

SIGNATURE DOCUMENT FOR  
**HHSC CONTRACT NO. HHS000002300001**  
(CRS PARS SERVICES; NEURO INSTITUTE OF AUSTIN L.P.)

**I. PURPOSE**

The **HEALTH AND HUMAN SERVICES COMMISSION** (“HHSC” or “System Agency”), an administrative agency within the executive department of the State of Texas, having its principal office at 4900 North Lamar Boulevard, Austin, Texas 78751, and **NEURO INSTITUTE OF AUSTIN, L.P. DBA TEXAS NEUROREHAB CENTER** (“Contractor” or “Provider”), a Texas Limited Partnership and having its principal office at 1106 West Dittmar Road, Austin, Texas 78745 (each a “Party” and collectively “the Parties”) enter into the following contract for Post-Acute Rehabilitation Services (the “Contract”).

**II. LEGAL AUTHORITY**

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

**III. STATEMENT OF SERVICES TO BE PROVIDED.**

Contractor shall perform or cause to be performed Rehabilitation Services in accordance with the Statement of Work and Budget, attached hereto and incorporated herein as **Attachments A and B**, respectively.

**IV. DURATION**

The Contract is effective on the signature date of the latter of the Parties to sign and terminates on **August 31, 2020**, unless renewed or terminated pursuant to the terms and conditions of the Contract. HHSC, at its sole discretion, may extend this Contract for any period or periods of time no greater than a cumulative total of five years, which five-year period includes the original contract term. At the sole option of HHSC, the Contract may also be extended beyond all exercised renewal periods as necessary to complete the mission of the procurement, ensure continuity of service, or as otherwise determined by HHSC to serve the best interest of the state.

**V. PAYMENT RATES AND TERMS**

Nothing in this Contract expresses or guarantees that HHSC will issue any Service Authorization to the Contractor. All services requested under the Contract will be requested on an as needed basis, and HHSC makes no guarantee of the minimum volume of usage under the Contract. If services are performed, payment for such services is limited to the adopted rate limits. All expenditures under the Contract will be in accordance with **Attachment B, Payment Rates and Terms**.

**VI. CONTRACT REPRESENTATIVES**

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

**HHSC**

Christine Medeiros  
701 West 51<sup>st</sup> Street; MC 3084  
Austin, Texas 78751  
(512) 438-2425  
[christine.medeiros@hhsc.state.tx.us](mailto:christine.medeiros@hhsc.state.tx.us)

**Contractor**

Beth Cathcart  
1106 W. Dittmar Rd.  
Austin, Texas 78745  
(512)444-4835 Phone  
[beth.cathcart@uhsinc.com](mailto:beth.cathcart@uhsinc.com)

Either Party may change its designated Representative by providing written notice to the other Party.

**VII. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by a Party 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  
Attention: Office of Chief Counsel  
4900 North Lamar Boulevard; MC 1100  
Austin, Texas 78751

**Contractor**

Neuro Institute of Austin, L.P.  
Attention: Facility CEO  
1106 W. Dittmar Rd.  
Austin, Texas 78745

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.

**VIII. PRIVACY, SECURITY, AND BREACH NOTIFICATION**

"HHSC Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the Provider electronically or through any other means that consists of or includes any or all of the following:

- a) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- b) Sensitive Personal Information defined by *Texas Business and Commerce Code Ch. 521*;

- c) Federal Tax Information;
- d) Personally Identifiable Information;
- e) Social Security Administration Data, including, without limitation, Medicaid information;
- f) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the *Texas Health & Safety Code* and the Texas Public Information Act, *Texas Government Code*, Chapter 552.

