

**SIGNATURE DOCUMENT FOR  
HEALTH AND HUMAN SERVICES COMMISSION, ON BEHALF OF THE OFFICE  
OF THE INSPECTOR GENERAL  
CONTRACT NO. HHS000539200001**

The Health and Human Services Commission (“System Agency”), on behalf of the Office of the Inspector General (“HHSC-OIG ”), an administrative agency within the executive branch of the state of Texas, and Health Management Systems (“Contractor”), having its principal office at 5615 High Point Drive, Irving, TX 75038, (each a “Party” and collectively the “Parties”), enter into the following agreement (“Contract”) for Medicaid Estate Recovery Program (“MERP”) services.

**I. LEGAL AUTHORITY**

This Contract is entered into pursuant to the provisions of the Texas Government Code, chapter 531,

**II. DURATION**

The Contract is effective on September 1, 2020 and terminates on August 31, 2022, unless sooner terminated or renewed or extended (the “Initial Term”). System Agency, may renew or extend this Contract for up to three additional, one-year terms. However, in no event may the Contract term, including all renewals and extensions, exceed five years. Notwithstanding the limitation in the preceding sentence, System Agency, at its sole discretion, also may extend the Contract beyond five years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State.

**III. STATEMENT OF WORK**

The Statement of Work to which Contractor is bound is incorporated into and made a part of this Contract for all purposes and included as **Attachment A**.

**IV. BUDGET**

The total amount of this Contract will not exceed \$4,800,000. By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract term, including the Initial Term, and all renewals and extensions exercised. Contractor will be paid a contingency fee of 11.5% of total MERP recoveries during the Initial Term. Contractor will be paid a contingency fee of 12.5% of total MERP recoveries during each of the three optional renewal or extension terms. However, at System Agency’s sole discretion or by mutual agreement of the Parties as authorized under the Contract, the budget or

contract amounts may be amended. All expenditures under the Contract will be in accordance with **ATTACHMENT E, BUDGET**.

**V. CONTRACT REPRESENTATIVES**

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

**System Agency Contract Representative**

Mary Moyer  
Office of the Inspector General  
11501 Burnet Road, Bldg 902  
Austin, TX 78758  
mary.moyer@hhsc.state.tx.us

**Contractor Contract Representative**

Michele Carpenter  
Health Management Systems  
5615 High Point Drive  
Irving, TX 75038  
Michele.carpenter@hms.com

**VI. NOTICE REQUIREMENTS**

- A. All notices given by Contractor shall be in writing, include the Contract number, comply with all terms and conditions of the Contract, and be delivered to the System Agency's Contract Representative identified above.
- B. Contractor shall send legal notices to System Agency at the address below and provide a copy to the System Agency's Contract Representative:

Office of the Inspector General  
Attn: Office of Chief Counsel  
11501 Burnet Road, Bldg. 902  
Austin, Texas 78758

- C. Notices given by System Agency to Contractor may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by System Agency. Notices sent by mail shall be deemed delivered when deposited by the System Agency in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the System Agency with a common carrier, overnight, signature required.
- D. Notices given by Contractor to System Agency shall be deemed delivered when received by System Agency.
- E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party. A contract amendment will not be required.

**VII. CONTRACT DOCUMENTS**

The following documents are incorporated by reference and made a part of this Contract for all purposes.

Unless expressly stated otherwise in this Contract, in the event of conflict, ambiguity or inconsistency between or among any documents, all System Agency documents take precedence over Contractor's documents and the Data Use Agreement takes precedence over all other contract documents.

**ATTACHMENT A – STATEMENT OF WORK**  
**ATTACHMENT B – CONTRACT AFFIRMATIONS**  
**ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**  
**ATTACHMENT D – DATA USE AGREEMENT**  
**ATTACHMENT E – BUDGET (COST PROPOSAL)**  
**ATTACHMENT F – ADDITIONAL PROVISIONS**  
**ATTACHMENT G - CERTIFICATION REGARDING LOBBYING**  
**ATTACHMENT H – SYSTEM AGENCY SOLICITATION No. HHS0005392 V2**  
**ATTACHMENT I - CONTRACTOR'S SOLICITATION RESPONSE**

**VIII. SIGNATURE AUTHORITY**

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

**SIGNATURE PAGE FOLLOWS**

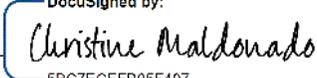
System Agency Contract No. [HHS000539200001](#)

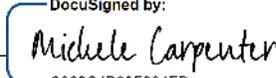
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**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000539200001**

**SYSTEM AGENCY**

**HEALTH MANAGEMENT SYSTEMS**

By:  \_\_\_\_\_  
Name: Christine Maldonado  
Title: Chief of Operations  
Date of Signature: August 26, 2020

By:  \_\_\_\_\_  
Name: Michele Carpenter  
Title: Senior Vice President  
Date of Signature: August 25, 2020

## STATEMENT OF WORK

### 1.1 EXECUTIVE SUMMARY

This Contract sets forth the specifications according to which the Contractor must conduct its Medicaid Estate Recovery Program (MERP) on behalf of the Health and Human Services Commission (HHSC) and the Office of Inspector General's (OIG) MERP.

Medicaid is a medical assistance program for qualifying persons that is state-administered according to federal requirements, and jointly funded by states and the federal government. Medicaid operates under Title XIX of the Social Security Act. Title XIX of the Social Security Act, 42 U.S.C. §§1396-1396w-5, is commonly known as the Medicaid Act. To participate in the Medicaid program and become eligible for federal funding, a state must develop a Medicaid state plan that conforms to comprehensive federal requirements. A state must obtain approval of its state plan from the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS).

Under Section 1396p(b) of the Medicaid Act, a state Medicaid plan must provide for recovery after the death of a Medicaid recipient from the recipient's estate of certain medical assistance paid by the state for covered Medicaid long-term care services provided to the recipient during the recipient's lifetime.

Texas Government Code Section 531.077 requires the Executive Commissioner for HHSC, which is the state agency designated to administer the state's Medicaid Program, to ensure implementation of federal requirements relating to Medicaid estate recovery. This statutory mandate and the Texas State Plan provisions relating to Medicaid estate recovery are implemented through rules in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 373 ("MERP rules"). MERP is the program within HHSC that is responsible for recovering the costs of Medicaid long-term care benefits paid on behalf of, and received by, certain Medicaid recipients.

