §§ 164.302-.318.

(3) Contractor is a Business Associate of HHSC.

(4) The obligations of Contractor under this section are in addition to the duties of Contractor with

respect to HHSC Confidential Information described elsewhere in this Agreement.

##### (c) *Uses and disclosures.*

Except as otherwise limited by this Agreement, CONTRACTOR may:

(1) Use or disclose Protected Health Information to perform the Services and accomplish the purposes of this Agreement, provided that:

(A) Such use or disclosure would not violate the Privacy Rule if the disclosure were made by HHSC; and

(B) Such use or disclosure is limited to the minimum necessary to accomplish the purposes of the use or disclosure;

(2) Use Protected Health Information for the proper management and administration of CONTRACTOR or to carry out Contractor's legal responsibilities;

(3) Disclose Protected Health Information for the proper management and administration of CONTRACTOR or to carry out Contractor's legal responsibilities if:

(A) Disclosure is required by law; or

(B) Contractor obtains assurances from the person to whom the information is disclosed that the person will:

(i) Maintain the confidentiality of the Protected Health Information;

(ii) Use or further disclose the information only as required by law or for the purpose for which it was disclosed to the person; and

(iii) Notify Contractor of any breaches of confidentiality of which the person is aware; and

(4) Use Protected Health Information to provide data aggregation services to HHSC, as that term is defined at 45 C.F.R. §164.501 and permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

##### (d) *Contractor's commitment and obligations.*

Contractor agrees that it will:

(1) Not use or disclose Protected Health Information provided by, made available by, or created or received on behalf of HHSC other than as permitted or required by this Agreement or as required by law;

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(2) Establish and maintain appropriate safeguards to prevent any use or disclosure of Protected Health Information other than as provided for by this Agreement;

(3) Have procedures in place for mitigating, to the maximum extent practicable, any harmful effect of a use or disclosure of Protected Health Information that is contrary to this Agreement or the Privacy Rule;

(4) Immediately report to HHSC any use or disclosure of Protected Health Information not provided for or allowed by this Agreement of which Contractor becomes aware;

(5) Enter into a subcontract anytime Contractor proposes to provide or make available Protected Health Information to any subcontractor or agent. Such subcontract or agreement must:

(A) Contain the same terms, conditions, and restrictions on the use and disclosure of Protected Health Information and restrictions on the security of information as contained in this Agreement; and

(B) Be approved as to the form of the terms, conditions, and restrictions by HHSC prior to entering into any such agreement;

(6) Make Protected Health Information in a designated records set available to HHSC or, as directed by HHSC, to the subject of the Protected Health Information, in compliance with the requirements of 45 C.F.R. §164.524.

(7) Make Protected Health Information in a designated records set available for amendment and will incorporate any amendments to this information that HHSC directs or agrees to pursuant to 45 C.F.R. §164.526.

(8) Document and make available to HHSC the Protected Health Information required to provide an accounting of disclosures, in accordance with 45 C.F.R. §164.528.

(9) Make internal practices, books, and records relating to the use or disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of HHSC, available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the privacy regulations.

(10) Return, destroy, or continue to maintain appropriate safeguards for all Protected Health Information received from HHSC or created or received on behalf of HHSC once Contractor finishes providing Services or Deliverables under this Agreement:

(A) If Contractor destroys the information, it must certify to HHSC that the information has been destroyed;

(B) Contractor may not elect to destroy information that must be retained under federal or state law; and

(C) Contractor must maintain appropriate safeguards for the information as long as Contractor has such Protected Health Information;

(11) Develop and implement a system of sanctions for any Subcontractor or Contractor Personnel that violate this Agreement or the Privacy Rule.

(12) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of HHSC as required by 45 C.F.R. §§ 164.302-.318.

(13) Immediately report to HHSC any security incident of which it becomes aware.

(14) Make internal practices, books, and records relating to the security of information received from or created or received by Contractor on behalf of HHSC available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the security rules.

(15) Develop and implement a system of sanctions for any Subcontractor or Contractor Personnel that violate this Agreement or the security rules.

*(e) Ownership of Protected Health Information.*

(1) The Protected Health Information shall be and remain the property of HHSC.

(2) Contractor agrees it acquires no title or rights to the information, including any de-identified information, as a result of this Agreement.

*(f) Injunctive relief; survival of terms.*

(1) Notwithstanding any rights or remedies provided for in this Agreement, HHSC retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information or a violation of the security rules by Contractor or any Subcontractor, Contractor Personnel, or third party that received information from Contractor.



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(2) The duties and obligations imposed on Contractor under this section of this Agreement will survive the expiration of the Agreement until all Protected Health Information provided by HHSC to Contractor, or created or received by Contractor on behalf of HHSC, is destroyed or returned to HHSC.



### **Section 16.02 Technology access.**

(a) The CONTRACTOR expressly acknowledges that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the CONTRACTOR represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- (1) Providing equivalent access for effective use by both visual and non-visual means;
- (2) Presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- (3) Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

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

(c) In addition, all technological solutions offered by the CONTRACTOR must comply with the requirements of Texas Government Code §531.0162. This includes, but is not limited to providing technological solutions that meet federal accessibility standards for persons with disabilities, as applicable.



### **Section 16.03 Member records.**

CONTRACTOR and any subcontractor shall not transfer an identifiable Member record, including a patient record, to another entity or person without written consent from the Member or someone

authorized to act on his or her behalf; however, HHSC may require CONTRACTOR, or any subcontractor, to transfer a Member record to another agency or to HHSC if the transfer is necessary to protect either the confidentiality of the record or the health and welfare of the Member.

If at any time during the Initial Term, this Agreement is terminated, HHSC may require the transfer of Member records, upon written notice to CONTRACTOR, to another entity that agrees to continue performance of the Agreement, as consistent with federal and state laws and applicable releases.

The term "Member Record" for this Section 16.03 means only those administrative, enrollment, case management and other such records maintained by CONTRACTOR and is not intended to include patient records maintained by participating network providers.



### **Section 16.04 Financial/performance audits.**

(a) The State of 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 vendor used by HHSC in HHSC's operation of a part of the State Medicaid program. "Medicaid vendor" 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 thirty (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 thirty (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 the "Financial Report Requirements" portion of Section 6 of this RFP. CONTRACTOR understands that as part of the auditor's audit procedures, the auditor will request,

## Subject: HHSC Uniform Contract Terms & Conditions

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 16.05 Audit software.**

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

### ☐ **Section 16.06 Ownership and licenses.**

#### (a) *Custom Software.*

The Parties agree that any Deliverable, including without limitation 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, the Work Plan, 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, without limitation, the Custom Software and associated Documentation on Final

Acceptance or as otherwise provided in the Agreement.

(2) CONTRACTOR will furnish such 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 such Deliverable does not qualify as a work for hire under applicable law, and to the extent that the Deliverable includes materials subject to copyright, patent, trade secret, or other proprietary right protection, CONTRACTOR agrees to assign, and hereby assigns, all right, title, and interest in and to Deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to HHSC.

(3) CONTRACTOR will, at the expense of HHSC, assist HHSC or its nominees to obtain copyrights, trademarks, or patents for all such Deliverables in the United States and any other countries. 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 and/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 and/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.

## Subject: HHSC Uniform Contract Terms & Conditions

### (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 CFR 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 16.07 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 ten (10) calendar days after the Agreement is awarded:

- (A) Standard Worker's Compensation Insurance coverage;
- (B) Automobile Liability; and
- (C) Comprehensive 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 Comprehensive 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.

(3) CONTRACTOR is responsible for any and 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 authorized by applicable law to conduct business 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. CONTRACTOR will submit evidence of insurance prior to Agreement award. The failure of HHSC to obtain such 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.

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(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 thirty (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 Worker's Compensation coverage in the amounts required by Texas law. CONTRACTOR will also require subcontractors to carry Comprehensive Liability Insurance including Bodily Injury coverage or \$100,000.00 per occurrence and Property Damage Coverage of \$25,000.00 per occurrence. CONTRACTOR may provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted will so stipulate.

(5) The Parties expressly 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 agree that insurer will waive their rights of subrogation against HHSC.

(7) CONTRACTOR expressly 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 such additional protection.



### **Section 16.08 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 16.08(b)(4)**.

(4) Contractor shall 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 T.A.C., Part 1, Chapter 20, Subchapter C), and subject to remedies for Breach.

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT C**

**Statement of Work**

**Statement of Work  
for  
Information Technology Services**

**Health and Human Services (HHS)**

**Information Technology Hardware Acquisition and  
Leasing**

**DIR Cooperative Contracts Category  
Managed Services-Computer**

**Enterprise and Customer Support Services**

**Statement of Work (SOW)  
52900-5-2000135059**

**The Vendor must submit Responses and direct inquiries to:**

|   |
|---|
| <p><b>Health and Human Services<br/>Procurement and Contracting Section</b><br/>Attn: Mark Cooper<br/>4405 North Lamar Blvd<br/>Austin, Texas 78756<br/><a href="mailto:Mark.cooper@hhsc.state.tx.us">Mark.cooper@hhsc.state.tx.us</a><br/>512.206.5128</p> |
|---|

To prevent opening by unauthorized individuals, all copies of the Response must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

|  |
|--|
| <p><b>SOW Response, Submitted in Response to SOW # 52900-5-2000135059<br/>due April 21, 2015 @ 2:00 pm<br/>Attn: Mark Cooper</b></p> |
|--|

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# 1. Introduction

The Texas Health and Human Services (HHS) issues this Statement of Work (SOW) to solicit hardware acquisition and leasing services from qualified vendors in order to provide computing devices to the Enterprise.

The State of Texas, by and through the Texas Health and Human Services Commission (HHSC), is seeking a competitive hardware leasing services procurement, which will encompass hardware acquisition and leasing for HHS end user computing devices. For the purposes of this procurement, hardware acquisition and leasing includes the hardware acquisition, leasing services, and delivery to statewide HHS locations specified by the HHS Agencies. This will include desktop computers, laptop computers, tablets and other equivalent personal computing devices, along with extended warranty options for each. In addition to the standard configurations listed in this Statement of Work, this agreement shall include any equipment requested by HHS and accepted by the vendor. All hardware must be compatible with Microsoft Operating System, unless otherwise specified.

The HHS Agencies are interested in acquiring a hardware acquisition and leasing vendor to transition existing services from each of their respective current vendors. HHS Agencies seek to improve processes that will refresh old technology and provide computing devices for future growth. This solicitation is provided to vendors who will provide hardware and leasing services through an existing approved Department of Information Resources (DIR) contract.

The HHS Agencies' objectives are to:

- Achieve cost optimization based on standardization,
- Establish a flexible lease agreement and structure to allow for movement of equipment,
- Transition services from previous Vendor,
- Refresh existing leased equipment and update old technology,
- Provide equipment statewide in a timely and responsible manner,
- Utilize an automated ordering and asset tracking system to enhance process orders and day-to-day management of inventory,
- Obtain flexible return requirements for expired computing devices,
- Improve accuracy through automation, and
- Obtain the best quality and value services.

## 2. Sole Point of Contact

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

**Mark Cooper**  
Health and Human Services Commission  
Procurement and Contracting Section  
4405 North Lamar Blvd  
Austin, Texas 78756  
[Mark.cooper@hhsc.state.tx.us](mailto:Mark.cooper@hhsc.state.tx.us)  
512.206.5128

All communications relating to this Statement of Work must be directed to the HHSC contact person named above. All communications between respondents and other HHSC staff members concerning this procurement are strictly prohibited.

## 3. Background

The following Texas Health and Human Services (HHS) agencies will be the recipients of services described in this procurement:

### 3.1. Overview of Texas Health and Human Services Commission (HHSC)

The mission of the Health and Human Services Commission is to provide the leadership and direction and foster the spirit of innovation needed to achieve an efficient and effective health and human services system for Texans.

Since 1991, 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), including:

- Department of Aging and Disability Services
- Department of Assistive and Rehabilitative Services
- Department of Family and Protective Services
- Department of State Health Services

### 3.2. Overview of the Department of Aging and Disability Services (DADS)

The Texas Department of Aging and Disability Services (DADS) was created to administer long-term services and support for people who are aging as well as for people with intellectual and physical disabilities. DADS also licenses and regulates providers of these services, and administers the state's Guardianship program. DADS began formal operations on Sept. 1, 2004.

### 3.3. Overview of the Department of Assistive and Rehabilitative Services (DARS)

The Department of Assistive and Rehabilitative Services (DARS) administers programs that ensure Texas is a state where people with disabilities, and children who have developmental delays, enjoy the same opportunities as other Texans to live independent and productive lives.

DARS administers programs that help Texans with disabilities find jobs through vocational rehabilitation, ensure that Texans with disabilities live independently in their communities, and assist families in helping their children under age 3 with disabilities and delays in development to reach their full potential.

### 3.4. Overview of the Department of Family and Protective Services (DFPS)

The 78th Texas Legislature, Regular Session, created the Texas Department of Family and Protective Services (DFPS) with the passage of House Bill 2292. Previously called the Texas Department of Protective and Regulatory Services, DFPS is charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes. The agency is also charged with managing community-based programs that prevent delinquency, abuse, neglect and exploitation of Texas children, elderly and disabled adults. Every day, approximately 11,400 DFPS employees in more than 290 offices across the state protect the physical safety and emotional wellbeing of the most vulnerable citizens of Texas.

### 3.5. Overview of the Department of State Health Services (DSHS)

The mission of the Department of State Health Services (DSHS) is to improve health and well-being in Texas. DSHS is responsible for oversight and implementation of public health and behavioral health services in Texas. With a budget of \$2.9 billion and a workforce of more than 12,000 in fiscal year 2012, DSHS is the fourth largest of Texas state agencies. DSHS manages nearly 7,900 client services and administrative contracts and conducts business from about 160 locations.

The agency's focus on public health and behavioral health provides DSHS with a broad range of responsibilities associated with improving the health and well-being of Texans. DSHS accomplishes this mission in partnership with numerous academic, research, and health and human services stakeholders within Texas, across the country, and along the United States/Mexico border. The Health and Human Services (HHS) System partners, as listed, perform important roles in working collaboratively to address existing and future issues faced by the agency:

- HHS System agencies;
- DSHS regional offices and hospitals;
- local mental health authorities (LMHAs);
- federally qualified health centers (FQHCs);
- local health departments (LHDs); and
- contracted community service providers

DSHS promotes optimal health for individuals and communities through the provision of effective public health services, clinical services, mental health services, and substance abuse services. Responsibilities include coordinating a statewide network of services available through DSHS and its partners, ranging from population-based services to individualized care.

## 3.6. Current State of Seat Management

### 3.6.1 Background

The HHS Agencies are seeking a vendor who will provide hardware acquisition and leasing services for over 55,000 staff at facilities located across the State of Texas. They require hardware acquisition and leasing services that provide the State of Texas with the highest value. They believe that the best value can be achieved by:

- Standardizing the HHS device configurations which may include the image engineering processes, to streamline ordering across the agencies
- Obtaining hardware price discounts due to the HHS agencies' anticipated number of devices
- Obtaining below government market lease rate factors
- Maximizing the flexibility to adjust lease terms (12, 24, 36 or 48 months) and the end user computing device mix, for instance the ratio of desktop to laptop devices, throughout the term of the contract
- Allowing device movement between HHS agencies' lease schedules thereby maximizing the use of the asset during the lease life cycle

This Statement of Work for hardware acquisition and leasing services will describe the current environment of the HHS agencies, end user computing device assets, the desired future state end user computing device specifications and services, Service Level Requirements (SLR's), refresh cycles and other facts that are essential for a vendor to create and propose the solution that provides the best value to the State.

