

**SIGNATURE DOCUMENT FOR
THE DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS000363900001**

I. PURPOSE

The DEPARTMENT OF STATE HEALTH SERVICES (“SYSTEM AGENCY”), an administrative agency within the executive department of the State of Texas, and Health Management Systems, Inc. (“CONTRACTOR”), (each a “Party” and collectively “the Parties”) enter into the following contract for Third Party Health Insurance Verification and Reimbursement Collection (TPL) services (the “Contract”).

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of Title 10, Subtitle D of the *Texas Government Code*, in particular, *Texas Government Code* Sections 531.039 and 2155.144; and *Texas Health and Safety Code* Section 12.051.

III. STATEMENT OF SERVICES TO BE PROVIDED

Contractor shall perform or cause to be performed services in accordance with the STATEMENT OF WORK and COST PROPOSAL, attached hereto and incorporated herein as ATTACHMENTS A AND B, respectively.

IV. DURATION

The Contract is effective on signature date of the latter of the Parties to sign this agreement and terminates on August 31, 2021, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, at its own discretion, may extend this Contract for four years, subject to terms and conditions mutually agreeable to the Parties.

V. COST PROPOSAL

The total amount of this Contract will not exceed **\$72,000.00** for Data Matching services. Notwithstanding the foregoing, Contractor will instruct payers to remit checks to a lockbox account linked to System Agency by DSHS THMP’s Tax ID and administered by Contractor as agent. Contractor shall reconcile the account monthly and shall remit to System Agency 89% of the money recovered through Contractor’s recovery efforts under Exhibit A, retaining for itself an 11% fee. These funds are not subject to the not to exceed amount of \$72,000.00 to be paid for Data Matching services. All expenditures under the Contract will be in accordance with **ATTACHMENT B, COST PROPOSAL**.

VI. CONTRACT REPRESENTATIVES

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

System Agency

Department of State Health Services
1100 West 49th Street, MC 1990
Austin, Texas 78756
Attention: Jennifer Stanley, Contract Manager
Email: jennifer.stanley@dshs.texas.gov

Contractor

Health Management Systems, Inc.
5615 High Point Drive, #100
Irving, TX 75038
Attention: Joanna Coccaro
Email: Joanna.coccaro@hms.com

VII. LEGAL NOTICES

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

System Agency

Department of State Health Services
1100 West 49th Street, MC 1911
Austin, Texas 78756
Attention: General Counsel

Contractor

Health Management Systems, Inc.
5615 High Point Drive, #100
Irving, TX 75038
Attention: Joanna Coccaro

With a copy to:

Health Management Systems, Inc.
5615 High Point Drive
Irving, TX 75038
ATTN: Office of the General Counsel

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

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS00036390001

SYSTEM AGENCY

HEALTH MANAGEMENT SYSTEMS, INC.

DocuSigned by:
Imelda Garcia
87AFD32A09D24A9
Name: Imelda Garcia
Title: Associate Commissioner
Date of execution: November 9, 2020

DocuSigned by:
Michele Carpenter
C608C4B09F384FB
Name: Michele Carpenter
Title: Senior Vice President
Date of execution: November 9, 2020

THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS0003639001 ARE HEREBY ATTACHED:

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – COST PROPOSAL**
- ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D – ADDITIONAL PROVISIONS**
- ATTACHMENT E – GENERAL AFFIRMATIONS**
- ATTACHMENT F – DATA USE AGREEMENT**
- ATTACHMENT G – SECURITY AND PRIVACY INQUIRY**
- ATTACHMENT H – FFATA**
- ATTACHMENT I - EXCEPTIONS**

INCORPORATED BY REFERENCE:

- ATTACHMENT J – SYSTEM AGENCY SOLICITATION NO. HHS0003639v2**
- ATTACHMENT K – CONTRACTOR'S SOLICITATION RESPONSE**

ATTACHMENTS FOLLOW

ATTACHMENT - A

STATEMENT OF WORK

I. Background

The THMP, which has been in existence since 1987, provides medications for the treatment of the HIV and its related complications for low-income Texans. The THMP is the official ADAP for the State of Texas. ADAP is a federally funded DSHS state administered program authorized under Part B of Title XXVI of the Public Health Service Act as amended by the [Ryan White HIV/AIDS Treatment Extension Act of 2009](#). ADAP provides approved medications to low-income, uninsured or underinsured people living with HIV who have no other means to obtain these necessary and/or life-saving medications. In addition to the ADAP, THMP also oversees the State Pharmacy Assistance Program which wraps around Medicare clients to help pay premiums and drug co-pays; and the Texas Insurance Assistance Program, which wraps around private insurance to help pay premiums and drug co-pays. To qualify for medications for any of the three programs, potential clients who meet eligibility criteria complete an application for assistance.