#### 1.1.1 Project Background

Unless exempt under MERP rules, the estates of Medicaid recipients who were 55 and older when they received covered Medicaid services, and who initially applied for Medicaid long-term care services on or after March 1, 2005, are subject to estate recovery. Covered Medicaid long-term care services for such recipients include nursing facility services, intermediate care facility services for individuals with an intellectual disability or related condition, certain Medicaid waiver program services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), and Community Attendant Services under Section 1929(b) of the Social Security Act (42 U.S.C. §1396t). They also include related costs of hospital and prescription drug services. Recoveries occur in both fee for service and managed care areas.

Contractor is responsible for identifying, after the death of a Medicaid recipient who received covered Medicaid long-term care services, the amount of Medicaid assistance paid on behalf of the individual for such services, and the assets that are recoverable from

the estate of that individual. In addition, Contractor must take the necessary steps to recover the amount of the MERP claim from the identified assets.

Estate claims are paid from the estate in order of their classification under the Texas Estates Code. Therefore, an estate recovery claim may only be paid from assets remaining in the estate after claims with a higher classification are paid. Claims with a higher classification are, in summary:

- A. Class 1: Reasonable, approved amounts for funeral and last illness expenses, not to exceed \$15,000;
- B. Class 2: Expenses of administration, expenses incurred in preserving, safekeeping, and managing the estate, and unpaid expenses of administration awarded in a guardianship of the decedent;
- C. Class 3: Any secured claim for money under Estates Code, Section 355.151(a)(1), including tax liens, to the extent the claim can be paid from the proceeds of the property subject to the mortgage or other lien;
- D. Class 4: Judicially or administratively determined amounts for delinquent child support and arrearages, and claims for unpaid child support obligations under Section 154.015, Family Code;
- E. Class 5: Claims for specified taxes, penalties, and interest; and
- F. Class 6: Texas Department of Criminal Justice claims for the cost of confinement.

Tex. Est. Code §355.102.

A MERP claim for repayment of applicable Medicaid payments made to or for the benefit of the decedent is a Class 7 claim under the Estates Code, Tex. Est. Code §355.102(h).

HHSC, and any other state agency, its officers, employees, or authorized agents.

## **2. Scope of Work**

### **2.1 DESCRIPTION OF CONTRACT SERVICES AND DELIVERABLES**

#### **2.1.1 PROJECT SCOPE**

Contractor will identify and recover from the estate of certain deceased Medicaid recipients, subject to MERP recovery, the amount of Medicaid assistance paid on behalf of such recipients, any assets recoverable from the estate of that individual, and subject to recovery, for covered Medicaid long-term care services provided to the recipients during their lifetime. Contractor will routinely exchange information and files with HHSC-OIG to determine potential MERP eligibility. OIG reserves the right to expand the Scope of Work through contract amendment, for any additional Services that may be beneficial to OIG.

Contractor is responsible for providing MERP Services for the HHSC-OIG, MERP, under the direction of OIG Operations, Third Party Recoveries (TPR) Division.

## **2.1.2 COMMUNICATION WITH OIG**

Contractor must:

- A. No later than the third business day after receipt, send OIG each recovery check mailed directly to the Contractor. Contractor must send each check using a method that permits the Contractor to track the location of the check.
- B. Keep the OIG informed, in writing, of personnel who are assigned to work with the MERP Contract and notify the OIG of any personnel changes within five business days after the change.
- C. Provide written notification to the OIG within three business days after a situation arises or occurs that requires action from the OIG.
- D. Respond, within the time frame established by the OIG at the time of request, to each information request from the OIG.
- E. Meet with OIG representatives at OIG offices on a quarterly basis to discuss the Contractor's performance or other Contract matters.
- F. Unless the request specifies a different time frame, including an earlier time frame, cooperate and comply with any request and provide requested information, within three business days after the request, to an HHSC attorney providing legal representation or services related to a MERP matter, or requesting information on behalf of the Office of the Attorney General (OAG) to facilitate its representation of HHSC or the OIG on a MERP-related matter. This includes providing, or cooperating to provide, MERP-related evidence, statements, or testimony.
- G. Enable OIG staff to listen to live calls when OIG staff are on site at the Contractor's offices.
- H. Provide OIG access to all calls required to be recorded as outlined in Section 2.1.5, Toll-free Line Operation, upon request from the OIG. When the OIG identifies its request for access to a recorded call as urgent, the Contractor must provide the OIG access to the recorded phone call within three business days after the OIG request. When the OIG does not identify its request as urgent, Contractor must provide the OIG access to a recorded phone call within four business days after the OIG requests access to it.
- I. Without limiting the reporting requirements as outlined in Section 2.1.15, Information Exchange and Reporting Requirements provide monthly, quarterly and yearly reports summarizing recovery data for those periods. Monthly and quarterly data should be submitted within 10 business days and yearly reports should be submitted 20 business days after state fiscal year end.

## **2.1.3 INTERNAL POLICY REQUIREMENTS**

Contractor must put its internal operational policies and procedures in an operation manual and make this manual available to OIG electronically no later than 60 calendar days after the Effective Date of the Contract. Contractor will notify OIG electronically if changes have been made to operational procedures within 20 business days.

Contractor's internal operational policies and procedures must include a description of the Contractor's procedures for performing all Contractor responsibilities, and its quality assurance policies and procedures relating to its performance of those responsibilities. This includes Contractor's procedures for handling incoming calls, time frames for completing specific tasks, and a complete timeline and associated procedures for all aspects of its recovery process.

Contractor's operational manual must also describe the Contractor's procedures for handling the money collected, its accounting methods, which must be consistent with generally accepted accounting principles, and its procedures for safeguarding the money collected.

#### **2.1.4 STAFFING REQUIREMENTS**

Contractor must recruit and maintain staff sufficient in number, training and qualifications to be able to meet each month each time frame established by the Contract, at a minimum, 90 percent of the time. The staff must include at least one attorney and other staff with extensive experience and training relating to Texas probate procedures, fair debt collection practices, and associated legal requirements and restrictions.

