

**SIGNATURE DOCUMENT FOR
HHSC CONTRACT NO. HHS000733500001**

I. PURPOSE

The **Health and Human Services Commission** (“**System Agency**”), and **WellSky Corporation**, a New York Corporation having its principal office at 11300 Switzer Road, Overland Park, KS 66210 (“**Contractor**”) (each a “**Party**” and collectively the “**Parties**”) enter into the following contract for the support, on-going training, and maintenance of the Medication Administration Module (“**MediMAR™**”) (the “**Contract**”).

II. LEGAL AUTHORITY

This Contract is authorized by and in compliance with the provisions of *Texas Government Code* §§ 2155.144 and 2157.068.

III. STATEMENT OF SERVICES TO BE PROVIDED

Contractor shall perform or cause to be performed (type) of Services in accordance with the **Statement of Work** and **Budget and Payment for Services**, attached and incorporated as **Attachments A and B**, respectively.

IV. DURATION

The Contract is effective on the signature date of the latter of the Parties to sign this Contract and terminates on **August 31, 2024**, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency, at its sole discretion, may extend this Contract for any period(s) of time at the Contract rate(s) as modified during the term of the Contract, provided the Contract term, including all extensions or renewals, does not exceed 5 years and subject to terms and conditions of the Contract. Notwithstanding the limitation in the preceding sentence, System Agency, at its sole discretion, also may extend the Contract beyond 5 years as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State.

V. BUDGET

The total amount of this Contract will not exceed **\$4,348,089.52**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET AND PAYMENT FOR SERVICES**.

VI. CONTRACT REPRESENTATIVES

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

System Agency

Health and Human Services
Commission
4900 North Lamar Blvd.
Austin, TX 78751
Attention: Donna Fontanese

Contractor

WellSky
11300 Switzer Road
Overland Park, KS 66210
David Beckwith

VII. LEGAL NOTICES

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

Legal notice given by Contractor shall be deemed effective when received by the System Agency contact listed in this section. Contractor must send, at the same time and in the same manner as set forth for legal notice, a copy of the legal notice to the System Agency Contract Representative.

System Agency

Health and Human Services Commission
4900 N. Lamar Blvd
Austin, TX 78751
Attention: Karen Ray, Chief Counsel

Contractor

WellSky
11300 Switzer Road
Overland Park, KS 66210
Jamie Garrett

VIII. NOTICE REQUIREMENTS

Notice given by Contractor will be deemed effective when received by the System Agency. Notices given by System Agency to Contractor shall be deemed delivered when deposited by the System Agency either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required. Either Party may change its Contract Representative or Legal Notice contact information by providing written notice to the other Party in accordance with the applicable Contract terms and conditions. All notices submitted to System Agency must:

- A. include the Contract number;
- B. be sent to the person(s) identified in the Contract for receipt of such notices; and,
- C. comply with all terms and conditions of the Contract.

IX. SIGNATURE AUTHORITY

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

X. TURNOVER PLAN

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

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

XI. 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.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000733500001

SYSTEM AGENCY

DocuSigned by:
Ricardo Blanco
AB9C98584B08427...

Name: Ricardo Blanco

Title: Chief Information Officer

Date of execution: April 11, 2020

CONTRACTOR

DocuSigned by:
David Beckwith
F1A396B7AC5D49B...

Name: David Beckwith

Title: Product Manager

Date of execution: April 6, 2020

THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS000733500001 ARE ATTACHED AND INCORPORATED BY REFERENCE:

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET AND PAYMENT FOR SERVICES**
- ATTACHMENT C – HHSC UNIFORM TERMS AND CONDITIONS - VENDOR**
- ATTACHMENT D – CONTRACT AFFIRMATIONS**
- ATTACHMENT E – DATA USE AGREEMENT**

ATTACHMENTS FOLLOW

Attachment A



TEXAS

Health and Human Services

Dr. Courtney N. Phillips, Executive Commissioner

Health and Human Services Commission (HHSC)

Procurement and Contracting Services (PCS)

HHS Systems Solicitation #HHS0005557

HHS Contract # HHS000733500001

Health and Human Services Commission (HHSC)

HHSC IT System Services

Statement of Work (SOW)

for

***MediMAR™ Service Agreement
Application Maintenance and Support***

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I. PROJECT SCOPE

HHSC seeks continued support, on-going training, and maintenance for the Medication Administration Module (“MediMAR™”). MediMAR™ is an application that is currently in use at the 10 State Hospitals, which is owned and supported by WellSky. WellSky is the only vendor that performs maintenance on MediMAR™.