II. Project Overview

- A. Contractor will conduct activities that will assist DSHS THMP with ensuring ADAP provides HIV medications as a safety net to effectively fill gaps as the payer of last resort. Contractor will identify individuals who are not eligible for ADAP because they have private or public health insurance. The Contractor will back-bill the appropriate health insurance company for medication costs incorrectly incurred by THMP.
- B. Contractor will receive and safeguard confidential ADAP client data according to **Data Usage Agreement, Appendix C-1**. No background check is required for Contractor.
- C. Contractor will perform data matches to identify clients who have other health insurance benefits, Third Party Liability (TPL), including, but not limited to; private coverage, access to other public coverage, including Medicaid, Medicare, and veterans' and military health programs. This will be accomplished by matching a monthly dataset from THMP with a listing of active insurance coverage through a secure file transfer protocol.
- D. Contractor will conduct investigations when a potential TPL is identified to determine the following:
 1. Effective dates of health insurance benefit coverage;
 2. Prescription drug covered benefits, specifically ADAP provided medications;
 3. Out-of-pocket costs (co-pays, coinsurance or deductibles);
 4. Any monthly limitations on the number of prescriptions covered; and
 5. Whether the third party is liable for ADAP medications previously provided.

As part of the monthly report, Contractor will inform DSHS the results of investigations when:

1. The results deem a client potentially ineligible for ADAP based on current or recent insurance benefit coverage;
2. A third party is liable for ADAP medications previously purchased;
3. The client's prescription drug coverage does not include prescribed HIV medications provided by ADAP; and
4. A client has monthly limitations on the number of prescriptions covered.

E. This Contract includes a variety of both automated and manual Third-Party Liability activities. All activities should augment current DSHS THMP processes and must not duplicate DSHS THMP work effort. The components and services required for this proposal are as follows:

1. Automated data matches with commercial and governmental insurers; and
2. Recovery and cost avoidance activities.

All proposals must be consistent with current Texas DSHS THMP policies and limitations for covered services, provider types, state plan benefits, and federal and state law.

III. Implementation - Phase 1

The Contractor shall be responsible for the preparation and execution of a final implementation plan. This plan shall be based upon the requirements of this Contract and coordinated with DSHS THMP to ensure readiness to complete required tasks by specified dates. The Contractor will develop an implementation plan to be approved by DSHS THMP that outlines in detail all steps necessary to begin program operations. It is anticipated that Phase I will begin upon contract execution and end ninety (90) calendar days into the contract. To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractors accountable for breach of contract or substandard performance and may take remedial or corrective actions, as identified in **Appendix A, UTC, Section 9.1 Contract Remedies**. If Phase 1 is not completed in a timely manner, issues arise, or non-compliance (e.g. report submissions untimely or not provided) occurs during Phase 1, remedies and/or corrective actions may be taken, so as not to impede the progress or development of Phase 2.

During the Implementation phase a written report of program progress shall be submitted to DSHS THMP every week. The progress report must specify accomplishments during the report period in a task-by-task format, including personnel hours expended, whether the planning tasks are being performed on schedule and any administrative problems encountered.

IV. Operations - Phase 2

During Phase 2, the Contractor must perform the responsibilities described in this Contract. It is expected that Phase 2 will begin upon commencement of Phase 1 through the end of the contract term.

The Contractor will be required to adhere to the performance requirements of the contract as well as the requirements of any revisions in federal and state legislation or regulations which may be enacted or implemented during the period of performance of this contract that are directly applicable to the performance requirements of this contract.

V. Data Matching

A. Work Plans

The Contractor shall identify new third-party coverage for Texas's recipient population with qualifying DSHS THMP coverage through data matches and other file searches with commercial and governmental carriers and other databases as approved by DSHS THMP. The Contractor should include the largest commercial insurance carriers operating in the State of Texas including Blue Cross and Blue Shield of Texas. Contractors should present evidence of the carrier's willingness to participate.

Data matching activities will be conducted based on Data Match Work Plans which will be submitted for DSHS THMP approval for each calendar quarter during the contract period. Work plans should be submitted no later than fifteen (15) calendar days prior to the beginning of each quarter. To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractors accountable for breach of contract or substandard performance and may take remedial or corrective actions, as identified in **Appendix A, UTC, Section 9.1 Contract Remedies.**

DSHS THMP reserves the right to modify the work plan to exclude specific carriers, types of coverage, and/or recipients as well as to modify time frames and match criteria for each match, to ensure non- duplication of effort and to maximize cost effectiveness. DSHS THMP will return the approved or modified work plan within ten (10) calendar days of receipt from the Contractor.

Work plans must include the following information:

1. Names of all commercial carriers, governmental and other databases the Contractor intends to perform data matches and the rationale for the selections;
2. Types of coverage provided by each carrier;
3. Recipient population to be included for each carrier including uniquely identified demographic elements, such as name, date of birth, gender, address, and zip code;
4. Time frames for each match;
5. Proposed process of identifying and verifying coverage for each carrier;
6. Criteria used to determine exact, suspect and other data match results;

7. Time frames for reporting information to the System Agency, description of reports, file formats, and data elements.
8. Contractor's method of billing.

