

**SIGNATURE DOCUMENT FOR
HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000001500030**

I. PURPOSE

The **TEXAS HEALTH AND HUMAN SERVICES COMMISSION** ("System Agency"), an administrative agency within the executive department of the State of Texas and having its principal office at Austin, TX, and **MEDMARK TREATMENT CENTER OF TEXAS, INC.** ("Contractor"), having its principal office at Lewisville, TX (each a "Party" and collectively "the Parties") enter into the following contract for Opioid Treatment Service (OTS-V) (the "Contract").

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of Texas Health and Safety Code Chapters 12 and 1001; Texas Government Code Chapter 531, Subchapter D, to the extent applicable.

III. STATEMENT OF SERVICES TO BE PROVIDED

Contractor shall perform or cause to be performed Adult Opioid Treatment Services in accordance with the Statement of Work and Program Services and Unit Rates, attached hereto and incorporated herein as **Attachments A and B**, respectively.

IV. DURATION

The Contract is effective on May 1, 2019 and terminates on August 31, 2020, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract.

V. BUDGET

The total amount of this Contract will not exceed **ONE HUNDRED FIFTY-TWO THOUSAND, FOUR HUNDRED SIXTY DOLLARS (\$152,460.00)**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, PROGRAM SERVICES AND UNIT RATES**.

VI. CONTRACT REPRESENTATIVES

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

System Agency
Health and Human Services Commission

909 W. 45th Street
Austin, TX 78751
[Attention:](#) Frederick DeLoach

Contractor

MedMark Treatment Centers of Texas, Inc.
401 E. Corporate Drive
Lewisville, TX 75057
Attention: Daniel Guschenritter

VII. LEGAL NOTICES

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency 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:

System Agency

Health and Human Services Commission
909 W. 45th Street
Austin, TX 78751
[Attention:](#) Frederick DeLoach

Contractor

MedMark Treatment Centers of Texas, Inc.
401 E. Corporate Drive
Lewisville, TX 75057
Attention: Daniel Guschenritter

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

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000001500030

HEALTH AND HUMAN SERVICES COMMISSION

MEDMARK TREATMENT CENTERS OF TEXAS, INC.

DocuSigned by:
Trina Ita
97DC84070502414...

DocuSigned by:
Daniel Gutschenritter
F5D67A913587424...

Name: Trina Ita
Title: Associate Commissioner
Date of execution: May 3, 2019

Name: Daniel Gutschenritter
Title: CFO
Date of execution: May 3, 2019

THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS000001500030 ARE HEREBY ATTACHED AND INCORPORATED BY REFERENCE:

- ATTACHMENT A -- STATEMENT OF WORK**
- ATTACHMENT A-1 -- STATEMENT OF WORK SUPPLEMENTAL**
- ATTACHMENT B -- BUDGET**
- ATTACHMENT C -- UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D -- GENERAL AFFIRMATIONS**
- ATTACHMENT E -- SPECIAL CONDITIONS**
- ATTACHMENT F -- DATA USE AGREEMENT**
- ATTACHMENT G -- NON-EXCLUSIVE LIST OF APPLICABLE LAWS**
- ATTACHMENT H -- GUIDELINES NALTREXONE OPIOID TREATMENT SERVICES**

ATTACHMENTS FOLLOW

ATTACHMENT A STATEMENT OF WORK

I. PURPOSE

To provide opioid treatment services (OTS) to adults to alleviate the adverse physiological effects of withdrawal from the use of opioids as required to meet the individualized needs of the client. Contractor will expend funds to administer and dispense medications for the treatment of moderate or severe opioid use disorder along with providing counseling and behavioral therapy. Funds will also be utilized to expand and integrate communicable disease testing, immunizations, chronic disease prevention, and address comorbid conditions such as abscesses due to intravenous drug use, Hepatitis C, and/or co-occurring psychiatric disorders within the context of OTS in order to provide clients with an opportunity to improve their health and the quality of their overall lives while also obtaining help for their substance use disorder.

TARGET POPULATION

Adult Texas residents who meet financial criteria for System Agency-funded substance use disorder services and have met the Diagnostic and Statistical Manual of Mental Disorders criteria for a moderate or severe opioid use disorder.

II. CONTRACTOR RESPONSIBILITIES

Contractor will:

- A. Expend funds under the Contract to administer and dispense opioid agonist, partial agonist and antagonist medications approved for the treatment of moderate or severe opioid use disorder in combination with providing counseling and behavioral therapy. Note that antagonist medications will not be used in pregnant women.

- B. Maintain, throughout the term of the Contract, the organization's certification and licensure compliance with applicable statutes, guidelines, and regulations related to opioid treatment services adopted by the System Agency, the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT), and the Drug Enforcement Agency (DEA).

- C. Maintain throughout the term of the Contract, the organization's compliance with applicable rules adopted by the System Agency:
 1. Title 25 of the Texas Administrative Code (TAC)
 - a. Chapter 140, Subchapter I – Counseling Licensure;
 - b. Chapter 229, Subchapter J – Minimum Standards for Narcotic Treatment Programs; and
 - c. Chapter 442 - Investigations and Hearings.
 2. Federal Guidelines for Opioid Treatment Programs, 42 CFR, part 8, Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Final Rule.

