

SIGNATURE DOCUMENT FOR

HEALTH AND HUMAN SERVICES CONTRACT NO. 52900-7-2000162130

PURPOSE

The Health and Human Services Commission (“HHSC”), an administrative agency within the executive department of the State of Texas and having its principal office at 4900 N. Lamar Blvd, Austin, Tx 78751, and Panoramic Software, Inc. (“Contractor”), having its principal office at 32932 Pacific Coast Highway #14-482, Dana Point CA 92629 (each a “Party” and collectively “the Parties”) enter into the following contract for Guardianship Online Database Services (the “Contract”).

LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of Chapter 531 of the Texas Government Code.

DURATION

The Contract is effective on September 1, 2017 and terminates on August 31, 2022, unless extended or terminated pursuant to the terms and conditions of the Contract. HHSC, at its sole option may further extend this contract one time for an additional one year term.

BUDGET

The total amount of this Contract will not exceed **Six Hundred Thousand Dollars (\$600,000)**. **HHSC will only pay for the basic services included in the Statement of Work (SOW) in increments of \$10,000 per month for sixty (60) months beginning September 1, 2017. Payments shall not exceed \$120,000 per year without a contract amendment.** All expenditures under the Contract will be in accordance with **STATEMENT OF WORK (SOW) 12 FEES.**

CONTRACT REPRESENTATIVES

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

In case of HHSC:

Rosa Berumen, Section Director
Office of Guardianship
Health and Human Services Commission
701 W. 51s
Mail Stop W555
P.O. Box 149030
Austin, TX 78714-9030
Phone: 512 438-5607

In case of Panoramic Software, Inc.
Jeff von Waldberg
President and Chief Executive Officer
Panoramic Software, Inc.
32932 Pacific Coast Highway #14-482
Dana Point, CA 92629
Phone: (877) 558-8526

LEGAL NOTICES

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

In case of HHSC:
Attention: Charles Smith, Executive Commissioner
Health and Human Services Commission
4900 N. Lamar Blvd.
Austin, TX 78751-2316
Phone: 512-424-6500
and

Karen Ray,
Chief Counsel
4900 N. Lamar Blvd.
Austin, TX 78751-2316
Phone: 612-4246614
Fax: 512-424-6586

In the Case of Contractor:

Jeff von Waldberg
President and Chief Executive Officer
Panoramic Software, Inc.
32932 Pacific Coast Highway #14-482
Dana Point, CA 92629
Phone: (877) 558-8526

Legal notice given by Contractor shall be deemed effective when received by the HHSC. Either Party may change its address for notice by written notice to the other Party.

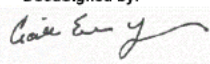
SIGNATURE PAGE FOLLOWS

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Signature Page for HHSC Contract No. 52900-7-2000162130

HHSC

PANORAMIC SOFTWARE, INC.

DocuSigned by:

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Gary Jessee
Deputy Executive Commissioner
Date of execution: 7/17/2017 | 7:37 AM CDT

Jeffrey von Waldberg
President and Chief Executive Officer
Date of execution: 6/6/2017

THE FOLLOWING EXHIBITS TO HHSC CONTRACT NO. 52900-7-2000162130 ARE HEREBY ATTACHED AND INCORPORATED BY REFERENCE:

- EXHIBIT A - HHSC SPECIAL CONDITIONS**
- EXHIBIT B - HHSC UNIFORM TERMS AND CONDITIONS**
- EXHIBIT C - STATEMENT OF WORK**
- EXHIBIT D - DATA USE AGREEMENT**

EXHIBIT A



TEXAS
Health and Human Services

Health and Human Services Commission Special Conditions

Version 1.0

HHSC SPECIAL CONDITIONS

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions – Vendor, Version 2.12

ARTICLE 1. SPECIAL DEFINITIONS

“Conflict of Interest” means a set of facts or circumstances, a relationship, or other situation under which Contractor, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Contractor’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements.

“Contractor Agents” means Contractor’s representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

“Custom Software” means Software developed as a Deliverable or in connection with the Agreement.

“Data Use Agreement” means the agreement incorporated into the Contract to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information.

“Federal Financial Participation” is a program that allows states to receive partial reimbursement for activities that meet certain objectives of the federal government. It is also commonly referred to as the Federal Medical Assistance Percentage (FMAP).

“Item of Noncompliance” means Contractor’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Work; (3) represent a failure of Contractor to be responsive to a request of HHSC relating to the Work under the Contract.

“Minor Administrative Change” refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 6.02 of these Special Conditions.

“Other Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor; or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Work, which is not designated as Confidential Information in the Data Use Agreement.

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

“Software” means all operating system and applications software used or created by Contractor to perform the Work under the Contract.

“State” means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean 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.

“Third Party Software” refers to software programs or plug-ins developed by companies or individuals other than Contractor which are used in performance of the Work. It does not include items which are

ancillary to the performance of the Work, such as internal systems of Contractor which were deployed by Contractor prior to the Contract and not procured to perform the Work.

“**Turnover**” means the effort necessary to enable HHSC, or its designee, to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself.

“**Turnover Plan**” means the written plan developed by Contractor, approved by HHSC, and to be employed when the Work described in the Contract transfers to HHSC, or its designee, from the Contractor.

“**VUTC**” means HHSC’s Uniform Terms and Conditions – Vendor, Version 2.13

“**Work**” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

ARTICLE II. GENERAL PROVISIONS

2.01 Controlling Order

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

- a. The Signature Document;
- b. These Special Conditions;
- c. HHSC Uniform Terms and Conditions – Vendor ver. 2.13;
- d. The Statement of Work included in HHSC's Solicitation and any exhibits, attachments addendums, corrections, and clarifications thereto then
- e. Contractor’s Solicitation Response and any agreed to modifications.

2.02 Inducements

In awarding the Contract, the HHSC relies on Contractor’s assurances of the following:

- a. Contractor and its Subcontractors are established providers of the Work described in the Solicitation and required under the Contract;
- b. Contractor and its Subcontractors have the skills, qualifications, expertise, financial resources, and experience necessary to perform the Work in an efficient, cost-effective manner, with a high degree of quality and responsiveness.
- c. Contractor has performed similar Work for other public or private entities;
- d. Contractor has thoroughly reviewed, analyzed, and understood the Solicitation, has timely raised all questions or objections to the Solicitation or Work, and has had the opportunity to review and fully understand HHSC’s current program and operating environment for the activities that are the subject of the Contract and the needs and requirements of the State during the Contract term;
- e. Contractor has had the opportunity to review and understand the State’s stated objectives in entering into the Contract and, based on such review and understanding, Contractor currently has the capacity to perform the Work in accordance with the terms and conditions of the Contract; and Contractor fully understands the risks associated with public health and human services programs administered by HHSC as directed in the Solicitation, including the risk of non-appropriation of funds.