In August 2015, HHS agencies will reach the end of their current seat management contracts. The awarded vendor will be responsible for a seamless transition of hardware from the current vendor to the new vendor. The awarded vendor will also be responsible for collaboratively working with HHS agencies' technical support teams during the transition to the new hardware acquisition and leasing services.

## 3.7. Current State

Multiple appendices provide information about the current state of HHS, including:

- Appendix A – Refresh Schedules,
- Appendix B – Current Hardware Configurations,
- Appendix C – HHS Ship To Locations

The State Regions are available online at [http://www.hhsc.state.tx.us/about\\_hhsc/Regions/index.shtml#01](http://www.hhsc.state.tx.us/about_hhsc/Regions/index.shtml#01).

### 3.7.1 DADS

DADS currently has an inventory of approximately 9,800 Dell desktops and laptops in use, all leased under contract to a single Vendor.

### 3.7.2 DARS

DARS currently has an inventory of approximately 2,765 Dell desktops and laptops in use, all leased under contract to a single Vendor.

### 3.7.3 DFPS

DFPS currently has an inventory of approximately 14,000 assets, over 7,000 are tablets, and the remaining are desktops and laptops.

### 3.7.4 DSHS

DSHS currently has an inventory of approximately 10,500 assets, Dell desktops and laptops in use, along with approximately 300 tablets.

### 3.7.5 HHSC

HHSC currently has an inventory of approximately 22,000 Dell desktops and laptops in use, of which approximately 17,800 are leased under contract to a single Vendor. The other assets are state owned. The assets are located in 600+ Agency offices across the state.

## 4. Business Vision – Critical Business Requirements

### 4.1. Forward Vision

The Texas Health and Human Services (HHS) agencies are keenly aware of the advantages and benefits of technology and its advances in the market today. Agencies know that their ability to take advantage of new capabilities begin with their technology business partners. It is of critical importance that the hardware acquisition and leasing services agreement, entered through this procurement process, provides a capability for identifying and leveraging innovative new technology and capabilities.

Over the past several years, HHS agencies have seen the transition from desktop devices to laptop computers and the recent migration to mobile and tablet technology. With these technology advances and changes, the agencies' workforce has been able to keep pace by moving from an office-based workforce to a more viable remote and mobile workforce. These advances in both technology and the way HHS conducts our services is expected to continue. HHS expects the Vendor to provide vision and innovative solutions to benefit the HHS agencies' due to the rapid changes that may occur in the marketplace.

The HHS agencies are continually looking to improve and enhance their services and the way they provide their services to the citizens of the State of Texas. Because of this "continuous improvement" approach within the agencies' leadership, it is imperative that the hardware acquisition and leasing services provided also has a 'continuous improvement' structure. Refresh of technology is just one of the many continuous improvement capabilities expected to be proposed in this new hardware acquisition and leasing services agreement as well as a clear description of ways the asset management process is continually assessed and optimized.

### 4.2. Critical Business Requirements

This section of the Statement of Work response includes the Critical Business Requirements that must be addressed by the solution proposed by the Vendor.

**Instructions:** The proposed solution should take into consideration, at a minimum, the Forward Vision described in Section 4.1. The Vendor is requested to describe how its' solution aligns with each of the key business requirements described below. Please limit responses to one (1) page per requirement.

#### 4.2.1 Cost Optimization

The hardware acquisition and leasing services agreement must provide hardware leasing that meets the agencies' requirements in a cost-optimized method. HHS agencies continually look for ways to obtain and provide services in the most cost effective manner. Implementing an enterprise-wide hardware leasing solution will provide the awarded vendor the opportunity to optimize their solutions over a much larger user base with a streamlined management model.

#### 4.2.2 Quality of Service

HHS envisions this new hardware acquisition and leasing services agreement to provide them with a much improved level of service quality. End user devices directly affect the critical services the HHS agencies provide; therefore quality of service is extremely important to minimize service disruptions.

#### 4.2.3 Flexibility

HHS agencies are continually changing their organizational structure, locations and requirements, and therefore require a very high level of flexibility to adjust their hardware acquisition and leasing services.

Vendor solutions must take into consideration the flexibility required at HHS. Each agency may require multiple images loaded onto machines.

In extreme circumstances, entire areas of responsibility can shift from one agency's responsibility to another, requiring device transfers that will need to be completed seamlessly. Allowing device movement between HHS agencies' lease schedules results in the maximum use of the asset during the lease life cycle; in such cases, HHS expects the awarded Vendor to provide the necessary support and flexibility to allow for these broad based moves.

Under this agreement, HHS expects to provide the individual agencies with a much more flexible lease structure that will facilitate staff movement, hardware upgrades, hardware mix changes (e.g.: laptops versus tablets) and lease timeframes for refresh cycles. HHS also expects flexibility in returns, such as no return of consumable, non-value items like mice and keyboards along with other flexible lease return policies.

#### **4.2.4 Principle Period of Service**

The services will be performed at HHS agency locations during the hours of 8:00 a.m. to 5:00 p.m. (location site time), Monday through Friday excluding State holidays. Services are required on Skeleton Crew and Optional Holidays.

<http://www.hr.sao.state.tx.us/Compensation/holidays.html>

#### **4.2.5 Contract Management**

HHS envisions this new hardware acquisition and leasing services agreement to be managed at an enterprise level with details captured and collected at an agency level. Communication and reporting will need to be provided both at an enterprise level and at an agency specific level.

The hardware acquisition and leasing services agreement must provide a clear set of metrics established for management at the lowest levels of the organization's needs. This level of contract management should also allow for each organization to manage its own ordering of equipment, determine the duration of lease terms (12, 24, 36 or 48 months) and its usage of the contract services via tools or dashboards.

While HHS agencies obtain the hardware from a centralized organization, the management of end user assets must also be maintained at an agency level. If necessary, the Vendor may be required to assign a single point-of-contact for each independent HHS agency.

#### **4.2.6 Minimize Complexity through Consensus**

The hardware acquisition and leasing services requirements for this procurement have been defined following a consensus building process. As independent agencies, each HHS agency has critical requirements and needs that this enterprise agreement must address. HHS has worked with each of the agencies to develop a set of requirements that will satisfy all agencies' needs and maximize and optimize the leasing ability of a large organization.

#### **4.2.7 Administration**

Asset administration is also a critical requirement of the HHS agencies. Under the oversight of this agreement, HHS expects the Vendor to propose a well-defined tagging method or tools that will provide the agencies with the appropriate components for asset tagging.

#### **4.2.8 Mobility**

The agencies are experiencing a substantial and sustained migration of employees over to mobile users. This will require a smooth transition from desktop components to more mobile laptop computers and tablets. The hardware acquisition and leasing services solution shall facilitate a user's ease of transition from station based desktops to mobile computing devices such as laptops and tablets, as required.

#### **4.2.9 Remote Work**

Strategically, many of the HHS agencies are reducing their 'brick and mortar' office spaces, focusing instead on bringing their services as close to their constituents as possible. Besides the shift to provide agency resources the capability to carry their work to a variety of remote office locations across the State of Texas, the number of home office workers is increasing. Home office workers will need to leverage the same device capabilities as they would if in an office location.

With this initiative, HHS may begin to see a growth in "hoteling" space within their existing offices. This "hoteling" area, allocated for when remote workers need to come to the office, shall provide these remote users with the ability to work in the office when required to do so. A hotel configuration may be required by agencies' during this contract.

**4.2.10 Open Standards**

All end user devices must be capable of interoperating with all existing agency services - hardware and software. For this reason, all hardware/software components provided and supported by the Vendor must be based on industry standards. All hardware must be compatible with Microsoft Operating System, unless otherwise specified.

**4.2.11 Information Security**

The role and function of the HHS agencies is focused on providing services to state citizens in need. This service includes the critical need of protecting the confidentiality, integrity and availability of all information and information systems.

The information technology security framework used by HHS for security controls is derived from the Moderate Impact system controls described in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations. Reviewing these control families would convey the information technology security required for applications and/or systems designed to protect HHS from unauthorized access, use, modification, and destruction.

## 5. Technical Requirements

This section of the Statement of Work includes the Technical Requirements that must be addressed by the solution proposed by the Vendor.

**Instructions:** For each technical requirement listed in the tables below, the Vendor must notate “Agree” or “Disagree” in the Agree/Disagree column.

- If the requirement will be met by the Vendor, the Vendor must respond with “AGREE” and provide an explanation in the corresponding Vendor Solution column that explains how the requirement will be met.
- If the requirement cannot be met by the Vendor, the Vendor must respond with “DISAGREE:” in the corresponding column and must provide an explanation in the corresponding Vendor Solution column that describes what options or alternatives it will provide to meet the requirement listed.

Vendors may submit attachments or appendices detailing their options or alternatives, but must clearly note the requirements addressed.

### 5.1. Account Management

Account management services will occur in a federated model between the HHS enterprise (managed by HHSC) and the respective HHS agencies’ Contract Manager. Each HHS agencies’ Contract Manager will have a communications and reporting interface with the awarded vendor, however overall issue tracking and escalation; contract management and service level management will be managed at the HHS agency level and may transition to the Enterprise HHS level when these services are selected for consolidation. The following services will be included within Account Management:

- Contract Management
  - IT Hardware Acquisition
  - Leasing Services
- Communications
- Issues Tracking and Escalation
- Service Level Reporting and Quality Controls
- Operational Reporting
- Fostering Innovation
- Transition Planning (In/Out)
- Invoicing
- Risk mitigation
- Problem identification, resolution and escalation
- Assurance of confidentiality
- Financial management
- Progress reporting for all phases
- Return Requirements

These services are described in additional detail by the requirements below:

**Table 1: Account Management Requirements**

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
| AM-01  | Vendor will manage all services provided to HHS. Vendor shall define its account management team and outline escalation paths for all activities defined within the Vendor's response. Any and all changes in the Vendor's key personnel must be approved in writing by HHS. |                |                 |
| AM-02  | Any issues encountered at an HHS Agency level will be escalated directly to the Vendor Account Manager, or Vendor designee. The account manager and account representatives are required to possess sufficient skills, expertise   |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | and experience necessary to manage this contract. HHS reserves the right to approve or disapprove of the selection of the account manager and account representatives by the Vendor.   |                |                 |
| AM-03  | Vendor Account Management team will perform the following processes: <ul style="list-style-type: none"> <li>• Contract management</li> <li>• Quality assurance and quality controls</li> <li>• Risk mitigation</li> <li>• Problem identification, resolution and escalation</li> <li>• Issue tracking</li> <li>• Assurance of confidentiality</li> <li>• Financial management</li> <li>• Progress reporting for all phases</li> <li>• Invoicing</li> </ul>                       |                |                 |
| AM-04  | The vendor shall measure service levels monthly, providing service level reports to the HHS Agency by the 5 <sup>th</sup> business day of the month, following the month of service. Service Level Requirements will be reviewed at regularly scheduled reviews.   |                |                 |
| AM-05  | At a minimum, a representative from the named Vendor Account Management team will be available on-site for all scheduled recurring meetings and as needed for face-to-face meetings with HHS vendor management representatives.  |                |                 |
| AM-06  | The Vendor is responsible for managing communication between HHS, the leasing services provider, the manufacturer and any / all subcontractors.<br><br>The Vendor must communicate with the Services Vendor who will be responsible for providing services on the devices. The Services Vendor may be required to support the devices during the life of the Lease Schedule. Upon request from the HHS Agency, access to the web portal shall be granted to the Services Vendor. |                |                 |
| AM-06  | The vendor shall coordinate with the leasing services provider to deliver the following requirements: <ol style="list-style-type: none"> <li>1) The agreement shall include desktops, laptops, tablets and other equivalent</li> </ol>   |                |                 |



| Req. #              | Requirement Description  | Agree/Disagree | Vendor Solution           |                  |         |                    |         |                     |         |                   |        |  |  |
|---------------------|--|----------------|---------------------------|------------------|---------|--------------------|---------|---------------------|---------|-------------------|--------|--|--|
|                     | <p>personal computing devices and shall include any equipment requested by HHS and accepted by the vendor.</p> <p>2) Lease Rate Factors are published and/or negotiated and agreed upon,</p> <p>3) Master Lease Agreement is available to each agency,</p> <p>4) Each agency has the flexibility to determine the Lease Term:<br/>12,24,36,48 month leases or coterminous. Each year shall have 12 monthly (1 per mo.) lease schedules.</p> <p>Example Lease Schedule Format:<br/>FY/LT/MO = 154802<br/>15= Fiscal Year<br/>48 = Lease Term<br/>02 = Month of the year of Initial Term (February)</p> <p>5) Each agency has the flexibility to determine the payment structure (monthly, quarterly, etc.)</p> <p>6) Certificate of Acceptance will be prepared for the applicable installation period, which will verify the quantities and serial number of the equipment, the commencement dates, the monthly rental per unit, and the total monthly rental for each lease.</p> <p>7) Installation Period shall occur within 30 days, ending 15 days before the first month of the Initial Term.</p> <p>Example:</p> <table><tr><th>Install Period</th><th>First Day of Initial Term</th></tr><tr><td>8/15/15 -9/15/15</td><td>10/1/15</td></tr><tr><td>9/16/15 – 10/15/15</td><td>11/1/15</td></tr><tr><td>10/16/15 – 11/15/15</td><td>12/1/15</td></tr><tr><td>11/16/15-12/15/15</td><td>1/1/16</td></tr></table> <p>8) Lease Schedules are generated and include the agency asset tag and serial number and lease terms</p> <p>9) Require the ability to renegotiate a lease schedule at any time.</p> <p>10) Updates to the Lease Schedules for replacements</p> | Install Period | First Day of Initial Term | 8/15/15 -9/15/15 | 10/1/15 | 9/16/15 – 10/15/15 | 11/1/15 | 10/16/15 – 11/15/15 | 12/1/15 | 11/16/15-12/15/15 | 1/1/16 |  |  |
| Install Period      | First Day of Initial Term  |                |                           |                  |         |                    |         |                     |         |                   |        |  |  |
| 8/15/15 -9/15/15    | 10/1/15  |                |                           |                  |         |                    |         |                     |         |                   |        |  |  |
| 9/16/15 – 10/15/15  | 11/1/15  |                |                           |                  |         |                    |         |                     |         |                   |        |  |  |
| 10/16/15 – 11/15/15 | 12/1/15  |                |                           |                  |         |                    |         |                     |         |                   |        |  |  |
| 11/16/15-12/15/15   | 1/1/16   |                |                           |                  |         |                    |         |                     |         |                   |        |  |  |

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
|        | or removals of assets due to buyout (loss/damage)   |                |                 |
| AM-08  | HHS reserves the right to request changes to Vendor personnel.  |                |                 |
| AM-09  | All Vendor staff, including partners, assigned to positions of special trust, responsibility, and/or work within sensitive areas or where their duties will bring them into contact with critical or sensitive information will pass a background check, as required by each agency.  |                |                 |
| AM-10  | Vendor shall be responsible for coordinating access to delivery points for movement of items with the appropriate Agency site contact person. While on site, vendor personnel are also required to take appropriate protective steps, including observing physical security policies and requirements   |                |                 |
| AM-11  | Parking arrangements, including compliance with City and State ordinances and statutes, are the responsibility of the Vendor and the Vendor's subcontractors or employees of the Vendor. Parking area for Vendor's vehicle(s) will not be designated by HHS. Any violation of existing parking restrictions is the responsibility of each individual subcontractor or employee. By signature of the response, the Vendor certifies that all subcontractors or employees provided will be advised of this requirement. |                |                 |
| AM-12  | Vendor personnel must display HHS supplied visitor badges and should be easily identifiable as Vendor representatives.  |                |                 |
| AM-13  | Vendor must ensure that the Lease Schedule is updated with replacement serial numbers and asset tag when warranty replacements occur.   |                |                 |
| AM-14  | Vendor Account Management team will provide monthly reporting to the Enterprise and HHS agencies, as appropriate. Reports will include, but will not be limited to: <ul style="list-style-type: none"> <li>• Invoices</li> <li>• Lease Schedules</li> <li>• Order status</li> <li>• Service Level performance metrics</li> <li>• Quality metrics</li> </ul>   |                |                 |