#### **2.1.5 TOLL-FREE LINE OPERATION**

Contractor must staff a dedicated, toll-free telephone number, during the hours of 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday, except on national and state holidays established in Section 662.003 of the Texas Government Code. Contractor's staff must include at least one employee who speaks both English and Spanish. Contractor must also have the capability of communicating with individuals who call the toll-free number, but who communicate primarily in languages other than English or Spanish. Staff answering the toll-free number must be trained and able to provide general information regarding Medicaid estate recovery and the claims process to personal representatives of an estate, heirs, and other members of the public, without providing them advice.

Contractor must record all phone conversations made during the Contractor's recovery process, maintain the recordings for a minimum of three years, and make the recordings available to OIG staff, as required under Section 2.1.2(H), Communication with OIG.

#### **2.1.6 ESTATE RECOVERY**

Contractor is responsible for managing the claims and recovery process for MERP.

Contractor must identify deceased Medicaid recipients who received covered long-term care Medicaid services subject to estate recovery under MERP rules through information obtained from various sources, including the Deceased Clients File, as described in Section 2.1.18, Deceased Clients File; other files from HHSC and any other relevant sources.

### **2.1.7 PROVIDE INITIAL NOTIFICATION**

Contractor must provide, within 30 calendar days after MERP receives notification of the death of a Medicaid recipient who received covered services, and in accordance with the order and conditions listed in TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307(a), Notice of Intent to File A Claim upon the Death of a Medicaid Recipient. Contractor must also comply with estate claim procedures and debt collection standards, mail written notice to a person described in TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307(a) that the program for Medicaid estate recovery within HHSC-OIG intends, through its MERP Contractor or representative, to file an estate recovery claim against the estate of the deceased Medicaid recipient for recoverable medical assistance paid for covered long-term services. The Notice of Intent to File a Claim must state that intent and include the following:

- A. An overview of the MERP program;
- B. A questionnaire that seeks to determine information listed in TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307(b)(2) that could exempt the estate of a deceased Medicaid recipient from recovery;
- C. An undue hardship waiver request form, with the directions and deadline for submission stated in TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307(c); and
- D. The date OIG's MERP received notification of the death of the Medicaid recipient and the source of the death notification to the OIG's MERP.

If the Contractor becomes aware that a recipient or prospective recipient of a Notice of Intent to File a Claim under TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307 has limited English proficiency, the Contractor must provide required notices and other correspondence to that person in a language or form the person can understand.

### **2.1.8 PROCESS UNDUE HARDSHIP WAIVER REQUESTS**

Unless this Section 2.1.8 requires a Contractor to send an undue hardship waiver request to the OIG, Contractor must complete a review of, and make a determination about, each undue hardship waiver request within 40 calendar days after receiving all required documentation.

Contractor's review must include:

- A. Determining whether the Contractor needs any supplemental documentation from the applicant and if so, obtaining that documentation. Contractor must provide the applicant with 30 calendar days to submit any requested supplemental documentation. Contractor must make the request to submit supplemental documentation in writing and must send it using a method that will produce evidence as to when the applicant received the documentation.
- B. Reviewing and determining the disposition of each undue hardship waiver application submitted under Sections I, II, III or IV of the Hardship Waiver Application, Form 5006

<https://hhs.texas.gov/sites/default/files//documents/laws-regulations/forms/5006/5006.pdf>).

Contractor must send an undue hardship waiver application that is submitted under Section V of the Hardship Waiver Application, Form 5006, to the OIG. Contractor must send such requests to OIG electronically not more than three business days after receiving the required documentation, including any supplemental documentation requested under Section 2.1.8(A).

**2.1.9 DETERMINE ESTATE VALUE**

Contractor must determine the value of the estate subject to recovery by obtaining information about the recipient's estate assets, the debts against the estate, and the priority of the debts against the estate from the deceased Medicaid recipient's personal representative, court filings, and other available and appropriate sources.

**2.1.10 REVIEW REQUESTS FOR CLAIM DEDUCTIONS**

Contractor must review and process any timely-submitted request for a deduction from the amount of a Medicaid estate recovery claim in accordance with TAC, Title 1, Part 15, Chapter 373, Subchapter B, Rule §373.213. If the applicant submits sufficient supporting documentation, Contractor may deduct from the amount of the estate recovery claim reasonable and necessary expenses and taxes for maintaining the home and for eligible costs of care of the Medicaid recipient prior to the recipient's death, as allowed under TAC, Title 1, Part 15, Chapter 373, Subchapter B, Rule §373.213.

**2.1.11 COMPLY WITH ESTATE CLAIM PROCEDURES AND DEBT COLLECTION STANDARDS**

Contractor must comply with:

- A. MERP rules, including applicable amendments that occur during the term of the Contract.
- B. All other federal, state, and local law applicable to the Contractor's estate recovery practices on behalf of HHSC- OIG, and MERP, including estate claim procedures under the Texas Estates Code and local court rules, including applicable amendments that occur during the term of the Contract;
- C. Any CMS reporting requirements applicable to the Contractor's estate recovery work on behalf of HHSC - OIG; and
- D. Debt collection standards in the Texas Debt Collection Act, Chapter 392 of the Texas Finance Code, and federal Fair Debt Collection Practices Act, 15 U.S.C. §1692 et. seq.

Contractor must file, recover, negotiate and settle MERP claims within the parameters and guidelines set by law and by HHSC, including the OIG.

### **2.1.12 PRESENT CLAIMS**

Contractor must timely present a Medicaid estate recovery claim against a deceased Medicaid recipient's estate that may be recoverable by depositing it with the clerk of the applicable county or probate court or presenting it to the personal representative of the estate, in accordance with applicable law at the time and TAC, Title 1, Part 15, Chapter 373, Subchapter B, Rule §373.205, Medicaid Estate Recovery Program (MERP) Claim.

Contractor shall notify the OIG of any claim rejection within three business days after the rejection, whether the claim is explicitly rejected or rejected by operation of law. Contractor shall specifically note the details of any rejected claim in a monthly report to the OIG.