Table 1 – MediMAR™ State Hospitals

Austin State Hospital	4110 Guadalupe Austin, TX 78751
Big Spring State Hospital	1901 North Highway 87 Big Spring, TX 79720
El Paso Psychiatric Center	4615 Alameda Avenue El Paso, TX 79905
Kerrville State Hospital	721 Thompson Drive Kerrville, TX 78028
Rio Grande State Center	1401 Rangerville Harlingen, TX 78550
Rusk State Hospital	805 North Dickinson Drive Rusk, TX 75785
San Antonio State Hospital	6711 South New Braunfels, Suite 100 San Antonio, TX 78223-3006
Terrell State Hospital	1200 East Brin Terrell, TX 75160
Texas Center for Infectious Disease	2300 SE Military Drive San Antonio, TX 78223
North Texas State Hospital - Vernon	4730 College Drive Vernon, TX 76385
Wichita Falls	6515 Kemp Boulevard Wichita Falls, TX 76308

II. PROJECT OVERVIEW

HHSC licenses and supports WORx™, a software system developed by Mediware Information Systems, Inc. (“Mediware” or “Contractor”) on behalf of the Mental Health and Substance Abuse Services Division, State Hospital Section for use in State Hospitals and at the Texas Center for Infectious Disease (“TCID”). HHSC uses MediMAR™, an automated medication administration record system (“Software”), developed by Mediware, that is tightly integrated into the WORx™ suite to manage the delivery of medications to patients within its inpatient care settings. HHSC requires any necessary software licenses, maintenance and support for MediMAR™.

III. SCOPE OF WORK

a. Standard Maintenance, Updates, and Support

i. Standard Maintenance Services

- A. Contractor shall provide standard maintenance services to HHSC for MediMAR™, including support for modules, components, and third-party elements identified in Section III.a.ii, "List of Support Areas for

Standard Maintenance.”

- B. “Standard maintenance services” shall include using reasonable commercial efforts to repair or provide a patch or workaround for all Program Errors that Contractor is able to reproduce except as otherwise specified herein. Standard maintenance services shall also include providing Updates (as defined below), including modifications and enhancements made to the Licensed Software as required to comply with all applicable federal laws and regulations.
 - C. In consultation with HHSC and with HHSC’s prior written approval, Contractor shall install any necessary patch or Update into HHSC’s installation(s) of Software (the “System”) and/or coordinate with HHSC to ensure patches and Updates are applied in a timely manner. Contractor shall notify HHSC in writing regarding any third-party software fees, maintenance fees, or additional hardware requirements required by any Update or enhancement at least thirty (30) days prior to the availability of the Update or enhancement. So long as the Contract remains current and HHSC complies with its terms and conditions of the Contract, the Software shall operate in accordance with the Documentation, in all material respects.
- ii. List of Support Areas for Standard Maintenance
 - A. MediMAR™ Application Software (105 Nursing Units in 11 Sites)
 - B. MediMAR™ Orders Management Administration Interface (Qty2)
 - C. Informix Dynamic Server current release
 - D. MediMAR™ First Databank Drug Database Uplift (11 Sites)
 - iii. Updates
 - A. Contractor shall make all Updates available to HHSC.
 - B. For purposes of clarification, “Updates” shall include bug fixes, error corrections, changes required by federal law and regulations, including but not limited to the use of new features (enhancements) that are not offered by Contractor as separate modules or software packages. Interface service maintenance services provided under the Contract shall keep the licensed interfaces in compliance with specifications agreed to in writing by Contractor and HHSC.
 - C. Any custom modifications or additions made to the Licensed Software, as requested by HHSC are not part of these standard Updates. Documentation shall generally be distributed to HHSC with each Update. All Updates shall be loaded only in accordance with instructions provided by Contractor’s service personnel.
 - D. Contractor shall provide training materials such as an instruction sheet or user guide (e.g., instructions for using changed functionality), regarding the use of the Update by clinical staff if the Update changes the user interface. These materials may be included

in documentation accompanying an Update, any custom training services or additional training resources may be contracted for separately.

- E. HHSC shall notify Contractor in writing, before the loading of operating system software updates, third-party software updates or installing new hardware to the System if the loading or installing is performed by HHSC. Contractor shall provide assistance to HHSC by telephone during normal business hours (Monday – Friday 8:00 – 5:00 CST).
- iv. Technical Consultation (Consultation)
- A. Contractor shall provide to HHSC contact information for a technical point of contact for HHSC to use in submitting Consultation requests. Contractor shall communicate any changes of contact in writing to HHSC within three (3) business days.
 - B. Priority Levels

HHSC may request, and Contractor shall provide, reasonable Consultation by telephone, email, and remote connection into HHSC's MediMAR™ installation 24 hours a day, 365 days of a year. Contractor shall assign Consultation requests to one of the priority levels described below described below. Contractor shall maintain a log of Consultation requests and their status in a tracking system and a unique number shall be assigned to each HHSC request. Contractor shall provide that unique number, priority level, and nature of the request to HHSC for reference and communication upon acknowledgement of the Consultation requests specified in this Scope of Work.

