

**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000561400001**

THE HEALTH & HUMAN SERVICES COMMISSION ("Receiving Agency" or the "System Agency") and Texas A&M University Health Science Center (hereinafter "TAMHSC"), a health-related institution under the administration of Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, on behalf of the A&M Rural and Community Health Institute (hereinafter "HSC-ARCHI"), having a principal place of business at 2700 Earl Rudder Frwy. S., Suite 3000, College Station, TX 77845 ("Performing Agency"), each a "Party" and collectively the "Parties," enter into the following contract for Patient Safety Organization, Physician, and Nursing Review services (the "Contract") pursuant to the provisions of "The Interagency Cooperation Act," Chapter 771 of the Texas Government Code.

I. CONTRACT REPRESENTATIVES

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

Performing Agency

Name: TAMHSC
Address: 2700 Earl Rudder Fwy S., Suite 3000
City and Zip: College Station, TX 77845
Contact Person: Dr. Steve Brown
Telephone: [REDACTED]
[REDACTED]
Agency Number: 709

Receiving Agency

Name: HHSC Health & Specialty Care System
Address: 701 W. 51st Street
City and Zip: Austin, TX
Contract Manager: Jodi Day
[REDACTED]
[REDACTED]
Agency Number: 529

II. STATEMENT OF SERVICES TO BE PROVIDED

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract as described in **Attachment A Statement of Work.**

III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on September 1, 2019 and terminates on August 31, 2024, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

IV. AMENDMENT

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

V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract is \$1,615,500.00 as provided for in **Attachment B - Budget**.

VI. LEGAL NOTICES

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

Performing Agency

Texas A&M University Health Science Center
2700 Earl Rudder Fwy S., Suite 3000
College Station, TX 77845
Attention: Dr. Steve Brown, Chief Clinical Officer

System Agency

Health and Human Services Commission
4900 N. Lamar Blvd.; Mail Code 1100
Austin, TX 78751
Attention: Office of Chief Counsel

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

VII. CERTIFICATIONS

The undersigned Parties certify that:

- A. The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;

Each Party executing this Contract on its behalf has full power and authority to enter into this Contract;

- B. The proposed arrangements serve the interest of efficient and economical administration of state government; and

- C. The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

The Parties acknowledge that they are both entities duly organized and established under the laws of the State of Texas and any terms and conditions which are made part of this agreement that conflict with applicable statutory requirements are accepted, to the extent permitted by the Constitution and laws of the State of Texas.

The Receiving Agency further certifies that it has statutory authority to contract for the services described in this contract under Section 12.051 of the Health and Safety Code.

The Performing Agency further certifies that it has statutory authority to contract for the services described in this contract under Texas Education Code Chapter 85.17.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO.

RECEIVING AGENCY

PERFORMING AGENCY

DocuSigned by:
Ruth T. Johnson
Signature

DocuSigned by:
Greg Hartman
Signature

Ruth T. Johnson
Printed Name

Greg Hartman
Printed Name

Chief Operating Officer
Title

Interim Senior Vice President
Title

September 4, 2019
Date

September 4, 2019
Date

THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS000561400001 ARE HEREBY INCORPORATED BY REFERENCE:

- ATTACHMENT A – SCOPE OF WORK**
- ATTACHMENT B -- BUDGET**
- ATTACHMENT C -- UNIFORM TERMS AND CONDITIONS 2.14 - IAC**
- ATTACHMENT D -- HHSC SPECIAL CONDITIONS v. 1.2**
- ATTACHMENT E -- CONTRACT AFFIRMATIONS v. 1.4**
- ATTACHMENT F -- DATA USE AGREEMENT v. 8.4**

**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000561400001**

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT A
CONTRACT NO. HHS000561400001
Contractor: Texas A&M University Health Science Center

SECTION I. STATEMENT OF WORK:

The A&M Rural and Community Health Institute (ARCHI), an institute of the Texas A&M University Health Science Center, (Contractor) shall provide the Federally-listed A&M Rural and Community Health Institute (ARCHI) Patient Safety Organization (PSO) Program and services, The Safety Net (TSN) patient safety organization event reporting system services and custom development and interface services, Root Cause Analyses (RCAs) onsite education, Root Cause Analyses (RCA) Quality Gap Analyses services, Physician Peer Review (PPR) services, and Nursing Peer Review (NPR) services, and Healthcare Team Communication services to the Texas Department of State Health Services (HHSC) State Hospitals, including State Hospital Section and individual facilities of the system: Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, North Texas State Hospital, Kerrville State Hospital, Rio Grande State Center, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, and Waco Center for Youth.

Contractor shall provide PSO services for data collection and analyses of Patient Safety Work Product (PSWP) within the Patient Safety Evaluation System (PSES) submitted by HHSC. Contractor shall provide systematic and secure event reporting and data collection through The Safety Net (TSN) customized reporting system, including developing an interface to optimize data collection, and provide data reports for analyses of Patient Safety Work Product (PSWP) within the Patient Safety Evaluation System (PSES). HHSC State hospitals have access to their PSO-TSN data and Contractor has access to HHSC PSO-TSN data through the secure, confidential and protected reporting system.

Contractor shall provide Root Cause Analysis (RCA) onsite education and training and Root Cause Analyses Quality Gap Analysis services, which shall include performance of an external quality gap analysis review and written report for each Root Cause Analyses (RCAs) that was performed, completed and selected by HHSC for the PSO. The RCAs are assembled and developed by HHSC to report to the PSO and are reported by HHSC to the PSO. HHSC State Hospitals have direct access to their PSO data and Contractor has access to HHSC PSO data through a functional reporting system. Contractor represents that its PSO is organized under federal statute (Patient Safety and Quality Improvement Act of 2005, Pub. L. 109-41, 42 U.S.C. 299b-21-b-26 (Patient Safety Act) and in the Code of Federal Regulations, Section 42, Part 3, (The Patient Safety Act). This Act provides the framework with which hospitals, doctors, and other health care providers may voluntarily report information to PSOs on a privileged and confidential basis for the aggregation and analysis of patient safety events.