3. Contractor will utilize and adhere to the most current Texas Health and Human Services Commission Department of State Health Services (DSHS) / Department of Aging and Disability Services Drug Formulary requirements, which includes the *Reserve Drug Criteria* and *Audit Criteria* also referenced in the *Interim Formulary Updates* and located at <http://dshs.texas.gov/mhprograms/Formulary.shtm>.
 4. Contractor will utilize the Attachment H, "Guidelines for the Use of Extended-Release Injectable Naltrexone."
- D. Ensure that Contractor's staff providing direct OTS maintain their professional license and compliance with the rules adopted by the System Agency as stated in Title 25 of the Texas Administrative Code (TAC), Chapter 140 Health Professions Regulation, Subchapter I. Licensed Chemical Dependency Counselors (LCDCs) throughout the term of the Contract.
- E. Establish a comprehensive resource network made up of community, health, and social service agencies serving or having interest in the target population. Contractor will engage and collaborate with community resources through written agreements defining the collaborative relationships:
1. System Agency-funded treatment, prevention, intervention, mental health, co-occurring psychiatric and substance use disorders (COPSD) providers.
 2. Local Behavioral Health Authorities (LBHAs) and Local Mental Health Authorities (LMHAs) within Contractor's Health & Human Services (HHS) Region and service area including System Agency-funded Outreach, Screening, Assessment, and Referral (OSAR) providers.
 3. Local and regional health departments, local Federally Qualified Health Centers (FQHC's), and other primary care centers.
- F. Coordinate with local OSAR for conducting screening and determining financial eligibility functions prior to service delivery.
- G. Establish Memorandum of Understanding (MOU) with the regional OSAR to provide screening and financial eligibility services. Contractor will maintain copies of the required MOUs and make them available to the System Agency for review upon request. The MOU must include and describe, but is not limited to, the following:
1. Coordinate with the regional OSAR to conduct screening and financial eligibility functions in the System Agency Clinical Management for Behavioral Health Services (CMBHS) system before the potential System Agency-funded client can receive authorization for OTS; and
 2. Ensure the MOU states that client financial eligibility on each System Agency funded client is conducted every 180 days.
- H. Medication-Assisted Treatment (MAT) and Counseling
Provide System Agency licensed Medication-Assisted Treatment that includes individual and group counseling services and behavioral therapies in conjunction with opioid

agonist, partial agonist and antagonist medications to treat adults diagnosed with moderate or severe opioid use disorder.

I. Overdose Prevention and Reversal Education

1. Provide overdose prevention education to clients on the Contractor's waiting list. Contractor will also provide overdose prevention education to all clients prior to discharge, including those that received it prior to admission.
2. General overdose prevention and reversal education will be provided to all clients as a part of treatment education requirements that include education on how to access and administer naloxone. Specific activities will be conducted with clients with opioid use disorders and those clients that use drugs intravenously to include:
 - a. Education on overdose prevention and risk reduction strategies;
 - b. Education about and referral to System Agency-funded HIV Outreach services for clients with IV drug use history;
 - c. Education about and referral to System Agency-funded Pregnant Postpartum Intervention (PPI) services for pregnant clients, postpartum clients, and clients involved with Child Protective Services (CPS);
 - d. Referral to local community resources that work to reduce harm associated with high risk behaviors associated with drug use; and
 - e. For detailed guidance, refer to the SAMHSA's Opioid Overdose Prevention Tool Kit found at: <http://store.samhsa.gov/product/Opioid-Overdose-Prevention-Toolkit/SMA13-4742>.

J. Immediately admit pregnant women, people who inject drugs, and people at high risk for overdose, and individuals referred by the Department of Family and Protective Services (DFPS) presenting for treatment.

- a. If unable to provide immediate admission to these populations, the Contractor must notify System Agency program services staff so that assistance can be provided that ensures referral to an alternate provider for immediate admission (within 72 hours).
- b. Contractor will have policies and procedures that conform with System Agency's definition for wait list and interim services.
- c. The Contractor will report available capacity and waiting list information Monday through Friday through CMBHS and comply with procedures specified by System Agency.

K. Documentation and Testing

1. Document opioid treatment-related activities including MAT and counseling, treatment services, and testing in CMBHS within seven business days of service delivery. This information collected in CMBHS will assist the System Agency in determining the number of clients served, the opioid treatment-related services and activities provided by the Contractor.
2. Ensure that staff providing MAT and/or counseling services maintain privacy and security controls related to client confidential information.
3. Document information from the informed-consent form in an administrative note and

- record clinical documentation into the client's CMBHS record; e.g. diagnostic tests such as the Clinical Institute Withdrawal Assessment or Beck Depression Inventory, physician orders, etc.
4. Provide or arrange for interim services including screening for tuberculosis, hepatitis B and C, sexually transmitted diseases (STDs), and Human Immunodeficiency Virus (HIV), and document in CMBHS.
 5. Provide and document in CMBHS, health screenings, testing, and prevention education. Contractor will use the funds and associated billing codes provided through this Contract to directly provide the services listed in item 6, while only subcontracting laboratory services and hepatitis C virus (HCV) treatment components.
 6. Document, upon admission, on the standard consent to treat form, the client's choice on testing and immunization services and upload the form in CMBHS. Ensure the client is informed of the following testing choices:
 - a. Tuberculosis,
 - b. Hepatitis B,
 - c. Hepatitis C,
 - d. Gonorrhea,
 - e. Chlamydia,
 - f. Human Immunodeficiency Virus (HIV) (Initial and, if necessary Confirmatory), and
 - g. Diabetes (using A1c testing).
 7. Physician may choose to consult with the client on comorbid conditions and provide services upon admission or as indicated for the following:
 - a. First-line wound care therapy which could include wound cleansing, use of systemic or topical antibiotics, use of pressure loading devices, perform compression, and apply dressing;
 - b. Co-occurring psychiatric disorders; and
 - c. HCV treatment.
 8. Document the needs of the client using the CMBHS assessment tool.
 9. Document the treatment plan and include courtesy dosing/temporary transfer, discharge criteria, and discharge plan.
 10. If the discharge plan includes the use of extended-release injectable naltrexone, the medical director or qualified designee will either administer the medication prior to discharge or Contractor will ensure that the client has immediate access to such medication services upon discharge. Additionally, the Contractor will utilize and adhere to:
 - a. The most current Texas Health and Human Services Texas Department of State Health Services (DSHS) / Department of Aging and Disability Services Drug Formulary located at <http://dshs.texas.gov/mhprograms/Formulary.shtm> requirements which includes the *Reserve Drug Criteria* and *Audit Criteria* also referenced in the *Interim Formulary Updates* at <http://dshs.texas.gov/mhprograms/Formulary.shtm>; *and*
 - b. The System Agency "Guidelines For The Use of Extended-Release Injectable Naltrexone."
 11. Ensure that clinical staff providing direct services have the training and expertise in:

- a. Motivational Enhancement Therapy (MET) or Motivational Interviewing (MI) techniques;
 - b. Overdose prevention;
 - c. Certified Methadone Advocate Training;
 - d. Co-Occurring Psychiatric and Substance Use Disorders (COPSD); and
 - e. Trauma, abuse and neglect, violence, Post-Traumatic Stress Disorder (PTSD), and related conditions.
12. If a client is discharged, Contractor must identify a specific physician or authorized healthcare professional, as appropriate, to whom the client is being discharged and will ensure that an appointment has been made with that provider to occur within 72 hours in order to maximize the client's chances for success. The name, address, and telephone number of the provider caring for the client after discharge will be recorded in the patient's record and given to the client in writing.