### **2.1.13 ERRONEOUS COLLECTION**

If Contractor recovers any amount from a deceased Medicaid recipient's estate in error, they must notify HHSC within three business days and refund HHSC any Contract payment the Contractor received that is associated with the Contractor's erroneous recovery.

### **2.1.14 TRACKING NOTICES**

Contractor will send any form of correspondence that provides a deadline for response that is tied to the date the recipient receives the correspondence using a method that will document for Contractor the date the personal representative receives the notice. This requirement applies to correspondence sent to a deceased Medicaid recipient's personal representative and to any other correspondence related to the Contractor's Medicaid estate recovery responsibilities.

### **2.1.15 INFORMATION EXCHANGE AND REPORTING REQUIREMENTS**

For reporting and information sharing purposes, Contractor must:

- A. Develop and maintain accurate and current data pertaining to recoveries in secure electronic form, and, in response to an OIG data request, securely transmit accurate and current data in the requested format. The content and format of Contractor's electronic files, as maintained and transmitted, must comply with all applicable requirements of the Contract and the OIG request.
- B. Lease, own, or have access to, computer equipment, software, and facilities that allow Contractor to meet the requirements of this Contract; safeguard confidential, personal, and sensitive information; and comply with Data Use Agreement (DUA) Between the Texas Health and Human Services System and Contractor.
- C. Lease, own, or have access to, computer equipment, software, and facilities that are capable of accessing all files and processing all file information to meet HHSC data and security requirements, and the requirements, including format requirements, of this Contract and any other OIG request.
- D. Maintain a database of "affected clients" who are subject to estate recovery. Information included in the "affected clients" database can only be used for

Medicaid estate recovery purposes authorized under this Contract with a general limitation applicable to all of the information the Contractor receives or to which it has access.

- E. Must obtain access to Social Security Administration (SSA) death files.
- F. On a monthly basis, utilizing information from HHSC and information obtained through the SSA, provide to HHSC two data files containing information regarding Medicaid recipients who are deceased; and
- G. Establish and maintain, for at least three years after all recovery efforts for a deceased Medicaid recipient have been completed, a complete record of all recovery activities undertaken in relation to a deceased Medicaid recipient for which a Medicaid estate recovery claim exists, whether or not recovery is achieved in whole or in part. As soon as practicable within three business days after a request from any HHSC or OIG staff with MERP-related responsibilities who requests from Contractor recovery-related information required to be maintained under this paragraph, Contractor must furnish the information to the requesting staff member. This requirement survives the end of a Contract term, so that, as part of the Contractor's responsibilities under this Contract, Contractor must, for the duration of the retention period, maintain the records and provide requested access to them, or requested information within them in accordance with this Section 2.1.15.

#### **2.1.16 AFFECTED CLIENTS DATABASE**

Based on the "affected clients files" it receives, as described in Section 2.1.17, Affected Clients File, Contractor must maintain a database of "affected clients" who are subject to estate recovery. Contractor may use the database and information in it only for Medicaid estate recovery purposes authorized under the Contract. The database must indicate, in a format acceptable to the OIG, all activities regarding estate recovery and whether recovery has been attempted or completed for each record.

Contractor's database must be accessible online, at all times, to OIG staff and meet applicable standards set forth in the contract, including in section 2.1.15, Information Exchange and Reporting Requirements.

Any loss or reduction in an estate recovery, or other adverse remedy, consequence, or outcome resulting from an act or omission of Contractor, including a missed deadline for which Contractor is responsible under the Contract, or a file omission, deletion, inaccuracy, or incorrect entry, constitutes Contract noncompliance by Contractor for which Contractor is subject to any sanction or remedy authorized under the Contract

#### **2.1.17 AFFECTED CLIENTS FILE**

Once a month, HHSC will place on a secure server a file encrypted with Triple Data Encryption that contains a complete list of every active Medicaid recipient who meets certain initial criteria for estate recovery and is therefore potentially affected

under the provisions of MERP. This file, called the Affected Clients File, includes the recipients' names, addresses, and other personal identifying information, as well as the long-term care services they have been determined to be eligible to receive and the amount they were authorized to receive.

If available, the file will contain the name, address, and telephone number of any legally authorized representative of the person and the name, address, and telephone number of the person designated to be the client's personal representative after the client's death.

The file will contain at least two unique identifiers such as, the Social Security Number (SSN) and the Medicaid number for each Medicaid recipient.

Contractor is responsible for pulling this data from the server, decrypting it using a key supplied by HHSC, and incorporating it into the secure "affected clients database" developed by Contractor as described in the Contract Section 2.1.16, Affected Clients Database.

Contractor must match the records with records previously stored in the database to determine which represent new Medicaid recipients and which represent recipients already in the Affected Clients Database. For new recipients, Contractor shall create a new record in the Affected Clients Database. For previously reported recipients, Contractor shall determine if any of the data in the records has changed and shall update the record in the database accordingly, preserving the data history and date of change.

Immediately upon receiving from HHSC new data for a recipient in its Affected Clients Database, the Contractor shall identify any inconsistency between the new data and the data already in the database that doesn't reflect that it is a change or update. Contractor shall note and date the inconsistent data in the database and notify the OIG of each inconsistency within ten business days after identifying the inconsistency.

#### **2.1.18 DECEASED CLIENTS FILE**

By the fifth business day of the month, HHSC will place on the same server a file that contains a listing of all Medicaid recipients who have died since the previous file was sent. This file will be created by HHSC from SSA records and HHSC automated systems, and from the Bureau of Vital Statistics in the Texas Department of State Health Services. This file, called the Deceased Clients File, will contain, at a minimum, a name, SSN, and date of death. Because data contained on the Deceased Clients File is obtained from several different systems, and these systems generally operate independently of each other, there may be duplicate records in each file or between successive files. Contractor shall first determine if the data on any given file represents the same recipient as included in a previous file and exclude those records.

Contractor must compare the records in the Deceased Clients File with records in the Affected Clients Database to determine which deaths are of Medicaid recipients and will then initiate estate recovery against the estates of those recipients. Contractor must utilize the information acquired from the SSA data file on deaths and information provided by HHSC to determine which recipients of HHSC Medicaid services are deceased.