2.03 Delegation of Authority

Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on HHSC, the right, power, or duty so imposed or conferred is possessed and exercised by HHSC's Executive Commissioner unless such is delegated to duly appointed agents or employees of HHSC. HHSC's Executive Commissioner will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by HHSC is limited to the terms of the Contract. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of HHSC Programs; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the HHSC regarding HHSC Programs or the Contract. However, upon request and reasonable notice to the Contractor, Contractor will assist HHSC in communications and negotiations regarding the Work under the Contract with state and federal governments.

2.04 Other System Agencies Participation in the Contract

In addition to providing the Work specified for HHSC, Contractor agrees to allow other System Agencies the option to participate in the Contract under the same terms and conditions. Each HHSC that elects to obtain Work under this section will issue a purchase or work order to Contractor, referring to, and incorporating by reference, the terms and conditions specified in the Contract.

System Agencies have no authority to modify the terms of the Contract. However, additional HHSC terms and conditions that do not conflict with the Contract, and are acceptable to the Contractor, may be added in a purchase or work order and given effect. No additional term or condition added in a purchase or work order issued by a HHSC can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a HHSC's purchase or work order and the Contract, the Contract terms control.

2.05 Most Favored Customer

Contractor agrees that if during the term of the Contract, Contractor enters into any agreement with any other governmental HHSC, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, Contractor will notify HHSC within (10) business days from the date Contractor executes any such agreement. Contractor agrees, at HHSC's option, to amend the Contract to accord equivalent advantage to HHSC.

2.06 Assumption After Assignment

As authorized in the VUTC, each party to whom an assignment is made must assume all or any part of Contractor's interests in the Contract, the Work, and any documents executed with respect to the Contract, including, without limitation, the assignor's obligation for all or any portion of the purchase payments, in whole or in part.

2.07 Cooperation with HHSC Vendors

At HHSC's request, Contractor will allow parties interested in responding to other HHSC solicitations to have reasonable access during normal business hours to the Work, software, systems documentation, and site visits to the Contractor's facilities. Contractor may elect to have such parties inspecting the Work, facilities, software or systems documentation to agree to use the information so obtained only in the State of Texas and only for the purpose of responding to the relevant HHSC solicitation.

2.08 Renegotiation and Reprocurement Rights

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor's receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

HHSC may at any time issue solicitation instruments to other potential contractors for performance of any portion of the Work covered by the Contract, including services similar or comparable to the Work, performed by Contractor under the Contract. If HHSC elects to procure the Work, or any portion thereof, from another vendor in accordance with this section, HHSC will have the termination rights set forth in the VUTC.

2.09 Solicitation Errors

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

ARTICLE III. PROHIBITION AGAINST PERFORMANCE OUTSIDE OF THE UNITED STATES

3.01 Authority

HHSC is responsible for the development and implementation of Software and hardware to support HHSC programs, which are paid for in whole or in part with State and federal funds. Accordingly, such Software and hardware may be subject to statutory restrictions on the export of technology to foreign nations, including but not limited to the Export Administration Regulations contained in 15 C.F.R. Parts 730-774.

3.02 Prohibition

Contractor agrees that, unless specifically authorized in writing by HHSC:

- (1) All Work under this Contract, including that of Subcontracts, will be performed exclusively within the United States. This obligation includes, but is not limited to, information technology services, processing, transmission, storage, archiving, data center services, disaster recovery sites and services, customer support, medical, dental, laboratory and clinical services, services related to Custom Software, and all modifications of Custom Software, Third Party Software, or vendor proprietary software;
- (2) All information obtained by Contractor or a Subcontractor under this Contract shall be maintained within the United States; and shall not leave the United States by any means (physical or electronic) at any time; and

- (3) Contractor shall not permit any person or entity at a location Outside The United States to have remote access to any of the Work under the Contract without HHSC's written approval.

3.03 **Exception**

The prohibition against Work Outside the United States does not preclude the acquisition or use of commercial off-the-shelf (COTS) software that is developed Outside the United States or hardware that is generically configured Outside the United States. The prohibition against Work Outside the United States does not preclude Contractor from acquiring or using products or supplies that are manufactured Outside the United States, provided such products or supplies are commercially available within the United States for acquisition.

ARTICLE IV. CONTRACTOR PERSONNEL AND SUBCONTRACTORS

4.01 **Qualifications**

Contractor agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Contractor Agents assigned to perform the duties and responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

4.02 **Conduct and Removal**

While performing the Work under the Contract, Contractor Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Contractor Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any Work under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

4.03 **No Authority**

Contractor Agents are not employees of HHSC or the State of Texas and are considered Contractor's employees for all purposes. Except as provided in the Contract, neither Contractor nor any of Contractor Agents may act in any sense as agents or representatives of HHSC or the State of Texas.

4.04 **E-Verify**

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

- (1) All persons employed to Work within the State of Texas, during the term of the Contract; and
- (2) All Contractor Agents assigned by Contractor to perform Work pursuant to the Contract, within the United States of America.

4.05 Subcontractors Not Identified in the Solicitation Response

Prior to entering into a Subcontract, 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 Work, and certify to HHSC that no loss of Work will occur as a result of the performance of such Subcontractor.

At HHSC's request, prior to executing a Subcontract with a value greater than \$100,000.00, Contractor must submit a copy of the Subcontract to HHSC for review and approval. HHSC reserves the right to:

- (1) Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for HHSC to monitor compliance with the Contract;
- (2) Object to the selection of the Subcontractor; or
- (3) Object to the subcontracting of the Work proposed to be subcontracted.

ARTICLE V. PERFORMANCE

5.01 Measurement

Satisfactory performance of the Contract, unless otherwise specified in the Contract, will be measured by:

- (1) Compliance with Contract requirements, including all representations and warranties;
- (2) Compliance with the Work requested in the Solicitation and Work proposed by Contractor in its response to the Solicitation and approved by HHSC;
- (3) Delivery of Work in accordance with the service levels proposed by Contractor in the Solicitation Response as accepted by HHSC;
- (4) Results of audits, inspections, or quality checks performed by the HHSC or its designee;
- (5) Timeliness, completeness, and accuracy of Work; and
- (6) Achievement of specific performance measures and incentives as applicable.

ARTICLE VI. AMENDMENTS AND MODIFICATIONS

6.01 Formal Procedure

No different or additional Work or contractual obligations will be authorized or performed unless contemplated within the Scope of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for Work that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract.

Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

6.02 Minor Administrative Changes

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Work or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 6.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

6.03 Technical Guidance Letters

Notwithstanding anything to the contrary in the Contract, Technical Guidance Letters ("TGL") as provided by the VUTC will not act as an Amendment or modification to the Contract to the extent such affect price or term of the Contract. Such TGLs are interpretive and instructional only and are not authorized to extend the term, modify the fees or other payment arrangements, increase the Contract total value, or materially change the substance of the Work.

ARTICLE VII. AUDITS AND RECORDS

7.01 Record Retention

Contractor will comply with the records retention schedule approved by the Texas State Library and Archives Commission, unless a longer period is specified in the Contract. Contractor acknowledges that such schedule may be amended or modified from time to time and agrees to give any such modification or amendment full effect. The current approved schedule is published at:

<https://www.tsl.texas.gov/sites/default/files/public/tslac/slrn/state/schedules/529.PDF>.

It is Contractor's responsibility to monitor the Texas State Library and Archives Commission's approval of HHSC's record retention schedules.

7.02 Access and Accommodation

In providing the access required by the VUTC for records and audits, Contractor will provide access to records, books, and documents in reasonable comfort and will provide any furnishings, equipment, or other conveniences necessary to enable complete and unfettered access to records, books, and documents to HHSC and any of its duly authorized representatives, as well as duly authorized federal, state or local authorities. Contractor will require Contractor Agents to provide comparable accommodations. Upon request, Contractor will provide copies of records, books, and documents free of charge to HHSC and any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including those the entities described in the VUTC.

The access and accommodations set forth in this section will also be provided for Software and equipment used in the performance of the Work. Contractor will provide reasonable assistance that this section requires to auditors and/or inspectors to complete any audits or inspections related to the Work.

Contractor will include this section concerning the right of access to, and examination of, sites and

information related to this Contract in any Subcontract it awards.

7.03 Response to Audits or Inspection Findings

Contractor will take all action to ensure it, or a Contractor Agent, complies with any finding of noncompliance relating to the Work or any other deficiency contained in any audit, review, or inspection conducted under the Contract. Contractor will bear the expense of compliance with any finding of noncompliance under the Contract 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 Work; or
- (3) Necessary due to Contractor's noncompliance with any law, regulation, rule or audit requirement imposed on Contractor.

ARTICLE VIII. PAYMENT

8.01 Duty to Make Payment

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any such dispute, Contractor will continue to perform the Work in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

ARTICLE IX. CONFIDENTIALITY

9.01 Requests for Public Information

HHSC will, as permitted by law and as practicable considering HHSC's resources, notify Contractor of a request for disclosure of public information related to the Contract filed in accordance with the Texas Public Information Act, Texas Government Code Chapter 552 ("PIA"). In the event Contractor believes the requested information should be protected under the PIA, Contractor will comply with PIA requirements pertaining to that information and will provide HHSC with copies of all such documentation required to support its request for nondisclosure. Contractor must make public information not otherwise excepted from disclosure under the PIA available to HHSC at no additional charge to HHSC.

To the extent authorized under the PIA, HHSC will safeguard from disclosure information received from Contractor that Contractor believes to be confidential. Contractor must clearly mark each page of such information as "Contractor Confidential Information" and provide written notice to HHSC that it considers the information confidential in accordance with the PIA. Contractor's designation or marking of information in this manner does not act, and should not be construed, as an agreement or other consent by HHSC that such information is actually confidential pursuant to the PIA.

9.02 Consultant Disclosure

Contractor agrees that any consultant reports received by HHSC in connection with the Contract may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC's website or the website of a standing committee of the Texas Legislature.

9.03 **Other Confidential Information**

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Contractor and all Contractor Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Work or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Other Confidential Information, Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Contractor. Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE VUTC, CONTRACTOR WILL 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 OR CONTRACTOR AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. CONTRACTOR WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

ARTICLE X. DISPUTES AND REMEDIES

10.01 **Agreement of the Parties**

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every reasonable effort to resolve

the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the VUTC and Texas Government Code §2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.

10.02 Operational Remedies

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the Work as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

- 1) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- 2) Require additional or different corrective action(s) of HHSC's choice;
- 3) Suspension of all or part of the Contract or Work;
- 4) Prohibit Contractor from incurring additional obligations under the Contract;
- 5) Issue stop Work Orders;
- 6) Assessment of liquidated damages as provided in the Contract;
- 7) Accelerated or additional monitoring;
- 8) Withholding of payments; and
- 9) Additional and more detailed programmatic and financial reporting.

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

10.03 Equitable Remedies

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

10.04 Continuing Duty to Perform

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension

of performance, in whole or in part, by Contractor of the Work or any duty or obligation with respect to the Contract.

ARTICLE XI. DAMAGES

11.01 Availability and Assessment

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the Work or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- 1) Through direct assessment and demand for payment to Contractor; or
- 2) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

11.02 Specific Items of Liability

Contractor bears all risk of loss or damage due to defects in the Work, unfitness or obsolescence of the Work, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the Work, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor Agents' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor Agents, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE VUTC, CONTRACTOR WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY CONTRACTOR TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.

ARTICLE XII. TURNOVER

12.01 Turnover Plan

HHSC may require Contractor to develop a Turnover Plan at any time during the term of the Contract in HHSC's sole discretion. Contractor must submit the Turnover Plan to HHSC for review and approval. The Turnover Plan must describe Contractor's policies and procedures that will ensure:

- 1) The least disruption in the delivery of the Work during Turnover to HHSC or its designee; and
- 2) Full cooperation with HHSC or its designee in transferring the Work and the obligations of the Contract.

12.02 Turnover Assistance

Contractor will provide any assistance and actions reasonably necessary to enable HHSC or its designee to effectively close out the Contract and transfer the Work and the obligations of the Contract to another vendor or to perform the Work by itself. Contractor agrees that this obligation survives the termination, regardless of whether for cause or convenience, or the expiration of the Contract and remains in effect until completed to the satisfaction of HHSC.

ARTICLE XIII. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS

13.01 HHSC Additional 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 Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Contractor in the performance of the Work. If applicable, Contractor will reproduce and include HHSC's copyright, proprietary notice, or any product identifications provided by Contractor.

13.02 Third Party Software

Contractor grants HHSC a non-exclusive, perpetual, license for HHSC to use Third Party Software and its associated documentation for its internal business purposes. HHSC will be entitled to use 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 expense.