B. Data Match Criteria

Data match criteria must include recipient's full name, date of birth, sex, social security number, and period of coverage of recipient and family members for the identification of valid matches and present full criteria to DSHS THMP for approval prior to initiating any data matches.

C. Tracking System

The Contractor shall maintain a tracking system that provides live update information on all cases. Contractor shall submit the proposed tracking system during Phase 1 for DSHS's review and approval. The Contractor should allow system access via the Internet to DSHS THMP staff or any designated agents working on its behalf for audit purposes. The system should track at the minimum the following information:

1. Data match dates and results
2. Individual insurance verification results

The Contractor must develop electronic and manual procedures for verifying the accuracy of its matches, the individuals matched, and their complete coverage. When the data match is completed, the Contractor shall present, for DSHS THMP approval, full results of the verified data matches conducted, prior to initiating any recoveries or data transfer to the insurance match file for the project.

D. Updates to Existing TPL Policy File

The Contractor is responsible for automated updates to the insurance match file with the new TPL information. TPL Policy File updates shall be provided in a separate file extract in a format approved by DSHS THMP and within fifteen (15) calendar days after previous month. The new TPL information must be verified and validated prior to transmission.

The Contractor must also provide a method for correcting information in the event previously transmitted information is found to be erroneous. Any errors identified should be corrected within fifteen (15) calendar days. If the error cannot be corrected within fifteen (15) calendar days, a corrective plan should be submitted outlining the nature of the problem and the timeframe on which it will be corrected.

VI. Recovery Activities

The Contractor shall provide a work plan to conduct post payment recoveries for mandatory “Pay and Chase” claims and for claims identified by retrospective identification of primary insurance and Medicare. The Contractor shall perform the following recovery activities after successfully updating the insurance match file with verified TPL information and receiving individual paid claims history data:

- A. Contractor will instruct payers to remit checks to a lockbox account linked to System Agency by DSHS THMP’s Tax ID and administered by Contractor as agent. Contractor shall reconcile the account monthly and shall remit to System Agency 89% of the money recovered through Contractor’s recovery efforts under Exhibit A, retaining for itself an 11% fee. These funds are not subject to the not to exceed amount of \$72,000.00 to be paid for Data Matching services.
- B. Establish, maintain, and update an accounts receivable file for claims which the Contractor identifies and bills to other insurance carriers. The accounts receivable file must be sufficient to provide an audit trail for State and Federal documentation requirements and shall be transferred to DSHS THMP at its request or at the termination of the contract resulting from this Contract. This account receivable file must be compatible with and capable of updating the TPL accounts receivable file on the insurance match file for this project. The account receivable file must have a separate cost center designated solely for these funds and must maintain documentation for receipts or notes to support all costs.
- C. Post recoveries to the accounts receivable files for receipt by DSHS THMP within seven (7) calendar days after recovery to allow for independent reconciliation by DSHS THMP of deposits to recoveries recorded.
- D. Send recovery and accounts receivable files to DSHS THMP within one hundred fifty (150) calendar days following the effective date of the contract and subsequent receipts of recoveries at least every thirty (30) calendar days thereafter.
- E. Transmit to DSHS THMP records of previously unidentified Third-Party recoveries in a format acceptable to DSHS THMP within ninety (90) calendar days after the effective date of the contract and at least every thirty (30) calendar days thereafter. The data will be transmitted within thirty (30) calendar days following discovery of the resource.
- F. Close out all claims for which no response was received after one hundred eighty (180) calendar days following the initial billing. An additional one hundred twenty (120) calendar days beyond the one hundred eighty (180) day period may be obtained if the Contractor shows it has re-billed the claim to the insurer between the 120th day and the 180th day of the initial period. Following the second period, the Contractor shall issue a zero-payment transaction to the insurance match file, canceling the Contractor’s rights to the recovery.

- G. Investigate reasons for nonpayment by other insurers and resubmit claims when appropriate. Specific reasons for nonpayment will be included in the accounts receivable file.
- H. Report to DSHS THMP all instances in which an insurance carrier has already paid an insured individual, a provider, or DSHS THMP for subsequent follow-up by DSHS THMP.
- I. Deduct from its billings any refunds of previous recoveries made to DSHS THMP in instances where incorrect or disallowed payments are made by third party resources. The total amount to be refunded should be shown on the Contractor's monthly billing statements as the amount to be deducted from the current month's bill. Each claim that results in incorrect or disallowed payments made by Third Party Resources must be identified by billing cycle/month, State Claim ICN, recipient name, DSHS THMP number, date of service, provider number, amount billed to DSHS THMP, amount paid by DSHS THMP, amount paid by Third Party Resource, and amount to be refunded for the claim.
- J. Identify all refunds owed to Third Party Resources to correct recoveries or other overpayments with appropriate documentation. Upon receipt of this information, DSHS THMP will verify its accuracy and request one single warrant to reimburse the Contractor for the total amount of all refunds. The Contractor will provide disbursement to the appropriate insurance carriers affected.