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
|        | <ul style="list-style-type: none"> <li>Return Summary Reports</li> <li>Outstanding issues and action items</li> </ul>   |                |                 |
| AM-15  | Vendor is required to notify HHS of expiring assets at 120 days prior to expiration and conduct a review of the expiring Lease Schedule. Verification of expiring assets (serial numbers) is performed and agreed upon by both parties. |                |                 |
| AM-16  | HHS will determine refresh, return or purchase option for assets on the expiring Lease Schedules.   |                |                 |
| AM-17  | HHS expects the Vendor to apply on average a 4-year life cycle for technology refresh of desktops. Actual plan for Refresh will be defined and agreed jointly between the parties.  |                |                 |
| AM-18  | HHS expects the Vendor to apply on average a 3 to 4-year life cycle for technology refresh for notebooks/laptops. Actual plan for Refresh will be defined and agreed jointly between the parties.                                       |                |                 |
| AM-19  | HHS expects the Vendor to apply on average a 2 to 3-year life cycle for technology refresh for tablets. Actual plan for Refresh will be defined and agreed jointly between the parties.   |                |                 |

## 5.2. Pre-Ordering

Pre-ordering services are services that are required prerequisites before end user computing devices can be ordered and installed at the HHS agencies. These services include, but are not limited to, the following:

- Providing Technical Specifications for End User Computing Devices based on agency requirements
- Providing detailed pricing prior to ordering
- Providing Test Units (Hardware/Drivers/OS compatibility testing)
- Providing First Articles of each platform
- Providing a Web Portal
  - Ordering catalog of all agreed upon device configurations for each agency
  - Includes lease schedules and inventory database for each agency
- Provide asset tagging for all end user computing devices

The HHS Agency shall:

- Validate the recommended configuration and offer alternate solutions, if needed.
- Create an image for each model, manage image updates (version updates, application and utilities)
- Verify the hardware configuration has been successfully tested and functions properly in the Agency's environment.
- Retain a library of all images.
- Perform testing, complete required manufacturer documentation to satisfy the engineering process,
- Provide the image to the Vendor to deliver to the manufacturer.
- The HHS Agency Contract Manager shall have oversight of image updates provided to the Vendor, to be submitted to the manufacturer. The Vendor shall inform the HHSC Agency Contract Manager of any image update requests received.
- Provide Asset Tags/IDs for the First Article(s) to meet Agency asset tagging management requirements.

- Perform testing of the First Article upon receipt from the manufacturer and provide approval for production.
- Verify the new configuration has been successfully tested and functions properly in the Agency's environment.

These services are described in additional detail by the requirements below:

**Table 2: Pre-Ordering Requirements**

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
| PO-01  | The vendor will provide pricing prior to ordering which will include all hardware costs and associated lease rate factors for each lease term and any additional fees or charges.   |                |                 |
| PO-02  | HHS requires delivery of two of each system configuration per agency no later than 45 business days before a new product is submitted by the Vendor for consideration for inclusion into the HHS environment.   |                |                 |
| PO-03  | <p>The vendor will provide First Articles of each platform. A First Article means the first device of any new model delivered.</p> <p>The vendor will</p> <ul style="list-style-type: none"> <li>• Recommend configuration of new model that meets or exceeds the Agency's requirements, alerting the Agency when configuration changes impact current standards.</li> <li>• Establish and provide pricing for the new product in accordance to the pricing model.</li> <li>• Provide two test units for every new model within 30 days of availability from the manufacturer.</li> <li>• Coordinate the development of manufacturer's image project number.</li> <li>• Provide any manufacturer's required documentation to the HHS Agency for completion &amp; return to the manufacturer.</li> <li>• Manage the coordination of the specifications directly with the manufacturer, including any documentation required by the manufacturer.</li> <li>• Coordinate the transmission of Agency image from the Agency to the manufacturer.</li> <li>• Manage the request for the production of First Article.</li> <li>• Assist the Agency as needed in coordinating the image creation and testing schedule.</li> </ul> |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | <ul style="list-style-type: none"> <li>• Must deliver the image to the manufacturer within 1 day of receipt from the agency.</li> <li>• The vendor shall facilitate the delivery of First Article(s) of each platform to the HHS agency within two (2) weeks of delivery of the Agency's image to the manufacturer by the vendor.</li> </ul>   |                |                 |
| PO-04  | <p>Vendor will provide asset tagging of all end user computing devices according to HHS specifications. Vendor will track, at a minimum, the following within the proposed asset tagging system:</p> <ul style="list-style-type: none"> <li>• Order fulfillment</li> <li>• Asset tagging (BIOS and physical tags)</li> <li>• Record of delivery</li> <li>• Vendor replacement of any dead on arrival (DOA) or damaged devices</li> <li>• In-warranty and out-of-warranty service determination</li> </ul>  |                |                 |
| PO-05  | <p>The Vendor shall maintain an online Service Catalog of all agreed upon device configurations available for order by each agency with a detailed Pricing Schedule (Appendix D). The ordering catalog must be updated within five (5) business days of a change, addition or deletion coordinated with HHS agency.</p>  |                |                 |
| PO-06  | <p>Vendor shall provide and support an online web-based Lease Schedule and inventory database. This will use the ordering web portal and is required to account for all assets leased from the awarded vendor by HHS or by individual agency. It shall include:</p> <ul style="list-style-type: none"> <li>• Customized HHS/Vendor-defined asset structure to organize and group assets for reporting needs</li> <li>• Custom reports to provide access to specific asset data with support for list, summary, and date-based reporting</li> <li>• Data export to enable asset analysis</li> <li>• Amortization Table</li> <li>• Letter of Replacement – The Vendor will be required to provide a letter of</li> </ul> |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | <p>acknowledgement replacing the asset on the lease schedule with the serial number of the replacement.</p> <p>The list of leased assets within the Web-based system shall be kept up-to-date by the Vendor throughout the term of the agreement by:</p> <ul style="list-style-type: none"> <li>• Agency</li> <li>• Lease Schedule</li> <li>• Detailed Asset information</li> <li>• Pricing Details</li> </ul> |                |                 |
| PO-07  | <p>The portal shall be available at a minimum from 7am to 7pm daily, including weekends and holidays.</p> <p>All agencies and their designated delegates, which could include agency approved contract staff, will be provided access to the online web portal.</p>  |                |                 |
| PO-08  | <p>Each end user computing device configuration of a given Lease Schedule will have the identical hardware component revision level, BIOS revision and software version. All revision levels will be documented in the Vendor's response. Any change in the revision levels between the Vendor's response and equipment delivery must be documented and agreed to in writing by HHS.</p>                       |                |                 |
| PO-09  | <p>In the event of hardware changes, problem escalations, or exceptions to the standard configuration, the Vendor will provide technical advice to HHS. Technical advisors must possess the necessary knowledge, skills and abilities to provide accurate technical solutions.</p>   |                |                 |
| PO-10  | <p>All equipment will be newly manufactured containing new components. Refurbished components must be certified and used only if explicitly approved by HHS.</p>   |                |                 |
| PO-11  | <p>The configurations included in Appendix B: Minimum Standard Configurations are HHS' current standard minimum configurations and are representative of the orders to be placed under this contract. This agreement shall also include any equipment requested by HHS and accepted by the Vendor.</p> <p>The components delivered must be the latest model/part number in</p>                                 |                |                 |

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
|        | <p>production as of the date of the order. Any product offered will be the latest replacement model/part even if the model/part number listed in the specifications of this section is not the latest as of the date of the order.</p> <p>All hardware must be compatible with Microsoft Operating System, unless otherwise specified.</p> <p>Vendor must include detailed specifications of units offered with responses.</p> <p>Vendor shall allow HHS Agencies to order these configurations from the online ordering catalog.</p> |                |                 |
| PO-12  | HHS reserves the right to adjust the configuration over the life of the contract in accordance with business requirements and industry best practices.  |                |                 |
| PO-13  | HHS reserves the right to maintain multiple standard image(s) as necessary to support business requirements; and to update such image(s) as often as deemed necessary. HHS will develop and retain the standard image for each model for future reference.  |                |                 |
| PO-14  | As new selected hardware platform products are released by the manufacturer, Vendor will provide demonstration units at no additional cost to the agencies.   |                |                 |
| PO-15  | HHS requires delivery of two of each of the new selected hardware platform system configurations per agency, no later than 45 business days before a new product is submitted by the Vendor for consideration for inclusion into the HHS environment.   |                |                 |
| PO-16  | In the event a hardware platform or a component of the platform (example: flat panel) is no longer available from the manufacturer, the vendor shall offer a substitute product that meets or exceeds the original specifications, at no additional cost.   |                |                 |
| PO-17  | HHS is responsible for obtaining software licenses and support agreements for standard and non-standard applications.   |                |                 |
| PO-18  | In order to manage manufacturer end of life cycles throughout this contract, the Vendor shall provide hardware roadmaps for all products, as well as  |                |                 |

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
|        | support lifecycles; and will give HHS at least one hundred and eighty (180) days' notice prior to the end of the life of the standard installed equipment, at which time HHS shall establish the new standard configuration. Roadmaps shall be for a minimum of 12 months.  |                |                 |
| PO-19  | If HHS determines that the hardware is incompatible with HHS environment/architecture, it must be replaced with compatible model, as determined by HHS.   |                |                 |
| PO-20  | HHS reserves the right to select or reject models.  |                |                 |
| PO-21  | During the term of this contract, Vendor must notify HHS whenever a change is proposed in hardware, software, configuration, installation, operation, maintenance, or any other information which may affect HHS' use of the system. Vendor must notify HHS in writing of the proposed change(s). It will be the sole option of HHS whether or not such changes will be accepted. |                |                 |
| PO-22  | The online web portal shall include following related documentation: <ul style="list-style-type: none"> <li>• Manufacturer Recall Notices</li> <li>• Technical Specifications Documents (updates provided as they occur)</li> <li>• Operator's reference guide, installation guides and manuals for each hardware component</li> </ul>  |                |                 |

### 5.3. Ordering

Ordering services are the services required to select, package and ship leased end user computing devices. These services include, but are not limited to, the following:

- Placing a Web-based Order
- Shipping the Order
- Tracking the Order and providing status reports
- Asset Tag reporting
- Order Handling Disaster Recovery and Emergency Response situations

These services are described in additional detail by the requirements below:

**Table 3: Ordering Requirements**

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
| OR-01  | HHS requires the ability to use an online web based ordering portal |                |                 |



| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | which should include: <ul style="list-style-type: none"> <li>• Security</li> <li>• Allow multiple workflows (may be agency specific)</li> <li>• Consistent naming conventions</li> </ul>   |                |                 |
| OR-02  | HHS will submit an equipment order via the online web based ordering portal and detail the following: <ul style="list-style-type: none"> <li>• quantity of each device type</li> <li>• ship to delivery locations on Appendix C - HHS Ship To Locations</li> <li>• point of contact information</li> <li>• Supporting documentation (spreadsheet, purchase order, etc.) may be provided via email.</li> </ul> The vendor shall acknowledge receipt of an equipment order within 1 business day of receipt.   |                |                 |
| OR-03  | The vendor shall deliver equipment at the locations specified by the HHS Agencies. Reference Appendix C - HHS Ship To Locations: <ul style="list-style-type: none"> <li>• Ship to locations may have a loading dock but require a truck with a lift and/or require a pallet jack. Inside Delivery is required.</li> <li>• Inside delivery to a location that includes the breakdown of pallets and includes hand delivery to an inside location may be required.</li> <li>• Just in time deliveries to an office location that does not have a loading dock or pallet jack available may be required. (Office shall have elevator access)</li> </ul> |                |                 |
| OR-04  | Deliveries shall be made to HHS Ship To Locations (Appendix C) and shall occur during the Principle Period of Service (PPS) hours of 8:00 AM to 5:00 PM (local site time) Monday through Friday, excluding State and Federal holidays.   |                |                 |
| OR-05  | All delivery and transportation fees must be provided and included in the lease cost.  |                |                 |
| OR-06  | Product delivery shall occur within fifteen (15) calendar days, excluding State and Federal holidays, from the date of an order submission request.<br><br>In the event of a manufacturer  |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | product constraint, the vendor shall provide HHS notification and estimated delivery date prior to a submission of an order.   |                |                 |
| OR-07  | During the term of the contract, HHS intends to minimize the quantity of devices however; it will maintain an inventory that will not fall below the number of appropriated filled positions. Traditionally, HHS agencies have leased additional devices for training rooms, kiosks, lobby pc's and other infrastructure support type devices. Quantities may change to meet HHS needs. Additional quantities ordered shall be subject to the same terms, conditions and pricing model of the agreement unless changes are mutually agreed upon.   |                |                 |
| OR-08  | The vendor must provide a report for each order of computers. The report may be web based or a spreadsheet and shall contain, at a minimum, the following information: <ul style="list-style-type: none"> <li>• HHS Purchase Order number</li> <li>• Service Tag/serial number of computer;</li> <li>• HHS Asset Tag generated by the manufacturer;</li> <li>• Location shipped to, including address and city;</li> <li>• Equipment description including components for each computer in the order</li> <li>• ship date</li> <li>• shipment received date</li> <li>• shipment tracking number</li> </ul> |                |                 |
| OR-09  | The vendor shall provide the Asset Tag Report to the HHS Agency point of contact within one (1) business day of equipment delivery.  |                |                 |
| OR-10  | Vendor will be responsible for the product until the HHS approved "signator of product receipt" signs off on the receipt of the product. Vendor is required to provide "Freight On Board (F.O.B.) Destination" to any HHS destination as specified in the Purchase Order(s). Inside delivery to all locations may be required.   |                |                 |
| OR-11  | The Vendor is responsible for resolving shipment delays, including shipment to the wrong location. The Vendor must initiate action to correct incorrect deliveries within 24 hours of identifying the issue.   |                |                 |
| OR-12  | All computers will be delivered from   |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | the point of manufacture with preloaded image provided by HHS, unless otherwise requested.   |                |                 |
| OR-13  | Vendor will be responsible for all aspects of order tracking.  |                |                 |
| OR-14  | HHS reserves the right to install any software that may be required on leased equipment.   |                |                 |
| OR-15  | In the event of a disaster, the Vendor will be required to provide 25 replacement devices hardware within 8 business hours of agency's notification to the Vendor of a disaster. |                |                 |
| OR-16  | The vendor shall update the online web portal Lease Schedule within 15 calendar days of delivery of a completed order.   |                |                 |

## 5.4. Warranty

Warranty involves the replacement of parts or devices that are defective for the leased assets associated with this Statement of Work. This includes, but is not limited to, the following:

- Providing Extended Warranties
- Providing Warranty Details and Processes

These services are described in additional detail by the requirements below:

**Table 4: Warranty Requirements**

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
| WR-01  | All equipment will have the standard manufacturer's warranty, plus extended warranty through the term of the lease.   |                |                 |
| WR-02  | Vendor must provide written authorization from the manufacturer of the products to pass through the standard manufacturer's warranty for each product leased under this agreement. Otherwise, a comprehensive statement of warranty must be provided by the Vendor to HHS warranting all of the products leased under this agreement in a manner consistent with the standard manufacturer's warranty and at no additional cost to HHS. This shall include procedures for remedial action when a problem occurs after HHS and their designated delegates, which could include agency approved contract staff, perform preliminary diagnostics and troubleshooting procedures that fail to isolate the problem source. |                |                 |
| WR-03  | The vendor must provide a toll free number and/or online access to be   |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | used by designated IT staff to order parts associated with the warranty.   |                |                 |
| WR-04  | The vendor must allow all agencies and their designated delegates, which could include agency approved contract staff, the ability to order parts and repair equipment under warranty.   |                |                 |
| WR-05  | In the event that the equipment cannot be returned to operable service, or is Dead on Arrival (DOA), a new, properly configured replacement unit will be supplied within 24 hours of the Vendor being made aware of the device's original problem at no cost to HHS.   |                |                 |
| WR-06  | The Vendor will assign to HHS all of the manufacturer's warranties and indemnities relating to all products, including without limitation, Third Party software to the extent the Vendor is permitted by the manufacturers to make such assignments to HHS. The assignment of manufacturer's warranties pursuant to this section is subject to all of the terms and conditions imposed by the manufacturer with respect thereto. |                |                 |
| WR-07  | In the event of any manufacturer-mandated recalls, the vendor shall be responsible for completing the associated repairs and/or component or system replacement.   |                |                 |
| WR-08  | The Vendor will list the warranty period of each expendable item. This would include, but not be limited to, items such as mice, keyboards, original packing, earphones, hard drive(s), batteries for laptops, laptop cases, etc   |                |                 |
| WR-09  | The warranty shall include procedures for remedial action when a problem occurs after HHS preliminary diagnostics and troubleshooting procedures fail to isolate the problem source.   |                |                 |
| WR-10  | Parts for devices under warranty must be available; otherwise the device must be replaced with an equal or better device.  |                |                 |
| WR-11  | The warranty shall include procedures for remedial action when a problem occurs after HHS preliminary diagnostics and troubleshooting procedures fail to isolate the problem source.   |                |                 |
| WR-12  | HHS agencies may use external devices that attach to a computing device. Use of such external devices  |                |                 |

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
|        | shall not void the warranty. HHS shall be responsible for installation and support of external devices and will be liable if damage is incurred.  |                |                 |
| WR-13  | The Vendor shall be responsible for the cost or repairs not covered under warranty due to loss or damage due to negligence or willful misconduct of its employees, agents or representatives. |                |                 |

## 5.5. Return Requirements

Return services are services that include, but are not limited to, the following:

- Return Requirements
  - Notification of Asset Expiration
  - Return of Equipment 60 days after Termination of Initial Term
  - Non-Return of Consumable Non-Value Items
  - Return Less Than All Assets on a Lease Schedule
  - % of Non-Return of Assets on a Lease Schedule
  - Like for Like Returns

HHS shall provide 60 days written notice of intent to return the equipment.

These services are described in additional detail by the requirements below:

**Table 5: Return Requirements and Optional Return Services**

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
| RR-01  | The vendor shall allow the return of equipment to be 60 days after termination of the Initial Term.  |                |                 |
| RR-02  | The Agency shall not be required to return consumable, non-value items at the end of the lease schedule. Expendable items include, but are not limited to, manuals and reference CDs, mice, keyboards, original packing, earphones, hard drive(s), batteries for laptops, laptop cases, etc. The Vendor will list the warranty period of each expendable item. |                |                 |
| RR-03  | The vendor shall not require nor track the return of any docking stations with any laptop  |                |                 |
| RR-04  | The vendor shall allow for partial returns on lease schedules and invoice only for non-returned assets.  |                |                 |
| RR-05  | The vendor shall provide for a % (5% to 10%) of all equipment leased on a schedule to be "non-returned" at no charge to the agency. HHS agrees to only pay for assets not returned after factoring in the % allowable "non-  |                |                 |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | returns".  |                |                 |
| RR-06  | The vendor shall allow for "like for like" returns on lease schedules to include "like for like" returns (example: desktop for desktop, laptop for laptop, tablet for tablet, flat panel for a flat panel) on any lease schedules and apply the returned asset to the lease schedule that is expiring first.   |                |                 |
| RR-07  | The Vendor shall allow HHS agencies to return expired leased devices to a location within the State of Texas.  |                |                 |
| RR-08  | Damages resulting in an invoice to the HHS Agency shall be accompanied by a picture of the damaged device. A damaged device has: <ul style="list-style-type: none"> <li>• Broken latches</li> <li>• Excessive Physical Damage</li> <li>• Crack LCD (beyond repair)</li> <li>• Missing Keys (laptop)</li> </ul> |                |                 |
| RR-09  | The vendor shall ensure that the Lease Schedule is updated within five (5) calendar days of the receipt of a returned device.  |                |                 |

## 5.6. Leasing Agreements

Master Lease Agreements (MLAs) provided by the Vendor shall include the following terms.

**Table 5: Leasing Requirements**

| Req. # | Requirement Description   | Agree/Disagree | Vendor Solution |
|--------|---|----------------|-----------------|
| LA-01  | The following documents shall be completed annually, if required by the Vendor: <ul style="list-style-type: none"> <li>• Essential Use Document</li> <li>• Opinion of Counsel</li> <li>• Certificate of Incumbency</li> <li>• Master Schedule will be completed annually and divided into 12 separate monthly Lease Equipment Schedules.</li> </ul> |                |                 |
| LA-02  | The following documents will be completed with each Lease Schedule: <ul style="list-style-type: none"> <li>• Certificate of Acceptance - Equipment Acceptance Document</li> </ul>   |                |                 |
| LA-03  | Each Lease Schedule, when executed shall constitute a separate and distinct lease agreement enforceable according to its terms.   |                |                 |

| Req. #         | Requirement Description  | Agree/Disagree | Vendor Solution      |  |  |
|----------------|--|----------------|----------------------|--|--|
|                | <p>The management of the Lease Schedule shall be managed by line item.</p> <p>All Purchase Orders and/or Lease Schedules issued under this Statement of Work and accepted by the Vendor shall survive the expiration or termination of the Agreement.</p>  |                |                      |  |  |
| LA-04          | <p>The vendor shall coordinate with the leasing services provider to deliver the following requirements:</p> <ul style="list-style-type: none"><li>1) The agreement shall include desktops, laptops, tablets and other equivalent personal computing devices and shall include any equipment requested by HHS and accepted by the vendor.</li><li>2) Lease Rate Factors are published and/or negotiated and agreed upon,</li><li>3) Master Lease Agreement is available to each agency,</li><li>4) Each agency will have the flexibility to determine the Lease Term:<br/>12,24,36,48 month leases or coterminous. Each year shall have 12 monthly (1 per mo.) lease schedules.</li></ul> <p>Example Lease Schedule Format:<br/>FY/LT/MO = 154802<br/>15= Fiscal Year<br/>48 = Lease Term<br/>02 = Month of the year of Initial Term (February)</p> <ul style="list-style-type: none"><li>5) Each agency will have the flexibility to determine the payment structure (monthly, quarterly, etc.)</li><li>6) Certificate of Acceptance will be prepared for the applicable installation period, which will verify the quantities and serial number of the equipment, the commencement dates, the monthly rental per unit, and the total monthly rental for each lease.</li><li>7) Installation Period shall occur within 30 days, ending 15 days before the first month of the Initial Term.</li></ul> <p>Example:</p> <table><tr><td>Install Period</td><td>First Day of Initial</td></tr></table> | Install Period | First Day of Initial |  |  |
| Install Period | First Day of Initial   |                |                      |  |  |

| Req. # | Requirement Description  | Agree/Disagree | Vendor Solution |
|--------|--|----------------|-----------------|
|        | Term   |                |                 |
|        | 8/15/15 -9/15/15   |                |                 |
|        | 9/16/15 – 10/15/15   |                |                 |
|        | 10/16/15 – 11/15/15  |                |                 |
|        | 11/16/15-12/15/15  |                |                 |
|        | <p>8) Lease Schedules are generated and include the agency asset tag and serial number and lease terms</p> <p>9) Require the ability to renegotiate a lease schedule at any time.</p> <p>10) Updates to the Lease Schedules for replacements or removals of assets due to buyout (loss/damage)</p> |                |                 |
| LA-05  | Lessee shall pay no Daily Rental, regardless of the Commencement Date(s) of the Equipment.   |                |                 |
| LA-06  | Lessee shall not pay delivery fees for new equipment.  |                |                 |
| LA-07  | An extension option shall be included – One time option at fair market value. HHS shall provide 60 days' notice and allows for "all or part" of the Equipment. HHS will provide notice of which assets (serial #) to be extended.  |                |                 |
| LA-08  | A purchase option shall be included – One time option at fair market value. HHS shall provide 60 days' notice and allows for "all or part" of the Equipment. HHS will provide notice of which assets (serial #) to be extended.  |                |                 |
| LA-09  | Upgrade Equipment Option: Allows for negotiation of new lease or leases for the Upgrade Equipment upon mutually agreeable terms and conditions and to terminate rental obligations of the Equipment upon Commencement Date of the lease or leases for the Upgrade Equipment, etc.                  |                |                 |
| LA-10  | The vendor shall ensure that the Lease Schedule agreement for every order is 100% accurate and delivery to the HHS agency within fifteen (15) calendar days of delivery of a completed order.  |                |                 |



## 6. Contract Transition Plan

This section of the Statement of Work includes the Contract Transition Plan Requirements that must be addressed by the solution proposed by the Vendor.

**Instructions:** The Contract Transition Plan shall cover all HHS agencies and must describe the Vendor's role and responsibilities during the transition of the existing Contract. The awarded Vendor shall be the lead in coordinating and facilitating all transition activities.

The initial draft of the Contract Transition Plan must be submitted with the Vendor's proposal. The second draft is to be submitted to the Agency for approval within ninety (90) calendar days after contract execution. If the Agency does not approve the second draft of the Contract Transition Plan, the Vendor shall submit additional plans such that the Agency may give final approval within one hundred twenty (120) calendar days after contract execution. The Contract Transition Plan is not approved until the Agency provides written acceptance of approval to the Vendor.

The Contract Transition Plan must include but is not limited to the following:

- Transition Timeline – to include all transition services listed below.
- Leveling Plan for refresh schedules of legacy Lease Schedules based upon the expiration month and location. (Refer to Appendix A for a list of expiring Lease Schedules.) Include options for the following:
  - Acquisition of leased assets from the previous vendor
  - Management of Lease Schedules (asset inventory and expiration notification)
  - Optional Return of expired leased assets to the appropriate vendor
- Transfer Cost Proposal to include a financial approach/option to assume existing Lease Schedule obligations from previous vendor,
- Identify issues that need to be addressed during the transition period;
- Recommended solutions and develop a plan for the issues that need to be addressed during transition period;
- Define Vendors', including partners, roles and responsibilities;
- Define the Agency's roles and responsibilities;
- Outline key milestones during the transition period;
- Outline procedures to be followed during the transition period;
- Define the method of transferring assets between state agencies;
- Define the method of identifying, documenting, and transferring assets; (nature, type, stage of delivery, location, and other relevant information as determined by the Agency) during the course of the existing Contract that are subject to the transition plan;
- Identify Vendor's point of contact and procedures for managing problems or issues during the changeover period; and
- Outline contingency plan for failed transition of services to the awarded Vendor. Components of this requirement must include the Vendor's decision making process and a plan for continuation of services.
- Identify the Vendor's escalation contact.

## 7. Service Level Requirements and Liquidated Damages

HHS will monitor the performance of the contract issued under this solicitation. All service levels under the contract must be provided at an acceptable level of quality and in a manner consistent with acceptable industry standards, custom, and practice.

### 7.1. Service Level Requirements

This section of the Statement of Work response includes the Service Level Requirements that must be addressed by the solution proposed by the Vendor. The Vendor shall measure all Service Level Requirements starting on the effective date of the contract.

**Instructions:** For each technical requirement listed in the tables below, the Vendor must notate "Agree" or "Disagree" in the Agree/Disagree column.

- If the requirement will be met by the Vendor, the Vendor must respond with "AGREE" and provide an explanation in the corresponding Vendor Solution column that explains how the requirement will be met.
- If the requirement cannot be met by the Vendor, the Vendor must respond with "DISAGREE:" in the corresponding column and must provide an explanation in the corresponding Vendor Solution column that describes what options or alternatives it will provide to meet the requirement listed.

Vendors may submit attachments or appendices detailing their options or alternatives, but must clearly note the requirements addressed.

**Table 6: Service Level Requirements**

| SLR Title                              | SLR Explanation  | SLR Objective                    | SLR Requirement   | Agree/Disagree | Vendor Response |
|--|--|----------------------------------|---|----------------|-----------------|
| <b>Service Level Monthly Reporting</b> | The vendor shall measure service levels monthly, providing a report to the HHS agency by the 5 <sup>th</sup> business day of the following month of service.   | Obtain SLR report.               | Provide the Service Level Report By 5 <sup>th</sup> business day of the month, following the month of service                                       |                |                 |
| <b>First Article Delivery</b>          | Vendor must deliver the image to the manufacturer within 1 day of receipt from the agency. The vendor shall facilitate the delivery of First Article(s) of each platform to the HHS agency within two (2) weeks of delivery of the Agency's image to the manufacturer by the vendor. | Timely receipt of First Articles | Deliver First Article(s) of each platform to the HHS agency within two (2) weeks from the time the HHS agency's image is delivered to manufacturer. |                |                 |

| SLR Title                                   | SLR Explanation  | SLR Objective  | SLR Requirement  | Agree/ Disagree | Vendor Response |
|---|--|--|--|-----------------|-----------------|
| <b>Online Service Catalog</b>               | The vendor shall maintain an online catalog of all agreed upon device configurations available for order by each agency with a detailed pricing schedule.      | Maintain an accurate online ordering catalog.                                  | Update the online catalog within five (5) business days of a change, addition or deletion.                                 |                 |                 |
| <b>Online Web Portal Availability</b>       | The portal shall be available at a minimum from 7am to 7pm daily, including weekends and holidays.   | Ensure availability and access to the web portal during normal business hours. | Web portal must be available from 7am to 7pm, including weekends and holidays.   |                 |                 |
| <b>Order Acknowledgement</b>                | The vendor shall acknowledge receipt of an equipment order within 1 business day of receipt.   | Acknowledge receipt of an equipment order.                                     | Acknowledge and provide a response to the requesting HHS Agency via email within 1 business day of receipt.                |                 |                 |
| <b>Product Delivery – Order fulfillment</b> | Product delivery shall occur within fifteen (15) calendar days, excluding State and Federal holidays, from the date of an order submission request.            | Obtain product within 15 calendar days.  | Product delivery within fifteen (15) calendar days from the date of an order submission request.                           |                 |                 |
| <b>Asset Tag Report</b>                     | The vendor shall provide the Asset Tag Report to the HHS Agency point of contact within one (1) business day of equipment delivery.                            | Obtain asset tag, serial number and delivery information timely.               | Asset Tag Report shall be provided within one (1) business day of equipment delivery.                                      |                 |                 |
| <b>Lease Schedule Delivery</b>              | The vendor shall ensure that the Lease Schedule agreement for every order is 100% accurate and delivery to the HHS agency within fifteen (15) calendar days of | Timely receipt of Lease Schedule   | Provide the Lease Schedule to the requesting HHS Agency within fifteen (15) calendar days of delivery of a completed order |                 |                 |

| SLR Title  | SLR Explanation   | SLR Objective                                 | SLR Requirement   | Agree/Disagree | Vendor Response |
|--|---|---|---|----------------|-----------------|
|  | delivery of completed order.  |   |   |                |                 |
| <b>Lease Schedule Web Portal Update</b>            | The vendor shall update the online web portal Lease Schedule within 15 calendar days of delivery of completed order.          | Timely update of Lease Schedule on Web Portal | Update the web portal Lease Schedule within fifteen (15) calendar days of delivery of completed order |                |                 |
| <b>Lease Schedule Updates for Returned Devices</b> | The vendor shall ensure that the Lease Schedule is updated within five (5) calendar days of the receipt of a returned device. | Timeline updates to Lease Schedules           | Lease Schedule shall be updated within five (5) calendar days of the receipt of a returned device.    |                |                 |

## 7.2. Liquidated Damages

Part of the evaluation of responses to this solicitation will be based on the Respondent's willingness to accept greater responsibility for producing discrete, measurable results, and its confidence in its ability to perform. The Respondent's responsiveness to these considerations will be measured, in part, by the Respondent's proposal of more compensatory levels of liquidated damages, and its willingness to accept financial responsibility for damages HHS may incur as a result of the Respondent's failure to perform its responsibilities in an acceptable manner. In addition to assessing liquidated damages, HHS may take other remedies if the Successful Respondent has failed to comply with the awarded contract.