Terms in any licenses for Third Party Software will be consistent with the requirements of this section. Prior to utilizing any Third Party Software product not identified in the Solicitation Response, Contractor will provide HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to, in its discretion, object to the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Contract. Contractor will assign to HHSC all licenses for the Third Party Software as necessary to carry out the intent of this section.

Contractor will, during the Contract, maintain any and all Third Party Software 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 notified by HHSC that any such version would prevent HHSC from using any functions, in whole or in part, of HHSC systems or

would cause deficiencies in HHSC systems.

13.03 Software and Ownership Rights

HHSC acknowledges and agrees that, as between Panoramic Software and HHSC, title and full ownership of all rights in and to the System and all other materials provided to HHSC hereunder shall remain with Panoramic Software Inc. HHSC further acknowledges and agrees that the System, and all ideas and expressions contained therein, are proprietary information and trade secrets of Panoramic Software Inc. Contractor acknowledges and agrees that all data remains the sole property of HHSC.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

14.01 Ability to Perform

In conjunction with the Permitting and Licensure requirements contained in the VUTC, Contractor must remain in good standing with all regulatory agencies throughout the term of the Contract. Failure to remain in good standing with all regulatory agencies constitutes a material breach of Contract. Contractor must maintain the financial resources to fund the capital expenditures required under the Contract without advances by HHSC or assignment of any payments by the HHSC to a financing source.

14.02 Continuing Duty to Disclose

Contractor acknowledges its continuing obligation to comply with the requirements of any affirmation or certification contained in the Contract, and will immediately notify HHSC of any changes in circumstances affecting those certifications.

14.03 Conflicts of Interest

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Contractor agrees that, if after Contractor's execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully 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.

If HHSC determines that Contractor was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

14.04 Flow Down Provisions

Contractor must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

14.05 Recruitment Prohibition

Contractor will not retain, without HHSC written consent, any person or entity utilized by HHSC in the development of the Solicitation or who participated in the selection of the Contractor for the Contract. Contractor will not recruit or employ any HHSC personnel who have worked on projects relating to the subject matter of the Contract, or who have had any influence on decisions affecting the subject matter of the Contract, for two (2) years following the completion of the Contract.

14.06 Manufacturer's Warranties

Contractor assigns to HHSC all of the manufacturers' warranties and indemnities relating to the Work, including without limitation, Third Party Software, to the extent Contractor is permitted by the manufacturers to make such assignments to HHSC.

14.07 Cooperation with HHSC Designees

Contractor will cooperate with and work with State and federal agencies, other State contractors, subcontractors and third-party representatives as required by the Work or requested by HHSC. Contractor personnel will cooperate at no charge to HHSC for purposes relating to the Work. This cooperation specifically includes, but is not limited to:

- (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 Contract or other delivery of information requested by the HHSC or other agencies' investigators or legal staff.

14.08 Notice of Litigation or Contract Action

Contractor will notify HHSC of any litigation or legal matter related to or affecting the Contract within seven calendar days of becoming aware of the litigation or legal matter. Contractor will also notify HHSC if Contractor has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within seven calendar days of such event. The notification required under this section will contain information sufficient for HHSC to independently confirm the action and to take appropriate actions.

ARTICLE XV. UNIFORM ICT ACCESSIBILITY CLAUSE

15.01 Applicability.

This section applies if the contract requires the CONTRACTOR to procure or develop Information and Communication Technology (ICT) for HHSC, or to change any of HHSC's ICT. This section also applies if the contract requires the CONTRACTOR to perform a service or supply goods that include ICT that: (i) HHSC employees are required or permitted to access; or (ii) members of the public are required or

permitted to access.

This section does not apply to incidental uses of ICT in the performance of a contract, unless the parties agree that the ICT will become property of the state or will be used by the HHS agency's Client/Recipient after completion of the contract.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.

15.02 Accessibility Definitions

The legacy term "Electronic and Information Resources" (EIR) and the term "Information and Communication Technology" (ICT) are considered equivalent in meaning for the purpose of applicability of HHS uniform terms and conditions, policies, accessibility checklists, style guides, contract specifications, and other contract management documents.

- a **"Accessibility Standards"** refers to the Information and Communication Technology Accessibility Standards and the Web Accessibility Standards/Specifications under the Web Content Accessibility Guidelines version 2.0 Level AA, (WCAG 2.0).
- b **"Information and Communication Technology (ICT)"** is any information technology, equipment, or interconnected system or subsystem of equipment for which the principal function is the creation, conversion, duplication, automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. Examples of ICT are electronic content, telecommunications products, computers and ancillary equipment, software, information kiosks and transaction machines, videos, IT services, and multifunction office machines which copy, scan, and fax documents.
- c **"Information and Communication Technology Accessibility Standards"** refers to the accessibility standards for information and communication technology contained in the Web Content Accessibility Guidelines version 2.0 Level AA.
- d **"Web Accessibility Standards/Specifications"** refers to the web standards contained in WCAG 2.0 Level AA.
- e **"Products"** means information resources technologies that are, or are related to, ICT.
- f **"Service"** means the act of delivering information or performing a task for employees, clients, or members of the public through a method of access or delivery that uses ICT.

15.03 Accessibility Requirements

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

15.04 Evaluation, Testing and Monitoring

- a HHSC may review, test, evaluate and monitor CONTRACTOR's Products, Services and associated documentation and technical support for compliance with the Accessibility Standards.

Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

- b Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or Service, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR'S assertion of compliance with the Accessibility Standards.
- c CONTRACTOR agrees to cooperate fully and provide HHSC and its representatives timely access to Products, Services, documentation, and other items and information needed to conduct such review, evaluation, testing and monitoring.

15.05 Representations and Warranties

- a CONTRACTOR represents and warrants that: (i) as of the effective date of the contract, the Products, Services and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless [HHS AGENCY and/or Client/Recipient, as applicable] uses the Products in a manner that renders it noncompliant.
- b In the event CONTRACTOR should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, repair, replacement, and upgrading of the Product, or providing a suitable substitute.
- c CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this contract.

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

15.06 Remedies

1. Pursuant to Texas Government Code Sec. 2054.465, neither CONTRACTOR nor any other person has cause of action against HHSC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which HHSC may be entitled. This remedy is cumulative of any and all other remedies to which HHSC may be entitled under this contract and other applicable law.

In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which HHSC may be entitled.

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EXHIBIT B



TEXAS
Health and Human Services

**Health and Human Services Commission HHSC Uniform
Terms and Conditions - Vendor Version 2.14**

Published and Effective March 1, 2017 Responsible Office:
Chief Counsel

ARTICLE I. DEFINITIONS AND INTERPRETATIONS

1.01 Definitions

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by the HHSC, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

“Deliverable” means a work product prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the HHSC or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles. “GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the HHSC and Contractor, collectively. “Party” means either the HHSC or Contractor, individually.