Any HHSC Confidential Information received by the Provider under this Agreement may be disclosed only in accordance with applicable law. By signing this agreement, the Provider certifies that the Provider is, and intends to remain for the term of this agreement, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:

- a) The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
- b) 42 CFR Part 2 and 45 CFR Parts 160 and 164;
- c) The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
- d) The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
- e) Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
- f) OMB Memorandum 07-16;
- g) *Texas Business and Commerce Code* Chapter 521;
- h) *Texas Health and Safety Code*, Section 81.006 and Chapters 181 and 611;
- i) *Texas Human Resources Code* § 12.003;
- j) *Texas Government Code*, Chapter 552, as applicable;
- k) Title 3 of the *Texas Occupations Code*, as applicable;
- l) Constitutional and Common Law Privacy; and
- m) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Agreement.

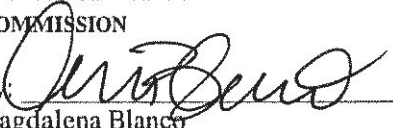
The Provider further certifies that the Provider will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

Provider will ensure that any subcontractor of Provider who has access to HHSC Confidential Information will sign a HIPAA-compliant Business Associate Agreement with Provider, and Provider will submit a copy of that Business Associate Agreement to HHSC upon request.

*Signature Page Follows*

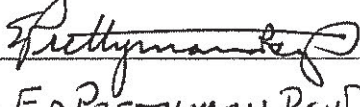
SIGNATURE PAGE FOR  
HHSC CONTRACT NO. <CONTRACT NUMBER>

HEALTH AND HUMAN SERVICES  
COMMISSION

By:   
Magdalena Blanco  
Deputy Associate Commissioner, Health,  
Developmental, & Independence Services

Date of execution: 4/12/18

NEURO INSTITUTE OF AUSTIN, L.P.  
dba Texas NeuroRehab Center

By:   
Name: E. PRETTYMAN, PsyD

Title: CEO

Date of execution: 4/2/18

The following attachments to this Contract are hereby attached and incorporated by reference:

- Attachment A - Statement of Work
- Attachment B - Payment Rates and Terms
- Attachment C - Locations and Services
- Attachment D - HHSC Uniform Terms and Conditions - Vendor (Version 2.15)
- Attachment E - HHSC Special Conditions (Version 1.2)
- Attachment F - HHSC CRS Supplemental Conditions (Version 1.0)
- Attachment G - General Affirmations (Version 1.2)
- Attachment I - Contractor's Response

*Attachments Follow*



**TEXAS**  
Health and Human Services

# **ATTACHMENT A**

## **Statement of Work**

## STATEMENT OF WORK

### 1. PROGRAM PURPOSE

- 1.1 The purpose of the Health and Human Services Commission's Comprehensive Rehabilitation Services ("CRS") program is to help eligible consumers who have a traumatic brain injury ("TBI") and/or traumatic spinal cord injury (~~TSCI~~"TSCI") improve their ability to function independently in the home and the community. The program focuses to improve self-care, communication, and mobility.

CRS is authorized to offer Post-Acute Rehabilitation Services for Residential Post-Acute Brain Injury Rehabilitation, Non-Residential Post-Acute Brain Injury Rehabilitation, and Non-Residential Post-Acute Spinal Cord Injury Rehabilitation. To be eligible to receive these services the consumer must have either a traumatic brain injury ("TBI") or a traumatic spinal cord injury ("TSCI"). The services are provided through an interdisciplinary team approach. For residential services, the consumer must have a TBI or have a TBI with a TSCI and for a non-residential setting, the consumer may have a TBI or TSCI. Services that are provided are based on an assessment of the individual's deficits with the goal of achieving independence in the home and community and/or establish new patterns of cognitive activity or compensatory mechanisms. The services are defined in the CRS Standards for Provider's Manual, and, unless otherwise specified, should be considered all inclusive.

- 1.2 **Ancillary Services:** Goods or services approved by the CRS program that are not part of the approved rates for Post-Acute Rehabilitation Services are considered ancillary and must be pre-authorized before service is rendered if services are not preauthorized then there is no guarantee of payment.
- 1.3 **Third Party Payment:** Payment by a financial agent, including but not limited to self-insured plans, commercial/private insurance plans, Medicare, Medicaid, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service. CRS is considered a payor of last resort. If a consumer has third party benefits the contractor is required to provide CRS with the explanation of benefits ("EOB") or denial from other pay sources(s). It is the contractor's responsibility to communicate with CRS staff regarding pre-authorizations or estimated third party payment prior to service delivery in order for CRS staff to provide appropriate authorization of services.

