

**INTERAGENCY COOPERATION CONTRACT
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS000681500001**

THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION OFFICE OF MENTAL HEALTH COORDINATION (“Receiving Agency” or the “System Agency”) and THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO, (“Performing Agency”), each a “Party” and collectively the “Parties,” enter into the following contract for Mental Health Wellness for Individuals with Intellectual and Developmental Disabilities MHW-IDD e-learning training maintenance 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: Texas Health and Human Services Commission
Address: 6330 E. Hwy 290
City and Zip: Austin 78723 (Mail Code 1155)
Contact Person: Lillian Ngyuen
Telephone: 512-380-4330
Fax number: 512-380-4383
E-Mail Address:
Lillian.ngyuen@hhsc.state.tx.us
Agency Number: 529

Receiving Agency

Name: The University of Texas Health Science Center at San Antonio
Address: 7703 Floyd Curl Drive, MSC 7828
City and Zip: San Antonio TX 78229-3900
Contact Person: Chris G. Green, CPA
Telephone: 210-567-2340
Fax number: 210-567-8107
E-Mail Address: grants@uthscsa.edu
Agency Number: 745

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, 2020 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 shall not exceed **Sixty-three thousand three hundred and thirty two dollars (\$63,332.00)**, as provided for in **Attachment B – Budget**.

VI. BASIS FOR CALCULATING REIMBURSABLE COSTS

Receiving Agency will pay Contractor for services provided in accordance with Attachment B-Budget which is incorporated herein by reference and made a part of this Contract as fully set forth therein.

VII. 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:

System Agency
Texas Health and Human Services Commission
6330 E. Hwy 290 (Mail Code 1155)
Austin, Texas 78723
Attention: Lillian Nguyen

Performing Agency
The University of Texas Health
Science Center at San Antonio
7703 Floyd Curl Drive, MSC 7828
San Antonio TX 78229-3900
Attention: Chris G. Green, CPA

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.

VIII. CERTIFICATIONS

The undersigned Parties certify that:

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

The Receiving Agency further certifies that it has statutory authority to contract for the services described in this contract under Chapter 531, Texas Government Code.

The Performing Agency further certifies that it has statutory authority to contract for the services described in this contract under Chapter 65, Texas Government Code.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO.

RECEIVING AGENCY

DocuSigned by:
Courtney Harvey
63070822D9FB424...
Signature

Courtney Harvey
Printed Name

Associate Commissioner
Title

March 6, 2020
Date

PERFORMING AGENCY

DocuSigned by:
Chris G. Green
16DCC2C24476462...
Signature

Chris G. Green
Printed Name

Senior Director, Sponsored Programs
Title

March 6, 2020
Date

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

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET**
- ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D – UT SYSTEM SUPPLEMENTAL STATEMENT**

ATTACHMENT A INTERAGENCY STATEMENT OF WORK

SECTION I. BACKGROUND.

The Mental Health Wellness for Individuals with Intellectual and Developmental Disabilities (MHW-IDD) e-learning training series was developed through the collaborative efforts of state IDD and mental health partners, along with national and local experts, community advocates, and persons receiving services and their families through a contract with The University of Texas Health Science Center at San Antonio. The training series offers modules designed to expand the knowledge and skills of a variety of professionals and others who work with and support people with IDD, including direct support workers (DSWs), behavioral health clinicians, and health care professionals (HCPs). The modules discuss evidence-based and effective techniques that may be used to improve support and the delivery of health care to these individuals, maximize outcomes, and enhance quality of life.

SECTION II. PERFORMING AGENCY RESPONSIBILITIES

The PERFORMING AGENCY will provide services to implement the MHW-IDD e-learning training series. PERFORMING AGENCY will:

A. GOALS

1. Manage all logistical aspects of delivery of trainings on the www.mhwidd.com website;
2. Track participants, offer continuing education units (CEUs) for clinicians, and provide evaluation(s) of trainings.
3. Assign and/or hire staff for supporting ongoing maintenance for the www.mhwidd.com website and training series, including maintaining:
 - a. IT support and servers – storing data, completing back-ups each night, performing server maintenance, completing updates to software/hardware, and executing changes as needed (i.e., adding a new resource, improving user experience, data cleaning);
 - b. Help Desk – providing phone and email support for learners; and
 - c. Project management – tracking data; managing updates; ensuring availability of IT and Help Desk staff; administering continuing education (CE) credits for licensed professional counselors (LPCs), licensed marriage and family therapists (LMFTs), licensed social workers, licensed psychology professionals, licensed nursing professionals (LNPs), and licensed medical professionals (LMEs).
4. Maintain the www.mhwidd.com website and make necessary updates to the website and trainings series to ensure that they meet accessibility standards at all times and comply with State and Federal accessibility requirements.
5. Make the www.mhwidd.com website and training series available to the public at all times.