“Project” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

“Scope of Work” means the description of Services and Deliverables specified in the Contract as may be amended.

“Services” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation” means the document issued by the HHSC under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“Solicitation Response” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas *Textravel*” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontract” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“Subcontractor” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the HHSC to the Contractor.

“Work” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

1.02 **Interpretive Provisions**

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the HHSC or by the HHSC by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

ARTICLE II. CONSIDERATION

2.01 **Prompt Payment**

The HHSC will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

2.02 **Expenses**

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the HHSC. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas Textravel.

2.03 **Work Orders**

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the HHSC will request that Contractor submit a proposal, including pricing and a project plan, to HHSC.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the HHSC will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the HHSC makes no guarantee of volume or usage under this Contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.01 **Funding**

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the HHSC may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the HHSC, if sufficient and adequate funds are not available. Contractor will have no right of action against the HHSC if the HHSC cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the HHSC will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

3.02 **No Debt Against The State**

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.03 **Debt To State**

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the HHSC's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

3.04 **Recapture Of Funds**

The HHSC may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. Overpayments as used in this Section include payments (i) made by the HHSC that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the HHSC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

4.01 **Warranty**

Contractor warrants that all Work under this Contract will be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and will be fit for ordinary use, of good quality, and with no material defects. If Contractor fails to complete Work timely or to perform satisfactorily under conditions required by this Contract, the HHSC may require Contractor, at its sole expense, to:

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

4.02 **General Affirmations**

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

4.03 **Federal Assurances**

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

4.04 **Federal Certifications**

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition,**

Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.

ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY

5.01 Ownership

The HHSC will own, and Contractor hereby assigns to the HHSC, all right, title, and interest in all Work.

5.02 Intellectual Property

Contractor is providing to HHSC a license to access and use a Software as a Service (SaaS) solution for HHSC's Guardianship Online Database (GOLD). As between the Parties, title and all rights to the SaaS solution and those materials provided to HHSC in connection with its use are and will remain the sole property of the Contractor. However, Contractor's Intellectual Property rights do not extend to the data used, stored or transmitted to or from HHSC, all such data being the sole property of HHSC. Unless a successor contract is signed among the same parties, upon the expiration or termination of this Contract, all data shall be returned to HHSC at no cost to HHSC and Contractor shall certify in writing to HHSC that all HHSC data has been wiped from Contractor's SaaS system.

ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE

6.01 Books and Records

Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the HHSC, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

6.02 Access To Records, Books, And Documents

In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the HHSC or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in

this section include: the HHSC, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the HHSC or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The HHSC and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

6.03 Response/Compliance With Audit Or Inspections Findings

- a. Contractor must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the HHSC.
- b. 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 Contract.

6.04 SAO Audit

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. 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.

6.05 Confidentiality

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

6.06 Public Information Act

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all

information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

7.01 Contract Management

To ensure full performance of the Contract and compliance with applicable law, the HHSC may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

7.02 Termination For Convenience

The HHSC may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the 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.

7.03 Termination For Cause

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

a. Material Breach

The HHSC will have the right to terminate the Contract in whole or in part if the HHSC determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

b. Failure to Maintain Financial Viability

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

7.04 Contractor Responsibility For Associated Costs

If the System Agency terminates the Contract for cause, the Contractor will provide support to the

HHSC for a period of time not to exceed six months to allow for the State of Texas to replace the Contractor. Further, if HHSC terminates the Contract for Cause, the Contractor will be responsible to HHSC for all costs incurred by the HHSC and the State of Texas 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 Work in accordance with the terms of the Contract.

7.05 Equitable Settlement

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.01 Amendment

The Contract may only be amended by an Amendment executed by both Parties.

8.02 Insurance

Unless otherwise specified in this Contract, Contractor will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the HHSC. Contractor will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the HHSC the nature and extent of coverage granted by each such policy, upon request by the HHSC. In the event that any policy is determined by the HHSC to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as the HHSC may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

8.03 Delegation of Authority

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the HHSC will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the HHSC is limited to the terms of the Contract. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of HHSC program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the HHSC regarding the HHSC programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the HHSC in communications and negotiations regarding the Work under the Contract with state and federal governments.

8.04 Legal Obligations

Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

8.05 E-Verify

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

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

8.06 Permitting And Licensure

At Contractor's sole expense, Contractor will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

8.07 Indemnity

TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE HHSC AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- **CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT**

ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR

- **ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT;**

OR

- **EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR**
- **WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE HHSC AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE HHSC FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE HHSC OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

8.08 Assignments

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the HHSC, which may be withheld or granted at the sole discretion of the HHSC. Except where otherwise agreed in writing by the HHSC, assignment will not release Contractor from its obligations under the Contract.

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

8.09 Subcontracts

Contractor will be responsible to the HHSC for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the HHSC of any Subcontractor receiving compensation of One hundred thousand dollars (\$100,000.00) or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The HHSC reserves the right to:

- a. **Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant**

- barriers for the HHSC to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
 - c. Object to the subcontracting of the Work proposed to be subcontracted.

8.10 **HUB/Mentor Protégé**

In accordance with State law, it is the HHSC's policy to assist HUBs whenever possible in providing goods and services to the HHSC. The HHSC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the HHSC. In addition to information required by this Contract, the contracting Party will provide the procurement department of the HHSC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The HHSC encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

8.11 **Relationship Of The Parties**

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the HHSC any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the HHSC will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

8.12 **Technical Guidance Letters**

In the sole discretion of the HHSC, and in conformance with federal and state law, the HHSC may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the HHSC will be incorporated into the Contract by reference herein for all purposes when it is issued.

8.13 **Governing Law And Venue**

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the HHSC. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

8.14 Severability

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

8.15 Survivability

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

8.16 Force Majeure

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

8.17 Dispute Resolution

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

8.18 No Waiver Of Provisions

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

8.19 **Publicity**

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the HHSC, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the HHSC's prior review and approval, which the HHSC may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the HHSC and any Federal agency, as appropriate.

8.20 **Prohibition On Non-compete Restrictions**

Contractor will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

8.21 **No Waiver Of Sovereign Immunity**

Nothing in the Contract will be construed as a waiver of sovereign immunity by the HHSC.

8.22 **Entire Contract And Modification**

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the HHSC.

8.23 **Counterparts**

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

8.24 **Proper Authority**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor with respect to compensation.