### 2. CONTRACTOR REQUIREMENTS

*To participate as a provider under this Contract, the Contractor must:*

- 2.1 Provide all Post-Acute Rehabilitation Services in accordance with [40 Texas Administrative Code \(TAC\) Chapter 107](#) and the CRS Standards for Providers Manual that is available online and can currently be accessed at <https://hhs.texas.gov/laws/regulations/handbooks/comprehensive-rehabilitation-services-crs-standards-providers>.
- 2.2 To stay informed and comply with any CRS Standards for Provider's revisions by the effective date, which will be revised when deemed necessary by HHSC. Contractor is

solely responsible for maintaining compliance with the most recent version of the CRS Standards for Provider's.

## 1. SERVICE DELIVERY AREA(S)

The service area for the CRS program is state-wide, but specific provider service area(s) within the state are individually approved by HHSC. The approved service area(s) for this Contract is(are) identified in **Attachment C**.

## 2. ELIGIBLE POPULATION

Consumer eligibility is determined by applicable law [40 TAC §107.707](#) and consumers must meet eligibility requirements as outlined in the CRS Standards for Providers Manual ( <https://hhs.texas.gov/laws-regulations/handbooks/comprehensive-rehabilitation-services-crs-standards-providers>).

## 3. CONSUMER CHARACTERISTICS

*Contractor must be prepared to serve individuals with characteristics including, but not limited to:*

### 3.1 Cognitive Deficits

- 3.1.1 Attention
- 3.1.2 Concentration
- 3.1.3 Distractibility
- 3.1.4 Memory
- 3.1.5 Speed of Processing
- 3.1.6 Confusion
- 3.1.7 Perseveration
- 3.1.8 Impulsiveness Language
- 3.1.9 Processing
- 3.1.10 Executive functions

### 3.2 Speech and Language Deficits

- 3.2.1 Not understanding the spoken word (receptive aphasia)
- 3.2.2 Difficulty speaking and being understood (expressive aphasia)
- 3.2.3 Slurred speech
- 3.2.4 Speaking very fast or very slow
- 3.2.5 Problems reading
- 3.2.6 Problems writing

### 3.3 Sensory Deficits

- 3.3.1 Difficulties with interpretation of touch, temperature, movement, limb position and fine discrimination.

### 3.4 Perceptual Deficits

- 3.4.1 Difficulty with the integration or patterning of sensory impressions into psychologically meaningful data

### **3.5 Vision Deficits**

- 3.5.1 Partial or total loss of vision
- 3.5.2 Weakness of eye muscles and double vision (diplopia)
- 3.5.3 Blurred vision
- 3.5.4 Problems judging distance
- 3.5.5 Involuntary eye movements (nystagmus)
- 3.5.6 Intolerance of light (photophobia)

### **3.6 Hearing Deficits**

- 3.6.1 Decrease or loss of hearing
- 3.6.2 Ringing in the ears (tinnitus)
- 3.6.3 Increased sensitivity to sounds

### **3.7 Smell Deficits**

- 3.7.1 Loss or diminished sense of smell (anosmia)

### **3.8 Taste Deficits**

- 3.8.1 Loss or diminished sense of taste

### **3.9 Seizures**

- 3.9.1 The convulsions associated with epilepsy that can be several types and can involve disruption in consciousness, sensory perception, or motor movements

### **3.10 Physical Changes**

- 3.10.1 Physical paralysis/spasticity
- 3.10.2 Chronic pain
- 3.10.3 Control of bowel and bladder
- 3.10.4 Sleep disorders
- 3.10.5 Loss of stamina
- 3.10.6 Appetite changes
- 3.10.7 Regulation of body temperature
- 3.10.8 Menstrual difficulties