Physician Peer Review (PPR) services provided by Contractor shall meet requirements of hospital accreditation standards and medical staff bylaws. SHS State Hospitals' Medical Staff Bylaws shall

reference Contractor as a part of the facilities' internal peer review program. Contractor will become part of the peer review program through the HHSC State Hospitals Medical Staff Bylaws. Contractor's Peer Review Program services shall provide internal objective review of certain clinical activities carried out in HHSC State Hospitals thereby increasing accountability and providing a measurable process for quality improvement.

Nursing Peer Review (NPR) services provided by Contractor shall maintain policies and procedures to meet requirements of hospital accreditation standards and adhere to the Texas Board of Nursing regulations. SHS State Hospitals Nursing Peer Review policy shall reference Contractor as a part of the facilities' internal Nursing Peer Review program.

Contractor will provide onsite and ongoing transformative Team Healthcare Communications education and training.

SECTION II. PERFORMANCE MEASURES:

A. Contractor's PSO Program shall:

1. Assist with the initial development of the HHSC State Hospitals PSES policy.
2. Provide confidentiality training and program orientation to assigned State Hospital PSO Administrators.
3. Provide the PSO functional reporting system database for secure file transfer of necessary data to PSO.
4. Provide development of the interface for the electronic health record system to interface with the The Safety Net (TSN) event reporting system.
5. Provide TSN education, training and support to capture data for adverse events, incidents, near misses, and unsafe conditions and analyze data to measure and impact safety improvement and outcomes.
6. Upon termination of the contract provide State Hospitals' historical PSO data, submitted to Contractor under this contract, in an agreed upon format and in compliance with the Patient Safety and Quality Improvement Act of 2005 (PSQIA) regulations governing patient safety organizations and participants.
7. Provide annual analysis report containing patient safety information recommendations, protocols, and best practices of the PSWP within the PSES within ninety (90) days of fiscal year end closeout date.
8. Provide the State Hospitals continuous access to the PSO database.
9. Provide external quality gap analysis written report for each of the HHSC designated Root Cause Analyses (RCAs) within thirty (30) days of submission to the PSO.

10. Provide Root Cause Analysis (RCA) services for five (5) onsite trainings each year.

B. Contractor's Physician Peer Review Program shall:

1. Coordinate the State Hospitals' PPR Committee as specified in the HHSC State Hospital PSES at monthly date and time agreed upon by HHSC and Contractor.
2. Receive, redact and distribute records to the State Hospitals' PPR Committee members submitted for PPR via secure file transfer system for a PPR meeting scheduled at monthly date and time agreed upon by HHSC and Contractor.
3. Provide a physician facilitator to conduct the meeting.
4. Utilize physician members provided by HHSC State Hospitals to attend meetings and perform the duties of the PPR Committee.
5. Contractor will provide "Peer Review Final Report" to HHSC within 10 business days following each PPR meeting.
6. Contractor will enter PPR outcome data into Contractor's proprietary database.
7. Contractor will provide HHSC access to State Hospitals' PPR data.
8. Upon termination of the contract provide State Hospitals' historical PPR data, submitted to Contractor under this contract, in an agreed upon format.
9. Provide a PPR pediatrician committee member to attend and perform the pediatric duties of the PPR when required.

C. Contractor's Nursing Peer Review Program shall:

1. Organize and provide a NPR Committee of HHSC State Hospitals as permitted by Texas Occupations Code Section 303.0015 (b) and organize and conduct NPR as set forth in Chapter 303, Texas Occupations Code.
2. Receive, redact and distribute records to the State Hospitals' NPR Committee members submitted for NPR via secure file transfer system for a NPR meeting scheduled at monthly date and time agreed upon by HHSC and Contractor.
3. Provide a nurse facilitator to conduct the State Hospitals' NPR meeting.
4. Utilize nurse members provided by HHSC State Hospitals to attend meetings and perform the duties of the NPR Committee.

5. Provide the NPR Detailed Summary of Committee Findings report to HHSC State Hospitals as required and compliant to the Texas Board of Nursing (BON)'s Rule at 22 TAC §217.19(d).
6. Notify the HHSC Hospitals' Patient Safety Committee of any identified significant external or systems issues discovered during the NPR Committee process in a Patient Safety Committee report as required and compliant to NPR law, [NPA §301.405(c) and Rule 217.19(f)(1)] to HHSC Hospitals' Patient Safety Committee.

D. Contractor shall:

1. Provide up to a combined total of seventy-two (72) PPR and RCA reviews per year.
2. Reviews include a maximum total of six (6) physician peer reviews and/or RCA reviews per month. Any RCAs reviewed will take the place of one physician peer review. For example, in a given month HHSC might submit four (4) PPRs and two (2) RCA reviews, or five (5) PPRs and one (1) RCA review.
3. Unused reviews from one month may not be carried over to another month if the maximum of six (6) have not been reached.
4. Provide up to thirty-six (36) NPRs per year (maximum of four (4) per month).
5. Provide additional PPR reviews as described above, over six (6) per month for PPR and/or RCA reviews for an additional \$1000.00 per review, with a cap at ten (10) PPR and/or RCA reviews per year. (10 PPR reviews or 10 RCA reviews, or a combination of PPR and RCA that total ten (10)).
6. Provide additional NPR reviews as described above, over thirty-six (36) per year at an additional \$1000.00 per review, with a cap at ten (10) NPR reviews per year.