8.25 **Civil Rights**

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
 - (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 and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
- (7) The 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 these 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 service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- a. 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. 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 take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- b. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- c. Contractor agrees to comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- d. Upon request, Contractor will provide HHSC Civil Rights Office with copies 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. This notice must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail
Code W206 Austin,
Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313

TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

8.26 Enterprise Information Management Standards

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

8.27 Notice Of Legal Matter Or Litigation

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

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EXHIBIT C

STATEMENT OF WORK (SOW)

The intent of this Statement of Work is to ensure the continued access, stability and security of the information related to the individuals served by the program and to accommodate the growth, both real and projected of the guardianship program. Further, the system must continue interfacing with the data system provided by the Department of Family and Protective Services (DFPS) to receive and process referrals.

The Contractor shall: (1) continue to furnish and maintain servers and equipment in secure HIPAA compliant environment; (2) furnish services to update and modify the system as needed by HHSC in accordance with all the requirements stated herein; (3) maintain secure backups of data and information; (4) maintain a disaster recovery program; and (5) furnish a reporting system.

1. The scope of services the Contractor shall provide as part of this SOW includes on-going support and system maintenance of the existing Guardianship Online Database (GOLD) system as outlined below:
 - Support and maintain a relational database customized to meet the requirements of the state of Texas and the current system as designed, developed and maintained by Panoramic Software.
 - Update system equipment and software to ensure continuous compliance with Health Insurance Portability and Accountability Act (HIPAA) requirements and Federal Information Security Management Act (FISMA) covered information.
 - The proposed system must meet and maintain compliance with standards established by HHSC requiring protection of sensitive data and information.
 - Maintain system as defined by the state of Texas requirements which are subject to change;
 - Maintain active interface between GOLD and the DFPS IMPACT system to process referrals.

Limitations. Contractor may not subcontract any software maintenance and development. All such work must be performed exclusively by Contractor in the United States of America. No HHSC data may be stored, transmitted or otherwise utilized outside the United States.

2. The following are the project Deliverables including, but not limited to possible documents, code, executables, reports, etc. which would be exchanged between HHSC and CONTRACTOR:

CONTRACTOR RESPONSIBILITY:

Telephone and email technical support to users, including:

Delivery Mode: Phone and email

Delivery Due Date: 09/01/2017 and thereafter for the term of the contract.

Description: Provide this continuously through life of program from 7:30 a.m. to 7:00 p.m. Central Standard Time (CST) on weekdays and provide emergency

services on weekends and holidays. Ensure personnel are available to support GOLD in a timely manner should the system "go down" unexpectedly outside of these hours.

Disaster Recovery and Business Continuity Plan

Delivery Mode: Email

Delivery Due Date: 10/15/2017

Description: Revise and submit annually on each anniversary of 10/15/17 during the term of the contract.

Technical Information Description of System

Delivery Mode: Email

Delivery Due Date: 10/15/2017

Description: Semi-Annually 10/15 and 4/15 of each year; updated within 45 days of significant contract additions as determined by HHSC.

System Uptime Report

Delivery Mode: Email

Delivery Due Date: 11/15/2017

Description: Quarterly per fiscal year. 12/15, 3/15, 6/15, and 9/15. The 9/15 report must be both a quarterly report and a cumulative report for the previous fiscal year.

Preventative Maintenance Plan with 99.99% uptime excluding identified exceptions to the Service Level Defaults.

Delivery Mode: Email

Delivery Due Date: 10/15/2017

Description: Annually after 10/15/17.

Management Plans including: Project management processes, change processes, maintenance plans and processes, crisis management plans, and system development plans

Delivery: Email

Delivery Due Date: 10/15/17

Description: Annually after 10/15/17.

3. Project Dependencies

The following items are critical and the successful initiation, operation and completion of this project depend on them.

- a. Item of Dependency: Data and Information HHSC
 1. Responsibility: HHSC - Office of Guardianship Services (OGS)

2. Comments: HHSC through the OGS owns and furnishes all data, documents, and photos to be included in the system.
- b. Item of Dependency: Database System
 1. Contractor Responsibility: Panoramic Software is the owner of the SaaS system. Contractor will be responsible for security, maintenance, management and development consistent either with its ownership of the SaaS database or possession of any and all licenses permitting it to secure, maintain, manage and develop the SaaS database.
 2. Ownership of data: All data in the GOLD database within the SaaS is owned exclusively by HHSC. No HHSC data in the GOLD database may ever be compiled with other data, distributed, re-packaged, sold, licensed or otherwise disposed of by Contractor during or after the term of this contract.
4. Warranties
 - a. The CONTRACTOR shall, at no expense to HHSC correct any defects or other failures to fulfill any representations, warranties and/or covenants expressed in the Warranty Item List, below. .
 - b. Warranty Item List:
 - Software (code changes, new code, jobs)
 - Infrastructure setup provided by the Contractor
 - Software tools provided by the Contractor.
 - Management Plans
5. Service Levels
 - a. Applicable Service Levels are set for in Exhibit A hereto and incorporated herein by reference. Service Levels will be tracked and reported from the Effective Date of a SOW.
 1. Contractor shall implement, in a form reasonably acceptable to HHSC, a project tracking process that shall track, by SOW, Project and Deliverable the status of all Services being performed by Contractor or any of its subcontractors.
 2. Contractor shall provide a semi-annual Performance Report that describes Contractor's compliance with each Service Level. Contractor shall provide as part of the semi-annual Performance Report, no later than March 20 and September 20 (for previous six-month period) of each year, and at no additional charge, soft and hard copy reports on Contractor's compliance with the Service Levels. Detailed supporting information for each report will be provided to HHSC in a form proposed by Contractor and approved by HHSC. If requested, Contractor will furnish reports containing the same information within 14 business days of the request.
 3. A failure by Contractor to provide a semi-annual Performance Report of sufficient accuracy for HHSC to reasonably determine whether Contractor has met or failed to meet a Service Level under this SOW in the immediately preceding semi-annual period will be deemed a Service Level Default with respect to such Service Level

for such month, provided that Contractor shall have seven (7) calendar days to cure such failure following notice from HHSC.

4. The raw data and detailed supporting data produced or derived from measurement of the Services shall be HHSC Data, and may be accessed by HHSC on-line, where feasible, at any time during the Term.

b. Liquidated damages

Should any of the events on Attachment A to this SOW occur during the term of the Contract, HHSC may assess liquidated damages against the Contractor in the amounts specified in Exhibit A. HHSC will notify the awarded Contractor in writing for any default specified herein, and the awarded Contractor will pay such liquidated damages within thirty (30) days of the HHSC notice. HHSC will have the right to deduct the amount of any liquidated damages assessed by DADS against the awarded Contractor from amounts otherwise payable to the awarded Contractor under the Contract. The Parties agree that any liquidated damages to be assessed in accordance with Attachment A to this SOW are a reasonable estimate of HHSC'S actual damages, which are uncertain in amount and difficult of proof, and are not assessed as a penalty. The aggregate amount of liquidated damages per month is equal to one month fixed fee payment.