### **3.11 Social-Emotional Deficits**

- 3.11.1 Dependent behaviors
- 3.11.2 Emotional ability
- 3.11.3 Lack of motivation
- 3.11.4 Irritability



- 3.11.5 Aggression
- 3.11.6 Depression
- 3.11.7 Disinhibition
- 3.11.8 Denial / lack of awareness

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**TEXAS**  
Health and Human Services

# **Attachment B**

## **Payment Rates and Terms**

## PAYMENT RATES AND TERMS

### 1. PAYMENT

The Health and Human Services Commission (“HHSC”) will pay the Contractor for referred services provided and invoiced in accordance with the terms and conditions of the Contract for the entire term. An indicator of the level of need for this service is historical utilization data. However, no level of service is guaranteed by this Contract or constitutes any promise or guarantee of service utilization on the part of HHSC.

### 2. PAYMENT FOR SERVICES

2.1 The Contractor will be paid in accordance with the contract requirements and based on adopted CRS PARS rates, unless otherwise specified. All payments by HHSC under this Contract will be made in accordance with the Texas Prompt Payment Act, *Texas Government Code*, Chapter 2251. Contractor shall pay any subcontractor’s in accordance with *Texas Government Code* § 2251.022. Contractor acknowledges the payment details as follows:

2.1.1 HHSC is the payor of last resort; therefore, all comparable benefits must be exhausted prior to payment of services. HHSC will pay for services in accordance with applicable Tier Level rates and Current Procedural Terminology (“CPT”) codes based on adopted CRS PARS rates, unless otherwise specified.

If the Contractor is providing services for a CRS consumer, then the Contractor must follow the CRS Standards for Providers, that include Residential and Nonresidential rates, and is available online and currently accessible at the following link: <https://hhs.texas.gov/laws-regulations/handbooks/comprehensive-rehabilitation-services-crs-standards-providers>.

2.1.2 **Adopted Rates:** Adopted rates for the Comprehensive Rehabilitation Services Program are available online and currently accessible at the following link: <https://rad.hhs.texas.gov/long-term-services-supports/comprehensive-rehabilitation-services-program-crs>.

2.1.3 Contractor will not be paid for services provided:

2.1.3.1 If a comparable benefit is available to fund services;

2.1.3.2 Without a Service Authorization from HHSC;

2.1.3.3 Outside the date range authorized in the Service Authorization; or

2.1.3.4 Without a denial of benefits and explanation of benefits, as applicable.

### 3. INVOICING PROCESS

The Contractor will submit to HHSC a total bill each month in the format prescribed by HHSC, and will accept as payment in full the contracted rate, as official published in the CRS Standards for Providers Manual. Contractors that provide both Residential and Nonresidential services for consumers who have a Traumatic Brain Injury are required to upload supporting billing detailed

service records information by the 10th of each month for all services provided in the previous month into a repository data base.

3.1 To receive payment, a Contractor must submit an invoice to HHSC and the invoice must be in accordance with 34 Texas Administrative Code §20.487, Invoicing Standards, which should include, but is not limited to:

- Contractor's Legal Name;
- State of Texas Vendor number or federal tax Identification number;
- Remit-to address;
- Contractor's Telephone number;
- Invoice number;
- HHSC Contract Number;
- State agency name of requestor;
- Description of goods and services provided, including CPT (current procedural terminology) codes;
- CRS service authorization number;
- Date of Service;
- Quantity and unit-cost being billed (as documented in the service authorization,
- Invoice guidelines outlined in the CRS Standards for Providers;
- If there is a third party benefit the contractor is required to provide CRS with the explanation of benefits ("EOB") or denial from other pay sources(s); and
- The name and telephone number of a person designated by the contract to answer questions regarding the invoice.

3.2 Failure to submit invoices on time may be considered a Contract compliance issue and be used in evaluating whether to renew or terminate the Contract.