M. Annual Survey

1. Collect the OTS Annual Survey.
2. Use the System Agency approved client satisfaction OTS annual survey template for collecting information from clients who have received OTS.
3. Have a process and procedure for collecting client satisfaction survey data.
4. Submit results of client surveys in an annual report to the System Agency.

N. Conference Calls

Ensure Contractor's medical director and/or sponsor participate in monthly conference calls as scheduled by the System Agency to address programmatic, documentation, or testing issues.

O. Reporting and CMBHS Requirements

1. Contractor will use the CMBHS components and/or functionality as specified in accordance with System Agency instructions.
2. Contractor will use the updated components and/or functionality as directed by System Agency.

P. Submission Schedule, Reporting, and CMBHS Requirements.

Contractor will:

1. Use the System Agency CMBHS system to document OTS-related activities and services, and testing.
2. Designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all the CMBHS user accounts are current.
3. Establish and maintain a security policy that ensures adequate system security and protection of confidential information.
4. Notify the CMBHS Help-desk within ten (10) business days of any change to the designated Security Administrator or the back-up Security Administrator.
5. Ensure that access to CMBHS is restricted to only authorized users. Contractor will,

within 24 hours, remove access to users who are no longer authorized to have access to secure data.

6. In addition to CMBHS Helpdesk notification, Contractor will submit a signed CMBHS Security Attestation Form and a list of Contractor's employees, contracted labor, and subcontractors authorized to have access to secure data. The CMBHS Security Attestation Form will be submitted electronically biannually as designated by System Agency to the designated Substance Abuse mailbox (SubstanceAbuse.Contracts@hhsc.state.tx.us).
7. Use the CMBHS components and/or functionality specified below, in accordance with System Agency instructions. Contractor will use the updated components and/or functionality as directed by System Agency. Required CMBHS components include:
 - a. Add/Update Staff, (including access control and Credential maintenance)
 - b. Provider Detail
 - c. Location Detail
 - d. Attachments (Financial Eligibility Screen, Progress Note screens, Detox Intake Report screens, Assessment screens)
 - e. Client Profile
 - f. Assessment (Initial, Update, Service End, and Discharge)
 - g. Admission and Discharge
 - h. Service Begin
 - i. Treatment Plan
 - j. Treatment Plan Review
 - k. Discharge Plan
 - l. Discharge Summary
 - m. Discharge Follow-up
 - n. Consent/Revoke Consent
 - o. Referral and Referral Follow-up
 - p. Referral List
 - q. Progress Note
 - r. Psycho-educational Note
 - s. Administrative Note
 - t. Medication Order
 - u. Medication List
 - v. Medication Service
 - w. Provider Census Board
 - x. Wait List
 - y. Daily Capacity Report
 - z. Service End
 - aa. Lab Results (Drug Screen)
 - bb. Contracts
 - cc. Pending Claims
 - dd. Submitted Claims
 - ee. Services Offered
 - ff. Discharge Follow up Reminder List
 - gg. Consent Release Request List

- hh. Assign/Reassign Clinician
- 8. Submit all documents identified in this Contract by the required due date.
- 9. Contractor’s duty to submit documents survives the termination or expiration of this Contract.

III. PERFORMANCE

- A. The System Agency will monitor the Contractor’s performance of the requirements in Attachment A and compliance with the Contract’s terms and conditions.

Opioid Treatment Services	
Number served	Formula
Percent of clients whose length of stay is at least one year	40%
Percent abstinent	65%
Percent with no arrest since admission	85%
Percent of all new clients who received at least one immunization for tetanus or hepatitis A and B	75%
Percent of all new clients who received all health screenings/testing (syphilis, gonorrhea, chlamydia, hepatitis B and C, HIV and TB)	75%
Percent of all new clients who received diabetes screening and individualized BMI information	90%

- B. Contractor will submit all documents identified in the Contract to the designated HHSC Substance Abuse mailbox (SubstanceAbuse.Contracts@hhsc.state.tx.us) by the required due date.

Report Name	Due Date*
CMBHS Security Attestation Form and List of Authorized Users	May 15 th ; November 15 th ; May 15 th
CMBHS Documentation and Testing	Ongoing
Client Satisfaction Survey	Ongoing
Daily Capacity Report	Ongoing
Wait List Entry and Management	Ongoing
OTS Annual Survey Report	August 31
Closeout documents	45 days after Contract end date of each fiscal year

***If the Due Date is on a weekend or holiday, submission is required on the next business day.**

IV. INVOICE AND PAYMENT

- A. Submit monthly claims through CMBHS no later than the 15th of the following month.
- B. Contractor will demonstrate their capacity to bill insurance and Medicaid for those clients with insurance coverage. Funds under the Contract can only be used as payment of last

resort which means that other applicable reimbursement resources such as Medicaid or other third-party payers must be billed first.

- C. Except as indicated by the CMBHS financial eligibility assessment, Contractor will accept reimbursement or payment from the System Agency as payment in full for services or goods provided to System Agency clients, and Contractor will not seek additional reimbursement or payment from System Agency clients for services or goods, to include benefits received from federal, state, or local sources.
- D. Contractor will operate within the funded capacity indicated in this Contract for the duration of the Contract term.
- E. System Agency, at its sole discretion, will adjust the funded capacity of this Contract based on Contractor's performance and/or other criteria determined by the System Agency, and contingent on availability of funds. Treatment Capacity Worksheet can be found on the Substance Abuse website: <http://www.dshs.texas.gov/sa/For-Substance-Abuse-Contractors.aspx>.
- F. Contractor may not apply any unexpended funds associated with a previous State Fiscal Year to expenses incurred in the performance of the requirements of this State Fiscal Year's contract.
- G. Contractor will be paid monthly in accordance with the Program Services and Unit Rates Table in **Attachment B** of this Contract.
- N. Contractor may access the Transactions List report in CMBHS to identify the amount of federal funds allocated to this award for each transaction. The CFDA number is identified in the CMBHS Transactions List report.