6. Obtain written approval from HHSC MHW-IDD Project Director prior to making changes to operational support positions, including changes in duties, hours or specific key personnel.

B. TARGET POPULATION

1. Performing Agency shall make eLearning modules available for access at all times. While the eLearning modules shall be made available to the general public, the target audience for the eLearning modules is as follows:
 - a. E-learning modules #1-6 are intended for direct services workers, but are also applicable to any person who works with or supports individuals with IDD; and
 - b. E-learning modules #7-9 are intended for health care professionals, but can be taken by any person who works with people with IDD.

C. STAFFING

1. Performing Agency shall only staff this project with personnel essential to the execution of the responsibilities and goals in this contract.
2. In the event key personnel (i.e., project coordinator) exits their position, Performing Agency shall ensure duties are executed fully by the available qualified staff until such time that a qualified staff person is hired.

D. TRAINING AND TECHNICAL ASSISTANCE

1. Performing Agency shall offer CEUs to completers of eLearning modules. Performing Agency will:
 - a. Ensure each training provides CEUs for the following providers: LPCs, LCSWs, LMFTs, and Licensed Psychologists;
 - b. Ensure the final three modules provides CEUs for the following providers: LMEs and LNPs; and
 - c. Ensure the training consists of all needed elements to allow for the provision of CEUs.
2. Performing Agency will include an evaluation component as part of completing the training. Performing Agency will:
 - a. Ensure training participants complete an evaluation of the training at the conclusion of each training; and
 - b. Submit a report of the results of those evaluations to HHSC each quarter.
3. Performing Agency will develop a method for tracking participation in trainings electronically in a manner that allows participants to track their participation, by being able to view and save a training transcript, track the amount of CEUs acquired, view

any acquired certifications; and

4. Performing Agency will ensure a certificate of completion is generated on completion of each module.
5. Performing Agency shall attend meetings as requested by the HHSC MHW-IDD Project Director.

E. SERVICE PROVISION

1. Performing Agency shall provide access to the www.mhwidd.com training website through two avenues:
 - a. Free version which does not provide CEUs; and
 - b. Paid version which does provide CEUs.
2. Performing Agency shall provide access to downloadable training materials for each delivered training, and include links to additional resources that augment the trainings provided. These resources may be, but are not limited to, research articles, templates, and books.
3. Administrative access shall be provided to HHSC MHW-IDD Project Director upon request.
4. Performing Agency will maintain registration and access processes.
5. HHSC MHW-IDD Project Director must approve modifications to the existing registration and access processes.
6. Performing Agency will maintain and manage an eCommerce component for participants seeking continuing education. Access to eCommerce shall be available for psychology professionals, social workers, marriage and family therapists, peer specialists, nurses, and physicians seeking continuing education units.

F. COMMUNICATIONS

1. Performing Agency shall notify HHSC MHW-IDD Project Director of all user concerns that cannot be resolved within 72 hours.
2. Performing Agency shall notify HHSC MHW-IDD Project Director of all IT and technical concerns of which there is a pattern of systemic problems, as identified by three or more unduplicated users making a complaint about the same issue in seven days.
3. Performing Agency shall notify HHSC MHW-IDD Project Director of all concerns or complaints made by a representative of an intermediate care facility for individuals with intellectual disabilities or related conditions as soon as possible, or within 48 hours of the first business day.

4. Performing Agency shall notify HHSC MHW-IDD Project Director if there is a system failure or if the www.mhwidd.com website goes down.
5. Performing Agency shall notify HHSC MHW-IDD Project Director at least 24 hours in advance of any planned outages or updates.
6. Performing Agency shall notify HHSC MHW-IDD Project Director of any requests from external parties to expand the use of the MH-WIDD eLearning series in their organization within three business days of the request.
7. Performing Agency shall notify HHSC MHW-IDD Project Director of any inquiries from external parties about the content or use of the MHWIDD eLearning series, outside of issues related to technical difficulties, within 3 business days of the inquiry.
8. Performing Agency shall notify HHSC MHW-IDD Project Director and request approval in writing before giving access to training material or communicating with external parties, including subcontractors and user testers, about the content of the training.
9. Performing Agency will include the above items in a quarterly progress/status report as outlined in Section III of this contract.

G. EVALUATION AND REPORTING

1. Performing Agency shall electronically track participation of completers of eLearning modules provided through the www.mhwidd.com website.
2. Performing Agency shall electronically track participation in eLearning modules provided through the CTI-EBP web platform.
3. Performing Agency shall collect and maintain documentation of all trainings in the format approved by HHSC.
4. Performing Agency shall provide monthly data reports to HHSC MHW-IDD Project Director, to include:
 - a. The unduplicated count of completers of each of the MH-WIDD eLearning modules;
 - b. Name module completed;
 - c. Dates of completion;
 - d. Email addresses of completers;
 - e. Zip codes of completers; and
 - f. State of completers;
5. Performing Agency shall submit quarterly progress/status reports to the HHSC MHW-IDD Project Director to include a summary of activities related to and the progress made toward the completion of the deliverables set forth in this contract, as well as the status, barriers, and recommendations related to the accomplishment of these deliverables. A copy of any supporting materials for assessment activities will also be submitted.