E. Contractor shall:

1. Provide five (5) onsite transformative Team Healthcare Communications education and training each year.
2. Transform five (5) hospitals per year, each year, returning onsite to advance levels of communications every other year and provide interim remote support to sustain improvement.

3. Provide two (2) days of expert training with licensed medical professional instructors.
4. Provide evidence-based communications knowledge, skill, training and education to build and sustain high-functioning teams' communication using research-proven healthcare team communications methods.

F. HHSC State Hospitals shall:

1. Review the data submitted by HHSC State Hospitals and draw decisions/conclusions at the local level in accordance with their respective Bylaws, Rules and Regulations.
2. Review the information and analyses provided by the Contactor and draw decisions/conclusions at the local level in accordance with HHSC State Hospital Bylaws, Rules, and Regulations.
3. Send records identified for PPR to Contractor in a secure file transfer manner dictated by the ARCHI PPR program.
4. Send records identified for NPR and appropriate accompanying information as dictated by the ARCHI NPR program.
5. Provide members for the PPR committee; one monthly meeting, at a mutually agreed upon date and time, dependent on submission of additional records.
6. Provide members for NPR committee.
7. Ensure PPR and NPR committee members attend orientation.
8. Ensure PPR and NPR committee members sign confidentiality agreement.
9. Provide secure location for NPR and PPR reviews, including internet and telephone access.
10. Modify each facility's Medical Staff Bylaws to include ARCHI as part of an internal PPR and NPR program.
11. Require annual and ongoing training of senior physician, nursing, and administrative leadership.
12. Develop a PSES that includes the collection, management and analysis of information for reporting to or by a PSO.
13. Provide current safety event categories and elements to be used for Contractor's data system design within thirty (30) days of signed contract.

14. Allow Contractor additional time to review and develop data system design for PSO safety event categories and elements.

SECTION II. BILLING INSTRUCTIONS:

Contractor shall electronically submit all invoices with supporting documentation to:

Contract Manager

Email: HSCSFacilityContracts@hhsc.state.tx.us

When required by this Program Attachment, Contractor shall also submit supporting documentation for reimbursement of the services/deliverables.

At a minimum, invoices shall include:

1. Name, address, and telephone number of Contractor;
2. HHSC Contract or Purchase Order Number;
3. Identification of service(s) provided;
4. Dates services were delivered;
5. Total invoice amount; and
6. Any additional supporting documentation that is required by this Program Attachment or as requested.

Alternative submission arrangements must be approved by the assigned HHSC Contract Manager.

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HEALTH & HUMAN SERVICES COMMISSION
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**ATTACHMENT B
BUDGET**

HHSC will pay Contractor for charges determined in accordance with the terms and conditions of this Program Attachment. Funding for subsequent fiscal years will be added on or before September 1st of each year.

Contract Deliverables	Deliverable Dates	Amounts Year One	Contract Totals
<p>A. Patient Safety Organization and The Safety Net (TSN) safety event reporting system custom development, secure data direct transfer interface services for HHSC Avatar electronic health record (EHR) to interface with TSN and with EHR for safety event data:</p> <ol style="list-style-type: none"> 1. Systems assessment, plan and digital data transfer interface for event data <ul style="list-style-type: none"> • Assessment plan. • Database redesign. • Data interface for abstraction. • Data processing. 2. Systems development testing and releasing 3. Hosting data processing (Safety event reporting systems customs development and interface systems work: \$10,000.00 (\$250.00 per hour for 40 hours of work from the ARCHI Technology Team. Spread as agreed upon as needed for work needed across five years for \$50,000.00 total and/or additional per hour if needed.) 	<p>2019-2024.</p> <p>Mutually agreed upon times to utilize needed custom development and interface systems costs when needed over five years. Estimated first 40 hours work for systems data interface in the first year 2019-2020, or more if needed. May add hourly work when needed an agreed upon to accomplish systems development customization and/or systems interface.</p>	<p>\$10,000.00</p>	<p>\$50,000.00</p>

<p>B. Functional reporting system: 1. Secure file transfer- \$500.00 per year.</p>	<p>Each December</p>	<p>\$500.00</p>	<p>\$2,500.00</p>
<p>2. Annual data hosting, processing 3. Startup and annual testing and releasing. Annual upgrades and data processing.</p>	<p>Annually and AHRQ common formats updates when released.</p>	<p>\$20,000.00</p>	<p>\$100,000.00</p>
<p>Performance Measures A. PSO Program services: Ongoing and annual PSO education and training for PSO and TSN. 1. Agency for Healthcare Research and Quality (AHRQ) PSO updates 2. SHS PSO quarterly and annual analysis reports</p>	<p>Agreed upon dates Ongoing continuous AHRQ released updates. Quarterly reports. PSO Annual Report is due ninety (90) days after year August 31st, fiscal year-end closeout date.</p>	<p>\$85,000.00</p>	<p>\$425,000.00</p>
<p>B. (B-1 PPR and B-2 RCA) 1. PPR and RCA services are capped at a monthly total of six (6) per month, and an annual total of seventy-two (72) per year (SHS Hospitals selecting either PPR or RCA or a combination of PPR and RCA). 2. PPR or RCA reviews over the cap will be done at \$1000 each, for an annual total of up to ten (10) per year, either PPR or RCA or a combination of PPR and RCA. B-1. Physician Peer Review (PPR) Program services</p>	<p>Monthly as scheduled</p>	<p>\$57,600.00 \$10,000.00</p>	<p>\$288,000.00 \$50,000.00</p>