Liquidated Damages shall begin in the fourth month after the effective date of the contract.

**Table 7: Liquidated Damages**

| SLR Title                                   | Service Level Requirement Description   | Liquidated Damages Assessment  |
|---|---|--|
| <b>Product Delivery – Order fulfillment</b> | Product delivery shall occur no more than fifteen (15) calendar days, excluding State and Federal holidays, from the date of an order submission request. | \$10 per device/per day past the scheduled delivery date. Revisions to the delivery date may be made if the requesting HHS Agency provides the Vendor written approval of such revision. |

## **8. Post Award Meeting, Performance Reporting & Key Personnel**

HHS and the Awarded Vendor will collaborate and mutually agree to any adjustments to reports or meetings, as necessary, during the term of the agreement.

### **8.1. Post Award Meeting**

The Successful Respondent shall be required to attend a post-award meeting at the primary work location within approximately ten (10) calendar days of the award of the contract.

### **8.2. Performance Reporting**

The Vendor shall measure service levels monthly, providing service level reports to the agencies' by the 5th business day of each month. Service level measurements will be reviewed at regularly scheduled SLA and executive reviews.

### **8.3. Key Personnel Qualifications**

The Vendor will identify key personnel assigned to the contract and provide names, titles, telephone numbers, resumes, and primary areas of responsibility for this project. The Agency reserves the right to request changes to key personnel. Any and all changes in the Vendor's key personnel must be approved in writing by the Agency.

### **8.4. Manufacturer Recall Notices**

The vendor will notify HHS of any manufacturer recall notices.

## 9. Term of Contract and Termination Provisions

### 9.1. Termination or Scope Reduction for Non-Appropriation

The termination provision for non-appropriation of funds is governed under the HHSC Uniform Terms and Conditions, section 3.02 Funding. [http://www.hhsc.state.tx.us/about\\_hhsc/Contracting/rfp\\_attach/General\\_TC.pdf](http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attach/General_TC.pdf)

### 9.2. Contract Term and Renewal Options

The term of this Contract shall be four (4) years with the option of two (2) one-year extensions for a maximum of six (6) years. The term of the initial agreement may be May 15, 2015 through August 31, 2019.

The Agency reserves the right to negotiate an early refresh option of 18 to 24 months prior to the expiration of the Lease Schedule without penalty or additional costs to the value of the Lease Schedule.

At the end of the Agreement, the Agency may elect to do any of the following:

- Exercise the option to extend the contract.
- Terminate the Agreement and manage the remaining Lease Schedule(s), including maintenance and payments according to its terms and conditions.
- Negotiate the ability to assign Lease Schedule(s) to the Agency or to a different Vendor to provide continued warranty services.
- Negotiate a new multi-year service contract.
- Replace the services with a competitive procurement and a new contract.
- Terminate the Agreement and all associated Lease Schedules and return all the equipment to the Vendor.
- Extend the current year's contract up to 90 days.

The Agency's decision will be delivered in writing to the Vendor at least 120 days before contract expiration.

## 10. Payments

### 10.1. Invoice Itemization

Payments for this contract will be made monthly or quarterly depending on the leasing schedule(s). Payment will be made to the Vendor after the Agency has verified that all equipment has been received.

The monthly invoice will be itemized as follows:

- Management Services
- Lease Payments by Lease Schedule
- One-time Purchases
- Associated Performance Remedies and Earn Backs

The Agency's financial obligation for each Lease Schedule will commence on the first day of the following month after delivery of the entire order.

### 10.2. Payee on Invoice Statements

Payment will be made only to the Vendor. No payments will be made to any subcontractor. All invoices shall only reflect the Vendor's name and Comptroller's Vendor ID as the Payee. Any and all other invoices received from parties outside of the Vendor will not be paid.

### 10.3. Invoice Format

All invoices will include the Agency's purchase order number, Contract number, lease schedule number, and serial numbers for equipment within the Lease Schedule invoiced. Costs must be divided by model/configuration line item numbers. The invoice must also include the Vendor's Name, Vendor ID number (VID), address, contact name and phone number and current payment address.

### 10.4. Buyout Payments

Each Lease Schedule, when executed shall constitute a separate and distinct lease agreement enforceable according to its terms. The management of the Lease Schedule shall be managed by line item.

In the event that an asset is lost, stolen or un-returned, the Agency will notify the Vendor of the loss and request a separate invoice according to the Amortization Table, excluding maintenance or any associated penalty. The buyout payment will include either full or prorated credit for advanced payment at the time of the loss. "Buyout Payment" invoices will be invoiced separately and indicate the asset serial number, Lease Schedule and effective date.

Invoices that require correction(s) shall be resubmitted with a new invoice date.

## 11. Pricing

### 11.1. Expenses

Applicable purchase, delivery, tax, services, safety, license, travel, per diem, Respondent's staff training, and any other expenses associated with the delivery and implementation of the proposed solution must be included in the Respondent's firm-fixed price (FFP).

### 11.2. Proposal Preparation Costs

All costs directly or indirectly related to preparation of a response to this solicitation or any oral presentation required to supplement and/or clarify a proposal that may be required by the HHS shall be the sole responsibility of the vendor.

## 12. Key Dates

### 12.1. Procurement Timeline

The approximate timeline for this procurement process is listed in the table below:

| Event                                    | Date       |
|--|------------|
| Statement of Work issued                 | 03/23/2015 |
| Due date for Respondent questions to HHS | 03/30/2015 |
| HHS responses to Respondent questions    | 04/07/2015 |
| Deadline for submission of responses     | 04/21/2015 |
| Contract awarded                         | TBD        |



## 13. Evaluation and Award

This solicitation is released to select DIR vendors. Responses must be offered under current and valid DIR contracts, which must be referenced in the response.

### 13.1. Evaluation Process

HHS will use a formal evaluation process to select the Successful Respondent(s). HHS 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 HHS. HHS reserve 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.

### 13.2. Evaluation Criteria

A HHS evaluation committee will evaluate and score each response based on established criteria. Respondents shall not contact members of the evaluation team. Responses will be evaluated according to the Respondent's ability to best satisfy HHS requirements. The following high level categories are presented in the order of evaluation importance:

- The extent to which the goods or services meets the agency's needs:
  - Response to the Requirement in the Statement of Work
    - Technical Requirements
    - Service Level Requirements
    - Acceptance of Requested Leasing Terms and Conditions
- The acquisition price and total long-term cost to the agency of acquiring the vendor's goods or services:
  - Cost Proposal
    - Pricing Schedule
    - Cost Reduction Proposal
    - Value Added Offerings
    - Contract Transition Plan
- Indicators of probable Vendor performance:
  - Business Proposal
    - Team Qualifications
    - Financial Health
    - Results of Reference Checks
    - Organizational Structure
    - Resumes
- Any other factor relevant to determining the best value for the agency.

The Agency reserves the right to consider any additional information submitted by a Vendor that is deemed beneficial to the Agency, and reject non-beneficial information, for evaluation.

Only complete responses meeting minimum qualifications will be considered. Failure to meet the minimum qualifications and submit the required documents will result in a response being declared nonresponsive.

Information obtained from the Texas Comptroller's Office Respondent Performance Tracking System may be used in evaluating proposals for deliverables to determine the best value for the state. Only those proposals that are deemed to be in administrative compliance will be evaluated for responsiveness to the state's needs. If other considerations are equal, HHS will give preference in accordance with any preferences authorized by law.

### 13.3. Vendor Questions

Vendors may request answers to questions or clarifications to this Statement of Work using the following procedures:

- Write each question or clarification request and identify the related paragraph(s) in the Statement of Work;
- Deliver an emailed document with the questions and clarifications requested to the Sole Point of Contact by close of business of the "Deadline to Submit Vendor Questions" specified in Section 12.1 Procurement Timeline.

HHSC WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS. It is solely the responsibility of the Vendors that the questions and clarification request document reaches HHSC on time. Vendors may

contact the Sole Point of Contact to verify the receipt of their document. Documents received after the deadline will be rejected. HHSC will distribute a document containing all questions and clarifications to each vendor that received the Statement of Work by close of business on the date specified in Section 12.1 Procurement Timeline.

### 13.4. Initial Screening of Proposals

HHS 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. HHS reserves the right to waive minor informalities in a proposal and award contracts that are in the best interest of the State of Texas.

Initial screening will check for compliance with various content requirements and minimum qualification requirements defined in the solicitation. HHS also reserves the right to request clarification from Respondents who fail to meet any initial compliance requirements prior to rejecting a proposal for material deviation from requirements or non-responsiveness.

### 13.5. Identification of Competitive Proposals

HHS may determine that certain proposals are within the range of competition for admission to discussions. The range of competition consists of the proposals that receive the highest or most satisfactory evaluations. HHS may, in the interest of administrative efficiency, place reasonable limits on the number of proposals admitted to the range of competition.

### 13.6. Oral Presentations and Site Visits

HHS may, at its sole discretion, request oral presentations, site visits, and/or demonstrations from one or more Respondents admitted to the range of competition. HHS will notify selected Respondents of the time and location for these activities, and may supply agendas or topics for discussion. HHS 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 HHS or presented as "value added".

### 13.7. Best and Final Offers

HHS may, but is not required to, permit Respondents to prepare one or more revised offers. For this reason, Respondents are encouraged to treat their original proposals, and any revised offers requested by HHS, as best and final offers.

### 13.8. Discussions with Respondents

HHS may, but is not required to, conduct discussions with all, some, or none of the Respondents admitted to the field of competition for the purpose of obtaining the best value for HHS. It may conduct discussions for the purpose of:

- Obtaining clarification of proposal ambiguities;
- Requesting modifications to a proposal; and/or
- Obtaining a best and final offer.

HHS may make an award prior to the completion of discussions with all Respondents admitted to the field of competition if HHS determines that the award represents best value to the State of Texas.

### 13.9. Award

- Procurements over \$25,000 awards will be posted on the Electronic State Business Daily.
- HHS will make no contract award if no offer received is acceptable.
- HHS reserves the right to make a partial award to a vendor including some, but not all, of the services and deliverables.

- HHS reserves the right to make partial awards to multiple vendors.
- All dates are subject to change at HHS discretion.

## 14. Legal and Regulatory Constraints

The Vendor must review all of the HHSC Standard Terms and Conditions found at [http://www.hhsc.state.tx.us/about\\_hhsc/Contracting/rfp\\_attach/General\\_TC.pdf](http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attach/General_TC.pdf) and identify in its response any provision that they take exception to. Without specifying exception, Vendor agrees to these terms and conditions. No additional terms and conditions can conflict or diminish a term or condition of the DIR contract(s).

By entering a contract with a Texas Health & Human Services agency, vendor agrees to be bound by the terms of the HHS Data Use Agreement at [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/data-use-agreement.pdf](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf)

The services performed shall be in accordance with the purchase specifications herein. HHSC will determine the answers to all questions that may arise as to the interpretation of the specifications and the quality or acceptability of work performed. HHSC will decide the rate of progress of the work and the acceptable fulfillment of the service on the part of the vendor.

Contract is subject to cancellation, without penalty, either in whole or in part, if funds are not available prior to the commencement of work.

In accordance with Texas Government Code, §2155.074 and §2155.075, Vendor performance may be used as a factor in the award.

### 14.1. Delegation of Authority

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

### 14.2. Conflicts of Interest

A conflict of interest is a set of facts or circumstances in which either a Vendor 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 Vendor'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 Vendor 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, Vendors should carefully review Article 12 of the Uniform Terms and Conditions for additional information concerning conflicts of interests.

A Vendor must certify that it does not have personal or business interests that present a conflict of interest with respect to the Statement of Work and resulting contract. Additionally, if applicable, the Vendor must disclose all potential conflicts of interest. The Vendor 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 Vendor 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.

### 14.3. Former Employees of a State Agency

Vendors 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](#) and [45 C.F.R. §74.43](#)). 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 Vendor must certify that it has complied with all applicable laws and regulations regarding former state employees (Reference Section 16.1.4 Section 3 – Certifications and Other Required Forms). Furthermore, a Vendor must disclose any relevant past state employment of the Vendor's or its subcontractors' employees and agents in the Vendor Information and Disclosure form.

## 15. Response Submission

Failure to follow any instruction within this Statement of Work may, at the State's sole discretion, result in the disqualification of the Vendor's response. The State has no obligation to locate or acknowledge any information in the Vendor's response that is not presented under the appropriate outline according to these instructions and in the proper location.

### 15.1.1 Response Requirements

Responses are due by 2:00 PM CST on the due date specified in Section 13.1 Procurement Timeline.

All responses shall be sealed and shall include the following written information on the outside of the package:

- Vendor name, physical address, mailing address, contact name and title;
- "Solicitation No. 52900-5-2000135059"; and
- "Due 2:00 p.m., Central Time, April 21, 2015"

The proposal package shall be delivered via United States Postal Service, courier, or overnight delivery service to:

Texas Health and Human Services Commission  
Procurement and Contract Services  
Attn: Mark Cooper  
4405 North Lamar Blvd  
Austin, Texas 78756  
Mark.Cooper@hhsc.state.tx.us  
512.206.5128

Submit one (1) original and 10 (ten) copies of the proposal. An authorized representative must sign on official company letterhead stationary and signed in ink by an official of the Vendor who is authorized to legally bind the Vendor to the provisions of the proposal.

- A statement that all terms and conditions, and other requirements of the solicitation are accepted
- The Vendor may note any additional provisions that it wishes the Agency to consider
- The Agency reserves the right to reject any or all of Vendor's proposed exceptions or additional provisions to terms and conditions and other requirements without comment
- A statement that the Vendor's proposal remains valid for 180 days
- A statement that all prices proposed have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, and/or agreement with any other vendors or competitor
- A statement that no attempt has been made or will be made by the Vendor to induce any other company or individual to submit or not submit a proposal for the purpose of restricting competition
- The Vendor's contact person for this Statement of Work, if different from the contact of record

In addition, submit 2 (two) electronic copies of the proposal on a portable media, such as an encrypted compact disk, compatible with Microsoft Office 2010. 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.

When mailing or delivering a proposal, allow sufficient time for delivery and time/date stamping of the proposal by the due time and date specified; ensuring this is the responsibility of the Vendor.

The Vendor must not alter or re-key any of the original text of this Statement of Work. If HHSC determines that the Vendor has altered any language in the original Statement of Work, HHSC may, in its sole discretion, disqualify the Vendor from further consideration. The Statement of Work issued by HHSC is the official version and will supersede any conflicting Statement of Work language submitted by the Vendor.