#### **2.1.19 CONSUMER FILE**

On the first business day of each month, HHSC will send Contractor a file, called the Consumer File, with a list of Medicaid recipients, both active and inactive, as well as individuals on interest lists to receive HHSC Medicaid services, who may not be Medicaid recipients.

The Consumer File will contain all of these individuals' SSNs as well as other identifying information. HHSC transmits the Consumer File to the Contractor through an encrypted file transfer method or makes the Consumer File available to Contractor on a State of Texas server that will allow Contractor to retrieve the file through an encrypted connection.

Contractor must match the SSNs provided in the Consumer File against the SSA records for deceased Medicaid recipients to determine individual Medicaid recipients' dates of death. Contractor must use only an individual's SSN to determine if an individual from the Consumer File matches a record from the SSA database. For each matching individual, Contractor must perform a secondary comparison between the date of birth provided in the Consumer File and the date of birth recorded in the SSA database.

#### **2.1.20 DEATH MATCH FILE**

By the seventh business day of each month, Contractor must send a "Death Match File" to HHSC. The Death Match File must list those individuals from the Consumer File described in Contract Section 2.1.19, Consumer File, that matched against the SSA database for deceased Medicaid recipients, and include the entire record from the Consumer File for each matched individual. At the end of the Death Match File record for each individual, Contractor must include the date of death from the SSA database and indicate whether the dates of birth in the Consumer File and the SSA database for the individual matched.

Contractor must transmit the Death Match File to HHSC through an encrypted file transfer method or make the Death Match File available to HHSC on a secure server provided by Contractor that will allow HHSC to retrieve the file through an encrypted connection.

### **2.1.21 TRANSITION**

Contractor must have plans for making the transition to a new Contractor at the end of the Contract. These plans must address the following:

- A. The schedule with key milestone dates. Contractor must begin estate recovery activities no more than 120 calendar days after the effective date of the Contract.
- B. An outline of procedures to be followed during the transition period, including how problems will be handled and disputes will be resolved.
- C. The roles and responsibilities of entities involved in the transition.
- D. Key issues that will need to be addressed during the transition, including the plan for identifying and transferring the assets that will need to be identified and transferred.
- E. The identity and contact information for the individual in charge of the transition for Contractor.

### **2.1.22 PERFORMANCE MEASURES**

The OIG monitors the Contract performance of the Contractor, including the Contractor's compliance with Article 2, Scope of Work. The Contractor must provide all Services and Deliverables under the Contract in a manner consistent with applicable law and acceptable industry standards.

The Contractor must maintain documentation that demonstrates its compliance with each performance measure described in this Section 2.1.22(A) – (G).

The Contractor must meet each of the following performance measures, at a minimum, 90 percent of the time in each section, every month, as determined by the OIG through a monthly desk review process:

- A. Within 30 calendar days after OIG's MERP receives notice of a recipient's death, Contractor must make a preliminary determination of whether a recipient's estate may be subject to recovery.
- B. Within 30 calendar days after OIG's MERP receives notice of the recipient's death, Contractor must, for any deceased Medicaid recipient whose estate Contractor determined may be subject to recovery under Paragraph A of this section, initiate the recovery process by opening a case and mailing a Notice of Intent to File a Claim to the personal representative of the deceased Medicaid recipient, or another person listed in TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307(a), Notice of Intent to File A Claim upon the Death of a Medicaid Recipient, in accordance with the Contract Section 2.1.7, Provide Initial Notification, and TAC, Title 1, Part 15, Chapter 373, Subchapter C, Rule §373.307.
- C. Within 70 calendar days after OIG's MERP receives actual notice of the death of a Medicaid recipient who received covered long-term care services at an age of 55 years or older, Contractor must present the MERP claim to the personal representative of the Medicaid recipient's estate or by

depositing it with the clerk of the applicable probate or county court in accordance with Contract Section 2.1.12, Present Claims; applicable law at the time; and TAC, Title 1, Part 15, Chapter 373, Subchapter B, Rule §373.205, Medicaid Estate Recovery Program (MERP) Claim.

- D. Without limiting Contractor's responsibility under the Contract Section 2.1.7, Provide Initial Notification, to include a Hardship Waiver Application Form with each Notice of Intent to File a Claim, Contractor must, within two business days after receiving a request for a hardship waiver application form, mail the requested application form to an estate representative, heir or legatee.
- E. Within 40 calendar days after receiving an undue hardship waiver request submitted under Sections I, II, III or IV of the HHSC Hardship Waiver Application, Form 5006 and all necessary supporting documents, Contractor must make an undue hardship determination in accordance with the Contract Section 2.1.8, Process Undue Hardship Waiver Requests.
- F. Within two business days after receipt of a voice message from a deceased Medicaid recipient's personal representative, the Contractor must, if the estate representative who left the voice message requests a return call, return the phone call and document the return call.
- G. No later than the seventh business day of each month, Contractor must transmit to HHSC in accordance with the Contact Section 2.1.20, Death Match File, the data file called the "Death Match File."

### **2.1.23 LIQUIDATED DAMAGES**

- A. Without limiting other Remedies available to HHSC under this Contract pursuant to Exhibit B, Health and Human Services (HHS) Uniform Terms and Conditions – Vendor, Version 3.0, Article XI, Section 11.14, Dispute Resolution, HHSC will be entitled to damages resulting from the Contractor's failure to comply with any of the terms of this Contract resulting from this Solicitation.
- B. The liquidated damages prescribed in this section are not intended to be in the nature of a penalty but are intended to constitute fair and reasonable compensation to HHSC for the Contractor's non- performance, including financial loss as a result of delays. Accordingly, if Contractor fails to perform in accordance with this Contract, HHSC may assess liquidated damages for the specific conditions and amounts specified in this Statement of Work. The total liquidated damages assessed under this section in a state fiscal year (September 1-August 31) shall not exceed \$55,000. HHSC reserves the right to pursue recovery of actual losses resulting from one or more of the of the breaches described in this Statement of Work; provided, however, HHSC shall reduce actual damages by the amounts received as liquidated damages for the same breaches causing the actual damages.
- C. For failing to initiate recovery within 30 days after receiving a notification of death of a Medicaid recipient whose estate Contractor has determined is or may be subject to recovery, as required under Solicitation Section 2.1.22, Performance Measures, Paragraph B, and Solicitation Section 2.1.7, Provide Initial Notification, Contractor must pay HHSC

the amount of \$300.00 per occurrence. After three breaches requiring liquidated damages in a state fiscal year (September 1 – August 31), the amount per occurrence will increase to \$500 for breaches four and five. After five breaches in a state fiscal year, Contractor will be required to submit a corrective action plan and the liquidated damages assessment per occurrence will increase to \$700 for breaches six and higher. Initiating recovery begins with notifying one or more known representatives of the Medicaid recipient identified in 1 TAC, pt. 15, ch. 373, subch. C, § 373.307(a).