 - 1. "Priority 1/Level 1 Failure" is the most severe Program Error and represents a situation where all features and functions of the Licensed Software are unavailable and no practical alternate mode of operation is available.
 - 2. "Priority 2/Level 2 Failure" indicates a problem in which certain features and functionality of the Licensed Software are not available, and no practical alternate mode of operation is available.
 - 3. "Priority 3/Level 3 Failure" indicates a problem when minor software functions are inoperable and represents the normal next-in-line priority assignment. At this level, requests are worked on in the order in which they are received by Contractor.
 - C. Problem Resolution

Priority 1, 2 and 3 Consultation solutions will be sent to HHSC as soon as available, consistent with applicable service level agreements (SLAs) contained herein or as agreed to by HHSC and Contractor in writing.
 - D. Service Location

Contractor shall provide Consultation from its business premises, except that Contractor, at its own discretion and expense, may dispatch a technical services representative to HHSC's facility for all Program Errors that Contractor is unable to correct by providing Consultation remotely from Contractor's premises.

v. Community Library

Contractor shall provide unlimited access for HHSC staff to an online community library which includes support materials that are submitted to the community library by Contractor and other customers of Contractor. "Support Materials" shall mean formats, forms, reports, selection lists, flowcharts, handouts, letter forms, preference lists and similar formats, data and forms that are created for use with the Licensed Software, but do not in any way assist with medical decision making or otherwise affect any regulated component or regulated software provided by or through Contractor. Contractor reserves the right to review any and all of the Support Materials provided for use in the library and to reject any Support Materials for any reason, including without limitation, reasons, relating to patient safety, applicable law, clinical decision making, etc.

b. Part II Services - Custom System Medication Quotes

At HHSC's request, Contractor will prepare, at no charge and based on HHSC's user requirements, written price quotes for requested improvements to the Software that are not included in Updates or general releases. The development and implementation of improvements shall be addressed in an independent Work Order. The quote shall include a proposed workplan (Workplan), time, and cost estimate, based on a time and materials cost basis.

- i. Contractor shall appoint, provide, and maintain contact information for a technical point of contact for HHSC to use in submitting custom system modification requests.
- ii. Contractor shall ensure that current system standards as documented by Contractor are followed for all system modifications.

c. Requirements of Contract Participants

i. HHSC Requirements

A. HHSC Shall:

Contractor's obligations are conditioned on HHSC fulfilling its obligations hereunder, including:

1. Assign and notify Contractor of contact(s) within HHSC and their roles and responsibilities with respect to this agreement;

2. Provide Contractor with reasonable information and assistance necessary to detect, simulate/reproduce and correct any Program Errors;
3. To the extent within the control of HHSC and in accordance with HHS privacy and security policies and regulations; provide Contractor access to the System and its related operation environment, including without limitation access to the System and the Licensed Software through Enexity remote access software and/or the software or services mutually agreed to by HHSC and the Contractor to the extent necessary to provide system support services and confirm compliance with the terms and conditions of this agreement.

HHSC recognizes that Contractor may be unable to fulfill its obligations and excused from any such failure to fulfill its obligations if it does not have access to the System or the installed Licensed Software due to a system access issue under the control of HHSC:

4. Provide a suitable physical environment including, but not limited to heat, light, ventilation, air conditioning, proper electrical power and grounding for the Licensed Software to be maintained as specified in MediMAR™ user documentation;
5. Procure, install, and maintain communications equipment, including, but not limited to, a telephone within operational reach of the central installation site necessary for diagnostic purposes and telephone equipment and lines for remote transmission of information;
6. Cause all equipment and facilities which are used in connection with the operation or security of the Licensed Software and system to be maintained properly and in good operating condition as specified by the applicable manufacturer. All charges for such media and services shall be the sole responsibility of HHSC;
7. Maintain regular back-ups of data files, application source code (if applicable) and operating system software;
8. Fulfill all obligations of HHSC as specified in any Workplan adopted and agreed to in writing by HHSC;
9. To the extent within the control of HHSC, provide Contractor at least sixty (60) days prior written notice of its intention to relocate the central site, or any portion thereof, from its current location;
10. Coordinate efforts with Contractor to install Licensed Software Updates with ninety (90) days of their release. Contractor has no obligation to support more than two (2) versions of the Licensed Software; therefore customer must use the then-current or immediately preceding release;