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# TEXAS

## Health and Human Services

**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 Textravel.

### **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**

### **51 OWNERSHIP**

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

### **52 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**

### **61 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.

### **62 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.

### **63 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.

### **64 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.

### **65 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.

## 66 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

### 71 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.

### 72 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.

### 73 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.

#### **74 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.

#### **75 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. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
TTY Toll Free: (877) 432-7232  
Fax: (512) 438-5885.

#### **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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**TEXAS**  
Health and Human Services

**ATTACHMENT E**  
**HHSC CRS 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.

**“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 5.02 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.

**“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.

### **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 5.01 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

# **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 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.

## **8.02 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. MISCELLANEOUS PROVISIONS**

## **9.01 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.

## **9.02 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.



**TEXAS**  
Health and Human Services

# **ATTACHMENT F**

## **HHSC CRS SUPPLEMENTAL CONDITIONS**



## HHSC CRS SUPPLEMENTAL CONDITIONS

**The HHSC Uniform Terms and Conditions - Vendors (“HHSC UTCs”), Attachment D of the Contract, is revised as follows:**

1. **SECTION 8.1** of the HHSC UTCs, **AMENDMENT**, is deleted in its entirety and replaced with the following:

### **8.1 Amendment**

The Contract may only be amended by an Amendment executed by both Parties, except HHSC may amend this Contract through execution of a unilateral amendment signed by a HHSC representative with delegated authority and provided to the Contactor under the following circumstances:

- a. To add or delete authorized service area(s);
- b. To correct an obvious clerical error in the Contract;
- c. To incorporate new or revised federal or state statutes, rules, or policies;
- d. To comply with a court order or judgment; and
- e. To change the name of the Contractor in order to reflect the Contactor’s name as recorded by the Texas Secretary of State.



**TEXAS**  
Health and Human Services

# ATTACHMENT G

## GENERAL AFFIRMATIONS

## 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, 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.

18. 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.*
19. 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.
20. Pursuant to Texas Government Code §2270.002, Contractor affirms that it: (a) does not boycott Israel; and (b) will not boycott Israel during the term of this Contract.
21. Contractor affirms that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization.
22. 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.
23. 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.
24. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind Contractor.

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**APPLICANT AFFIRMATIONS AND CERTIFICATIONS**

Applicant affirms, without exception, as follows:

1. Applicant represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Certifications apply to Applicant and all of Applicant'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 Open Enrollment Solicitation or any contract resulting from this Open Enrollment Solicitation.
2. Applicant represents and warrants that all statements and information provided to HHSC and HHSC are current, complete, and accurate. This includes all statements and information in this Application.
3. Applicant acknowledges that its Application and subsequent documents submitted are subject to the Texas Public Information Act.
4. Applicant agrees that HHSC and HHSC have the right to use, produce, and distribute copies of and to disclose to HHSC and HHSC employees, agents, and contractors and other governmental entities all or part of Applicant's Application as HHSC or HHSC deem necessary to complete the solicitation process or comply with state or federal laws.
5. Applicant generally releases from liability and waives all claims against any party providing information about the Applicant at the request of HHSC or HHSC.
6. Applicant acknowledges that all addenda and amendments are part of the Open Enrollment Solicitation.
7. Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
8. Applicant 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 Application, this Open Enrollment Solicitation, or any contract resulting from this Solicitation.
9. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
10. Under Section 2155.006, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
11. Under Section 2261.053, Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the contractor certifies

**Post-Acute Rehabilitation Services**

Procurement Number: HHS0000023

that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

12. Pursuant to Section 231.006(c), Texas Family Code (relating to delinquent child support), identify below the name and social security number (SSN) of each individual, sole proprietor, partner, shareholder, and owner with an ownership interest of at least 25 percent (25%) of the business entity submitting this Application:

Name:   N/A   SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

**FEDERAL PRIVACY ACT NOTICE:** Disclosure of requested Social Security Numbers (SSNs) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law. Failure by a Applicant to provide the required SSNs may result in disqualification of the Applicant's Application.

13. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application 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.
14. Applicant certifies that: (a) the entity executing this Application; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Open Enrollment Solicitation 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.
15. Applicant certifies that it, its principals, its subcontractors, and any personnel designated to perform services related to any contract resulting from this Open Enrollment Solicitation 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.
16. Applicant certifies it is in compliance with all State of Texas statutes and rules relating to procurement; and that (a) the entity executing this Application; (b) its principals; (c) its subcontractors; and (d) any personnel designated to perform services related to any contract resulting from this Open Enrollment Solicitation 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 Applicant may review in making this certification.
17. In accordance with Texas Government Code Section 669.003 (relating to contracting with the executive head of a state agency), Applicant certifies that it (1) is not the executive head of HHSC; (2) was not at any time during the past four years the executive head of HHSC; and (3) does not employ a current or former executive head of HHSC.

**Post-Acute Rehabilitation Services**

Procurement Number: HHS0000023

18. Applicant 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.
19. Applicant represents and warrants that payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this Solicitation 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).
20. Applicant 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.
21. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Applicant will not allow any former employee of HHSC to perform services under any contract resulting from this Open Enrollment Solicitation during the twelve (12) month period immediately following the employee's last date of employment at HHSC.
22. Applicant acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of HHSC or HHSC who during the period of state service or employment participated on behalf of HHSC or HHSC in a procurement or contract negotiation involving Applicant may not accept employment from respondent before the second anniversary of the date the officer's or employee's service or employment with HHSC or HHSC ceased.
23. Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Open Enrollment Solicitation and any resulting contract and that Applicant's provision of the requested goods and/or services under this Open Enrollment Solicitation and any resulting contract would not reasonably create an appearance of impropriety.
24. Applicant understands that HHSC and HHSC do not tolerate any type of fraud. The policy of HHSC and HHSC 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, 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. Applicant agrees to comply with all applicable laws, rules, regulations, and HHSC and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
25. Applicant represents and warrants that it has not violated state or federal antitrust laws and has not communicated its Open Enrollment Solicitation response directly or indirectly to any competitor or any other person engaged in such line of business. Applicant hereby assigns to HHSC any claims for overcharges associated with any contract resulting from this Open Enrollment Solicitation under 15 U.S.C. § 1, *et seq.*, and Texas Business and Commerce Code § 15.01, *et seq.*
26. Applicant understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Applicant is



**Post-Acute Rehabilitation Services**

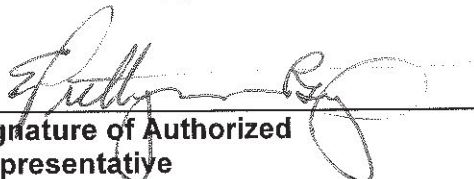
Procurement Number: HHS0000023

subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Open Enrollment Solicitation.

- 27. Applicant 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, statues, codes, and other laws that pertain to any contract resulting from this Open Enrollment Solicitation.
- 28. Applicant represents and warrants that the individual signing Applicant's Application is authorized to sign on behalf of Applicant and to bind Applicant.

**Authorized representative on behalf of Applicant must complete and sign the following:**

**Legal Name of Applicant: Neuro Institue of Austin, L.P.**

 _____ <b>Signature of Authorized Representative</b>	<u>11/14/17</u> _____ <b>Date Signed</b>
<u>Ed Prettyman, Psy.D. , CEO</u> _____ <b>Printed Name and Title of Authorized Representative</b>	<u>512-444-4835</u> _____ <b>Phone Number</b>
<u>56-2274069</u> _____ <b>Federal Employer Identification Number</b>	<u>512-462-6636</u> _____ <b>Fax Number</b>
<u>N/A</u> _____ <b>DUNS Number</b>	<u>Ed.prettyman@uhsinc.com</u> _____ <b>Email Address</b>
<u>1106 West Dittmar Rd</u> _____ <b>Physical Street Address</b>	<u>Austin, TX 78745</u> _____ <b>City, State, Zip Code</b>
_____ <b>Mailing Address, if different</b>	_____ <b>City, State, Zip Code</b>