- D. For failing to file a claim in probate court within 120 days after the death of the Medicaid recipient, as verified by the report of death, if Contractor receives notice under the Texas Estates Code §308.054, Contractor will pay HHSC \$300 per occurrence. After three breaches requiring liquidated damages in a state fiscal year (September 1 – August 31), the amount per occurrence will increase to \$500 for breaches four and five. After five breaches in a state fiscal year, Contractor will be required to submit a corrective action plan and the liquidated damages assessment per occurrence will increase to \$700 for breaches six and higher.
- E. HHSC will not assess liquidated damages under Paragraph 1 or 2 of this section if the specified time frame is not met because OIG’s MERP or the Contractor has accurately determined that the deceased Medicaid recipient’s estate is exempt from recovery under 1 TAC, pt. 15, ch. 373, subch. B, §373.207, Exemptions from Claims; MERP recovery would not be cost-effective under 1 TAC, pt. 15, ch. 373, subch. B, §373.215, Recovery Not Cost-Effective; or a request for an undue hardship waiver has been asserted under 1 TAC, pt. 15, ch. 373, subch. B, §373.209, Undue Hardship Waivers.
- F. HHSC also will not assess liquidated damages under Paragraph 1 or 2 of this section from Contractor if the timeline is not met because:
  - (1) Contractor requested information from HHSC but did not receive the information from HHSC within five business days; or
  - (2) Contractor requested information from another HHSC contractor (such as a contracted nursing facility) but did not receive the information from the HHSC contractor within five business days; or
  - (3) HHSC or an HHSC Contractor is scheduled to deliver information to Contractor or its designate but the delivery of information is delayed more than five business days from the scheduled date; or
  - (4) The estate pays a recoverable amount to HHSC;
  - (5) Contractor can show that the estate is not subject to recovery or that recovery was not possible due to a reason other than Contractor failing to meet the additional performance measures specified in the RFP.
- G. HHSC may elect to collect liquidated damages:
  - (1) Through direct assessment and demand for payment delivered to Contractor within 120 days of occurrence; or
  - (2) By deduction of amounts assessed as liquidated damages as set-off against payments then due to Contractor after assessment of the liquidated damages, and notification is made to the Contractor within 21 days of occurrence. HHSC will make deductions until the full amount payable by the Contractor is received.

- H. If any of the conditions of this section are disputed, they will be resolved using the following procedure: Disputes will be reduced to writing and delivered to all parties promptly after discovery of the disputed occurrence. The Parties must then negotiate in good faith and use every reasonable effort to resolve such dispute without resorting to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible.

## **Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
6. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.

7. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
8. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. No exceptions, terms, or conditions will be considered if not advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Respondent that differ in any manner from HHSC's terms and conditions are rejected unless expressly accepted by HHSC in writing in a fully executed contract.
9. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
10. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
11. Respondent acknowledges all addenda and amendments to the Solicitation.
12. Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Texas Vegetation Native to the Region
  - USA-produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy efficient products
  - Rubberized asphalt paving material

- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or reused computer equipment of other manufacturers
- Foods of higher nutritional value
- Commercial production company or advertising agency located in Texas

14. Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.
15. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
16. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
17. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

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

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

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

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

**FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.

18. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
19. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
21. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
22. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
23. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
24. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
25. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
26. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
27. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
28. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

29. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
30. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
31. Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
32. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
33. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent’s provision of the requested goods and/or services

under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

34. Respondent understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
35. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
36. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
37. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
  - (a) all persons employed by Respondent to perform duties within Texas; and

(b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

38. If this Solicitation is for an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Respondent represents and warrants that neither Respondent nor any of Respondent's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

39. If this Solicitation is for consulting services,

(A). In accordance with Section 2254.033 of the Texas Government Code, a Respondent offering to provide consulting services in response to this solicitation who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

(1) Name of individual(s) (Respondent or employee(s)): \_\_\_\_\_

(2) Status (circle one): Respondent Employee

(3) The nature of the previous employment with HHSC or the other State of Texas agency:

\_\_\_\_\_  
(4) The date the employment was terminated and the reason for the termination:

\_\_\_\_\_  
(5) The annual rate of compensation for the employment at the time of its termination: \_\_\_\_\_

If more than one individual is identified in A(1) above, Respondent must provide responses to A(2)-(5) as to each identified individual. To satisfy this requirement, Respondent must attach a separate page or pages, as necessary, and include the information required in Section A, including subsections (1)-(5). Respondent must identify here how many pages, if any, are attached: \_\_\_\_\_. Respondent acknowledges, agrees, and certifies that all information provided is true, correct, and complete on this and all attached pages.

(B). If no information is provided in response to Section A above, Respondent certifies that neither Respondent nor any individual employed by Respondent was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response.

40. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

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41. Respondent understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article IX, Section 6.25.

42. Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Respondent certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the certification:

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43. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.

44. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.

45. Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the

performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

46. By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

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

**Legal Name of Respondent:** Health Management Systems, Inc.

 <b>Signature of Authorized Representative</b>	<u>March 3, 2020</u> <b>Date Signed</b>
Michele Carpenter Senior Vice President, Government Services	<u>(972) 786-7431</u> <b>Phone Number</b>
<u>13-2770433</u> <b>Printed Name and Title of Authorized Representative</b>	<u>(214) 453-3023</u> <b>Fax Number</b>
<u>07-526-6346</u> <b>Federal Employer Identification Number</b>	<u>info@hms.com</u> <b>Email Address</b>
<u>5615 High Point Drive</u> <b>DUNS Number</b>	<u>Irving, Texas 75038</u> <b>City, State, Zip Code</b>
<u>5615 High Point Drive</u> <b>Physical Street Address</b>	<u>Irving, Texas 75038</u> <b>City, State, Zip Code</b>
<u>5615 High Point Drive</u> <b>Mailing Address, if different</b>	<u>Irving, Texas 75038</u> <b>City, State, Zip Code</b>



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions - Vendor**

**Version 3.0**

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

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## 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 *Travel* 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

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. 51<sup>st</sup> 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

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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# TEXAS

## Health and Human Services

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

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## **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.