**ATTACHMENT A-1
STATEMENT OF WORK SUPPLEMENTAL**

A. CONTRACT INFORMATION

Vendor ID:	12742505329
Contractor Name:	MedMark Treatment Centers of Texas, Inc
Contract Number: (CAPPS)	HHS000001500030
Contract Type	Treatment
Payment Method:	Fee for Service
DUNS Number:	079635748
Federal Award Identification Number (FAIN)	H79TI081729
Solicitation Method:	Health and Human Services Commission; Open Enrollment No. HHS0000015.

B. SERVICE AREA

Services or activities will be provided to participants and/or clients from the following counties:

Angelina, Nacogdoches, Panola, Sabine, Shelby, St. Augustine

System Agency Solicitation No HHS0000015

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C. POPULATION SERVED

Adults – Male and Female

D. CONTACT INFORMATION

Name:	Frederick DeLoach
Email:	Frederick.DeLoach@hhsc.state.tx.us
Telephone:	(512) 206-5023
Address:	909 W 45 th Street, Bldg 552 (MC 2058)
City/Zip:	Austin TX 78751

**ATTACHMENT B
PROGRAM SERVICES AND UNIT RATES**

- A. System Agency-funded capacity is defined as the stated number of clients that will be concurrently served as determined by this Contract.
- B. The Assigned Contract Manager must approve clinic Numbers before billing can occur. The Clinic Change Request form is located at: <http://www.dshs.texas.gov/sa/For-Substance-Abuse-Contractors.pdf>.
- C. Funding from The United States Health and Humans Services (HHS) and the Substance Abuse and Mental Health Services Administration (SAMSHA) fund the HHSC Substance Use Disorder project(s), which includes this contract.
- D. Table of Funding
 - 1. Services provided will not exceed the amounts stated in each Fiscal Year column.
 - 2. Texas Targeted Opioid Response (TTOR) State Opioid Response (SOR) funding shall be expended as follows:

Fund Title	FY2019 thru 8/31/19	FY2020 9/1/19 thru 08/31/2019	Totals
System Agency Share	\$38,115.00	\$114,345.00	\$152,460.00
Contractor Share (Match)	\$0.00	\$0.00	\$0.00
Total Contract Value:	\$38,115.00	\$114,345.00	\$152,460.00

- E. System Agency Share funds are from the TTOR, SOR, Catalog of Federal Domestic Assistance (CFDA), 93.788.
- F. The following Treatment Services and Rates are approved and will be delivered through this Contract.

Service Type/Capacity/Unit Rate Chart is on the following page.

**ATTACHMENT B
PROGRAM SERVICES AND UNIT RATES
FISCAL YEAR 2019**

Service Type	Number Served	*Capacity	Unit Rate**	Amount***
Opioid Treatment Services	16	16		\$33,541.00
Methadone			\$17.00	
Buprenorphine			\$24.00	
Extended-Release Injectable Naltrexone			\$1,208.40	
Naltrexone Support Services			\$183.82	
New Admission Health Screening Services				\$1,906.00
Outpatient visit - Immunization Consent			\$40.27	
Hepatitis B - Testing			\$11.84	
Hepatitis C - Testing			\$16.35	
HIV (initial) - Testing			\$27.60	
HIV (confirmatory) - Testing			\$10.18	
Gonorrhea - Testing			\$40.21	
Chlamydia - Testing			\$40.21	
Diabetes - Testing			\$11.12	
TB Testing Intradermal			\$7.07	
Outpatient visit - Follow-up (Results/Linkages)			\$33.27	
CoMorbidity Services				\$2,668.00

Hepatitis C - Treatment Coordination			\$55.87	
Hepatitis C - Confirmatory Test			\$21.10	
Hepatitis C - Viral Load Quantification			\$38.65	
Initial Interview ofr diagnosis of psychiatric condition			\$113.91	
Thirty-minute physician visit for psychiatric follow-up			\$44.66	
Wound Care Management			\$60.34	

*** Capacity - Capacity is projected using an average of Methadone and Buprenorphine services and is subject to change depending on services utilized. When utilized, Naltrexone capacity is also noted separately, above. Changes in capacity will require an amendment.**

** Rates are subject to change.

*****Amount** - Service Types with no associated Amount will be paid from the preceding Service Type with an associated Amount.

**ATTACHMENT B
PROGRAM SERVICES AND UNIT RATES
FISCAL YEAR 2020**

Service Type	Number Served	*Capacity	Unit Rate**	Amount***
Opioid Treatment Services	16	16		\$100,625.00
Methadone			\$17.00	
Buprenorphine			\$24.00	
Extended-Release Injectable Naltrexone			\$1,208.40	
Naltrexone Support Services			\$183.82	
New Admission Health Screening Services				\$5,717.00
Outpatient visit - Immunization Consent			\$40.27	
Hepatitis B - Testing			\$11.84	
Hepatitis C - Testing			\$16.35	
HIV (initial) - Testing			\$27.60	
HIV (confirmatory) - Testing			\$10.18	
Gonorrhea - Testing			\$40.21	
Chlamydia - Testing			\$40.21	
Diabetes - Testing			\$11.12	
TB Testing Intradermal			\$7.07	

Outpatient visit - Follow-up (Results/Linkages)			\$33.27	
CoMorbid Services				\$8,004.00
Hepatitis C - Treatment Coordination			\$55.87	
Hepatitis C - Confirmatory Test			\$21.10	
Hepatitis C - Viral Load Quantification			\$38.65	
Initial Interview ofr diagnosis of psychiatric condition			\$113.91	
Thirty-minute physician visit for psychiatric follow-up			\$44.66	
Wound Care Management			\$60.34	

*** Capacity - Capacity is projected using an average of Methadone and Buprenorphine services and is subject to change depending on services utilized. When utilized, Naltrexone capacity is also noted separately, above. Changes in capacity will require an amendment.**

** Rates are subject to change.

*****Amount** - Service Types with no associated Amount will be paid from the preceding Service Type with an associated Amount.

ATTACHMENT C
UNIFORM TERMS AND CONDITIONS



Health and Human Services Commission
HHSC Uniform Terms and Conditions - Vendor
Version 2.15

Published and Effective September 1, 2017

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETATIONS

1.1 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 System Agency, 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 System Agency 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 System Agency and Contractor, collectively.

“Party” means either the System Agency 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 System Agency 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.

“System Agency” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

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

1.2 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 System Agency or by the System Agency 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

2.1 PROMPT PAYMENT

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

2.2 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 System Agency. 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 Texttravel.