All proposals must be:

- clearly legible;
- sequentially page-numbered and include the Vendor's name at the top of each page;
- organized in the sequence
- bound in a notebook or cover;
- correctly identified with the Statement of Work number and submittal deadline;

- responsive to all Statement of Work requirements;
- typed on 8½ by 11" paper;
- in Arial or Times New Roman font, size 12 for normal text, no less than size 10 for tables, graphs and appendices; and may not include materials or pamphlets not specifically requested in this Statement of Work.

**Late proposals will not be accepted.**

Failure by the Vendor to submit complete proposal documentation may disqualify the Vendor from further consideration.

HHSC reserves the right to reject any or all responses, including those with exceptions, prior to and at any time during negotiations.

HHSC reserves the right to waive any defect or irregularity in any Response procedure.

HHSC reserves the right to request additional information or clarification of a Vendor's Response. The Vendor's cooperation during the evaluation process in providing HHSC staff with adequate Responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation may, at the State's discretion, result in the disqualification of the Vendor's response.

Unsolicited clarifications and updates submitted after the deadline for Responses will be rejected at the sole discretion of HHSC.

## **15.1.2 Proposal Requirements**

The Proposal must consist of the following parts: Response to Statement of Work, Business Proposal and Cost Proposal.

### **15.1.3 Part 1 – Response to the Statement of Work**

Vendors shall provide their responses to Sections 4.2 Critical Business Requirements, 5. Technical Requirements, 6. Contract Transition Plan, 7. Service Level Requirements & Liquidated Damages in line according to the instructions within the section.

### **15.1.4 Part 2 – Business Proposal**

The Business Proposal must include the following sections:

- Section 1 – Executive Summary
- Section 2 – Corporate Background and Experience
- Section 3 – Certifications and Other Required Forms
- Section 4 – Assumptions

#### **■ 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 Vendor's approach to meeting the Statement of Work's business and technical requirements. The summary must demonstrate an understanding of HHSC's goals and objectives for this procurement.

#### **■ Section 2 – Corporate Background and Experience**

This section details the Vendor's corporate background and experience. If the Vendor 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 Vendor's corporate background as it relates to contracts similar in scope and complexity to the project described in this Statement of Work.

Include a description and at least three (3) references from projects performed within the last five (5) years that demonstrate the Vendor's ability to perform the Scope of Work described. Include contract dates and contact information (customer points of contact, address, telephone number and email address). The Vendor must explain whether it performed the work as a prime contractor or subcontractor. If the Vendor performed the work as a subcontractor, the Vendor 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 Vendor's and any subcontractor's proposed labor skill set and provide résumés of all proposed key personnel (as defined by the Vendor). Résumés must demonstrate experience germane to the position proposed. Résumés should include work on projects cited under the Vendor's corporate experience, 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 Vendor's or subcontractor's employees.

## 3. **Financial Capacity**

A Vendor must supply evidence of financial stability sufficient to demonstrate reasonable stability and solvency appropriate to the requirements of this procurement. Vendors 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; cash flows; and capital expenditures. If the Vendor 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 Vendor must describe the circumstances of such change and indicate when the change is likely to occur.

## 4. **Corporate Guarantee**

If the Vendor is substantially or wholly owned by another corporate (or other) entity, HHSC reserves the right to request that such entity unconditionally guarantee performance by the Vendor in each and every term, covenant, and condition of the contract as executed by the parties.

## 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.

## 6. **Department of Information Resources (DIR)**

This solicitation is released to select qualified DIR contract holders. Responses must be offered under current and valid DIR contracts, and the contract(s) must be referenced in the response.

## ■ **Section 3 – Certifications and Other Required Forms**

Vendors 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
- Certification Letter
- Respondent Information and Disclosures
- Anti-Trust Certification
- Data Use Agreement
- HHS Initial Security Inquiry Form
- Samples of any vendor required forms
  - Master Lease Agreement of Master Operating Lease Agreement
  - Lease Schedule Document
  - Certificate of Incumbency
  - Essential Use Form
- Any Other Required Documents

The required forms are located on HHSC's website (except for vendor required forms), under the "Business Opportunities" link [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/BO\\_home.shtml](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml) and under Required Forms for all HHSC Procurements section at [http://www.hhsc.state.tx.us/about\\_hhsc/Contracting/rfp\\_attach/attach.shtml](http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attach/attach.shtml). HHSC encourages Vendors to carefully review all of these forms and submit questions regarding their completion prior to the deadline for submitting questions.

#### ■ **Section 4 - Proposal Assumptions**

State any business, economic, legal, programmatic, or practical assumptions that underlie the Vendor'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 Statement of Work are deemed rejected by HHSC.

**Instructions:** State any assumptions that underlie the Respondent's response to the solicitation. HHS reserves the right to accept or reject any assumptions, and to take Respondent's assumptions into consideration when evaluating responses for the purposes of making a best value determination. All assumptions not expressly identified and incorporated into the contract resulting from this solicitation are deemed rejected by HHS. Add more lines as needed.

**Table 8: Proposal Assumptions**

| ITEM # | REFERENCE (Section, Page, Paragraph) | DESCRIPTION | RATIONALE |
|--------|--------------------------------------|-------------|-----------|
|        |                                      |             |           |
|        |                                      |             |           |

### 15.1.5 Part 3 - Cost Proposal

**Instructions:** Provide ten (10) copies of "Cost Proposal" in a sealed envelope separate from the Part 1 and Part 2. The Cost Proposal consists of pricing for deliverables.

#### ■ **Pricing Schedule – Appendix D**

The Vendor shall submit a Pricing Schedule. The Pricing Schedule shall consist of the base DIR Hardware equipment cost and proposed lease rate factors, along with the cost per month, the additional discount to the Agency, and the cost of any additional services. The lease rate information shall include the defined cost methodology and the number of basis points over the current published prime interest rate that the leasing agent will use to determine the lease rate factor over the life of the contract.

#### ■ **Cost Reduction Proposal**

The Vendor shall submit a Cost Reduction Proposal as part of their response. The Cost Reduction Proposal shall identify exceptions or alternatives to the requirements as stated in this Statement of Work which would result in cost savings to the Agency. The value of the cost savings to the Agency shall be identified in the Cost Reduction Proposal.

The Vendor should continue to present recommendations for potential cost savings throughout the term of the Agreement.

#### ■ **Value-added Benefits**

Describe any services or deliverables that are not required by the Statement of Work that the Vendor proposes to provide at no additional cost to HHSC. Vendors are not required to proposed value-added benefits, but inclusion of such benefits may result in a more favorable evaluation.

#### ■ **Contract Transition Plan**

The Contract Transition Plan shall cover all HHS agencies and must describe the Vendor's role and responsibilities during the transition of the existing Contract. The awarded Vendor shall be the lead in coordinating and facilitating all transition activities. Reference Section 6 Contract Transition Plan.



## 16. Glossary

| Term                                 | Definition  |
|--------------------------------------|---|
| DADS                                 | The Department of Aging and Disability Services   |
| DARS                                 | The Department of Assistive and Rehabilitative Services   |
| DFPS                                 | The Department of Family and Protective Services  |
| DIR                                  | The Department of Information Services  |
| Device or Asset                      | Any system identified by a CPU family to denote the hardware of a computing system I.E PC or workstation, laptop, notebook, Desktop or server   |
| DSHS                                 | The Department of State Health Services   |
| HHS                                  | All Health and Human Services agencies, which includes: DSHS, DADS, DARS, DFPS, and HHSC  |
| HHSC                                 | The Health and Human Services Commission  |
| Lessee                               | The State of Texas acting by and through DIR  |
| Lessor                               | For the purposes of this agreement, the Awarded Vendor  |
| F.O.B. Destination - "Free on Board" | The risk of loss of goods does not pass to the lessee until the goods are delivered and the agency has accepted the shipment – this definition came from the Comptroller of Public Accounts Purchasing Manual   |
| Fair Market Value (FMV)              | The price that represents the item's current worth and shall not include interest or disposal costs. This provides for the right but not the obligation to buy a leased asset at any time during the lease term. The assessed fair market value must be accurate and agreed to by both parties. HHS shall not overpay for the asset and the vendor will not receive less than the worth of the asset. |

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT D**

**Cost Proposal**

## ■ Pricing Schedule – Appendix D

The Vendor shall submit a Pricing Schedule. The Pricing Schedule shall consist of the base DIR Hardware equipment cost and proposed lease rate factors, along with the cost per month, the additional discount to the Agency, and the cost of any additional services. The lease rate information shall include the defined cost methodology and the number of basis points over the current published prime interest rate that the leasing agent will use to determine the lease rate factor over the life of the contract.

## ■ Cost Reduction Proposal

As part of our response, SHI has identified some additional cost savings ideas for HHS to consider via exceptions or alternatives to the requirements as specified in this request.

- SHI is providing a 0% markup on specified hardware configurations for the all orders for the remainder of the 2015 calendar year. Depending upon the projected volume of orders, this will have a “**substantial**” impact for immediate cost savings to the enterprise. For the remainder of the contract, the SHI markup from cost of equipment is minimal which provides additional savings.
- Asset return requirements – another requirement to consider involves the return of equipment without hard drive or batteries. Because this has a direct impact to the residual value of the equipment from the lessee’s perspective, consideration of not removing those could impact potential lease rates. Today, SHI is providing a DOD level wipe of all hard drives before equipment is returned. Returning those assets with hard drives included, versus removing and shredding them could result in additional cost savings.
- Aggregate orders – By aggregating order into fewer but larger quantities, HHS can take advantage of additional discounts on orders. There is a discount structure that applies to larger orders based upon dollar volume amount. A subsequent consideration however, is how this may affect the scheduling of deployment and support services during the transition of new assets to the field.

SHI will continue to present recommendations for potential cost savings throughout the term of this Agreement.

## ■ Value-added Benefits

SHI would like to provide the following value add benefits during the contract period.

- SHI will invest \$100,000.00 annually to be spent on strategic initiatives or future technology as identified by HHS
- Dedicated KACE technology specialist provided at no cost to HHS for a period of one month per year of contract term to further assist in developing the value of KACE technology throughout the enterprise.
- If mutually agreed, funding for a Proof of concept for Cloud based desktops utilizing technology from VMware

## ■ Contract Transition Plan

The Contract Transition Plan shall cover all HHS agencies and must describe the Vendor’s role and responsibilities during the transition of the existing Contract. The awarded Vendor shall be the lead in

coordinating and facilitating all transition activities. Reference Section 6 Contract Transition Plan.

## History

Today the Health & Human Services Commission (HHSC) utilizes a number of different contracts and vendors for technology acquisition and leasing. In December 2009, HHSC executed a Seat Management supplemental contract 529-09-0064 under the DIR master contract for approximately 14,000 systems. Vintage IT Services partnered with SHI Government Solutions (SHI) and CSI Leasing and was awarded this contract. In January 2010, the Texas Department of State Health Services (DSHS) executed a supplemental agreement for Seat Management services for approximately 12,000 systems under the same contract. The third and final supplemental agreement for Seat Management services was executed by the Texas Department of Assistive & Rehabilitative Services (DARS) in May 2012 for approximately 3,000 systems. DFPS and DADS are currently being serviced under different contracts and vendors.

## Transition

SHI is the only vendor uniquely positioned to provide a seamless transition without substantial costs. Under the existing contract through Vintage, SHI is the primary subcontractor. Because we provide the majority of the acquisition and leasing services this will ensure a very quick transition for over two thirds of the existing enterprise. One of the stated goals is for HHSC to have an Enterprise approach for all agencies, with a "continuous improvement" model for innovation and efficiency in delivery. With SHI as the prime vendor our dedicated team of professionals and infrastructure is already in place. On day 1 of the contract, we will have the ability to provide a web portal order processing/financing capability with all of the requested reporting detail. Because of our history of being a world class reseller, we have relationships with all of the major OEM's and financing partners established. We have selected a team of partners to engage on this project and can support the entire Enterprise with the flexibility, cost efficiency, and quality of service you expect. Our primary focus during the transition will be to establish the selected OEM configurations on our portal, agree to a leveling/refresh timeline and any negotiated asset transfers on to new schedules from previous vendors for DFPS and DADS.

Transition activities will concentrate on these major areas:

- (1) Transition timeline
- (2) Leveling plan for refresh schedules which addresses delivery/installation and return of expired assets
- (3) Asset transfer and cost consideration
- (4) Major issues to be addressed during the transition period
- (5) Definition of agency and vendor roles and responsibilities
- (6) Contingency plan for failed transition services.

### 1. Transition Timeline

| Activity  | Time frame    |              |
|---|---------------|--------------|
|   | Start         | End          |
| a. Develop Transition Plan  | June 1, 2015  | Aug 30, 2015 |
| b. Develop Leveling Plan  | June 1, 2015  | Aug 30, 2015 |
| <ol style="list-style-type: none"><li>1. Review current lease schedules by state fiscal year.</li><li>2. Determine weighted cost average from quantities of systems.</li><li>3. Determine quantity to order by month by fiscal year to replace the needed counts within a fiscal year – must consider end of lease schedule.</li><li>4. Apply quantity counts for monthly orders to maintain lowest over/under on both quantities and cost.</li></ol> |               |              |
| c. Evaluate Asset Transfer  | June 16, 2015 | Aug 30, 2015 |

SHI to engage current Seat Management vendors and/or leasing partners to determine the

viability of transfer of existing leased assets.

1. If current Seat Management vendors and/or leasing partners transfer equipment leases –
  - a. Classify as buyout or transfer
  - b. Negotiate with each leasing company
  - c. Verify hardware to transfer prior to assumption of lease
  - d. Set up schedule for the transfer of assets by agency based upon lease schedule
  - e. Transfer services over to SHI as equipment is acquired from current Seat Management vendors and/or leasing partners
  - f. Implement Leveling Plan to replace equipment
2. If the current Seat Management vendors and/or leasing partners do not transfer equipment leases –
  - a. Implement Leveling Plan to replace equipment
  - b. Transfer services over to SHI as equipment is replaced

d. Establish Support Services                      June 16, 2015                      Aug 30, 2015

1. Ordering
  - a. Establish CFI specifications and image at Dell under SHI
  - b. Develop configurations and obtain quotes
  - c. Implement on-line ordering process
  - d. Implement lease schedule/asset system

## **2. Leveling Plan for refresh schedules**

- a. Acquisition of leased assets from previous vendor

As per the existing contract, SHI is to engage all HHSC Enterprise agency vendors and/or leasing partners to ascertain the feasibility of transferring the existing lease schedules from the current vendors SHI. In the event the schedules are transferable and an agreement of transfer is reached, SHI will negotiate with each of the vendors and lease holding organizations. There are multiple vendors and leasing partners engaged on the various Seat Management contracts and it will be necessary to engage each one on a separate basis.

- b. Management of Lease Schedules

Regardless of the outcome of the negotiations to transfer the existing assets from the current vendors and/or leasing partners, the SHI team will institute an asset database of equipment currently leased and in place, approximately 55,000 units. This database will be accessed from an SHI procurement portal, which shall provide entry into both this asset information repository and to the Enterprise ordering system. As HHSC and Enterprise agencies order new equipment, under the SHI/HHSC Enterprise Information Technology Hardware Acquisition and Leasing contract, to replace existing leased or state owned equipment, information for each new lease schedule shall be entered into the database for access by each agency. By virtue of the design of the database, each agency will be able to obtain schedule information in the form of a Microsoft Excel spread sheet. Each agency representative will participate in the information design of the database to ensure it meets all information requirements. SHI will use the database to provide lease schedule management information as per the requirements of the Enterprise Information Technology Hardware Acquisition and Leasing contract, including lease schedule content and notifications of lease expiration.