<p>And/or,</p> <p>B-2. Root Cause Analysis (RCA) external RCA Quality Gap Analysis Review services for a total of six (6) per month and seventy-two (72) per (PPR or RCA):</p> <p>B-1: Physician Peer Review (PPR) Program Services:</p> <ol style="list-style-type: none"> 1. PPR startup orientation and annual training 2. PPR record submission for: <ul style="list-style-type: none"> • Ongoing Physician Performance Evaluation (OPPE) and Focused Physician Performance Evaluation (FPPE) • Incidence-based 3. PPR final reports. Total of six (6) per month and seventy-two (72) per year (PPR or RCA) 4. PPR Pediatrician and other PPR specialty physician as committee member <p>B-2: Root Cause Analysis (RCA)</p> <ol style="list-style-type: none"> 1. External review services for RCA quality gap analyses. 2. RCA written reports for each submitted RCA external review. Total of six (6) per month, seventy-two (72) per year (PPR or RCA): 3. RCA onsite competency education and training for five trainings each year. 	<p>Monthly and agreed upon dates for ARCHI and SHS Hospitals' teams.</p> <p>PPR reports are ongoing. PPR reports are provided within ten (10) business days following each PPR committee meeting.</p> <p>When required for pediatric reviews and for other specialty physician reviews.</p> <p>RCA reports are ongoing. RCA reports are provided within thirty (30) days of submission to PSO.</p> <p>Agreed upon scheduling</p>	<p>\$30,000.00</p>	<p>\$150,000.00</p>
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<p>C. Nursing Peer Review (NPR) Program Services:</p> <p>1. NPR startup orientation and annual training</p> <p>2. NPR record submission for</p> <ul style="list-style-type: none"> • incident-based • safe harbor • quality review <p>NPR written reports. Total of up to four (4) per month, Thirty-six (36) per year. NPR reviews over the cap will be done at \$1000 each, for an annual total of up to ten (10) per year.</p> <p>D. Healthcare Team Communications</p> <p>1. Education/training for transformation to High-Functioning Teams' Communications. (Continuing medical and nursing education provided. CME/CNE). Transform five hospitals per year. 2 days onsite training with licensed medical professional instructors. \$12,000.00 each site. Remote reinforcement in the interim, then cycle back for reinforcement and fill gaps identified through evaluation and analysis.</p> <p>D-2. Start up and ongoing five-year program for transforming to high-functioning teams' communications competent in healthcare team</p>	<p>Agreed upon dates for ARCHI and Hospitals' teams.</p> <p>As required and compliant to NPR law.</p> <p>Agreed upon dates for ARCHI and SHS teams.</p>	<p>\$40,000.00</p> <p>\$10,000.00</p> <p>\$60,000.00</p>	<p>\$200,000.00</p> <p>\$50,000.00</p> <p>\$300,000.00</p>
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communications knowledge, skills, training and education to build and sustain high-functioning teams' communications using research proven healthcare team communications methods.			
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Contractor shall submit invoices for reimbursement for each fiscal year and expenditures no later than sixty (60) days for goods received and services rendered from contract execution through end of each fiscal year.

Total reimbursement for services provided under this Program Attachment will not exceed Contract Total: \$1,615,500.00

**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000561400001**

ATTACHMENT C - UNIFORM TERMS AND CONDITIONS v 2.14 - IAC

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



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

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ARTICLE I DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 Definitions

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

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

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

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

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

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

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

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

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

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

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

“Parties” means the System Agency and Performing Agency, collectively.

“Party” means either the System Agency or Performing Agency, individually.

“Performing Agency” means the State Agency providing the goods or services defined in this Contract.

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

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

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

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

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

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

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

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

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

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

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

1.02 Interpretive Provisions

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

- G. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver shall be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II CONSIDERATION

2.01 Expenses

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

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

2.02 Funding

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

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

ARTICLE III WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

3.01 Federal Assurances

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

3.02 Federal Certifications

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

ARTICLE IV INTELLECTUAL PROPERTY

4.01 Intellectual Property

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

ARTICLE V RECORDS, AUDIT, AND DISCLOSURE

5.01 Access to records, books, and documents

In addition to any right of access arising by operation of law, Performing Agency and any of Performing Agency’s affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their

authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Performing Agency shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Performing Agency shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

5.02 Response/compliance with audit or inspection findings

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

5.03 SAO Audit

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

5.04 Recapture of Funds

The System Agency may withhold all or part of any payments to Performing Agency to offset overpayments made to the Performing Agency. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Performing Agency understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

5.05 Public Information and Confidentiality

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

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

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

5.06 Data Security

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

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

ARTICLE VI CONTRACT MANAGEMENT AND EARLY TERMINATION

6.01 Contract Management

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

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

6.02 Termination for Convenience

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

6.03 Termination for Cause

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Performing Agency has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or

orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Performing Agency's duties under the Contract.

6.04 Equitable Settlement

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

ARTICLE VII MISCELLANEOUS PROVISIONS

7.01 Technical Guidance Letters

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

7.02 Survivability

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

7.03 No Waiver

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

7.04 Standard Terms and Conditions

- A. In the performance of this Contract, each Party shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Each Party shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. Each Party will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.
- B. All records relevant to this Contract shall be retained for a minimum of seven (7) years. The period of retention begins at the date of final payment by the System Agency, or from the date of termination of the Contract, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit or to complete any administrative proceeding or litigation that may ensue.
- C. The System Agency shall own, and Performing Agency hereby assigns to the System Agency, all right, title, and interest in all tangible Work.
- D. Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

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

- J. This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the System Agency within thirty (30) days of execution by the other Party, this Contract shall be null and void.
- K. Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," Each Party is self-insured and, therefore, is not required to purchase insurance.