2.3 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 System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- 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 System Agency 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 System Agency makes no guarantee of volume or usage under this Contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 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 System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency 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 System Agency 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.

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT TO STATE

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency'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.

3.4 RECAPTURE OF FUNDS

The System Agency 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 System Agency 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 System Agency 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

4.1 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 System Agency 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.

4.2 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.

4.3 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.

4.4 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

5.1 OWNERSHIP

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

5.2 INTELLECTUAL PROPERTY

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE

6.1 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 System Agency, the Texas State Auditor’s Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of 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.

6.2 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 System Agency 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 System Agency, 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 System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency 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.

6.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION 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 System Agency.
- 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.

6.4 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.

6.5 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.

6.6 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

7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency 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.

7.2 TERMINATION FOR CONVENIENCE

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

7.3 TERMINATION FOR CAUSE

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

a. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency 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 System Agency may terminate the Contract if, in its sole discretion, the System Agency 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.

7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.

If the System Agency terminates the Contract for Cause, the Contractor will be responsible to the System Agency for all costs incurred by the System Agency 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.

7.5 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

8.1 AMENDMENT

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

8.2 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 System Agency. 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 System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as the System Agency 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.

8.3 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 System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is

limited to the terms of the Contract. Contractor may not reply 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 System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

8.4 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.

8.5 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.

8.6 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.

8.7 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 SYSTEM AGENCY 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 SYSTEM AGENCY 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 SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

8.8 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 System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency 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.

8.9 SUBCONTRACTS

Contractor will be responsible to the System Agency 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 System Agency 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 System Agency 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 System Agency 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 System Agency’s policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency 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 System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency 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 System Agency 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 System Agency 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 System Agency, and in conformance with federal and state law, the System Agency 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 System Agency 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 System Agency. 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.

8.18.2017 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 System Agency, 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 System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency 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 System Agency.

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 System Agency.

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 System Agency'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.

- b. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. 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.
- c. 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>

- d. 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.
- e. Upon request, Contractor will provide HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- f. 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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ATTACHMENT D GENERAL AFFIRMATIONS

By entering into this Contract, Contractor affirms, without exception, as follows:

1. Contractor represents and warrants that these General Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, Subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract.
2. Contractor represents and warrants that all statements and information provided to the System Agency are current, complete, and accurate. This includes all statements and information relating in any manner to this Contract and any solicitation resulting in this Contract.
3. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.
4. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
5. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
6. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
7. Under Section 231.006, Texas Family Code (relating to delinquent child support), Contractor certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
8. Contractor certifies that: (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Department or Agency. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the

Department or Agency funding this project. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.

9. Contractor certifies that it, its principals, its Subcontractors, and any personnel designated to perform services related to this Contract are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
10. Contractor certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Contract; (b) its principals; (c) its Subcontractors; and (d) any personnel designated to perform services related to this Contract are not listed on the federal government's terrorism watch list described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>, which Contractor may review in making this certification. Contractor acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. This provision shall be included in its entirety in Contractor's Subcontracts if payment in whole or in part is from federal funds.
11. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Contractor certifies that it (1) is not the executive head of the System Agency; (2) was not at any time during the past four years the executive head of the System Agency; and (3) does not employ a current or former executive head of the System Agency.
12. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
13. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
14. Contractor represents and warrants that it will comply with Texas Government Code Section 2155.4441, relating to the purchase of products produced in the State of Texas under service contracts.
15. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.
16. Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of the System Agency who during the period of state service or employment participated on behalf of the System Agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the officer's or employee's service or employment with the System Agency ceased.

17. Contractor understands that the System Agency does not tolerate any type of fraud. The System Agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated,
18. and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.
19. Contractor represents and warrants that it has not violated state or federal antitrust laws and has not communicated its bid for this Contract directly or indirectly to any competitor or any other person engaged in such line of business. Contractor hereby assigns to System Agency any claims for overcharges associated with this Contract under 15 U.S.C. § 1, *et seq.*, and Texas Business and Commerce Code § 15.01, *et seq.*
20. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included numbered paragraph 1 of these General Affirmations within the five (5) calendar years immediately preceding the execution of this Contract that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to the System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the System Agency's consideration of entering into this Contract. In addition, Contractor represents and warrants that it shall notify the System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the System Agency shall constitute breach of contract and may result in immediate termination of this Contract.
21. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
22. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
23. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind Contractor.

**ATTACHMENT E
SPECIAL CONDITIONS**



TEXAS
Health and Human Services

Health and Human Services Commission

Special Conditions

Version: 1.2

9.1.17

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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 2.15

ARTICLE I. 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.

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

"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 **Error! Reference source not found.** of these Special Conditions.

"Confidential System 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 a Data Use Agreement.

"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.

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

"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.

"UTC" means HHSC's Uniform Terms and Conditions- Vendor --Version 2.15

ARTICLE II. GENERAL PROVISIONS

2.01 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 System Agency 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 System Agency 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 System Agency can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a System Agency's purchase or Work order and the Contract, the Contract terms control.

2.02 MOST FAVORED CUSTOMER

Contractor agrees that if during the term of the Contract, Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, 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.

2.03 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.

2.04 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 UTC.

ARTICLE III. CONTRACTORS PERSONNEL AND SUBCONTRACTORS

3.01 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.

3.02 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.

ARTICLE IV. PERFORMANCE

4.01 MEASUREMENT

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

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

ARTICLE V. AMENDMENTS AND MODIFICATIONS

5.01 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.

5.02 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 **Error! Reference source not found.** 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.

ARTICLE VI. PAYMENT

6.01 ENHANCED PAYMENT PROCEDURES

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 VII. CONFIDENTIALITY

7.01 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.

7.02 CONFIDENTIAL SYSTEM 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 UTC, 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 VIII. DISPUTES AND REMEDIES

8.01 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 UTC 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.

8.02 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:

- (a) Requesting a detailed Corrective Action Plan, subject to HHSC approval, to correct and resolve a deficiency or breach of the Contract;
- (b) Require additional or different corrective action(s) of HHSC's choice;
- (c) Suspension of all or part of the Contract or Work;
- (d) Prohibit Contractor from incurring additional obligations under the Contract;
- (e) Issue Notice to stop Work Orders;
- (f) Assessment of liquidated damages as provided in the Contract;
- (g) Accelerated or additional monitoring;
- (h) Withholding of payments; and
- (i) 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.