- c. Return of expired leased assets to the appropriate vendor

Deinstallation of the old equipment may be provided either in conjunction with an installation or as

a separate request. The SHI team will remove the old hardware from the desktop and provide a DOD level wipe of each working disk drive after a designated quarantine period on the legacy equipment. In all State and field offices, the DOD wipe will occur after the legacy equipment is delivered to the Regional Warehouse locations and after the designated quarantine period has expired. If a legacy system be found to be in a non-working state, the SHI team will follow an established agency escalation procedure to notify each agency representative of the equipment condition. SHI will document any damage to the equipment, including a digital photograph and provide the documentation to the agency representative. SHI will follow agency-provided procedures and instructions for removal, packing/unpacking and labeling of components. Where possible, the SHI team will pack the old equipment in the new equipment boxes and place in an agency designated on-site location. Once all legacy systems are packed and deemed ready for return, the SHI team will contact each vendor and/or leasing partner to schedule a pickup.

d. Proposed leveling plan

Whether or not the leases are transferred from the current vendors and/or leasing partners or concluded with the original leasing company via expiration or buyout, each schedule will be placed into a leveling plan. In this leveling effort, quantities will be applied on a monthly basis that will provide a level of equipment delivered per month to affect a more consistent flow over the course of a fiscal year than currently in effect. SHI is recommending a leveling plan instead of an accelerated replacement plan. With leveling instead of early replacement, each agency will still be able to recover full usage value of the currently installed equipment base, while instituting newer technology into the environment. The leveling plan is keyed to the ends of lease schedules for a timely delivery/installation of the new assets and removal of the expired assets to avoid monthly charges in excess on either set of equipment. The number of leveling units per month is arrived at by considering the logical number of units that should be installed each month to arrive at a complete replacement of the existing systems during that period.

By maintaining an order process such as that described above, each agency will have a continuous flow of equipment with the objective to minimize the amount of equipment being returned early and equipment retained past its end of term. It will also provide each agency with a smoother planning process for replacement of equipment in the future under the newly awarded contract. Under this constant flow scenario, it will also be possible to adjust each monthly order for expansion, should that become necessary, without affecting the consistent replacement of the previous contract equipment. Because of the flow of the existing leases, there will be some months in the plan where no units are ordered. At these times, each agency may wish to plan for non-refresh related expansion of the managed hardware, replacing aged state-owned equipment or addressing increased business need.

Regardless of the ending lease date, each agency may determine it is prudent to enter into an accelerated replacement of equipment which no longer meets business requirements. In this event, SHI will jointly prepare that specific plan with each agency to address the requirements and steps to accomplish the accelerated replacement. The leveling plan for the remaining units still in place would be adjusted to accommodate that change.

### **3. Transfer Cost Proposal**

a. Financial approach to assume existing Lease Schedule Obligations

If the current vendors and/or leasing partners agree to transfer the existing leases and the current leasing organizations are willing to negotiate a transfer to the SHI team, it will be necessary to determine a fiscal impact for each set of schedules, by leasing company, for a buyout of the schedule by the SHI team. Should it be determined that a buyout is detrimental to each agency financially, the set of lease schedules will be left with the original leasing company until end of term and remain with the current vendors and/or leasing partners as the lease holder. If it is

determined a buyout would be of no effect or a positive fiscal impact to each agency, SHI will (a) obtain agreement of each agency to a new lease schedule with SHI in place of the existing lessor, and (b) acquire the existing hardware from the existing lessor. This action should be completed by August 30, 2015.

b. Hardware Support Services to a single vendor model

As with the transfer of lease schedules, per the existing contract, it is incumbent upon SHI to engage the current vendors and/or leasing partners, to determine the feasibility of transferring the responsibility of hardware support services from the current vendors and/or leasing partners to SHI. Should the current vendors and/or leasing partners agree to transfer hardware support services, SHI will establish a transfer date in concert with each agency and current vendors for full service exchange. In addition, SHI will examine each lease schedule and request the manufacturer to list SHI as the warranty service provider for those units of equipment listed in the schedules.

If the full scale transfers of support services prove to be unfeasible for whatever reason, systematic transfer of services will be done as the equipment on each lease schedule is replaced by SHI. Such equipment will be labeled as property of SHI to enable service requestors to identify the needed resource for support.

#### **4. Support Services**

a. Identify issues to be addressed during the transition period

1. Implementation of ordering process
2. Implementation of a hardware support process
3. Equipment delivery

b. Recommended solutions

1. Implementation of ordering process

From SHI's perspective, the ordering process for each agency will consist of two parts: (1) acceptance and filing of the orders to provide equipment, and, (2) asset acceptance, and lease schedule/inventory recording. Initial orders for each agency can be fulfilled immediately on the SHI web based procurement system. Since the SHI online web based ordering portal is in place and fully operational there will not be a need to manually fulfill any equipment order.

The SHI online web based ordering portal will provide an automated interface for each agency to enter orders and access lease schedule and inventory information. The interface will provide a catalog based system that will enable each agency to place orders quickly and with minimal effort.

The SHI online web based ordering portal will also provide access to the lease schedules and the asset information for all systems which are ordered and installed under the SHI contract. This information will be maintained and supported in a SHI database. As part of the transition process, SHI will also enter and retain the asset information for the systems currently in place under the previous seat management contract. These will be replaced with SHI supplied equipment in a leveling plan over the course of the contract, with the new equipment being recorded and maintained in the SHI database.

2. Implementation of a hardware support process

As is currently done, each contacts its service provider in various manners for current

requirements. Requirements currently include phone calls to existing Help Desks, by issuing an e-mail from the HHSC Help Desk Remedy system to request post-install support service, or phone support direct from the OEM. Under this new contract, SHI will provide a 1-800 number, and/or online access for each agency to manage incidents.

The current agency asset tag affixed to the equipment at the factory will be revised to reflect SHI as the property holder. This will be for identification purposes when service is required.

On a monthly basis, SHI will collect performance information for all support service requirements under the HHSC Enterprise Information Technology Hardware Acquisition and Leasing contract and report to each agency no later than the 5<sup>th</sup> business day of the succeeding month. Each agency and SHI will establish a review process for this information and reconcile any SLA induced charges that come from that review. Any charges resulting from that review will be provided as a credit on the subsequent month's invoice.

### 3. Equipment Delivery

Equipment delivery will be scheduled in a "just in time" manner, set to arrive at the designated delivery location(s) shortly before the arrival of the SHI installation team. This will reduce the amount of non-use time of the new equipment.

#### c. Define vendors, including partners, roles and responsibilities

1. SHI shall provide overall contract management
2. SHI shall provide:
  - a. Account Management Services: Program Manager, dedicated; Customer Services Representative
  - b. Transition management and planning
  - c. Project management of strategic and daily operations to include weekly status meetings with agency operational staff
  - d. Order and lease management services, including provision of online web based ordering portal for ordering and lease schedule services
  - e. Monthly reporting and reconciliation of contracted service level agreements
  - f. Scheduled briefings on processing/technology improvements
    1. At each agency's request, an Innovation Summit to discuss emerging trends and technologies with a view of the potential impact to the HHSC Enterprise.
    2. Quarterly Executive Management briefings will be scheduled by the Project Manager through each agency resource to discuss SLA performance, progress reports, and/or cost reduction, contract status and pertinent management issues.
    3. On an annual basis, one of the Executive Management meetings will concentrate upon on a technology roadmap for SHI team provided services, with emphasis on selected OEM products being considered for deployment in HHSC Enterprise.
  - g. Leasing of the hardware
  - h. Provision of the lease schedule information repository

#### d. Define agency's roles and responsibilities

1. Overall contract management
2. Project management for agency activities
3. Interface, if applicable, to current vendor for transfer of assets and services
4. General daily direction in completion of contracted responsibilities



5. Participation in development of orders and installation planning
6. Review and reconciliation of contracted service level agreements
7. End user management in installation projects
8. Development and testing of images to be used upon all installed equipment
- e. Outline key transition milestones
  1. Acceptance of Transition Plan
  2. Ordering process implemented
  3. Delivery of leading service implemented
  4. Evaluation of acquisition of leased assets from current vendors
- f. Outline procedures to be followed during transition
  1. Regular scheduled weekly meetings with Transition Manager, Project Manager and agency operational staff
  2. Monthly review with each HHSC agency and SHI Executive Management
  3. Transition Manager and Project Manager have daily interface with HHSC agency operational staff during transition period
  4. Introduction of SHI support staff to each HHSC agency operation staff
- g. Define method of identifying, documenting, and transferring assets
  1. Engage each HHSC agency to identify equipment to be transferred (by time of acquisition)
  2. Obtain pertinent lease schedule from current service providers
  3. Verify and reconcile lease schedule to agency equipment records
  4. Negotiate transfer of verified assets to SHI team
  5. Add list of transferred assets to SHI assets

- h. Identify Vendor's point of contact and procedures for managing problems

The SHI point of contact will be the Project Manager in all instances of problems. Initial contact may be verbal to describe the problem and determine if the problem needs to be put into writing for a formal resolution. This written communication may be in the form of an e-mail or a signed memorandum/letter. It is the Project Manager's responsibility to keep SHI Executive Management informed of all problems requiring attention. Resolution and/or actions of resolution should be directed back to each HHSC agency in the manner requested or as described in the contract.

Should resolution to a problem offered by any HHSC agency not be forthcoming in the agreed-upon time frame, the SHI Project Manager shall inform the agency of all actions taken to that point toward resolution and escalate the problem to the SHI Executive.

- i. Outline contingency plan for failed transition of services

As one of the largest managed IT care firms in Central Texas, SHI assembled a team of both solvent and experienced partners to respond to the HHSC Enterprise Information Technology Hardware Acquisition and Leasing services RFO. SHI is the primary operational service provider for this contract. With the planning, experience and dedication of the SHI team, failure of the transition is a very remote, although possible, end result of the efforts and activities of the team.

In the contingency planning for failed transition, the decision process must consider multiple situations of failure encompassing the SHI team. In making a decision, the actions taken are dependent upon the answers to questions that are the first part of the process:

1. What specific actions or service(s) failed in transition?
2. What is the impact of the failure(s)?

3. What options are available to resolve the situation?
4. What are the impacts of the possible options?
5. How long does the selected option take to implement?

Utilizing the question process above, a plan for probable solutions to the continuation of services is:

1. SHI will identify all areas causing the failed transition.
2. SHI will gain approval from the HHSC agency or agencies to extend the transition to openly discuss the areas of failure in order to negotiate a successful transition.
3. Should further negotiations fail then any of the HHSC agencies may revert to the legacy vendor for services, HHSC Enterprise may negotiate a continuation of services with one of the other bidders on the RFO for this contract, or HHSC may rebid the contract.

Utilizing the extensive communication process being followed in the delivery of services by the SHI team and having the Project Manager on site on a continual basis, there should be reasonable forewarning of any deviance from the required service levels that might lead to failure of any of the services or transition, barring any force majeure. In acting upon that forewarning, the SHI team will immediately confer with HHSC and apply the decision making process to the situation to arrive at an equitable solution(s) to all parties.

j. Identify Vendors escalation contact.

1. First contact – Greg Brown, Project Manager
2. Second Contact – Jay Martell – Lead Inside Account Manager
3. Third Contact – Lee Bazemore, Director – End User Services
4. Fourth Contact – John Haines, Senior Account Executive
5. Fifth Contact – Darron Gross, Client Executive

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT E**

**Contractor's Proposal**

**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT F**

**Master Lease Agreement**

## **Appendix E of DIR Contract No. DIR-SDD-1922 MASTER OPERATING LEASE AGREEMENT**

1. **Definitions.** Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) “Assets” refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
  - (b) “Contract” refers to DIR Contract number DIR-SDD-1922 into which this Appendix is incorporated.
  - (c) “Event of Default” is defined in Section 23, “Default.”
  - (d) “Event of Loss” means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
  - (e) “Hardware” refers to the computer machinery and equipment specifically identified on the applicable Schedule.
  - (f) “Lease” means the financing transaction described in this MOLA.
  - (g) “Lessee” means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
  - (h) “Lessor” means the Vendor identified in the Contract.
  - (i) “MOLA” means this Master Operating Lease Agreement (Appendix E). Any reference to “MOLA” includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
  - (j) “Rent Payment” means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
  - (k) “Schedule” or “Supplementary Schedule” to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee, applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.

- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m) "Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

## **2. Lease.**

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 ("Default") of this MOLA.

### **3. Term of MOLA.**

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

### **4. Term of Schedule.**

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the effective date specified in the Schedule (and, if no date is specified, then on the date the Schedule was signed by Lessee, provided Lessor has also signed the Schedule). Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein.

### **5. Administration of MOLA.**

- (a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.
- (b) With respect to Lessor's obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.
- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order

acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.

- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

## **6. Rent Payments.**

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15<sup>th</sup> of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MOLA (and any Schedule), and applied to reduce future Rent Payments. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 7C of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.
- (c) Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.



## **7. Liens.**

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

## **8. Appropriation of Funds.**

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 ("Option to Extend; Surrender of Assets") of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

## **9. Assignment of Warranties.**

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 ("Remedies") hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor's acts or omissions: (i) Lessee's dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

## **10. Inspection and Acceptance.**

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20<sup>th</sup>) business day, as described above. In the event Lessee does not accept the Assets, Lessor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

## **11. Installation and Delivery; Use of Assets; Repair and Maintenance.**

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

## **12. Relocation of Hardware and Software.**

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on any Schedule

and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

### **13. Taxes.**

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

### **14. Ownership.**

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

### **15. Option to Extend; Surrender of Hardware and Software Assets.**

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.

(b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware ("Return Condition"), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee's cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee's premises or any other premises where the Hardware may be found to take possession of and to remove the Hardware, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee's obligation to return Hardware may, at Lessor's option, be specifically enforced by Lessor.

#### **16. Quiet Enjoyment.**

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 ("Default") of the MOLA) has not occurred.

