

**INTERAGENCY COOPERATION CONTRACT
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000538900001**

TEXAS HEALTH AND HUMAN SERVICES COMMISSION (“HHSC”) and THE UNIVERSITY OF TEXAS AT AUSTIN (“UT”), each a “Party” and collectively the “Parties,” enter into the following Interagency Cooperation Contract (the “Contract”) pursuant to the provisions of “The Interagency Cooperation Act,” Chapter 771 of the Texas Government Code.

I. CONTRACT REPRESENTATIVES

The following will act as the Representative authorized to act on behalf of their respective Party.

Performing Agency

Mohini Patel, CRA
The University of Texas at Austin
7703 Floyd Curl Drive-MC 6220
San Antonio, TX 78229-3900
Telephone Number: (512) 471-2342
Email: mohini.patel@austin.utexas.edu

Receiving Agency

Project Manager: Maribel Castoreno
Texas Health and Human Services
Commission
701 W. 51st Street
Austin, TX 78751

Telephone Number: (512) 707-6112
Fax Number: (512) 730-7483
Email: Maribel.castoreno@hhsc.state.tx.us

Agency#: 529

Contract Manager: Adrienne Wilson
Telephone Number: (512) 438-2108
Email: Adrienne.wilson@hhsc.state.tx.us

II. STATEMENT OF SERVICES TO BE PROVIDED

The parties agree to the following services (See Attachment A)

III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on September 1, 2019 and terminates on August 31, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract for up to two additional two-year terms, subject to mutually agreeable terms and conditions.

IV. AMENDMENT

The Parties to this Contract may modify this contract only through the execution of a written amendment signed by both parties.

V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract will not exceed \$276,553.35 which is allocated for State of Texas Fiscal Year 2020 as not to exceed \$90,417.30; and for State of Texas Fiscal Year 2021 as not to exceed \$92,172.75; and for State of Texas Fiscal Year 2022 as not to exceed \$93,963.30 and will be reimbursed to the Performing Agency in accordance with Section V of this agreement.

VI. BASIS FOR COMPUTING REIMBURSABLE COSTS

(A) HHSC will reimburse UT for actual costs and any noncancelable commitments incurred during the term of and in the performance of this Contract. At the conclusion of each State Fiscal Year, UT agrees to send HHSC a final financial report reflecting UT's expenditures within budget categories and to refund unspent funds, if any, within sixty (60) days of the end date of this Contract.

(B) HHSC will make payment to UT in equal monthly installments by State Fiscal Year upon receipt of complete and accurate invoices by UT in accordance to the Prompt Payment Act. UT agrees to maintain, and upon request provide to HHSC, supporting financial information and documents that are adequate to ensure that claims for payment are made in accordance with applicable federal and state requirements and are sufficient to ensure the accuracy and validity of claims for payment.

(C) UT will maintain such documents for a period of ten (10) years after the date of submission of the final invoice, or until the resolution of all litigation, claims, financial management review or audit pertaining to this Contract, whichever is longer. UT agrees to timely prepay any undisputed audit exceptions taken by HHSC in any audit of this Contract.

(C) HHSC shall pay for services received from appropriation items or accounts of HHSC from which like expenditures would normally be paid, based upon vouchers drawn by HHSC, payable to UT. Payments received by UT shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

VII. SECURITY, AND BREACH NOTIFICATION

A. UT will safeguard HHS Confidential Information in compliance with Attachment B, the HHS Data Use Agreement, incorporated herein by reference.

VIII.CERTIFICATIONS

The undersigned Parties certify that:

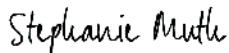
- A.The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- B.Each Party executing this Contract on its behalf has full power and authority to enter into this Contract;
- C.The proposed arrangements serve the interest of efficient and economical administration of state government; and
- D.The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

THE FOLLOWING ATTACHMENT TO THIS IAC ARE HEREBY INCORPORATED BY REFERENCE:


- ATTACHMENT A: Statement of Work**
- ATTACHMENT B: Budget**
- ATTACHMENT C: Data Usage Agreement**
- ATTACHMENT D: Special Conditions**
- ATTACHMENT E: Uniform Terms and Conditions**

RECEIVING AGENCY

PERFORMING AGENCY

DocuSigned by:


 Signature
 D2864AE64F6B4C4...