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**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000561400001**

ATTACHMENT D - HHSC SPECIAL CONDITIONS V. 1.2



TEXAS
Health and Human Services

Health and Human Services Commission

Special Conditions

Version 1.2

9.1.17

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HHSC SPECIAL CONDITIONS

The terms and conditions of these Special Conditions are incorporated into and made a part of the Contract. Capitalized items used in these Special Conditions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions –Vendor- Version 2.14

ARTICLE I. SPECIAL DEFINITIONS

“Conflict of Interest” means a set of facts or circumstances, a relationship, or other situation under which Contractor, a Subcontractor, or individual has past, present, or currently planned personal or financial activities or interests that either directly or indirectly: (1) impairs or diminishes the Contractor’s, or Subcontractor’s ability to render impartial or objective assistance or advice to the HHSC; or (2) provides the Contractor or Subcontractor an unfair competitive advantage in future HHSC procurements.

“Contractor Agents” means Contractor’s representatives, employees, officers, Subcontractors, as well as their employees, contractors, officers, and agents.

“Custom Software” means Software developed as a Deliverable or in connection with the Agreement.

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

“Federal Financial Participation” is a program that allows states to receive partial reimbursement for activities that meet certain objectives of the federal government. It is also commonly referred to as the Federal Medical Assistance Percentage (FMAP).

“Item of Noncompliance” means Contractor’s acts or omissions that: (1) violate a provision of the Contract; (2) fail to ensure adequate performance of the Work; (3) represent a failure of Contractor to be responsive to a request of HHSC relating to the Work under the Contract.

“Minor Administrative Change” refers to a change to the Contract that does not increase the fees or term and done in accordance with Section 0 of these Special Conditions.

“Confidential System Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor; or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHSC or through performance of the Work, which is not designated as Confidential Information in a Data Use Agreement.

“State” means the State of Texas and, unless otherwise indicated or appropriate, will be interpreted to mean HHSC and other agencies of the State of Texas that may participate in the administration of HHSC Programs; provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

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

“Third Party Software” refers to software programs or plug-ins developed by companies or individuals other than Contractor which are used in performance of the Work. It does not include items which are ancillary to the performance of the Work, such as internal systems of Contractor which were deployed by Contractor prior to the Contract and not procured to perform the Work.

“Turnover” means the effort necessary to enable HHSC, or its designee, to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself.

“Turnover Plan” means the written plan developed by Contractor, approved by HHSC, and to be employed when the Work described in the Contract transfers to HHSC, or its designee, from the Contractor.

“UTC” means HHSC’s Uniform Terms and Conditions- Vendor –Version 2.15

ARTICLE II. GENERAL PROVISIONS

2.1 OTHER SYSTEM AGENCIES PARTICIPATION IN THE CONTRACT

In addition to providing the Work specified for HHSC, Contractor agrees to allow other System Agencies the option to participate in the Contract under the same terms and conditions. Each System Agency that elects to obtain Work under this section will issue a purchase or Work order to Contractor, referring to, and incorporating by reference, the terms and conditions specified in the Contract.

System Agencies have no authority to modify the terms of the Contract. However, additional System Agency terms and conditions that do not conflict with the Contract, and are acceptable to the Contractor, may be added in a purchase or Work order and given effect. No additional term or condition added in a

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

2.2 MOST FAVORED CUSTOMER

Contractor agrees that if during the term of the Contract, Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, Contractor will notify HHSC within (10) business days from the date Contractor executes any such agreement. Contractor agrees, at HHSC's option, to amend the Contract to accord equivalent advantage to HHSC.

2.3 COOPERATION WITH HHSC VENDORS

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

2.4 RENEGOTIATION AND REPROCUREMENT RIGHTS

Notwithstanding anything in the Contract to the contrary, HHSC may at any time during the term of the Contract exercise the option to notify Contractor that HHSC has elected to renegotiate certain terms of the Contract. Upon Contractor's receipt of any notice under this section, Contractor and HHSC will undertake good faith negotiations of the subject terms of the Contract.

HHSC may at any time issue solicitation instruments to other potential contractors for performance of any portion of the Work covered by the Contract, including services similar or comparable to the Work, performed by Contractor under the Contract. If HHSC elects to procure the Work, or any portion thereof, from another vendor in accordance with this section, HHSC will have the termination rights set forth in the UTC.

ARTICLE III. CONTRACTORS PERSONNEL AND SUBCONTRACTORS

3.1 QUALIFICATIONS

Contractor agrees to maintain the organizational and administrative capacity and capabilities proposed in its response to the Solicitation, as modified, to carry out all duties and responsibilities under the Contract. Contractor Agents assigned to perform the duties and responsibilities under the Contract must be and remain properly trained and qualified for the functions they are to perform. Notwithstanding the transfer or turnover of personnel, Contractor remains obligated to perform all duties and responsibilities under the Contract without degradation and in strict accordance with the terms of the Contract.

3.2 CONDUCT AND REMOVAL

While performing the Work under the Contract, Contractor Agents must comply with applicable Contract terms, State and federal rules, regulations, HHSC's policies, and HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

If HHSC determines in good faith that a particular Contractor Agent is not conducting himself or herself in accordance with the terms of the Contract, HHSC may provide Contractor with notice and documentation regarding its concerns. Upon receipt of such notice, Contractor must promptly investigate the matter and, at HHSC's election, take appropriate action that may include removing the Contractor Agent from performing any Work under the Contract and replacing the Contractor Agent with a similarly qualified individual acceptable to HHSC as soon as reasonably practicable or as otherwise agreed to by HHSC.

ARTICLE IV. PERFORMANCE

4.1 MEASUREMENT

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

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

ARTICLE V. AMENDMENTS AND MODIFICATIONS

5.1 FORMAL PROCEDURE

No different or additional Work or contractual obligations will be authorized or performed unless contemplated within the Scope of Work and memorialized in an amendment or modification of the Contract that is executed in compliance with this Article. No waiver of any term, covenant, or condition of the Contract will be valid unless executed in compliance with this Article. Contractor will not be entitled to payment for Work that is not authorized by a properly executed Contract amendment or modification, or through the express written authorization of HHSC.