## **5. TRADEMARK LICENSE**

HHSC grants to Contractor, for the term of the Contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce HHSC's trademarks (as depicted in Exhibit \_\_) on published materials in the United States related to the performance of the Contract, provided that such license is expressly conditional upon, and subject to, the following:

- i. Contractor is in compliance with all provisions of the Contract;
- ii. Contractor's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit \_\_ or as otherwise communicated by HHSC;
- iii. Contractor takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose HHSC's right, title and interest in the trademarks or their validity;
- iv. Contractor makes no attempt to sublicense any rights under this trademark license; and
- v. Contractor complies with any marking requests HHSC may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the registered trademark symbol "®" for registered trademarks, and the symbol "™" for unregistered trademarks.

## **6. TRADEMARK OWNERSHIP**

Contractor acknowledges and agrees that the trademarks remain the exclusive property of HHSC, that all right, title and interest in and to the trademarks is exclusively held by HHSC, and all goodwill associated with such trademarks inures solely to HHSC.

## **7. 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.

## **8. 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.

**9. 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.

**10. 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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### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
<input type="text" value="HMS"/>	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE <i>Kristen</i>	
Prefix: <input type="text"/>	* First Name: <input type="text" value="Kristen"/> Middle Name: <input type="text"/>
* Last Name: <input type="text" value="Ballentine"/>	Suffix: <input type="text"/>
* Title: <input type="text" value="VP, Government Relations"/>	
* SIGNATURE: <input type="text" value="Handwritten Signature"/>	* DATE: <input type="text" value="2/24/20"/>

**Attachment A**  
**Liquidated Damages**

A. Without limiting other Remedies available to HHSC under a Contract resulting from this Solicitation, pursuant to Exhibit B, Health and Human Services (HHS) Uniform Terms and Conditions – Vendor, Version 3.0, Article XI, Section 11.14, Dispute Resolution, HHSC will be entitled to damages resulting from the Contractor's failure to comply with any of the terms of a Contract resulting from this Solicitation, as described in Section 2.1.23 of this RFP Solicitation.

B. The liquidated damages prescribed in this section are not intended to be in the nature of a penalty but are intended to constitute fair and reasonable compensation to HHSC for the Contractor's non-performance, including financial loss as a result of delays. Accordingly, if the Contractor fails to perform in accordance with the Contract resulting from this RFP, HHSC may assess liquidated damages for the specific conditions and amounts specified below. The total liquidated damages assessed under this section in a state fiscal year (September 1-August 31) shall not exceed \$55,000. HHSC reserves the right to pursue recovery of actual losses resulting from one or more of the of the breaches described in this Attachment; provided, however, HHSC shall reduce actual damages by the amounts received as liquidated damages for the same breaches causing the actual damages.

1. For failing to initiate recovery within 30 days after receiving a notification of death of a Medicaid recipient whose estate the Contractor has determined is or may be subject to recovery, as required under Solicitation Section 2.1.22, Performance Measures, Paragraph B, and Solicitation Section 2.1.7, Provide Initial Notification, the Contractor must pay HHSC the amount of \$300.00 per occurrence. After three breaches requiring liquidated damages in a state fiscal year (September 1 – August 31), the amount per occurrence will increase to \$500 for breaches four and five. After five breaches in a state fiscal year, Contractor will be required to submit a corrective action plan and the liquidated damages assessment per occurrence will increase to \$700 for breaches six and higher. Initiating recovery begins with notifying one or more known representatives of the Medicaid recipient identified in 1 TAC, pt. 15, ch. 373, subch. C, § 373.307(a).
2. For failing to file a claim in probate court within 120 days after the death of the Medicaid recipient, as verified by the report of death, if Contractor receives notice under the Texas Estates Code §308.054, Contractor will pay HHSC \$300 per occurrence After three breaches requiring liquidated damages in a state fiscal year (September 1 – August 31), the amount per occurrence will increase to \$500 for breaches four and five. After five breaches in a state fiscal year, Contractor will be required to submit a corrective action plan and the liquidated damages assessment per occurrence will increase to \$700 for breaches six and higher.
3. HHSC will not assess liquidated damages under Paragraph 1 or 2 of this section if the specified time frame is not met because OIG's MERP or the Contractor has accurately determined that the deceased Medicaid recipient's estate is exempt from recovery under 1 TAC, pt. 15, ch. 373, subch. B, §373.207, Exemptions from Claims; MERP recovery would not be cost-effective under 1 TAC, pt. 15, ch. 373, subch. B, §373.215, Recovery Not Cost-Effective; or a request for an undue hardship waiver has been asserted under 1 TAC, pt. 15, ch. 373, subch. B, §373.209, Undue Hardship Waivers.
4. HHSC also will not assess liquidated damages under Paragraph 1 or 2 of this section from the Contractor if the timeline is not met because:
  - a. the Contractor requested information from HHSC but did not receive the information from HHSC within five business days; or
  - b. the Contractor requested information from another HHSC contractor (such as a contracted nursing facility) but did not receive the information from the HHSC contractor within five business days; or
  - c. HHSC or an HHSC Contractor is scheduled to deliver information to Contractor or its designate but the delivery of information is delayed more than five business days from the scheduled date; or
  - d. estate pays a recoverable amount to HHSC;

- e. the Contractor can show that the estate is not subject to recovery or that recovery was not possible due to a reason other than the Contractor failing to meet the additional performance measures specified in the RFP.

C. HHSC may elect to collect liquidated damages:

1. Through direct assessment and demand for payment delivered to Contractor within one hundred and twenty (120) days of occurrence; or
2. By deduction of amounts assessed as liquidated damages as set-off against payments then due to Contractor after assessment of the liquidated damages, and notification is made to the Contractor within twenty-one (21) days of occurrence. HHSC will make deductions until the full amount payable by the Contractor is received.