8.03 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.

8.04 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 IX. DAMAGES

9.01 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:

- (a) Through direct assessment and demand for payment to Contractor; or
- (b) 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.

9.02 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 UTC, 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 X. TURNOVER

10.01 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:

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

10.02 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 XI. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS

11.01 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.

11.02 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.

11.03 SOFTWARE AND OWNERSHIP RIGHTS

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

ARTICLE XII. UNIFORM ICT ACCESSIBILITY CLAUSE

12.01 APPLICABILITY

This Section applies to the procurement or development of Information and Communication Technology (ICT) for HHSC, or any changes to HHSC's ICT. This Section also applies if the Contract requires Contractor to perform a service or supply a 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 HHSC'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.

12.02 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 HHSC Uniform Terms and Conditions, policies, accessibility checklists, style guides, contract specifications, and other contract management documents. To the extent that any other of the following definitions conflict with definitions elsewhere in this Contract, the following definitions are applicable to this Section only.

1. **"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).
2. **"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.

3. **"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.
4. **"Web Accessibility Standards/Specifications"** refers to the web standards contained in WCAG 2.0 Level AA.
5. **"Products"** means information resources technologies that are, or are related to, ICT.
6. **"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.

12.03 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.

12.04 EVALUATION, TESTING AND MONITORING

1. 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.
2. 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.

3. 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.

12.05 REPRESENTATIONS AND WARRANTIES

1. 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 HHSC and/or Client/Recipient, as applicable uses the Products in a manner that renders it noncompliant.
2. 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.
3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this contract.
4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

12.06 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.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01 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.

13.02 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.

13.03 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.

13.04 NOTICE OF LEGAL MATTER OR LITIGATION

Contractor will send notice to the Substance Use Disorder (SUD) email box, SubstanceAbuse.Contracts@hhsc.state.tx.us of any litigation or legal matter related to or affecting this Contract within seven (7) calendar days of becoming aware of the litigation or legal matter.

13.05 NOTICE OF A CONTRACT ACTION

Contractor shall notify their assigned contract manager assigned to the contract if Contractor has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

ARTICLE XIV. DSHS LEGACY PROVISIONS

14.01 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- (a) **Contractor shall immediately report in writing to their contract manager when Contractor has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent,**

employee, subcontractor or volunteer that is providing services under this Contract has:

Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or

Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.

- (b) Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.**

14.02 NOTICE OF IRS OR TWC INSOLVENCY

Contractor shall notify in writing their assigned contract manager their insolvency, incapacity or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission within five days of the date of becoming aware of such.

14.03 EDUCATION TO PERSONS IN RESIDENTIAL FACILITIES

Contractor shall ensure that all persons, who are housed in System Agency licensed or funded residential facilities and are 22 years of age or younger, have access to educational services as required by Texas Education Code § 29.012.

Contractor shall notify the local education agency or local early intervention program as prescribed by this Section not later than the third calendar day after the date a person who is 22 years of age or younger is placed in Contractor's residential facility

14.04 DISASTER SERVICES

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Contractor may be called upon to assist the System Agency in providing the following services:

- (a) Community evacuation;
- (b) Health and medical assistance;
- (c) Assessment of health and medical needs;
- (d) Health surveillance;
- (e) Medical care personnel;

- (f) Health and medical equipment and supplies;
- (g) Patient evacuation;
- (h) In-hospital care and hospital facility status;
- (i) Food, drug and medical device safety;
- (j) Worker health and safety;
- (k) Mental health and substance abuse;
- (l) Public health information;
- (m) Vector control and veterinary services; and
- (n) Victim identification and mortuary services.

14.05 CONSENT BY NON-PARENT OR OTHER STATE LAW TO MEDICAL CARE OF A MINOR

Unless a federal law applies, before a Contractor or its subcontractor can provide medical, dental, psychological or surgical treatment to a minor without parental consent, informed consent must be obtained as required by Texas Family Code Chapter 32.

14.06 TELEMEDICINE /TELEPSYCHIATRY MEDICAL SERVICES

If Contractor or its subcontractor uses telemedicine/telepsychiatry, these services shall be in accordance with the Contractor's written procedures. Contractor must use a protocol approved by Contractor's medical director and equipment that complies with the System Agency equipment standards, if applicable. Contractor's procedures for providing telemedicine service must include the following requirements:

- (a) Clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
- (b) Contraindication considerations for telemedicine use;
- (c) Qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- (d) Safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- (e) Use by credentialed licensed providers providing clinical care within the scope of their licenses;
- (f) Demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- (g) Priority in scheduling the system for clinical care of individuals;
- (h) Quality oversight and monitoring of satisfaction of the individuals served; and
- (i) Management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites. Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under 25 Texas Administrative Code Rule § 448.911.

14.07 SERVICES AND INFORMATION FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

- (a) Contractor shall take reasonable steps to provide services and information both orally and in writing, 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 shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
- (c) Contractor shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

14.08 THIRD PARTY PAYORS

Except as provided in this Contract, Contractor shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.

As applicable, the Contractor shall:

- (a) Enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs and bill those programs for the covered services;
- (b) Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
- (c) Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the System Agency for the deductible;
- (d) Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
- (e) Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
- (f) Bill all third party payors for services provided under this Contract before submitting any request for reimbursement to System Agency; and
- (g) Provide third party billing functions at no cost to the client.

14.09 HIV/AIDS MODEL WORKPLACE GUIDELINES

Contractor shall implement System Agency's policies based on the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS), AIDS Model Workplace Guidelines for Businesses at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>, State Agencies and State Contractors Policy No. 090.021.

Contractor shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas. Health & Safety Code §§ 85.112-114.

14.10 MEDICAL RECORDS RETENTION

Contractor shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

14.11 NOTICE OF A LICENSE ACTION

Contractor shall notify their contract manager of any action impacting its license to provide services under this Contract within five days of becoming aware of the action and include the following:

- (a) Reason for such action;
- (b) Name and contact information of the local, state or federal department or agency or entity;
- (c) Date of the license action; and
- (d) License or case reference number.