Any changes to the Contract that results in a change to either the term, fees, or significantly impacting the obligations of the parties to the Contract must be effectuated by a formal Amendment to the Contract. Such Amendment must be signed by the appropriate and duly authorized representative of each party in order to have any effect.

5.2 MINOR ADMINISTRATIVE CHANGES

HHSC's designee, referred to as the Contract Manager, Project Sponsor, or other equivalent, in the Contract, is authorized to provide written approval of mutually agreed upon Minor Administrative Changes to the Work or the Contract that do not increase the fees or term. Changes that increase the fees or term must be accomplished through the formal amendment procedure, as set forth in Section 0 of these Special Conditions. Upon approval of a Minor Administrative Change, HHSC and Contractor will maintain written notice that the change has been accepted in their Contract files.

ARTICLE VI. PAYMENT

6.01 ENHANCED PAYMENT PROCEDURES

HHSC will be relieved of its obligation to make any payments to Contractor until such time as any and all set-off amounts have been credited to HHSC. If HHSC disputes payment of all or any portion of an invoice from Contractor, HHSC will notify the Contractor of the dispute and both Parties will attempt in good faith to resolve the dispute in accordance with these Special Conditions. HHSC will not be required to pay any disputed portion of a Contractor invoice unless, and until, the dispute is resolved. Notwithstanding any such dispute, Contractor will continue to perform the Work in compliance with the terms of the Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

ARTICLE VII. CONFIDENTIALITY

7.1 CONSULTANT DISCLOSURE

Contractor agrees that any consultant reports received by HHSC in connection with the Contract may be distributed by HHSC, in its discretion, to any other state agency and the Texas legislature. Any distribution may include posting on HHSC's website or the website of a standing committee of the Texas Legislature.

7.2 CONFIDENTIAL SYSTEM INFORMATION

HHSC prohibits the unauthorized disclosure of Other Confidential Information. Contractor and all Contractor Agents will not disclose or use any Other Confidential Information in any manner except as is necessary for the Work or the proper discharge of obligations and securing of rights under the Contract. Contractor will have a system in effect to protect Other Confidential Information. Any disclosure or transfer of Other Confidential Information by Contractor, including information requested to do so by HHSC, will be in accordance with the Contract. If Contractor receives a request for Other Confidential Information,

Contractor will immediately notify HHSC of the request, and will make reasonable efforts to protect the Other Confidential Information from disclosure until further instructed by the HHSC.

Contractor will notify HHSC promptly of any unauthorized possession, use, knowledge, or attempt thereof, of any Other Confidential Information by any person or entity that may become known to Contractor. Contractor will furnish to HHSC all known details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist HHSC in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Other Confidential Information.

HHSC will have the right to recover from Contractor all damages and liabilities caused by or arising from Contractor or Contractor Agents' failure to protect HHSC's Confidential Information as required by this section.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, Contractor WILL INDEMNIFY AND HOLD HARMLESS HHSC FROM ALL DAMAGES, COSTS, LIABILITIES, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COSTS) CAUSED BY OR ARISING FROM Contractor OR Contractor AGENTS FAILURE TO PROTECT OTHER CONFIDENTIAL INFORMATION. Contractor WILL FULFILL THIS PROVISION WITH COUNSEL APPROVED BY HHSC.

ARTICLE VIII. DISPUTES AND REMEDIES

8.1 AGREEMENT OF THE PARTIES

The Parties agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under the Contract before resorting to formal dispute resolution processes otherwise provided in the Contract. The Parties will use all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in the Contract, unless HHSC immediately terminates the Contract in accordance with the terms and conditions of the Contract.

Any dispute, that in the judgment of any Party to the Agreement, may materially affect the performance of any Party will be reduced to writing and delivered to the other Party within 10 business days after the dispute arises. The Parties must then negotiate in good faith and use every reasonable effort to resolve the dispute at the managerial or executive levels prior to initiating formal proceedings pursuant to the UTC and Texas Government Code §2260, unless a Party has reasonably determined that a negotiated resolution is not possible and has so notified the other Party. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within 10 business days of such resolution.

8.2 OPERATIONAL REMEDIES

The remedies described in this section may be used or pursued by HHSC in the context of the routine operation of the Contract and are directed to Contractor's timely and responsive performance of the Work as well as the creation of a flexible and responsive relationship between the Parties. Contractor agrees that HHSC may pursue operational remedies for Items of Noncompliance with the Contract. At any time, and at its sole discretion, HHSC may impose or pursue one or more said remedies for each Item of Noncompliance. HHSC will determine operational remedies on a case-by-case basis which include, but are not, limited to:

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

HHSC's pursuit or non-pursuit of an operational remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity; excuse Contractor's prior substandard performance, relieve Contractor of its duty to comply with performance standards, or prohibit HHSC from assessing additional operational remedies or pursuing other appropriate remedies for continued substandard performance.

HHSC will provide notice to Contractor of the imposition of an operational remedy in accordance with this section, with the exception of accelerated monitoring, which may be unannounced. HHSC may require Contractor to file a written response as part of the operational remedy approach.

8.3 EQUITABLE REMEDIES

Contractor acknowledges that if, Contractor breaches, attempts, or threatens to breach, any obligation under the Contract, the State will be irreparably harmed. In such a circumstance, the State may proceed directly to court notwithstanding any other provision of the Contract. If a court of competent jurisdiction finds that Contractor breached, attempted, or threatened to breach any such obligations, Contractor will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches, attempts, or threats of breach without a further finding of irreparable injury or other conditions to injunctive relief.