SECTION III. PERFORMANCE MEASURES and DELIVERABLES.

Contractor's performance will be measured in part on the achievement of the following Deliverables. Documentation shall be provided to HHSC MHW-IDD Project Director by the dates specified below:

- A. Quarterly progress/status reports, along with copies or drafts of current plans if available, will be submitted to the HHSC MHW-IDD Project Director within 30 days of the end of the quarter with the first report due January 30, 2020 and will include:
- a. The unduplicated count of completers of each of the MHW-IDD eLearning modules;
 - b. Name module completed;
 - c. Dates of completion;
 - d. Email addresses of completers;
 - e. Zip codes of completers;
 - f. State of completers;
 - g. Survey evaluation responses;
 - h. User complaints received and resolution of user complaint;
 - i. General feedback received from users;
 - j. User concerns, that cannot be resolved within 72 hours;
 - k. IT and technical concerns of which there is a pattern of systemic problems, as identified by three or more unduplicated users making a complaint about the same issue in seven days;
 - l. Concerns or complaints made by a representative of an intermediate care facility for individuals with intellectual disabilities or related conditions;
 - m. System or website failures;
 - n. Planned outages or updates;
 - o. Requests from external parties to expand the use of the MHW-IDD eLearning series in their organization within three business days of the request; and
 - p. Inquiries from external parties about the content or use of the MHW-IDD eLearning series, outside of issues related to technical difficulties, within three business days of the inquiry.
- B. All reports, documentation, and other information required of Performing Agency shall be submitted electronically to the HHSC MHW-IDD Project Director, at Novella.evans@hhsc.state.tx.us, and HHSC contract manager, at Lillian.Nguyen@hhsc.state.tx.us. If HHSC determines Performing Agency needs to submit deliverables by mail, Performing Agency shall send the required information to the following address:

Texas Health and Human Services Commission
Office of Mental Health Coordination (Mail Code 1155)
Attn: Novella Evans
6330 E. Hwy 290

Austin, TX 78723

- C. Receiving Agency will pay Performing Agency, on a fixed cost basis, dollar amounts determined to be in accordance with the terms and conditions of this Contract.
- D. Performing Agency agrees by submitting the Deliverables all tasks and requirements for the Deliverable have been completed and, to the Performing Agency's knowledge and understanding, acceptable to the System Agency. Documents will meet content, quality and format criteria specified by the System Agency. The System Agency must accept and approve of all deliverables before invoices will be processed for reimbursement.

E. Deliverable Table

Deliverable	Due Date	Amount
Quarterly Report x 4	30th day of:	
	January	\$15,833
	April	\$15,833
	July	\$15,833
	September	\$15,833
Total		\$63,332

SECTION IV. INVOICE AND PAYMENT

Subject to the PERFORMING AGENCY's compliance with the requirements of this contract, the RECEIVING AGENCY will make payments within 30 days of receipt and acceptance of each deliverable and its proper billing documentation.

The PERFORMING AGENCY shall submit an invoice at least quarterly, but not more often than monthly, to the HHSC MHW-IDD Project and Contract Managers for all project activities associated with the completion of the associated Service or Deliverable. Upon HHSC's request, PERFORMING AGENCY shall provide additional information to the degree of detail necessary to resolve any review, examination, inquiry, or audit by HHSC or any other responsible authority.

PERFORMING AGENCY'S invoice must certify that the payments requested are in accordance with the Contract provisions, applicable laws and regulations. The Contract Number assigned by HHSC must appear on each invoice submitted for payment.

**ATTACHMENT B
BUDGET**

MHWIDD Maintenance Budget

Deliverable	Due Date	Amount
Quarterly Report x 4	30th day of:	
	January	\$15,833
	April	\$15,833
	July	\$15,833
	September	\$15,833
Total		\$63,332

HHSC Uniform Terms and Conditions Version 2.14
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Responsible Office: Chief Counsel



TEXAS

Health and Human Services

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

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ARTICLE I DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretive Provisions

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

2.1 Expenses

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

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

2.2 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

3.1 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.

3.2 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

4.1 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

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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

6.1 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.

6.2 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.

6.3 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.

6.4 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

7.1 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.

7.2 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.

7.3 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.

7.4 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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ATTACHMENT D
UT SYSTEM SUPPLEMENTAL CONDITIONS

The HHSC Uniform Terms and Conditions – Vendor, Attachment B of this Contract, is revised as follows:

Section 5.01, Ownership, is deleted in its entirety and replaced with the following:

5.1 Ownership

Other than intellectual property interests, System Agency will own, and Grantee hereby assigns to the System Agency, all right, title, and interest in all Deliverables.