6. Service Level Defaults

A "Service Level Default" will be deemed to occur whenever Contractor fails to meet a Service Level under any SOW. Contractor shall not be responsible for its failure to meet a Service Level that would have been met but for an event beyond the Contractor's control if, but only to the extent: (i) Contractor has identified such event and the applicable exclusions in the quarterly and annual reports; and (ii) the failure to meet the Service Level was due to any one (1) or more of the following:

- a) Failure of Equipment is caused, directly or indirectly, without fault by Contractor, by an event beyond the reasonable control of Contractor, and such event could not have been prevented by reasonable precautions and cannot reasonably be circumvented by Contractor through the use of alternate sources, work-around plans or other means (including compliance with Contractor's obligations with respect to the provision of any disaster recovery services as set forth in any SOW).
- b) Outages during Scheduled Maintenance Windows approved by HHSC.
- c) Failure of Contractor or its contractor, Amazon Web Services, to perform or provide any relevant assistance, data or information specifically required of HHSC under the terms of the relevant SOW or reasonably requested by Contractor.

7. Transition

If, as a result of this Solicitation, a new contractor is selected, there shall be a transition period not to exceed 6 months. During that period the Contractor shall meet and cooperate with the existing Contractor to smoothly transition the software from the old to any new platform. During that period, Contractor shall maintain the level of service for each Service specified in this SOW at a level no less advantageous to HHSC than the level achieved by

HHSC under its current contract prior to the Effective Date of this contract. Contractor will measure and report its performance during any transition period against each applicable Service Level. A failure to meet a Service Level during a transition period shall be a breach of this Agreement and shall generate a Service Level Credit.

8. Project Governance and Escalation Framework

This project is managed by the OGS program contract management staff.

9. Fees

CONTRACTOR shall invoice HHSC for a monthly fixed fee of \$10,000 for service and access to the system for up to 300 users to be invoiced as follows:

1. FY 2018 (9/1/2017 – 8/31/2018); Invoice due to HHSC within 5 business days following the end of the month.
2. FY2019 (9/1/2018 – 8/31/2019); Invoice due to HHSC within 5 business days following the end of the month.
3. FY2020 (9/1/2019 – 8/31/2020); Invoice due to HHSC within 5 business days following the end of the month.
4. FY2021 (9/1/2020 – 8/31/2021); Invoice due to HHSC within 5 business days following the end of the month.
5. FY2022 (9/1/2021 – 8/31/2022); Invoice due to HHSC within 5 business days following the end of the month.

10. Maintenance Services and Modification to System

PANOSOFT will provide maintenance services at no additional charge, to include (but not be limited to) changes to field names, insertion of fields in or revisions to an existing module, new drop-down choices, new date fields, updating and/or loading forms, providing custom reports, updating reports, responding to needs for data, and similar actions taken to the database. Maintenance does not include development of complete new modules.

HHSC requires the completion of a contract amendment before any programming or services resulting in billable costs, in addition to the monthly fee, may occur. If HHSC and Contractor agree on an amendment for the project, it will be subject to the current hourly programming rate for hours in excess of the first 100 hours of programming. For any given request, PANOSOFT will provide an estimate of the total cost for the project including the estimated programming hours. In no case will HHSC be billed for charges in excess of the amount agreed upon in the Contract amendment. PANOSOFT may require HHSC authorization in writing or a HHSC Purchase Order before service which will result in billable costs is performed. Maintenance Services include, but is not limited to, the following:

1. Additional Training. Additional software training is available at HHSC sites subject to an amended contract agreement.
2. Data and Systems Corrections. Data and Systems corrections include any corrective actions accomplished by PANOSOFT staff on-site or by Internet access or via internet access which are necessary due to HHSC error(s) such as removing

an extra referral, making corrections to records, adding fields or date, or similar, or unauthorized data access by HHSC. Unauthorized data access by HHSC is defined as any HHSC editing or entering of data other than through normal system usage as described in the user documentation. Contractor may not charge HHSC any billable costs other than the monthly fee unless Contractor and HHSC first amend the contract.

3. HHSC Site Visits. Visits to HHSC sites requested by HHSC for reasons such as, but not limited to additional system training, system usage, and/or resolution of system difficulties not resulting from actions by or otherwise the responsibility of, PANOSOFT (as determined by mutual agreement between PANOSOFT and HHSC). Expenses will be reimbursed to the extent of the travel expenses occurred using state approved travel amounts.
4. Custom Software Modules. Software Modules are developed to address HHSC-specific areas of information management not currently or significantly addressed by PG-Pro Web. Modules will be available to HHSC upon completion of the project under separate contractual agreement with PANOSOFT.HHSC.
5. Custom Programming. Requests for supplemental programming or customization of system features will be available to HHSC. Such requests will be reviewed by PANOSOFT. If PANOSOFT and HHSC agree on an estimate for the project, it will be subject to the current hourly programming rate for hours in excess of the first 100 hours of programming per project. For any given request, PANOSOFT will provide an estimate of the total cost for the project including the estimated programming hours. In no case will HHSC be billed for charges in excess of the approved estimate or the amount agreed upon in the Contract amendment.
6. Modifications to the system requiring more than 100 hours of programming are at the rate of \$ 175.00 per hour for each hour exceeding 100 hours. Projects will be negotiated individually and become an amendment to the SOW or the contract.
7. Additional Costs. No additional costs shall be charged by Contractor for uploading of statements, legal documents, photographs or other items.

Contractor may not charge HHSC any costs, other than the monthly fee, unless the Parties have first executed an amendment authorizing the work and establishing the costs to be paid by HHSC.

11. Invoices

CONTRACTOR shall submit invoices for SERVICES to the attention of:

Heather Pasch at
Heather.Pasch@hhsc.state.tx.us and

Larry Weisel at
Larry.Weisel@hhsc.state.tx.us

CONTRACTOR shall invoice HHSC no later than the 5th of the month for the previous month's access as described in the SOW. CONTRACTOR'S invoice shall include: a description of SERVICES and DELIVERABLES; all fee(s), costs, expenses and other

charges claimed with respect to such SERVICES and DELIVERABLES; and the SOW number.