DocuSigned by:


 Signature
 BC34AC81F49E4DF...

Stephanie Muth

 Printed Name

Linda Shaunessy

 Printed Name

State Medicaid Director

 Title

Business Contracts Administrator

 Title

July 23, 2019

 Date

July 23, 2019

 Date

**ATTACHMENT A
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000538900001**

STATEMENT OF WORK

I. SERVICES AND DELIVERABLES

A. Performing Agency – UT

The scope of work includes but is not limited to the following services and deliverables. HHSC and UT are preparing this agreement in good faith and with the expectations that each 'party' will fulfill its obligations as described in this agreement.

UT shall:

1. Provide consulting services of a clinical pharmacist from the Drug Information Center in San Antonio, Texas to review therapeutic criteria and standards for drug use.
2. Revise and update the therapeutic criteria and standards for drug use as directed by HHSC and/or its Drug Utilization Review (DUR) Board.
3. Revise and update the therapeutic prior authorization criteria guide documents annually or in specified timeframes as required by HHSC.
4. Develop new therapeutic criteria and standards for drug use as directed by HHSC and/or DUR Board, to include validating the criteria and standards comply with HHSC's specifications.
5. Develop provider and patient educational materials and conduct medical literature searches as directed by HHSC.
6. Provide the services of Jennifer K. Seltzer, PharmD., who will coordinate drug utilization activities with HHSC's Vendor Drug Program staff to ensure optimal program results. If services are not available by Jennifer K. Seltzer, PharmD., UT may use the services of an optional clinical pharmacist as approved by HHSC.
7. Communicate as requested by the HHSC Project Manager to describe and provide progress reports on services and deliverables developed and approved under the Contract.
8. Complete services and deliverables in the timeframes requested and specified by HHSC. If timeframe cannot be met, provide a two week notice to the project manager by request of an extension in written communication.
9. Correct or revise any errors, omissions or other deficiencies in any services or deliverable provided that is not in compliance with the scope of work or other contract requirements as identified by HHSC.
10. Use data obtained from HHSC exclusively in connection with this study, as described in this agreement only in the manner and for the purposes authorized by this agreement.

B. Receiving Agency – HHSC

HHSC shall:

1. Identify service and deliverable topics, prioritize and specify completion timeframe(s) at time of assignment to UT.
2. Consider service and deliverable timeframe extensions as requested by UT per contract terms.
3. Monitor all requirements, services and deliverables in the Contract and assess performance to determine satisfaction with the Contract terms.
4. Request UT to correct or revise any errors, omissions or other deficiencies in any service or deliverable provided by UT that is not in compliance with the scope of work and other contract requirements.
5. Seek appropriate approvals as needed, including that of the Drug Utilization Review Board as necessary.

II. INTELLECTUAL PROPERTY RIGHTS

Title to all inventions and discoveries made by UT resulting from the research performed hereunder shall reside in UT; however, UT hereby grants to HHSC a nonexclusive, worldwide, license to use any invention or discovery made and conceived during the term of this Agreement and directly resulting from the performance of research hereunder for its non-commercial governmental purposes.

III. PUBLICATION RIGHTS

All publications resulting from, relating to, or otherwise regarding the Contract must be reviewed and approved by HHSC prior to publication. UT has the right to publish or otherwise publicly disclose information gained during this Agreement, except for the Protected Health Information or other confidential information furnished to UT pursuant to this Agreement. In order to provide HHSC with the ability to review proposed publications and other public disclosure for inclusion of Protected Health Information or other confidential information, UT will submit any prepublication materials to HHSC for review, comment(s) and approval at least forty-five (45) days prior to planned submission for publication or disclosure. HHSC must notify UT within thirty (30) days of receipt of such materials whether Protected Health Information or other confidential information has been included in the publication or disclosure. UT agrees to remove any such Protected Health Information or other confidential information from publications. If HHSC does not respond within thirty (30) days, UT may publish the proposed publication or information except Protected Health Information or other confidential information.