#### **17. Warranties regarding the Assets.**

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

#### **18. No Warranties by Lessor regarding the Assets.**

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for

use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software “as is”. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee’s request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

#### **19. Risk of Loss.**

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

#### **20. Representations and Warranties of Lessee.**

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

## **21. Representation and Warranties of DIR.**

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;

- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

## **22. Representations and Warranties of Lessor.**

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;
- (f) The Schedule Term as specified in the applicable Schedule does not exceed 75% of the useful life of the Hardware, and the present value of the Rent Payments for the Hardware on the Schedule Commencement Date does not equal or exceed ninety percent (90%) of the value of the Hardware; and

- (g) Lessor acknowledges that DIR, as a government agency, is subject to the Texas Public Information Act, and that DIR will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

### **23. Default.**

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee's material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

### **24. Remedies.**

#### **(a) Lessor's Remedies.**

- i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
  - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
  - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
  - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;
  - D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a penalty, the sum of:



- I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
  - II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
  - III. interest on (I) from the date of default at 1½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
  - iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
  - iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

- (b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.
- (c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

## **25. Notices and Waivers.**

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

## **26. Assignment by Lessor; Assignment or Sublease by Lessee.**

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except

otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

## **27. Delivery of Related Documents.**

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

## **28. Miscellaneous.**

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

## Attachment 1 to the Master Operating Lease Agreement Financial Disclosure Summary

| Lease Rate Factor(s):  | Response   | Notes        |
|--|--|--------------|
| Equipment Type A   |  |              |
| Equipment Type B   |  |              |
| Equipment Type C   |  |              |
| How is Daily Rental calculated?                                      |  |              |
| Is Daily Rental invoiced separately or rolled into monthly rental?   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br><input type="checkbox"/> N/A  |              |
| Is this a Step Lease?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |
| Does this lease include software?                                    | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |
| If yes, who owns the software?                                       | <input type="checkbox"/> Agency<br><input type="checkbox"/> Lessor   |              |
| <b>Personal Property Tax</b>   | <b>Response</b>  | <b>Notes</b> |
| Estimated PPT  |  |              |
| PPT Payment made by  | <input type="checkbox"/> Agency<br><input type="checkbox"/> Lessor on Agency behalf  |              |
| PPT calculation method   | <input type="checkbox"/> Agency pays direct<br><input type="checkbox"/> Lessor pays and passes invoice through<br><input type="checkbox"/> Lessor estimates and includes<br><input type="checkbox"/> Lessor sets PPT at disclosed rate |              |
| If PPT rate changes, how are charge backs or short falls handled?    | <input type="checkbox"/> N/A - Agency pays direct<br><input type="checkbox"/> N/A - Lessor pays/passes invoice through<br><input type="checkbox"/> Lessor is responsible<br><input type="checkbox"/> Lessee is invoiced for short fall |              |
| <b>Equipment Schedule Details</b>                                    | <b>Response</b>  | <b>Notes</b> |
| Can Agency make decisions at asset level (extend, purchase, return)? | <input type="checkbox"/> Asset level<br><input type="checkbox"/> All and not less than all   |              |
| Does this ES auto extend?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |
| If Yes, how long?  |  |              |
| What is the cost of the Auto extension?                              |  |              |
| What is the notice period?   |  |              |
| Are negotiated extensions FMV based?                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |

|   |  |              |
|---|--|--------------|
| On FMV, can Agency select own evaluator?                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |
| Is asset and lease information available online?              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |              |
| <b>End of Lease Details</b>                                   | <b>Response</b>  | <b>Notes</b> |
| Where are the assets returned to?                             |  |              |
| What is the return freight cost?                              |  |              |
| Who pays the return freight cost?                             | <input type="checkbox"/> Agency<br><input type="checkbox"/> Lessor                                       |              |
| Do I need to return original packaging?                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>If yes, what is the cost if not returned? |              |
| Do I need to return original manuals and documentation?       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>If yes, what is the cost if not returned? |              |
| Do I need to return software?                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>If yes, what is the cost if not returned? |              |
| Is there an FMV purchase cost cap?                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>If yes, what is the cost cap percentage?  |              |
| What is the cost for a lost asset?                            |  |              |
| What is the cost for missing equipment?                       |  |              |
| What is the cost for data sanitization on assets with memory? |  |              |
| What is the cost for data sanitization?                       |  |              |
| What is the cost for on-site data destruction?                |  |              |

## Rider to DIR-SDD-1922 Master Operating Lease Agreement

This Rider to DIR-SDD-1922 Master Lease Agreement ("**Rider**") is entered into by and between SHI Government Solutions, Inc. ("**Lessor**") and the Texas Health and Human Services ("**HHSC**"), on behalf of the Texas health and human services agencies, including HHSC, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, the Texas Department of Family and Protective Services, and the Texas Department of State Health Services (collectively, the "**HHS Agencies**") pursuant to the Master Operating Lease Agreement ("**MOLA**") attached as Exhibit E to DIR-SDD-1922, Contract for Services between Lessor and the State of Texas Department of Information Resources ("**DIR Contract**"). Lessor and HHSC are referred to in this Rider collectively as the "**Parties**" and individually as the "**Party**".

### RECITALS

1. Lessor and HHSC have entered into a contract (the "**Agreement**") resulting from the HHSC's solicitation of hardware acquisition and leasing services through HHSC Statement of Work (No. 529-2000135059) ("**SOW**"), which was carried out under the DIR Contract.
2. Pursuant to the SOW, the Parties are to enter into a master lease agreement for the lease of Assets by the HHSC Agencies from Lessor.
3. In accordance with the Section 7(B) of the DIR Contract and Section 2(d) of the MOLA, the Parties agree to utilize the MOLA as the master lease agreement, as modified in this Rider.

### AGREEMENT

1. Master Lease Agreement. By entering into the Agreement, the Parties agree that they are bound by the terms and conditions of the MOLA, as modified by this Rider.
2. Defined Terms. Unless otherwise defined in this Rider, capitalized terms have the meaning set forth in the MOLA or the Agreement, as applicable.
  - 2.1. Lessee. With respect to each Schedule under the MOLA, the defined term "Lessee" refers to the HHS Agency that executes the Schedule.
3. Schedules.
  - 3.1. Each Schedule entered into under the MOLA must be in the format attached to this Rider as Attachment 1.
  - 3.2. Each Schedule shall incorporate by reference the terms and conditions of the MOLA.
  - 3.3. Each Schedule Term will be for a 12-, 24-, 36-, or 48-month period, which will be at the sole discretion of Lessee. Within one hundred twenty (120) days prior to the expiration of a Schedule, Lessor will notify Lessee of the upcoming expiration and will review the Schedule with Lessee to verify the serial numbers of the Assets under the Schedule. Lessee has a one-time option to extend each Schedule. If Lessee extends a Schedule for less than three (3) months, Rent Payments for the extended Schedule Term will equal the Rent Payments under the original Schedule Term. If Lessee extends a Schedule for three (3) months or more, the Rent Payments will be based on the fair market value of the Assets. If Lessee desires to extend a Schedule with respect to all or part of the Assets under the schedule, Lessee shall give Lessor written notice of the option Lessee intends to exercise at least sixty (60) days but no more than one hundred and eighty (180) days before the expiration of such Schedule Term. In the event the Schedule is extended for some but not all of the Assets specified on a Schedule, the Schedule shall be updated to reflect those changes, and Lessee will only be responsible for the Rent Payments for the Assets remaining on the Schedule.

- 3.4. The Parties may negotiate an early refresh option of 18 to 24 months prior to the expiration of a Lease Schedule without penalty or additional costs to the value of the Lease Schedule.
- 3.5. All effective Schedules and purchase orders issued thereunder will survive the expiration or termination of the Agreement and DIR Contract.
4. Administration of MOLA.
- 4.1. The pricing agreed upon by Lessee and Lessor in the applicable Schedule will be based on the Cost Proposal. Lessee, at its sole discretion, will determine the payment structure (e.g. monthly payments, quarterly payments).
- 4.2. Lessor will not charge Lessee, and Lessee will not pay for, any interim rental or "Daily Rental" for Products prior to the Commencement Date.
5. Return of Assets.
- 5.1. At the expiration of a Schedule Term, Lessee shall not be required to return:
- 5.1.1. Expendable equipment, which includes, but are not limited to; manuals and reference CDs, mice, keyboards, original packing, earphones, hard drive(s), batteries for laptops, and laptop cases;
- 5.1.2. Docking stations for laptops; and
- 5.1.3. Five to Ten percent of all Assets leased under a Schedule, which will account for lost or non-returned Assets.
- 5.2. Lessor will accept "like for like" returns of Assets, provided such substitute Assets: (i) are manufactured by a Tier One computer company as the Assets to be returned, (ii) is of equal or greater capacity and capability as the Product to be returned, (iii) has been in use by Lessee for at least six months prior to its return, and (iv) is owned or leased by Lessee at the time of return and title is conveyed to Lessor free and clear of all liens, claims, and encumbrances.
- 5.3. Upon expiration or termination of a Schedule, Lessee may return Assets under the Schedule to any location within the state of Texas.
6. Upgrade of Assets. If Lessee is not in default under a Schedule at such time as Lessee desires to upgrade some or all of the Assets under the Schedule, Lessee may notify Lessor of its desire to upgrade the Assets with technologically more advanced Assets ("**Upgraded Assets** "). In the event Lessor receives such notice, Lessor agrees to negotiate in good faith to enter into a new Schedule or Schedules for the Upgraded Assets upon mutually agreeable terms and conditions, and to terminate the rental obligations of the Assets upon the Commencement Date of the Schedule or Schedules for the Upgrade Assets.
7. Purchase Option. Provided no default has occurred and is continuing and provided the Schedule shall not have previously terminated, Lessee shall have the option, exercisable by written notice to Lessor received by Lessor at least sixty (60) days but no earlier than one hundred eighty (180) days before the expiration of the Schedule Term, to purchase on the day following the last day of such Term ("**Purchase Date**"), some or all of the Assets for a price equal to the then-current, in-place, fully installed and functional fair market value of such Assets as mutually agreed to by Lessor and Lessee, or, if they cannot agree, as determined by an independent appraiser selected by Lessor and approved by Lessee. The cost of such appraiser shall be split between the parties. Provided Lessee

has exercised such option, Lessee shall pay to Lessor on the Purchase Date the aforementioned purchase price, together with any other amounts due and owing hereunder, whereupon Lessor shall cause said Assets to be transferred to Lessee without recourse or warranty on an as-is, where-is basis, with respect to Lessor; however, Lessor will transfer to Lessee any and all manufacturer/supplier warranties covering the Assets.

8. SOW Requirements. As required by the SOW, the following requirements are included in the MOLA with respect to Lessor in its capacity solely as the Contractor performing the SOW requirements, not as the Lessor under the MOLA. Lessee acknowledges and understands that any recourse Lessee has with respect to the following requirements is based on terms and conditions of the SOW and the remainder of the Agreement, other than the MOLA. Lessee's obligation to pay Rent and other sums payable under a Schedule, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor with respect to the following requirements:

- 8.1. Lessor will deliver to Lessee, at locations specified by Lessee, the Assets within fifteen (15) days after the date of an order submission request. However, if delivery by that date is not possible due to the manufacturer's product constraints, Lessor will notify Lessee of the delay and an estimated delivery date at the time that Lessor provides Lessee with the proposed Schedule. Lessor is responsible for resolving shipment delays, including shipment to the wrong location. Lessor must initiate action to correct incorrect deliveries within 24 hours of identifying the issue.
- 8.2. Notwithstanding Section 11(a) of the MOLA, Lessor is responsible for all delivery and transportation costs related to the Assets.
- 8.3. Lessor will be responsible for the Assets until Lessee's authorized representative signs off on the receipt of the Assets. Lessee is required to provide "Freight On Board (F.O.B.) Destination" to any HHS destination as specified in the purchase order(s). Inside delivery to all locations may be required by Lessee.
- 8.4. In the event of a disaster (i.e. any cause beyond the reasonable control of a Party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God), Lessor will provide Lessee with twenty five (25) replacement Hardware devices within eight (8) business hours after Lessee's notification to Lessor of a disaster.
- 8.5. Lessor assumes the risk of loss or damages to Assets caused by the negligence or willful misconduct of Lessor's employees, agents or representatives.
- 8.6. Lessor will comply with, and ensure that all warranties for the Products are in compliance with Section 5.4 of the SOW.

IN WITNESS HEREOF, HHSC and the Lessor have each caused this Rider to be signed and delivered by its duly authorized representative.

Texas Health and Human Services Commission

SHI Government Solutions, Inc.

  
Chris Taylor  
Executive Commissioner

  
Keith Markowski  
Accounting Mgr

Signature Date 8-31-15

Signature Date 8/21/15



**AGREEMENT  
FOR  
INFORMATION TECHNOLOGY  
HARDWARE ACQUISITION AND LEASING  
BETWEEN  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
AND  
SHI GOVERNMENT SOLUTIONS, INC.**

**EXHIBIT G**

**Form of  
Lease Schedules**

**SHI Government Solutions, Inc.**

1301 South Mo-Pac Expressway Austin, TX 78746

Leasing Schedule No. XXXX

**Leasing Schedule XXXX**

Counterpart No. 1 Dated

**EQUIPMENT DESCRIPTION**

(Please include Quantity, Manufacturer, Model, HHS Asset Tag Numbers, Serial Numbers and Other Identification)

Attachment A hereto attached.

**Lessee:** SAMPLE**EQUIPMENT LOCATION:****INITIAL TERM**

\_\_\_ months

**BASIC RENTAL PAYMENT****ADVANCE PAYMENT(S)**

NONE

**IMPORTANT:** NEITHER SUPPLIER NOR ANY SALESPERSON IS AN AGENT OF LESSOR NOR ARE THEY AUTHORIZED TO WAIVE OR ALTER THE TERMS OF THIS LEASE. THEIR REPRESENTATION SHALL IN NO WAY AFFECT LESSEE'S OR LESSOR'S RIGHTS AND OBLIGATIONS AS HEREIN SET FORTH.

**1. TERM AND RENT.** The items of Equipment listed above are hereby leased on the terms specified in, and subject to the terms and conditions of, the Master Operating Lease Agreement as referenced in the contract resulting from the Statement of Work (No. 529-2000135059) issued by the Texas Health and Human Services Commission ("SOW") (the "Lease") as noted above and. This Leasing Schedule shall take effect on the date accepted by Lessor, as shown below, and shall continue for the initial term set forth above ("**Term**"), calculated from the date the Equipment is accepted by Lessee in accordance with the Lease as shown on a delivery and acceptance certificate or by other means acceptable to Lessor (the "**Acceptance Date**"). The "**Commencement Date**" shall be the first day of the month following the Acceptance Date. Basic Rental Payments are due on the Commencement Date and on the same day of each consecutive month, quarter or year thereafter, as determined by Lessee and as specified above. All Basic Rental Payments shall be paid without notice or demand and without abatement, reduction or setoff of any amount whatsoever at the office of Lessor set forth above or at such other address as Lessor may designate.

**2. PURCHASE OPTION.** Provided no default has occurred and is continuing and provided the Schedule shall not have previously terminated, Lessee shall have the option, exercisable by written notice to Lessor received by Lessor at least sixty (60) days but no more than one hundred and eighty (180) days before the expiration of the Schedule Term, to purchase on the day following the last day of such Term ("**Purchase Date**"), some or all of the Equipment for a price equal to the then-current fair market value of such Equipment as mutually agreed to by Lessor and Lessee, or, if they cannot agree, as determined by an independent appraiser selected by Lessor and approved by Lessee. Provided Lessee has exercised such option, Lessee shall pay to Lessor on the Purchase Date the aforementioned purchase price, together with any other amounts due and owing hereunder, whereupon Lessor shall cause said Equipment to be transferred to Lessee without recourse or warranty on an as-is, where-is basis, with respect to Lessor; however, Lessor will transfer to Lessee any and all manufacturer/supplier warranties covering the Equipment.

**43. RENEWAL.** If no default shall have occurred and be continuing, Lessee shall have the one-time option to renew this Leasing Schedule, as to some or all of the Equipment listed therein, on the terms and conditions thereof for a term for a minimum of three (3) months agreed to by Lessee and Lessor, for an amount that shall be the then fair market rental value thereof for such Leasing Schedule as mutually agreed to by Lessor and Lessee. Lessee must give Lessor written notice of its intention to exercise said option with respect to a Leasing Schedule at least sixty (60) days but no more than one hundred and eighty (180) days before expiration of the Term for such Leasing Schedule. In the event the Leasing Schedule is extended for some but not all of the Equipment specified on a Leasing Schedule, the Leasing Schedule shall be updated to reflect those changes, and Lessee will only be responsible for the Rental Payments for the Equipment remaining on the Leasing Schedule.

**4. NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision of this Leasing Schedule, if funds for the continued fulfillment of this Leasing Schedule by Lessee are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then Lessee will have the right to terminate this Leasing Schedule at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. All obligations of Lessee to make payments for the payments due with respect to the Equipment for which such termination applies will cease, all interests of Lessee in such Equipment will terminate, Lessee shall surrender the Equipment in accordance with the Lease, and the Leasing Schedule shall be deemed amended or terminated, as appropriate.

By execution hereof, the signer hereby certifies that he/she has read this Leasing Schedule and the above referenced Master Operating Lease Agreement and that he/she is duly authorized to execute this Leasing Schedule on behalf of Lessee.

Accepted By:

**SHI Government Solutions, Inc.**

(Lessor)

(Lessee) Sample

Authorized Signature

Authorized Signature

Printed Name &amp; Title

Printed Name &amp; Title

Date

Date