12. Reimbursable Expenses

CONTRACTOR shall not be reimbursed for any expenses not submitted to and approved by HHSC before they are incurred in connection with the performance of SERVICES.

13. Project Management

In the event of a change in the Project Manager, the party making the change shall notify the other in writing. HHSC shall have the right to approve any replacement of Contractor's Project Manager.

14. Meetings

HHSC's Project Manager and CONTRACTOR'S Project Manager shall meet as often as required to discuss accomplishments, plans for future work, new requirements, milestone dates, problem resolution and such other topics as are appropriate for good project management. Meetings may be accomplished by conference call or other form of electronic communication.

15. Changes to the Project.

During the performance of SERVICES, changes to the Project may be required or requested by HHSC. The HHSC Project Manager shall issue a signed Project Memo to CONTRACTOR detailing the changes contemplated. CONTRACTOR shall determine how the changes contemplated will impact the continuous availability of the GOLD system, CONTRACTOR'S estimate of the cost of providing SERVICES if passed on to HHSC, and the estimated fees to be paid to CONTRACTOR. Following receipt of this analysis, HHSC may elect to proceed with the Project or further negotiate CONTRACTOR'S costs and fees and the milestone dates.

CONTRACTOR and HHSC will institute formal processes to accommodate potential changes during the term of this contract. The function of these processes is to ensure that, as the technical support environment and/or service level requirements change during the contract period, the appropriate support infrastructure and contractual elements exist to accommodate these changes.

In order to address this need for changes in scope throughout the contract life, CONTRACTOR must have a defined mechanism for amending the current service levels (if affected), or any other aspects of the SOW, as defined under this contract, through the Change of Scope Process below:

Step 1

Description: The HHSC Project Manager or Information Systems Lead shall furnish a description of needed changes or additions in a proposed SOW or in an email.

Step 2

Description: The Contractor and involved HHSC personnel shall participate in a conference call to discuss the feasibility of the changes or additions, testing requirements, if any the time frame needed and any potential costs. The outcome of this conference call shall be documented in Contractor's change order system.

Step 3

If an agreement is reached regarding the scope of the changes or additions, the time frame for their completion and testing, and the costs, if any, to be incurred by HHSC, Contractor and HHSC shall execute a contract amendment.

Step 4

Contractor and HHSC shall cooperate to review all pertinent information and web based test site.

Step 5

Contractor and HHSC shall cooperate to complete any required testing. Upon acceptance of the changes by HHSC, the changes or additions will be deployed by the Contractor

16. Status Reports

Upon the request of HHSC, CONTRACTOR shall submit a written status report to the HHSC project manager detailing the status of CONTRACTOR'S performance in connection with this SOW or any additional SOW to which the parties hereafter agree. The status report shall enumerate any problems that may adversely affect the progress of the work to be performed in connection with this SOW and shall contain such additional information as HHSC may require.

17. Project Book

CONTRACTOR shall maintain a Project Book which shall contain:

1. The names, titles, business addresses and telephone numbers of all CONTRACTOR'S personnel assigned to the Project, including subcontractors and other personnel providing SERVICES and/or DELIVERABLES;
2. A copy of all SOW(s);
3. Copies of status reports;
4. Correspondence or any other documentation pertaining to the Contract regarding issues which are brought to the attention of HHSC, or which are significant enough that a reasonable person familiar with the GOLD system, its operation, maintenance and function would notify HHSC.
5. Copies of all documentation and manuals developed as part of the performance of development and related SERVICES;
6. Any other data pertinent to this SOW. The Project book shall be the property of HHSC and shall be provided to HHSC upon request.

- 7. The Project Book must be accessible by the use of standard Microsoft Office applications (Word, Excel, etc.);_and
- 8. The Project Book must be furnished to the OGS within 14 business days of written request.

18. Risk Evaluation and Mitigation Plan

The CONTRACTOR will create, update and provide to HHSC annually or upon request by HHSC a Risk Evaluation and Mitigation plan, including the risks already identified are given below and any others that may from time to time be identified by Contractor or HHSC.

Risk	Probability & Impact	Mitigation Plans	Contingency Plans
Natural Disaster			
Data/Compromise of System			
Equipment Malfunction			
Loss of Key Personnel			
Other (as identified)			

19. Infrastructure

The following are the infrastructure facilities to be provided at Contractor’s site or off that site.

1. Contractor’s site

Windows compatible computer system; FTP protocol provided for interface with the DFPS.

2. Off-site

All Guardianship On-line Database (GOLD) information and records must be stored and maintained within the boundaries of the continental United States. Technical Support must be provided by individuals located within the continental United States.

ATTACHMENT A**Service Levels and Liquidated Damages**

Aggregate penalties are capped at the monthly fee total for the month in which damages occur.

ID	Implementation Delay Item	Liquidated Damage
		Amount (per day)
1	Denial Report Query	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete.
2	Denial Report Listing	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete
3	System Usage Report	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete
4	Client Information by Type (GOE/GOP, GOP, GOE)	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete
5	Statistical Information of Key Milestone Delinquencies (e.g., Late Annual Reports, Late Inventories, etc.)	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete
6	Summary Report of Fiduciary Information (cumulative and per ward)	Up to \$250 per report, per day or portion thereof a report is late, inaccurate or incomplete

Activity	Monitoring Frequency	Cure Period	Liquidated
			Damage Amount (per day)
Meet 99.5% Uptime requirement	Daily	10 Days	\$500
Meet on-line response time of eight seconds or less	Daily	10 Days	\$500
Provide scheduled downtime for system maintenance which is pre-planned, with no less than 24 hours notice. Scheduled downtime must be on weekend days, National holidays, State of Texas Holidays (not including optional or skeleton holidays) or on business days between the hours of 6:00 p.m. and 6:00 a.m. Central Standard Time (CST), unless approval is granted by DADS.	Daily	N/A	\$500
Correct Fatal Errors, system wide outages and interface problems with desktop access which may impact access to the guardianship IMS. Ensure actions are taken and completed, or a corrective action plan delivered, within four hours of discovery to address problems related to fatal errors, system-wide outages and interface problems affecting the access to the guardianship IMS.	Daily	N/A	\$500 per instance, plus an additional \$100 for each 30-minute increment beyond the initial infraction.
Provide Ad Hoc Reports on use of the guardianship IMS. The Ad Hoc Report provides information on the use of the guardianship IMS system and includes system usage and user details. Reports will be run by state office program management and/or personnel in regional offices. Information will be broken available in aggregate form, by regional offices, or by users. These reports are to be available within 3 minutes following system submitted request.	Daily	N/A	\$500 per instance