Attachment B Interagency Cooperative Agreement

Contract HHS000538900001

**Interagency Agreement Between College of Pharmacy and
Texas Health and Human Services Commission
Drug Information Services for Medicaid DUR
Vendor Drug Program, Texas Health and Human Services Commission
September 1, 2019-August 31, 2020**

Personnel (1/2 time Drug Information Specialist)	
Salary	\$58,262.40
Fringe Benefits (31%)	\$18,061.34
Travel	\$1,800.00
Supplies	\$500.00
Total Direct Costs	\$78,623.74
Indirect Costs (15%)	<u>\$11,793.56</u>
TOTAL BUDGET	\$90,417.30

**Interagency Agreement Between College of Pharmacy and
Texas Health and Human Services Commission
Drug Information Services for Medicaid DUR
Vendor Drug Program, Texas Health and Human Services Commission
September 1, 2020-August 31, 2021**

Personnel (1/2 time Drug Information Specialist)	
Salary	\$59,427.65
Fringe Benefits (31%)	\$18,422.57
Travel	\$1,800.00
Supplies	\$500.00
Total Direct Costs	\$80,150.22
Indirect Costs (15%)	<u>\$12,022.53</u>
TOTAL BUDGET	\$92,172.75

**Interagency Agreement Between College of Pharmacy and
Texas Health and Human Services Commission
Drug Information Services for Medicaid DUR
Vendor Drug Program, Texas Health and Human Services Commission
September 1, 2021-August 31, 2022**

Personnel (1/2 time Drug Information Specialist)	
Salary	\$60,616.20
Fringe Benefits (31%)	\$18,791.02
Travel	\$1800.00
Supplies	\$500.00
Total Direct Costs	\$81,707.22
Indirect Costs (15%)	<u>\$12,256.08</u>
TOTAL BUDGET	\$93,963.30

**Total Contract Amount (September 1, 2019-August 31, 2022) –
\$276,553.35**

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM

System Agency CONTRACT NUMBER _____

The DUA between System Agency and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with _____ (SUBContractor) for performance of duties on behalf of CONTACTOR which are subject to the DUA. SUBContractor acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to System Agency Confidential Information. Contractor and SUBContractor agree that System Agency is a third-party beneficiary to applicable provisions of the subcontract.

System Agency has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and SUBContractor assure System Agency that any Breach or Event as defined by the DUA that SUBContractor Discovers will be reported to System Agency by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBContractor that constitutes a material breach or violation of the DUA or the SUBContractor's obligations Contractor will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBContractor, if feasible;
3. Notify System Agency immediately upon reasonably discovery of the pattern of activity or practice of SUBContractor that constitutes a material breach or violation of the DUA and keep System Agency reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate SUBCONTACTOR's contract or arrangement.

This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.

CONTRACTOR

SUBCONTRACTOR

BY:

BY:

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE _____, 201 .

DATE: _____

ATTACHMENT D
UT SYSTEM SUPPLEMENTAL CONDITIONS
Contract HHS000538900001

The HHSC Uniform Terms and Conditions - State Governmental Body are revised as follows:

Section 4.01, Intellectual Property, is deleted in its entirety and replaced with the following:

“4.01 Intellectual Property

- A. Other than intellectual property interests, System Agency will own, and Performing Agency hereby assigns to the System Agency, all right, title, and interest in all Deliverables.
- B. To the extent any Work results in the creation of Intellectual Property, all rights, title, and interest in and to such Intellectual Property shall vest in the Party that creates such Intellectual Property.
- C. Performing Agency agrees to grant to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable, non-commercial license to use all Deliverables and any Intellectual Property invented or created by Performing Agency, Performing Agency's contractor, or a subcontractor in the performance of the Project. Performing Agency will require its contractors to grant such a license in any subcontracts under this Contract.
- D. The System Agency shall have the right to review and provide comment to any written report, publication or other literature including copyrightable Intellectual Property invented or created in the performance of this Contract, prior to the publication of such literature. Performing Agency agrees to provide the System Agency with an advance copy of any such report, publication, or literature at least thirty (30) days prior to publication. Performing Agency agrees to insert the following statement into any such report, publication or literature: “The views expressed in this publication are those of the authors and do not necessarily reflect the official policies, positions, or views of the State of Texas or the Health and Human Services Commission.”

Section 5.05, Public Information and Confidentiality, is deleted in its entirety and replaced with the following:

“5.05 Public Information and Confidentiality

Information related to the performance of this Contract may be subject to the PIA. Performing Agency must make all information not otherwise excepted from disclosure under the PIA available in portable document file (“.pdf”) format or any other format agreed between the Parties.