8.4 CONTINUING DUTY TO PERFORM

Neither the occurrence of an event constituting an alleged breach of contract, the pending status of any claim for breach of contract, nor the application of an operational remedy, is grounds for the suspension of performance, in whole or in part, by Contractor of the Work or any duty or obligation with respect to the Contract.

ARTICLE IX. DAMAGES

9.1 AVAILABILITY AND ASSESSMENT

HHSC will be entitled to actual, direct, indirect, incidental, special, and consequential damages resulting from Contractor's failure to comply with any of the terms of the Contract. In some cases, the actual damage to HHSC as a result of Contractor's failure to meet the responsibilities or performance standards of the Contract are difficult or impossible to determine with precise accuracy. Therefore, if provided in the Contract, liquidated damages may be assessed against Contractor for failure to meet any aspect of the Work or responsibilities of the Contractor. HHSC may elect to collect liquidated damages:

- (a) Through direct assessment and demand for payment to Contractor; or
- (b) By deducting the amounts assessed as liquidated damages against payments owed to Contractor for Work performed. In its sole discretion, HHSC may deduct amounts assessed as liquidated damages as a single lump sum payment or as multiple payments until the full amount payable by the Contractor is received by the HHSC.

9.2 SPECIFIC ITEMS OF LIABILITY

Contractor bears all risk of loss or damage due to defects in the Work, unfitness or obsolescence of the Work, or the negligence or intentional misconduct of Contractor or Contractor Agents. Contractor will ship all equipment and Software purchased and Third Party Software licensed under the Contract, freight prepaid, FOB HHSC's destination. The method of shipment will be consistent with the nature of the items shipped and applicable hazards of transportation to such items. Regardless of FOB point, Contractor bears all risks of loss, damage, or destruction of the Work, in whole or in part, under the Contract that occurs prior to acceptance by HHSC. After acceptance by HHSC, the risk of loss or damage will be borne by HHSC; however, Contractor remains liable for loss or damage attributable to Contractor's fault or negligence.

Contractor will protect HHSC's real and personal property from damage arising from Contractor or Contractor Agents performance of the Contract, and Contractor will be responsible for any loss, destruction, or damage to HHSC's property that results from or is caused by Contractor or Contractor Agents' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of HHSC, Contractor will notify HHSC thereof and, subject to direction from HHSC or its designee, will take all reasonable steps to protect that property from further damage. Contractor agrees, and will require Contractor Agents, to observe safety measures and proper operating procedures at HHSC sites at all times. Contractor will immediately report to the HHSC any special defect or an unsafe condition it encounters or otherwise learns about.

IN COORDINATION WITH THE INDEMNITY PROVISIONS CONTAINED IN THE UTC, Contractor WILL BE SOLELY RESPONSIBLE FOR ALL COSTS INCURRED THAT ARE ASSOCIATED WITH INDEMNIFYING THE STATE OF TEXAS OR HHSC WITH RESPECT TO INTELLECTUAL, REAL AND PERSONAL PROPERTY. ADDITIONALLY, HHSC RESERVES THE RIGHT TO APPROVE COUNSEL SELECTED BY Contractor TO DEFEND HHSC OR THE STATE OF TEXAS AS REQUIRED UNDER THIS SECTION.

ARTICLE X. TURNOVER

10.1 TURNOVER PLAN

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

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

10.2 TURNOVER ASSISTANCE

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

ARTICLE XI. ADDITIONAL LICENSE AND OWNERSHIP PROVISIONS

11.1 HHSC ADDITIONAL RIGHTS

HHSC will have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by Contractor under or resulting from the Contract. Such data will include all results, technical information, and materials developed for or obtained by HHSC from Contractor in the performance of the Work. If applicable, Contractor will reproduce and include HHSC's copyright, proprietary notice, or any product identifications provided by Contractor.

11.2 THIRD PARTY SOFTWARE

Contractor grants HHSC a non-exclusive, perpetual, license for HHSC to use Third Party Software and its associated documentation for its internal business purposes. HHSC will be entitled to use Third Party Software on the equipment or any replacement equipment used by HHSC, and with any replacement Third Party Software chosen by HHSC, without additional expense.

Terms in any licenses for Third Party Software will be consistent with the requirements of this section. Prior to utilizing any Third Party Software product not identified in the Solicitation Response, Contractor will provide HHSC copies of the license agreement from the licensor of the Third Party Software to allow HHSC to, in its discretion, object to the license agreement that must, at a minimum, provide HHSC with necessary rights consistent with the short and long-term goals of the Contract. Contractor will assign to HHSC all licenses for the Third Party Software as necessary to carry out the intent of this section.

Contractor will, during the Contract, maintain any and all Third Party Software at their most current version or no more than one version back from the most current version. However, Contractor will not maintain any Third Party Software versions, including one version back, if notified by HHSC that any such version would prevent HHSC from using any functions, in whole or in part, of HHSC systems or would cause deficiencies in HHSC systems.

11.3 SOFTWARE AND OWNERSHIP RIGHTS

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

ARTICLE XII. UNIFORM ICT ACCESSIBILITY CLAUSE

12.1 APPLICABILITY

This Section applies to the procurement or development of Information and Communication Technology (ICT) for HHSC, or any changes to HHSC's ICT. This Section also applies if the Contract requires Contractor to perform a service or supply a goods that include ICT that: (i) HHSC employees are required or permitted to access; or (ii) members of the public are required or permitted to access. This Section does not apply to incidental uses of ICT in the performance of a contract, unless the parties agree that the ICT will become property of the state or will be used by HHSC's Client/Recipient after completion of the Contract.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.