VII. Contractor Responsibilities

- A. Secure any necessary approvals and clearances required to conduct the tasks required by this RFP. These may include Data Match Agreements, CMS Waivers for timely filings, State Insurance Commission Approvals, etc.
- B. Provide a system for effective communication with a variety of entities including, but not limited to, employers, providers, recipients and insurance carriers. Communications should include a toll-free number to answer inquiries. The toll-free line must be operable and manned on business days from 8:00 a.m. - 5:00 p.m. CST.
- C. The Contractor's Project Manager must be available and prepared to meet with DSHS THMP staff and other individuals as considered necessary for the discussion of the contract requirements. The Project Manager must also be prepared to answer pertinent inquiries regarding the program, its implementation, and operation. Meetings between the representatives of the Contractor and DSHS THMP shall be on an as-needed basis throughout the implementation phase and monthly, or as otherwise required by DSHS THMP, during the operations phase.
- D. Provide adequate cash control procedures in the Contractor's processes of deposit of funds and disposition of recoveries to the accounts receivable files. These procedures must include separation of staff deposit and disposition functions,

security of receipts during business and non-business hours, and balancing deposits to the accounts receivable files with seven (7) calendar days of receipt of recoveries. Any unresolved variances must be reported to DSHS THMP with seven (7) calendar days of receipt.

- E. Submit monthly invoices to DSHS THMP based on finalized recoveries (those that the provider does not challenge or that have completed administrative appeals process and that include the number of newly verified insurance policies added to the insurance match file by the Contractors.
- F. The Contractor will be required to assist in the eventuality of an audit.

VIII. Information Technology and Systems Requirements

- A. The Contractor shall ensure seamless coordination between other systems including, but not limited to, the state's fiscal agent.
- B. The Contractor shall have the capacity (hardware, software and personnel) sufficient to fully manage and report on the project described in this RFP. The Contractor's information system must ensure system linkage throughout all Contractor departments and include a scalable database repository that supports large data sets and exponential growth in total database size over the life of the contract. The Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA).

The contractor shall supply an FTP fixed length text file consisting of monthly TPL identification and verification for ADAP enrollees. The file format template will be provided to DSHS to allow for proper implementation of this process.

- C. DSHS THMP will coordinate with the Contractor concerning which of DSHS THMP's data files will be shared and the frequency with which they will be made available to perform data matches and recover against previously unidentified Third-Party Resources. DSHS THMP has the first right to pursue.

IX. Administration and Management

The Contractor shall have a governing body that sets policy and assumes overall responsibility for the organization. The Contractor shall be responsible for the administration and management of all aspects of the contract resulting from this Contract. Any delegation of authority to subcontractors does not relieve the Contractor of responsibility. This includes all subcontracts, employees, agents and anyone acting for or on behalf of the Contractor.

The relationship between management personnel and the governing body shall be set forth in writing, including each person's authority, responsibilities, function, and position descriptions for key personnel.

If the Contractor delegates any function of the administration or management of the contract, the Contractor shall

- A. Ensure that the entity receiving such delegation adheres to all requirements set forth in state and federal requirements, in relation to the delegated entity and any further subcontractors;
- B. Notify DSHS THMP within ten (10) calendar days before such functions are delegated (full or partial delegation), specify what functions are delegated, identify the Contractor staff responsible for monitoring the delegated functions, and define how the Contractor will accomplish that monitoring
- C. Provide to DSHS THMP the names, addresses, phone numbers and roles of all subcontractors for this account and notify DSHS THMP within two (2) calendar days of any changes. Delegation to subcontractors is subject to System Agency approval.

X. Staffing

- A. The Contractor must designate key staff persons that will be responsible for implementation and program operations. Key staff persons are defined as core staff experienced in systems, operations, and policies necessary for overall project management, systems management, and contract implementation and operations.
- B. The Contractor must propose an organizational structure and staffing levels that are sufficient to accomplish the requirements of the Contract and must indicate key personnel.
- C. The Contractor must provide a detailed Staffing Plan that includes the name, title, and duties of each key staff person. If a key staff person is found unacceptable by DSHS THMP based on performance of duties and deliverables, the Contractor will be expected to replace that staff person with a different individual who meets the required qualifications and is able to perform the required duties and comply with all contract requirements and deliverables. Replacement of any key staff person should be accomplished within thirty (30) calendar days of the position vacancy, regardless of the reason for the vacancy, unless a longer period is approved by DSHS THMP.
- D. The Contractor may not make any permanent or temporary changes in key personnel assigned to this Contract without DSHS THMP's prior written approval. DSHS THMP reserves the right to approve all key staff persons assigned to this Contract.
- E. An in-person interview with DSHS THMP is required at least five (5) calendar days prior to the proposed start date of assignment of any key staff person to this Contract. Resumes and references must be submitted to DSHS THMP for review and approval at least five (5) calendar days prior to the in-person interview. At least three (3) professional references per key staff person are required. Resumes must

demonstrate that the individual has the educational background and work experience that meet the requirements and support the individual's ability to perform the duties of the position.