Should the work under this Contract require the exchange of any confidential information, the parties agree to execute a separate nondisclosure or data use agreement to control the handling and protection of such information.”

Section 5.06, Data Security, is deleted in its entirety and replaced with the following:

“5.06 Data Security

Should the work under this contract require the exchange of any confidential data, the parties agree to execute a separate data use agreement to control the handling and protection of such data.”

ATTACHMENT D
UT SYSTEM SUPPLEMENTAL CONDITIONS
Contract HHS000538900001

Section 6.02, Termination for Convenience, is deleted in its entirety and replaced with the following:

“6.02 Termination for Convenience

Either Party may terminate the Contract at any time when, in its sole discretion, it determines that termination is in the best interest of the State of Texas. The termination will be effective on the date specified in the terminating Party's notice of termination.”

Section 7.04 Standard Terms and Conditions, is deleted in its entirety and replaced with the following:

“7.04 Standard Terms and Conditions

- A. In the performance of this Contract, each Party shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Each Party shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. Each Party will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.
- B. All records relevant to this Contract shall be retained for a minimum of seven (7) years. The period of retention begins at the date of final payment by the System Agency, or from the date of termination of the Contract, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit or to complete any administrative proceeding or litigation that may ensue.
- C. Performing Agency 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/or 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.
- D. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Performing Agency irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE SYSTEM AGENCY OR BY PERFORMING AGENCY.**
- E. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

HHSC-UT System Approved Supplemental Conditions
Interagency Contract HHS000538900001

ATTACHMENT D
UT SYSTEM SUPPLEMENTAL CONDITIONS
Contract HHS000538900001

- F. Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the System Agency may terminate this Contract immediately upon written notification to Performing Agency.
- G. This Contract, its integrated Attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and are 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 such Attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract.
- H. Neither party shall assign or subcontract the whole nor any part of the contract, including any right or duty required under it, without the other party's prior written consent. Any assignment made contrary to this shall be void.
- I. This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the System Agency within thirty (30) days of execution by the other Party, this Contract shall be null and void.
- J. Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," each Party is self-insured and, therefore, is not required to purchase insurance."

HHSC Uniform Terms and Conditions Version 2.14
Published and Effective: September 1, 2017
Responsible Office: Chief Counsel



TEXAS

Health and Human Services

Health and Human Services Commission
HHSC Uniform Terms and Conditions -
State Governmental Body
Version 2.14

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ARTICLE I DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 Definitions

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

“[Amendment](#)” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Technical Guidance Letters, as herein defined.

“[Attachment](#)” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference, as if physically, within the body of this Contract.

“[Contract](#)” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“[Deliverables](#)” means any item, report, data, document, photograph, or other submission required to be delivered under the terms of this Contract, in whatever form.

“[Effective Date](#)” means the date agreed to by the Parties as the date on which the Contract takes effect.

“[Federal Assurances](#)” means Standard Form 424B (Rev. 7-97), as prescribed by OMB Circular A-102 (non-construction projects); or Standard Form 424D (Rev. 7-97), as prescribed by OMB Circular A-102 (construction projects).

“[Federal Certifications](#)” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions.”

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

“[GAAP](#)” means Generally Accepted Accounting Principles.

“[GASB](#)” means the Governmental Accounting Standards Board.

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

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

“[Parties](#)” means the System Agency and Performing Agency, collectively.

“[Party](#)” means either the System Agency or Performing Agency, individually.

“[Performing Agency](#)” means the State Agency providing the goods or services defined in this Contract.

“[Project](#)” means the goods and/or Services described in the Signature Document or an Attachment to this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Receiving Agency](#)” means the State agency receiving the benefit of the goods or services provided under this Contract.

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

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Performing Agency under the Contract.

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

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

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

“[Subcontractor](#)” means an individual or business that performs part or all of the obligations of Performing Agency under this Contract.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Performing Agency.

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

1.02 Interpretive Provisions

- A. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.

- G. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall 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 shall be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II CONSIDERATION

2.01 Expenses

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

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

2.02 Funding

- A. This Contract shall not be construed as creating any debt on behalf of the State of Texas or the System Agency in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the System Agency hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- B. Furthermore, any claim by Performing Agency for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Performing Agency, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.
- C. This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract.

In the event of cancellation or termination under this Section, the System Agency shall not be required to give notice and shall not be liable for any damages or losses caused or associated with such termination or cancellation.