D. If any of the conditions of this section are disputed, they will be resolved using the following procedure: Disputes will be reduced to writing and delivered to all parties promptly after discovery of the disputed occurrence. The parties must then negotiate in good faith and use every reasonable effort to resolve such dispute without resorting to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible.

### Exhibit H — Cost Proposal Form

Contract Year <sup>1</sup>	Contingency Fee Percentage (includes postage and all associated costs)	Revenue Projections <sup>2</sup>
1		
2		
3		
4		
5		
<b>Total</b>		

<sup>1</sup> The term of the initial contract year will be September 1, 2020 — August 31, 2023.

<sup>2</sup> Attach supporting documentation that illustrates how these projections were derived.

This Cost Proposal includes documentation that supports any business, economic, legal, programmatic, or practical assumptions in support of the Scope of Work described in Article 2 of the RFP.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT E: EXCEPTIONS FORM**

**(Note to Respondents: Completion of this exhibit is not required if there are no exceptions. See RFP Sections 3.6.4 and 3.6.5)**

**No exception -- nor any term, condition, or provision in a Solicitation Response that differs, varies from, or contradicts this Solicitation -- will be considered to be a part of any contract resulting from this Solicitation unless expressly made a part of the contract in writing by the System Agency.**

Solicitation Document	Solicitation Document Section Number	Solicitation Language to which Exception is Taken	Basis of Exception	Respondent's Proposed Language	Still Want to Be Considered for Contract Award if Exception Denied? (State "Yes" or "No")

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

<p><b>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</b></p> <p>DocuSigned by:                    C608C4B99F384FD...</p>	<p><b>TITLE</b></p> <p>Senior Vice President</p>
<p><b>APPLICANT ORGANIZATION</b></p> <p>HMS</p>	<p><b>DATE SUBMITTED</b></p> <p>August 25, 2020</p>

# Affirmations and Certification



## **G. AFFIRMATIONS, CERTIFICATIONS, AND OTHER REQUIRED DOCUMENTS**

Respondent must complete and return the following forms, attached to the Solicitation as the following Exhibits:

- A. Exhibit A - Affirmations and Solicitation Acceptance;
- B. Exhibit D - Assurances- Non-Construction Program;
- C. Exhibit D1- Certification Regarding Lobbying;
- D. Exhibit E - Exceptions Form, if applicable;
- E. Exhibit F - Data Use Agreement (DUA) Between the Texas Health and Human Services System and Contractor;
- F. Exhibit F1 Texas HHS System – DUA - Attachment 2, Security and Privacy Inquiry (SPI);
- G. Exhibit G- HUB Subcontracting Plan; and
- H. Exhibit H- Cost Proposal Form

HMS has provided the requested completed forms on the following pages.

The HUB Subcontracting Plan (Exhibit G) is included on a separate USB, as requested in the RFP.

The Cost Proposal Form (Exhibit H) is included on a separate USB, as requested in the RFP.



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## **Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
6. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.

7. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
8. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. No exceptions, terms, or conditions will be considered if not advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Respondent that differ in any manner from HHSC's terms and conditions are rejected unless expressly accepted by HHSC in writing in a fully executed contract.
9. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
10. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
11. Respondent acknowledges all addenda and amendments to the Solicitation.
12. Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Texas Vegetation Native to the Region
  - USA-produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy efficient products
  - Rubberized asphalt paving material

- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or reused computer equipment of other manufacturers
- Foods of higher nutritional value
- Commercial production company or advertising agency located in Texas

14. Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.
15. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
16. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
17. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

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

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

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

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

**FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.

18. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
19. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
21. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
22. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
23. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
24. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
25. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
26. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
27. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
28. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

29. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
30. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
31. Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
32. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
33. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent’s provision of the requested goods and/or services

under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

34. Respondent understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
35. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
36. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
37. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
  - (a) all persons employed by Respondent to perform duties within Texas; and

(b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

38. If this Solicitation is for an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Respondent represents and warrants that neither Respondent nor any of Respondent's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

39. If this Solicitation is for consulting services,

(A). In accordance with Section 2254.033 of the Texas Government Code, a Respondent offering to provide consulting services in response to this solicitation who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

(1) Name of individual(s) (Respondent or employee(s)): \_\_\_\_\_

(2) Status (circle one): Respondent Employee

(3) The nature of the previous employment with HHSC or the other State of Texas agency:

\_\_\_\_\_  
(4) The date the employment was terminated and the reason for the termination:

\_\_\_\_\_  
(5) The annual rate of compensation for the employment at the time of its termination: \_\_\_\_\_

If more than one individual is identified in A(1) above, Respondent must provide responses to A(2)-(5) as to each identified individual. To satisfy this requirement, Respondent must attach a separate page or pages, as necessary, and include the information required in Section A, including subsections (1)-(5). Respondent must identify here how many pages, if any, are attached: \_\_\_\_\_. Respondent acknowledges, agrees, and certifies that all information provided is true, correct, and complete on this and all attached pages.

(B). If no information is provided in response to Section A above, Respondent certifies that neither Respondent nor any individual employed by Respondent was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response.

40. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

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41. Respondent understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state’s Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article IX, Section 6.25.

42. Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Respondent certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the certification:

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43. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.

44. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.

45. Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the



**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

<p>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</p> <p>Michele Carpenter </p>	<p>TITLE</p> <p>Senior Vice President, Government Services</p>
<p>APPLICANT ORGANIZATION</p> <p>Health Management Systems, Inc.</p>	<p>DATE SUBMITTED</p> <p>03/03/2020</p>

### CERTIFICATION REGARDING LOBBYING

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
[Redacted] HMS	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE <i>Kristen</i>	
Prefix: [ ]	* First Name: [Redacted] Middle Name: [ ]
* Last Name: [Redacted] <i>Bullentine</i>	Suffix: [ ]
* Title: [Redacted] <i>VP, Government Relations</i>	
* SIGNATURE: [Redacted]	* DATE: [Redacted] <i>2/24/20</i>
	<i>[Signature]</i>