- F. The Contractor must provide an updated Organizational Chart and Staffing Plan that identifies each staff person assigned to this Contract and update this Chart and Staffing Plan when there are changes in key personnel.

Staffing levels must be sufficient to complete the responsibilities outlined in this Contract.

XI. Key Personnel

This section states the minimum requirements for staffing during the term of the contract. The Contractor must ensure that these minimum requirements are met and may also propose additional staff to ensure that all contract requirements are met, and program operations are performed effectively and efficiently. Key staff persons may be based outside the state of Texas except where specifically noted otherwise.

The Contractor shall develop a written Staffing Plan that designates key staff persons who will be responsible for program operations.

Key personnel for program operations must include at least the following:

- A. Project Manager – This key staff person will be the person responsible for implementation of the contract requirements, including all deliverables for this phase. This person must have experience in project management in a TPL program and must have a college or university degree in public health, public administration, hospital administration, nursing or business administration with a health-care emphasis.
- B. Data/Information Systems Manager – This key staff person will be responsible for developing and implementing all requirements related to hardware and software, data collection, information management, file transfers, and data coordination with DSHS THMP's fiscal agent. This person should be skilled and experienced with data systems in a TPL program and be able to work with DSHS THMP and the fiscal agent to develop and implement a data and information systems plan for implementation and operations. This person must have a college or university degree in information systems management, computer science, business administration with emphasis in information systems management, or similar degrees that relate to the required job duties.
- C. Customer Service Manager – This key staff person will be responsible for management of the local staff. This person must have experience in management and must have a college or university degree in business administration, public administration public health management or another related field. This key person must be a resident of Texas.

- D. Other Key Support Staff – Other key staff persons as assigned by the Contractor. All duties must be clearly defined, and responsibilities must be directly related to program operations.

XII. Contractor Payment

The amount payable by DSHS THMP to the contractor under this contract shall be monthly. The contractor shall submit an invoice and progress report, to include any required deliverables, to DSHS THMP for payment. Such invoice shall provide a description to sufficiently support payment by DSHS THMP.

A. Payments for Data Matches

DSHS THMP will pay a fee for each update to an existing policy when the following criteria have been verified by DSHS THMP to have been met:

1. Insurance is in force simultaneously with DSHS THMP eligibility;
2. Verified coverage not previously indicated on the Policy File; and
3. Verified coverage meets the requirements of the RFP.

B. Payments for Recovery Activities

DSHS THMP will pay a percentage of all recoveries made in accordance with a DSHS THMP-approved Work Plan.

C. Turnover Price

No specific or lump-sum payment shall be made by DSHS THMP for Turnover Phase services. Payment for such services shall be encompassed in the Operations Phase.

D. Erroneous Issuance of Compensation

In the event compensation to the Contractor of any kind is issued in error, the Contractor shall reimburse DSHS THMP the full amount of erroneous payment within thirty (30) calendar days of written notice of such error. Interest shall accrue at the statutory rate upon any amounts determined to be due and not repaid within thirty (30) calendar days following the notice. If payment is not made within thirty (30) calendar days following notice, DSHS THMP may deduct the amount from the Contractor's monthly administrative invoice.

E. Release

Upon final payment of the amounts due under this contract, the Contractor shall release DSHS THMP, its officers and employees from all liabilities and obligations whatsoever under or arising from this contract.

Payment to the Contractor by DSHS THMP shall not constitute final release of the Contractor. Should audit or inspection of the Contractor's records or client complaints subsequently reveal outstanding Contractor liabilities or obligations, the Contractor shall remain liable to DSHS THMP for such liabilities and obligations. Any

overpayments by DSHS THMP shall be subject to any appropriate recoupment to which DSHS THMP is lawfully entitled. Any payment under this contract shall not foreclose the right of DSHS THMP to recover excessive or illegal payments as well as interest, attorney fees and costs incurred in such recovery.

XIII. Reports Requirements

In addition to other requirements specified in this Contract, the vendor, if selected, must develop and electronically submit monthly reports to DSHS with a summary of activities that are conducted under this Contract, including billed claims, insurance coverage reports, and recovery reports.

The Contractor will retain all work papers and reports, at no additional charge to DSHS, for a minimum of seven (7) years after final payment under the Contract unless the Contractor is notified in writing by DSHS of the need to extend the retention period. DSHS reserves the right to use and reproduce all reports and data produced by the Contractor hereunder and to disseminate the same.