ARTICLE III WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

3.01 Federal Assurances

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

3.02 Federal Certifications

Performing Agency further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Performing Agency is in compliance with each of the requirements reflected therein. **In addition, Performing Agency certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

ARTICLE IV INTELLECTUAL PROPERTY

4.01 Intellectual Property

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

ARTICLE V RECORDS, AUDIT, AND DISCLOSURE

5.01 Access to records, books, and documents

In addition to any right of access arising by operation of law, Performing Agency and any of Performing Agency’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. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Performing Agency shall produce original documents related to this Contract. 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. Performing Agency 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.

5.02 Response/compliance with audit or inspection findings

- A. At Performing Agency's sole expense, Performing Agency must take action to ensure its or a Subcontractor's compliance with a correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under the Contract. Whether Performing Agency's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the Services, Performing Agency must provide to HHSC upon request a copy of those portions of Performing Agency's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

5.03 SAO Audit

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

5.04 Recapture of Funds

The System Agency may withhold all or part of any payments to Performing Agency to offset overpayments made to the Performing Agency. 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. Performing Agency understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

5.05 Public Information and Confidentiality

Information related to the performance of this Contract may be subject to the Public Information Act and will be withheld from public disclosure or released to the public only in

accordance therewith. Performing Agency shall make any information required under the Public Information Act available to the System Agency in portable document file (“.pdf”) format or any other format agreed between the Parties.

To the extent permitted by law, Performing Agency and the System Agency agree to keep all information confidential, in whatever form produced, prepared, observed, or received by Performing Agency or the System Agency. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

5.06 Data Security

Each Party and its Subcontractors will maintain reasonable and appropriate administrative, physical, and technical safeguards to ensure the integrity and confidentiality of information exchanged in the performance of services pursuant to this Contract and protect against any reasonably anticipated threats or hazards to the security or integrity of the information and unauthorized use or disclosure of the information in accordance with applicable federal and state laws, rules, and regulations.

Upon notice, either Party will provide, or cause its subcontractors and agents to provide, the other Party or its designee prompt access to any information security records, books, documents, and papers that relate to services provided under this Contract.

ARTICLE VI CONTRACT MANAGEMENT AND EARLY TERMINATION

6.01 Contract Management

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

- A. suspending all or part of the Contract;
- B. requiring the Performing Agency to take specific corrective actions in order to remain in compliance with term of the Contract;
- C. recouping payments made to the Performing Agency found to be in error;
- D. suspending and/or limiting any services and placing conditions on any such suspensions and/or limitations of services;
- E. imposing any other remedies authorized under this Contract; and
- F. imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, rule.

6.02 Termination for Convenience

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC’s notice of termination.

6.03 Termination for Cause

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Performing Agency 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 Performing Agency's duties under the Contract.

6.04 Equitable Settlement

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

ARTICLE VII MISCELLANEOUS PROVISIONS

7.01 Technical Guidance Letters

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

7.02 Survivability

All obligations and duties of the Performing Agency not fully performed as of the expiration or termination of this Contract will survive the expiration or termination of the Contract.

7.03 No Waiver

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

7.04 Standard Terms and Conditions

- A. In the performance of this Contract, each Party shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Each Party shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. Each Party will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.
- B. All records relevant to this Contract shall be retained for a minimum of seven (7) years. The period of retention begins at the date of final payment by the System Agency, or from the date of termination of the Contract, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit or to complete any administrative proceeding or litigation that may ensue.
- C. The System Agency shall own, and Performing Agency hereby assigns to the System Agency, all right, title, and interest in all tangible Work.
- D. Performing Agency 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/or 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.

- E. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Performing Agency irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE SYSTEM AGENCY.**
- F. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
- G. Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a “Force Majeure”), then, while so prevented, the affected Party’s obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the System Agency may terminate this Contract immediately upon written notification to Performing Agency.
- H. This Contract, its integrated Attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and are 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 such Attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract.
- I. Neither party shall assign or subcontract the whole nor any part of the contract, including any right or duty required under it, without the other party’s prior written consent. Any assignment made contrary to this shall be void.

- J. This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the System Agency within thirty (30) days of execution by the other Party, this Contract shall be null and void.

- K. Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," Each Party is self-insured and, therefore, is not required to purchase insurance.

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