14.12 INTERIM EXTENSION AMENDMENT

- (a) Prior to or on the expiration date of this Contract, the Parties agree that this Contract can be extended as provided under this Section.
- (b) The System Agency shall provide written notice of interim extension amendment to the Contractor under one of the following circumstances:
 - 1. Continue provision of services in response to a disaster declared by the governor; or
 - 2. To ensure that services are provided to clients without interruption.
- (c) The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- (d) Contractor will provide and invoice for services in the same manner that is stated in the Contract.
- (e) An interim extension under Section (b)(1) above shall extend the term of the contract not longer than 30 days after governor's disaster declaration is declared unless the

Parties agree to a shorter period of time.

- (f) An interim extension under Section (b)(2) above shall be a one-time extension for a period of time determined by the System Agency.

14.13 CHILD ABUSE REPORTING REQUIREMENT

- (a) Contractors shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Contractor to report child abuse.
- (b) Contractor shall develop, implement and enforce a written policy that includes at a minimum the System Agency's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements.

Contractor shall use the System Agency's Child Abuse Reporting Form located at www.System_Agency.state.tx.us/childabusereporting as required by the System Agency. Contractor shall retain reporting documentation on site and make it available for inspection by the System Agency.

14.14 LIQUIDATED DAMAGES

Contractor agrees that noncompliance with the requirements specified in the Contract causes damages to SYSTEM AGENCY that are difficult to ascertain and quantify. Contractor further agrees that SYSTEM AGENCY may impose liquidated damages each month for so long as the noncompliance continues. For failing to comply with any of the Contract requirements, SYSTEM AGENCY may impose liquidated damages of \$500 for the first occurrence of noncompliance during a fiscal year; \$750 for the second occurrence of noncompliance with the same requirement during the same fiscal year, and \$1,000 for the third and subsequent occurrence(s) of noncompliance with the same requirement during the same fiscal year.

ATTACHMENT G
NON-EXCLUSIVE LIST OF APPLICABLE LAWS

Contractor is responsible for reviewing and complying with any applicable statutes, rules, regulations, executive orders

and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

a. Statutes, rules, regulations, and HHSC policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion:

1. Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.;
2. Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686;
3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a);
4. Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.;
5. Age Discrimination Act of 1975, 42 USC §§ 6101-6107;
6. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91;
7. U.S. Department of Labor, Equal Employment Opportunity E.O. 11246;
8. Tex. Labor Code Chapter 21;
9. Food Stamp Act of 1977 (7 USC §§ 2011 et seq.);
10. Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations;
11. Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse;
12. Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
13. Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and
14. Non-discrimination Policy for HHSC Programs;

b. Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., as amended by Public Law 113-4 (March 7, 2013), regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

c. Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;

d. National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), regarding human subjects involved in research;

e. Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-26, which limits the political activity of employees whose employment is funded with federal funds;

f. Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;

- g. Texas Government Code Chapter 469 pertaining to eliminating architectural barriers for persons with disabilities;
- h. Texas Workers' Compensation Act, Texas Labor Code Chapters 401-406, and 28 Texas Administrative Code (TAC) pt. 2, regarding compensation for employees' injuries;
- i. The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code Chapter 96 regarding safety standards for handling blood borne pathogens;
- k. Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l. Environmental standards pursuant to the following:
 - 1. Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;"
 - 2. Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;"
 - 3. Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961;
 - 4. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);
 - 5. Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.;
 - 6. Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.;
 - 7. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j;
 - 8. Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.;
 - 9. Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§ 7401 et seq.;
 - 10. Wild and Scenic Rivers Act of 1968, 16 USC §§ 1271 et seq., related to protecting certain river systems; and
- m. Lead-Based Paint Poisoning Prevention Act, 42 USC §§ 4821 et seq., prohibiting the use of lead-based paint in residential construction or rehabilitation;
- n. Intergovernmental Personnel Act of 1970, 42 USC §§ 4278-4763, regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration, 5 CFR Part 1200 et seq.;
- o. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of, 42 USC §§ 4601 et seq (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;

- p. Davis-Bacon Act, 40 USC §§ 3141-3148;
- q. Copeland Act, 40 USC §§ 276c and 18 USC § 874;
- r. Contract Work Hours and Safety Standards Act, 40 USC § 3702 et seq., regarding labor standards for federally-assisted construction subagreements;
- s. National Historic Preservation Act of 1966, § 106, 16 USC § 470; Executive Order 11593; and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist HHSC in complying with the Acts;
- t. Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- u. Executive Order 13513 (Oct. 1, 2009), Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of this Contract;
- v. Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)) and Texas Whistleblower Act (Tex. Gov. Code Chapter 554); and
- w. Requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

ATTACHMENT H

GUIDELINES FOR THE USE OF EXTENDED-RELEASE INJECTABLE NALTREXONE

A. TREATMENT CONSIDERATIONS

The medical literature supports the use of opioid substitution therapy as first-line treatment for patients with opioid use disorders. Substance Abuse and Mental Health Services Administration (SAMHSA), American Society of Addiction Medicine (ASAM) and the Veterans Administration (VA) indicate that extended-release injectable naltrexone may be an acceptable alternative to opioid substitution therapy in selected patients.

Careful patient selection is essential in order to maximize the chance of long-term treatment success and to minimize the risk of adverse outcomes including relapse and overdose. Several organizations, including SAMHSAⁱ, VAⁱⁱ, ASAMⁱⁱⁱ and Providers' Clinical Support System for Medication Assisted Treatment (PCSS-MAT)^{iv} have published guidance on which patients may be the best candidates for treatment with extended-release injectable naltrexone. Patient selection criteria based on that guidance and on a review of the other available literature are included below. These criteria are intended as guidelines and should not be considered a substitute for the clinical judgment of the treating physician.

The optimal duration of treatment with extended-release injectable naltrexone has not been determined. Most studies have been based on 6 months of medication, but data on long-term outcomes is lacking. The decision to discontinue medication must be determined on a case-by-case basis and in conjunction with patient preference, taking into account the relative risks and benefits.

As with other forms of medication-assisted treatment (MAT), extended-release injectable naltrexone must only be used as part of a comprehensive program of treatment that includes counseling and behavioral therapy. Patients should be encouraged to participate in recovery-related activities in addition to formal counseling.