- A. Monthly Data Match Progress Reports. Narrative reports by Carrier specifying benchmarks, problems, and proposed solutions. All monthly reports are due by the 15th of the following month.
- B. Detailed Report of Actual Recoveries, including date of check receipt, client name, DSHS THMP ID number, carrier, and date of deposit. This information should balance to the deposits made to the bank account for each date. If any unidentified payments remain as of a given date, they shall be included on the report. This report is due to DSHS THMP within ten (10) calendar days of check receipt. (NOTE: See Section 2.1.7, Item 4 which requires disposition within seven (7) calendar days of receipt, thus allowing three (3) calendar days for delivery of the report.)
- C. Annual Report of Collections. This report must include the total amount billed and recovered, percentage of recovery, and number of claims involved. These totals should not be duplicative. The annual report is due forty-five calendar days following each 12-month period.
- D. Monthly Accounts Receivable Summaries. Report by Carrier, detailed claims billed, and re-billed, detailed claims and dollars paid, detailed claims and dollars outstanding, percentage of claims paid for initial and re-billings, with appropriate totals. All monthly reports are due by the 15th of the following month.
- E. Monthly Report of Carrier Payments to Other entities. Detailed listings specifically identifying payee, recipient, and paid claims affected on a weekly basis. Additionally, DSHS THMP will require summary reporting which indicates by Carrier, number and percentages of claims billed and dollar amounts requested, and payments made. Outstanding claims should be reported in 30, 60, 90, 120 and over 120-calendar day intervals. All monthly reports are due by the 15th of the following month.

- F. Newly Identified Resources by Carrier. Verified data match results by Carrier indicating number of recipients with newly identified coverage by type of coverage, due within thirty (30) calendar days of match completion.
- G. Monthly Comprehensive Recovery Report by Carrier. This will be a detailed report produced after all significant recoveries have been affected which will specify recoveries billed and paid, claims by procedure code, diagnosis and place of service. All monthly reports are due by the 15th of the following month.
- H. Monthly Report of Recoveries. This report must include the total amount billed and recovered, and the number of unduplicated claims. All monthly reports are due by the 15th of the following month.
- I. Monthly status report that includes the number of newly identified and verified health insurance segments. All monthly reports are due by the 15th of the following month.

All reports, documentation, and other information required of the Contractor shall be submitted electronically to Rachel.Sanor@dshs.texas.gov, as well as, the assigned DSHS Contract Manager.

Attachment B: Cost Proposal

Service	Fee	Percent
<p>Data Matches</p> <p>Provide the Fee to be paid for each Automated Data Match with commercial and government insurers that meets the criteria and requirements of the RFP.</p>	<p>\$6,000/ month fixed fee regardless of volume of matches performed for the ADAP population</p>	
<p>Recovery Activities</p> <p>Provide the Percentage to be used for calculating payment based on the amount of money recovered.</p>		<p>11%</p>

ATTACHMENT - C
UNIFORM TERMS AND CONDITIONS

HHS0003639v2
Appendix A



Health and Human Services (HHS)

Uniform Terms and Conditions - Vendor

Version 3.0

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

Health and Human Services
Uniform Terms and Condition – Vendor V.3.0
Page 1 of 24