12.2 DEFINITIONS

The legacy term “Electronic and Information Resources” (EIR) and the term “Information and Communication Technology” (ICT) are considered equivalent in meaning for the purpose of applicability of HHSC Uniform Terms and Conditions, policies, accessibility checklists, style guides, contract specifications, and other contract management documents. To the extent that any other of the following definitions conflict with definitions elsewhere in this Contract, the following definitions are applicable to this Section only.

1. **“Accessibility Standards”** refers to the Information and Communication Technology Accessibility Standards and the Web Accessibility Standards/Specifications under the Web Content Accessibility Guidelines version 2.0 Level AA, (WCAG 2.0).
2. **“Information and Communication Technology (ICT)”** is any information technology, equipment, or interconnected system or subsystem of equipment for which the principal function is the creation, conversion, duplication, automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, or broadcast of data or information. Examples of ICT are electronic content, telecommunications products, computers and ancillary equipment, software, information kiosks and transaction machines, videos, IT services, and multifunction office machines which copy, scan, and fax documents.
3. **“Information and Communication Technology Accessibility Standards”** refers to the accessibility standards for information and communication technology contained in the Web Content Accessibility Guidelines version 2.0 Level AA.
4. **“Web Accessibility Standards/Specifications”** refers to the web standards contained in WCAG 2.0 Level AA.
5. **“Products”** means information resources technologies that are, or are related to, ICT.
6. **“Service”** means the act of delivering information or performing a task for employees, clients, or members of the public through a method of access or delivery that uses ICT.

12.3 ACCESSIBILITY REQUIREMENTS

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, HHSC must procure Products or Services that comply with the Accessibility Standards when such Products or Services are available in the commercial marketplace or when such Products or Services are developed in response to a procurement solicitation. Accordingly, Contractor must provide ICT and associated Product and/or Service documentation and technical support that comply with the Accessibility Standards.

12.4 EVALUATION, TESTING AND MONITORING

1. HHSC may review, test, evaluate and monitor Contractor’s Products, Services and associated documentation and technical support for compliance with the Accessibility Standards. Review,

testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.

1. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product or Service, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the Contractor's assertion of compliance with the Accessibility Standards.
2. Contractor agrees to cooperate fully and provide HHSC and its representatives timely access to Products, Services, documentation, and other items and information needed to conduct such review, evaluation, testing and monitoring.

12.5 REPRESENTATIONS AND WARRANTIES

1. Contractor represents and warrants that: (i) as of the effective date of the contract, the Products, Services and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless HHSC and/or Client/Recipient, as applicable uses the Products in a manner that renders it noncompliant.
2. In the event Contractor should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, Contractor represents and warrants that it will, in a timely manner and at no cost to HHSC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, repair, replacement, and upgrading of the Product, or providing a suitable substitute.
3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which HHSC relies in awarding this contract.
4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

12.6 REMEDIES

1. Pursuant to Texas Government Code Sec. 2054.465, neither Contractor nor any other person has cause of action against HHSC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Contractor's representations and warranties, Contractor will be liable for direct and consequential damages and any other remedies to which HHSC may be entitled.

This remedy is cumulative of any and all other remedies to which HHSC may be entitled under this contract and other applicable law.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.1 CONFLICTS OF INTEREST

Contractor warrants to the best of its knowledge and belief, except to the extent already disclosed to HHSC, there are no facts or circumstances that could give rise to a Conflict of Interest and further that Contractor or Contractor Agents have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with their performance under the Contract. Contractor will, and require Contractor Agents, to establish safeguards to prohibit Contract Agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational Conflict of Interest, or for personal gain. Contractor and Contractor Agents will operate with complete independence and objectivity without actual, potential or apparent Conflict of Interest with respect to the activities conducted under the Contract.

Contractor agrees that, if after Contractor's execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

If HHSC determines that Contractor was aware of a Conflict of Interest and did not disclose the conflict to HHSC, such nondisclosure will be considered a material breach of the Contract. Furthermore, such breach may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

13.2 FLOW DOWN PROVISIONS

Contractor must include any applicable provisions of the Contract in all subcontracts based on the scope and magnitude of Work to be performed by such Subcontractor. Any necessary terms will be modified appropriately to preserve the State's rights under the Contract.

13.3 MANUFACTURER'S WARRANTIES

Contractor assigns to HHSC all of the manufacturers' warranties and indemnities relating to the Work, including without limitation, Third Party Software, to the extent Contractor is permitted by the manufacturers to make such assignments to HHSC.

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**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT No. HHS000561400001
ATTACHMENT E - CONTRACT AFFIRMATIONS v. 1.4**

ARTICLE 1. CONTRACT AFFIRMATIONS

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

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. Contractor represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Contractor 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 Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor 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. Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, if any, are rejected unless expressly accepted by HHSC in writing.
5. Contractor 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 this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
6. Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of HHSC.
7. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.
8. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this

Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

9. 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 Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
10. Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation 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.
11. Contractor 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 Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.
12. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
13. Contractor 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.
14. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor 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 this 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.
15. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
16. Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
17. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related 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).

18. Contractor 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.
19. Contractor agrees that upon request of HHSC, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.
20. Contractor 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, Contractor represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) 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.

21. If this Contract is for the purchase or lease of computer equipment, then Contractor 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.
22. If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
23. Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee’s last date of employment at the System Agency.

24. Contractor 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 Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
25. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
26. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
27. Contractor 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. Contractor agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
28. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and (c) neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.
29. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered

paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor 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.

30. Contractor represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of this Contract.
31. 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 this Contract to determine the eligibility of:
 - (a) all persons employed by Contractor to perform duties within Texas; and
 - (b) all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.
32. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.
33. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
34. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
35. Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is

subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

36. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor.

**INTERAGENCY COOPERATION CONTRACT
HEALTH & HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000561400001**

ATTACHMENT F - DATA USE AGREEMENT V. 8.4