Section 5.2, Intellectual Property, is deleted in its entirety and replaced with the following:

5.2 Intellectual Property

- a. The System Agency and Performing Agency will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property.
- b. To the extent any Work results in the creation of Intellectual Property, all rights, title, and interest in and to such Intellectual Property shall vest in the Part that creates such Intellectual Property.
- c. Performing Agency agrees to grant to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable, non-commercial licenses to use all Deliverables and any Intellectual Property invented or created by Performing Agency, Performing Agency's contractor, or a sub-contractor in the performance of this project. Performing Agency will require its contractors to grant such a license in any sub-contracts under this Contract.
- d. The System Agency shall have the right to review and provide comment to any written report, publication or other literature including copyrightable Intellectual Property invented or created in the performance of this Contract, prior to the publication of such literature. Performing Agency agrees to provide the System Agency with an advance copy of any such report, publication, or literature at least thirty (30) days prior to publication. Performing Agency agrees to insert the following statement into any such report, publication or literature: "The views expressed in this publication are those of the authors and do not necessarily reflect the official policies, positions, or views of the State of Texas or the Health and Human Services Commission.

Section 6.1, Books and Records, is deleted in its entirety and replaced with the following:

6.1 Books and Records

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.

Section 6.5, Confidentiality, is deleted in its entirety and replaced with the following:

6.5 Confidentiality

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

Section 7.2 Termination for Convenience, is deleted in its entirety and replaced with the following:

7.2 Termination for Convenience

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

Section 8.1, Amendment is deleted in its entirety and replaced with the following:

Section 8.1 Amendment

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

- a. To add additional funding;
- b. To extend the Contract termination date and modify the Project timeline;
- c. To correct an obvious clerical error in the Contract;
- d. To incorporate new or revised federal or state statutes, rules, or policies;
- e. To comply with a court order or judgement; and
- f. To change the name of the Contractor in order to reflect the Contractor name as recorded by the Texas Secretary of State.

Section 8.2, Insurance, is deleted in its entirety and replaced with the following:

8.2 Insurance

As an agency of the State of Texas, Performing Agency agrees to maintain the highest levels of insurance as required by applicable law. Performing Agency is self-insured with respect to

Worker's Compensation Insurance (Texas Labor Code title 5, Chapter 503, Workers' Compensation Insurance for Employees of The University of Texas System). Under the law of the State of Texas, Performing Agency is unable to obtain Employer's Liability, comprehensive General or Public Liability, and Comprehensive Automobile Insurance. In lieu of this, the Texas Tort Claims Act provides for remedies against the State for legal proceedings for claimants for personal injuries or death (Texas Civil Code Title 5, Chapter 101, Governmental Liability).

Section 8.6, Permitting and Licensure, is deleted in its entirety and replaced with the following:

8.6 Permitting and Licensure

At Performing Agency's sole expense, Performing Agency will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Performing Agency to provide the goods or Services required by this Contract. Performing Agency will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law.

Section 8.7, Indemnity, is deleted in its entirety and replaced with the following:

8.7 Indemnity

TO THE EXTEND ALLOWED BY LAW, PERFORMING AGENCY WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS (IF SO AWARDED BY A COURT OF COMPETENT JURISDICTION) ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- a. PERFORMING AGENCY'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF PERFORMING AGENCY, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PERFORMING AGENCY, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISORIN OF PERFORMING AGENCY, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY GRANTEE, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF PERFORMING AGENCY, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**

- c. EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST PERFORMING AGENCY, ITS OFFICERS, OR ITS AGENCES; OR**
- d. SUBJECT TO THE STATUTORY DUTIES OF THE TEXAS ATTORNEY GENERAL, PERFORMING AGENCY WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE PERFORMING AGENCY TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.**

Section 8.8, Assignments, is deleted in its entirety and replaced with the following:

8.8 Assignments

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.

Section 8.13 Governing Law and Venue, is deleted in its entirety and replaced with the following:

8.13 Governing Law and Venue

The 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 bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. NOTHING IN THIS SECTION SHALL

BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE SYSTEM AGENCY OR BY PERFORMING AGENCY.

Section 8.19, Publicity, is deleted in its entirety and replaced with the following:

8.19 Publicity

Except as provided in the paragraph below or required under applicable law, Performing Agency must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Performing Agency may publish, at its sole expense, results of Performing Agency's performance under this Contract following the System Agency's prior review and comment. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal Agency, as appropriate.

Section 8.21, No Waiver of Sovereign Immunity, is deleted in its entirety and replaced with the following:

8.21 No Waiver of Sovereign Immunity

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency or the Performing Agency.