Table of Contents

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS 5

1.1 DEFINITIONS5

1.2 INTERPRETIVE PROVISIONS 7

ARTICLE II. PAYMENT PROVISIONS 8

2.1 PROMPT PAYMENT8

2.2 ANCILLARY AND TRAVEL EXPENSES8

2.3 NO QUANTITY GUARANTEES8

2.4 TAXES8

ARTICLE III. STATE AND FEDERAL FUNDING 8

3.1 EXCESS OBLIGATIONS PROHIBITED8

3.2 NO DEBT AGAINST THE STATE8

3.3 DEBT AND DELINQUENCIES.....9

3.4 REFUNDS AND OVERPAYMENTS9

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS..... 9

4.1 WARRANTY.....9

4.2 GENERAL AFFIRMATIONS9

4.3 FEDERAL ASSURANCES 10

4.4 FEDERAL CERTIFICATIONS 10

ARTICLE V. INTELLECTUAL PROPERTY..... 10

5.1 OWNERSHIP OF WORK PRODUCT 10

5.2 CONTRACTOR’S PRE-EXISTING WORKS.....10

5.3 THIRD PARTY IP..... 11

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS 11

5.5 DELIVERY UPON TERMINATION OR EXPIRATION 11

5.6 SURVIVAL..... 11

5.7 SYSTEM AGENCY DATA..... 12

ARTICLE VI. PROPERTY 12

6.1 USE OF STATE PROPERTY 12

6.2 DAMAGE TO GOVERNMENT PROPERTY..... 13

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT..... 13

ARTICLE VII. WORK ORDERS..... 13

7.1 WORK ORDERS..... 13

7.2 PROPOSALS 13

7.3 RESPONSIBILITY 13

7.4 TERMINATION..... 13

ARTICLE VIII RECORD RETENTION, AUDIT, AND CONFIDENTIALITY 13

8.1 RECORD MAINTENANCE AND RETENTION 13

8.2 AGENCY’S RIGHT TO AUDIT 14

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS 14

8.4 STATE AUDITOR’S RIGHT TO AUDIT 15

8.5 CONFIDENTIALITY..... 15

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION 15

9.1 CONTRACT REMEDIES..... 15

9.2 TERMINATION FOR CONVENIENCE 15

9.3 TERMINATION FOR CAUSE..... 16

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY’S TERMINATION COSTS 16

ARTICLE X. INDEMNITY..... 16

10.1 GENERAL INDEMNITY 16

10.2 INTELLECTUAL PROPERTY 17

10.3 ADDITIONAL INDEMNITY PROVISIONS 17

ARTICLE XI. GENERAL PROVISIONS 18

11.1 AMENDMENT 18

11.2 INSURANCE 18

11.3 LIMITATION ON AUTHORITY..... 18

11.4 LEGAL OBLIGATIONS..... 18

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS..... 19

11.6 E-VERIFY PROGRAM..... 19

11.7 PERMITTING AND LICENSURE..... 19

11.8 SUBCONTRACTORS 19

11.9 INDEPENDENT CONTRACTOR..... 19

11.10 GOVERNING LAW AND VENUE..... 20

11.11 SEVERABILITY 20

11.12 SURVIVABILITY..... 20

11.13 FORCE MAJEURE..... 20

11.14 DISPUTE RESOLUTION..... 20

11.15 NO IMPLIED WAIVER OF PROVISIONS 21

HHS0003639v2
Appendix A

11.16 MEDIA RELEASES21
11.17 NO MARKETING ACTIVITIES21
11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS.....21
11.19 SOVEREIGN IMMUNITY.....22
11.20 ENTIRE CONTRACT AND MODIFICATION22
11.21 COUNTERPARTS.....22
11.22 CIVIL RIGHTS22
11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS23
11.24 DISCLOSURE OF LITIGATION23
11.25 NO THIRD-PARTY BENEFICIARIES24
11.26 BINDING EFFECT24

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

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, which documents changes to the Contract other than those permitted by Work Orders.

“Attachment” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference and made a part of this Contract.

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

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

“Deliverable” means a Work Product(s), including all reports and project documentation, 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.

“Goods” means supplies, materials, or equipment.

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

“Health and Human Services” or “HHS” includes the Department of State Health Services (DSHS), in addition to the Health and Human Services Commission.

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

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;

- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“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.

“Scope of Work” means the description of Services and Deliverables specified in the Contract and 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 (including any published addenda, exhibits, and Attachments) under which the goods or Services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

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

“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 the State Travel Management Program through the Texas Comptroller of Public Accounts website and 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, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a Subcontractor.

“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.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Contractor in connection with Contractor’s performance of its duties under the Contract or through use of any funding provided under this Contract.

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- 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, 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, 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. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. 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.
- B. 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* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

2.3 NO QUANTITY GUARANTEES

The System Agency makes no guarantee of volume or usage of work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

2.4 TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. System Agency shall not be liable for any taxes resulting from the contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Contractor for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

Contractor agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

3.4 REFUNDS AND OVERPAYMENTS

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
 - ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "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 shall 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 shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Contractor has failed 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:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Contractor received from System Agency for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and,
- iii. Take necessary action to ensure that Contractor's future performance and Work conform to the Contract requirements.

4.2 GENERAL AFFIRMATIONS

Contractor certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the Contractor has reviewed the General Affirmations and that Contractor is in compliance with all requirements.

4.3 FEDERAL ASSURANCES

Contractor certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal assurances and that Contractor is in compliance with all requirements.

4.4 FEDERAL CERTIFICATIONS

Contractor certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal certifications and that Contractor is in compliance with all requirements. In addition, Contractor certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

5.2 CONTRACTOR'S PRE-EXISTING WORKS

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective

Date of this Contract (“**Incorporated Pre-existing Works**”), Contractor retains ownership of such Incorporated Pre-existing Works.

- B. Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency’s internal business purposes only,
 - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
 - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency’s advance written approval prior to incorporating any Third Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor’s compliance with this **Section 5.3**, including without limitation documentation indicating a third party’s written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Contractor shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Contractor’s compliance with Contractor’s obligations under this **Article V**.

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency’s request, Contractor shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Contractor’s failure to timely deliver such Work Product is a material breach of the Contract. Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor’s activities under the Contract without the prior written consent of System Agency.

5.6 SURVIVAL

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

5.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Contractor by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Contractor shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Contractor's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Contractor's performance of its obligations hereunder.

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such Services.
- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
 - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 DAMAGE TO GOVERNMENT PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Contractor shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Contractor's receipt of System Agency's notice of amount due.

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

If the Contract is for indefinite quantities of Services, as specified in the Signature Document, all Work will be performed in accordance with properly executed Work Orders.

7.2 PROPOSALS

For Work Order contracts, the Contractor shall submit to System Agency separate proposals, including pricing and a project plan, for each Project.

7.3 RESPONSIBILITY

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. 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 any other information or special conditions as may be necessary for the Work assigned.

7.4 TERMINATION

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

- A. Contractor shall 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.