B. PHYSICIAN EDUCATION REQUIREMENTS

Prior to initiation of treatment with extended-release injectable naltrexone, the ordering physician must gain a thorough understanding of the use of this medication in the treatment of patients with opioid use disorder. The treating physician must:

1. Become familiar with the published guidelines for the use of this medication, such as those by SAMHSA, ASAM and the VA;
2. Become familiar with and follow the Food & Drug Administration (FDA) prescribing information, REMS and manufacturer's recommendations regarding the appropriate use and administration of the medication;
3. Become familiar with and follow the Texas Department of State Health Services (DSHS) / Texas Health & Human Services (HHSC) Drug Formulary requirements, including *Reserve Drug Criteria* and *Audit Criteria*^v.

4. In addition to the resources previously mentioned, the physician may wish to access continuing medical education (CME) such as that offered by PCSS-MAT^{vi} at <http://pcssmat.org/category/module/naltrexone/>.

C. PATIENT SELECTION

To be considered a candidate for treatment with extended-release injectable naltrexone, a patient must meet all of the following screening requirements:

1. Have an FDA indication;
2. Not have a contraindication;
3. Be fully detoxified and verified abstinent from all opioids;
4. Be at significant risk for relapse;
5. Be willing and able to participate in ongoing care and follow-up;
6. Be non-pregnant, not intending to become pregnant and using a reliable form of contraception.

Those patients meeting the following additional criteria may then be considered appropriate candidates for the use of extended-release injectable naltrexone:

1. Have considered and rejected agonist treatment due to one or more of the following reasons:
 - a. Treatment failure with prior agonist maintenance;
 - b. Not interested in agonist maintenance;
 - c. Not able to access agonist maintenance.
2. Be highly motivated and committed to maintaining abstinence in the opinion of the patient's treatment providers and as evidenced by:
 - a. regular attendance at and participation in group and/or individual counseling;
 - b. appropriate behaviors in the treatment setting;
 - c. no positive drug screens.
3. Be actively engaged in recovery-related activities, e.g. peer supported groups such as 12-step, SMART, etc.
4. Have a less severe form of opioid use disorder based on route of administration and/or duration, level and pattern of use
5. Have no history of relapse or have a history of long periods of abstinence between relapses.
6. Have good social supports and a stable home environment.
7. Be psychiatrically stable.

Patients that meet any of the following criteria are likely better served by treatment with agonist maintenance:

1. Advanced liver disease;
2. History of opioid overdose(s);
3. Limited social supports (e.g. homeless, unstable lives);
4. History of psychiatric illness that worsened after previous detoxifications;
5. Heavy marijuana use (due to increased risk of psychosis);
6. Chronic pain requiring opioid medications.

D. INFORMED CONSENT & INITIATION OF TREATMENT

It is the responsibility of the ordering physician to ensure that the patient is fully informed about all available treatment alternatives, along with the risks and potential benefits associated with each alternative^{vii}. SAMHSA has published a guide entitled *Decisions in Recovery: Treatment for Opioid Use Disorder Handbook*^{viii} that may be of assistance to patients in making treatment choices, but such materials are intended to supplement rather than replace the discussion between physician and patient.

Out of respect for the patient's autonomy, counseling must be given in a non-directive fashion, occur face-to-face and provide an opportunity for the patient to ask questions prior to initiation of treatment.

Prior to initiation of treatment with extended-release injectable naltrexone, the physician must:

1. Inform the patient of all options for medical treatment of opioid use disorder, including:
 - a. methadone and buprenorphine for long-term maintenance;
 - b. medication-assisted detoxification; and
 - c. post-detoxification control of craving and other symptoms.
2. Ensure that the patient is an appropriate candidate for the use of the medication, in accordance with the selection criteria above, national guidelines and best practices;
3. Inform the patient of all risks associated with use of the medication as outlined in the FDA prescribing information, including:
 - a. Vulnerability to opioid overdose
 - i. following discontinuation of the medication
 - ii. during attempts to overcome the medication's blockade effect
 - b. Precipitation of opioid withdrawal
 - c. Injection site reactions
 - d. Hepatotoxicity
 - e. Depression & Suicidality
 - f. Potential issues with acute pain management
 - g. Eosinophilic pneumonia
 - h. Hypersensitivity reactions
4. Ensure that the patient is opioid free for a sufficient period of time to avoid precipitation of acute withdrawal, as evidenced by patient self-report, drug screening and a naloxone challenge test.

E. ONGOING TREATMENT AND FOLLOW-UP

Patients must be followed no less than weekly for the first 4 weeks, then no less than monthly until 1 month after last injection. Post-treatment surveillance must include patient contacts every month for 3 months, then every 3 months for an additional 12 months.

Face-to-face counseling must occur at a minimum of once monthly to coincide with injections, with additional visits and / or telephone contacts as deemed appropriate by the provider.

F. DATA COLLECTION REQUIREMENTS

In order to assess safety and long-term outcomes, HHSC requires certain data to be collected for patients undergoing treatment with extended-release injectable naltrexone. Details of data collection requirements will be at the discretion of HHSC and a data collection form will be provided.

G. REFERENCES

¹ Clinical Use of Extended-Release Naltrexone in the Treatment of Opioid Use Disorder: A Brief Guide

<https://store.samhsa.gov/shin/content//SMA14-4892R/SMA14-4892R.pdf>

¹ VA/DoD Clinical Practice Guidelines: Management of Substance Use Disorder (SUD) (2015)

<https://www.healthquality.va.gov/guidelines/MH/sud/>

¹ The ASAM National Practice Guideline for the Use of Medications in the Treatment of Addiction involving Opioid Use <https://www.asam.org/docs/default-source/practice-support/guidelines-and-consensus-docs/asam-national-practice-guideline-supplement.pdf>

¹ PCSS-MAT Resource Page including multiple applicable publications

<http://pcssmat.org/opioid-resources/medication-assisted-treatment-for-opioid-addiction/>

¹ Decisions in Recovery: Treatment for Opioid Use Disorder Handbook

<https://store.samhsa.gov/shin/content/SMA16-4993/SMA16-4993.pdf>

¹ⁱ DSHS/HHSC Drug Formulary, including criteria for the use of Reserve Drugs, along with the Medication Audit Criteria and Guidelines, can be found at:

<http://dshs.texas.gov/mhprograms/Formulary.shtm>

¹ⁱ PCSS-MAT CME modules <http://pcssmat.org/category/module/naltrexone/>.

¹ⁱ AMA Code of Ethics, Chapter 2.1: Informed Consent & Shared Decision Making

<https://www.ama-assn.org/delivering-care/ama-code-medical-ethics>