- B. Contractor shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Contractor for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

8.2 AGENCY'S RIGHT TO AUDIT

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall 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 shall 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 shall 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.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor must act to ensure its and its Subcontractors' 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 Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.

- B. As part of the Services, Contractor must provide to System Agency 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.

8.4 STATE AUDITOR'S RIGHT TO AUDIT

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The 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, under the direction of the legislative audit committee, 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 state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Contractor shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

8.5 CONFIDENTIALITY

Contractor shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Contractor under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Contractor.

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of

HHS0003639v2
Appendix A

the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

9.3 TERMINATION FOR CAUSE

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

i. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in 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 System for Award Management (SAM) will also constitute a material breach of the Contract.

ii. 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 Work, or otherwise fully perform its responsibilities under the Contract.

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Contract for cause, the Contractor shall 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 attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

- A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.**
- B. 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 FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.

C. For the avoidance of doubt, System Agency shall not indemnify Contractor or any other entity under the Contract.

10.2 INTELLECTUAL PROPERTY

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

10.3 ADDITIONAL INDEMNITY PROVISIONS

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall 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 shall 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 shall 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.
- B. 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.

11.3 LIMITATION ON AUTHORITY

- A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.
- B. Contractor shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Contractor may not rely upon implied authority and is not granted authority under the Contract to:
 - i. Make public policy on behalf of the System Agency;
 - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
 - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

11.4 LEGAL OBLIGATIONS

Contractor shall 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 shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.6 E-VERIFY PROGRAM

Contractor certifies that for Contracts for Services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Contractor to perform Work pursuant to the Contract within the United States of America.

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor shall 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 shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

11.8 SUBCONTRACTORS

Contractor may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

11.9 INDEPENDENT CONTRACTOR

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee

benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

11.10 GOVERNING LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

11.11 SEVERABILITY

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

11.12 SURVIVABILITY

Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

11.13 FORCE MAJEURE

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.14 DISPUTE RESOLUTION

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas

Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

11.15 NO IMPLIED WAIVER OF PROVISIONS

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

11.16 MEDIA RELEASES

- A. Contractor shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. 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.

11.17 NO MARKETING ACTIVITIES

Contractor is prohibited from using the Work for any Contractor or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Contractor shall 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.

11.19 SOVEREIGN IMMUNITY

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

11.20 ENTIRE CONTRACT AND MODIFICATION

This 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.

11.21 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.

11.22 CIVIL RIGHTS

- A. Contractor shall comply with all applicable state and federal anti-discrimination laws, including:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Contractor shall 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.
- C. Contractor shall 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 shall 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.

Contractor shall 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 shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring contractor to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the contractor can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- E. Contractor shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Contractor shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor shall provide the HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

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

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Contractor shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. 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 HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.24 DISCLOSURE OF LITIGATION

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any

HHS0003639v2
Appendix A

development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.25 NO THIRD-PARTY BENEFICIARIES

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

11.26 BINDING EFFECT

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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ATTACHMENT - D
ADDITIONAL PROVISIONS

HHS0003639v2
Appendix B



TEXAS
Health and Human Services

Health and Human Services (HHS)
Additional Provisions
Version 1.0
Effective: November 7, 2019

HHS0003639v2
Appendix B

Table of Contents

1. HHSC VENDOR ACCESS.....	1
2. HHSC APPROVAL OF STAFFING	1
3. TURNOVER PLAN.....	1
4. TURNOVER ASSISTANCE	1
5. DISCOUNTS	2
6. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS.....	2
7. NOTICE OF IRS OR TWC INSOLVENCY	2
8. NOTICE OF A LICENSE ACTION.....	2

HHS0003639v2
Appendix B

ADDITIONAL PROVISIONS

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Contract. Capitalized items used in these Additional Provisions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions.

1. HHSC VENDOR ACCESS

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

2. HHSC APPROVAL OF STAFFING

A. Contractor shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them. The Contractor shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Contract. The Contractor shall be responsible to HHSC for the acts and omissions of the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Contractor shall enforce strict discipline among the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.

B. Any person employed by the Contractor shall, at the written request of HHSC, and within HHSC's sole discretion, be removed immediately by the Contractor from work relating to the Contract.

3. TURNOVER PLAN

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

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

4. TURNOVER ASSISTANCE

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

HHS0003639v2
Appendix B

5. DISCOUNTS

If Contractor at any time during the term of the Contract provides a discount on the final contract costs, Contractor will notify HHSC in writing at least ten (10) calendar days prior to the effective date of the discount. HHSC will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

6. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

A. Contractor shall immediately report in writing to its assigned HHSC contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Contract has:

- i. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
- ii. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.

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

7. NOTICE OF IRS OR TWC INSOLVENCY

Contractor shall notify in writing its assigned HHSC contract manager of any insolvency, incapacity or outstanding unpaid obligations of Contractor owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas within five days of the date of Contractor's becoming aware of such.

8. NOTICE OF A LICENSE ACTION

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

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Date of the license action; and
- iv. License or case reference number.

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