11. Meet additional criteria proposed by Contractor and agreed to by HHSC in writing; and
 12. If, upon HHSC's request, Contractor personnel travel to HHSC's site to perform any support services (which cannot be completed remotely), HHSC shall pay for such personnel at Contractor's then standard state travel rates and shall reimburse Contractor for all reasonable, mutually agreed travel expenses incurred; and
 13. Compliance with the terms and conditions of the agreement, including without limitation, the terms and restrictions on the license grant.
- ii. Contractor Requirements
- A. Contractor shall:
1. Perform requirements as specified in the Contract;
 2. Supervise and coordinate the work of Contractor staff assigned to the MediMAR™ Contract;
 3. Support the Software for the term of the Contract;
 4. Appoint and provide to HHSC contact information for a point of contact for administrative issues;
 5. Appoint and provide to HHSC contact information for a point of contact for Consultations;
 6. Provide maintenance in a coordinated fashion with HHSC, maintaining all licensed interfaces between WORx™ and MediMAR™,
 7. Follow Contractor's system standards for testing and applying all Updates;
 8. Contractor shall specify any other services included as "standard maintenance services";
 9. Provide to HHSC electronic copies of all appropriate documentation;
 10. Coordinate activities as necessary with HHSC to resolve configuration, communication, and all other installation problems and recommend hardware and software upgrades;
 11. Establish and follow an SLA as specified in Section III.c.ii.D, Service Level Agreement, Performance Measures and Metrics, of this Statement of Work;
 12. Meet via conference call quarterly with HHSC staff to discuss status, defects, new changes, issues affecting application users and upcoming maintenance; and
 13. Suggest other areas of work related to the maintenance and

operation of MediMAR™.

B. Contractor shall not be responsible for:

1. Providing or installing any major releases related to the operating system software;
2. Support for a release of the Licensed Software that is not the then-current or immediately preceding release;
3. Annual update fees, if any, for third-party software Licenses or sublicensed Software not included in Section III.a.ii, List of Support Areas for Standard Maintenance, associated installation charges for updates to third-party software or sublicensed Software shall be the responsibility of HHSC; or
4. Providing software solutions to resolve malfunctions due to operator error or negligence.

C. Services not provided by Contractor through this Scope of Work but that may be obtained through a separate agreement with the Contractor as custom services include:

1. Development and/or maintenance of custom programs for HHSC that are not included in general releases or Updates to MediMAR™ including modifications to meet state and/or local requirements that are different than federal requirements;
2. Any additional hardware or software required to operate custom programs developed by HHSC or Contractor;
3. Maintenance of custom programs developed by HHSC using system tools such as, SQR, Infomaker, or other tools (e.g. guaranteeing HHSC-developed programs continue to operate after an Update is applied); and
4. Travel expenses incurred by Contractor employees in conjunction with performing customized, non-standard services unrelated to Section III.a.iv.D, Service Location.

D. Service Level Agreement, Performance Measures, and Metrics:

The following performance measures shall be used to determine the compliance of the parties with the terms of this Scope of Work, management of the Contract and progress on activities included in the Scope of Work. Contractor shall maintain all current system functions, including Updates, while meeting the production operation requirements identified below. All technical functionality shall be measured in the production environment Contractor shall respond outside of normal working hours and on holidays if necessary to meet production operation requirements. These consist of:

1. Part I Services
 - (a) Consultation Responsiveness

- (i) **Problem Resolution for Priority 1 Consultations**

Time to respond to and resolve issues will be used to measure responsiveness to Contract requirements. Priority 1 consultation calls are answered or acknowledged by non-automated service Contractor within one (1) hour. A custom email is considered a non-automated response. Work will be assigned by Contractor to a programmer who will immediately begin to address the error. An estimated time for resolution or a workaround will be provided within four (4) hours. The time for a resolution or workaround must be mutually agreed upon by HHSC and Contractor.
 - (ii) **Problem Resolution for Priority 2 Consolations**

Time to respond to and resolve issues will be used to measure responsiveness to Scope of Work requirements. Priority 2 consultations shall be answered by or acknowledged via non-automated service (e.g., not an auto-reply email) within two (2) business hours of receipt by Contractor. The request shall be given to the next available programmer but within one (1) business day. An estimated time for resolution or a workaround will be provided within one (1) business day of receipt by the programmer. The time for a resolution or workaround must be mutually agreed upon by HHSC and Contractor.
 - (iii) **Problem Resolution for Priority 3 Consultations**

Time to respond to and resolve issues will be used to measure responsiveness to Project requirements. Contractor will acknowledge Priority 3 consultation requests within two (2) business hours of receipt by Contractor via non-automated service (e.g., not an auto-reply email). Resolutions or a workaround will be provided within ninety (90) days. The time for a resolution or workaround must be mutually agreed upon by HHSC and Contractor.
- (b) **Standard Maintenance**
- (i) Contractor shall thoroughly test all Updates prior to installation in HHSC's production environment.
 - (ii) Contractor shall coordinate scheduled maintenance windows with HHSC and the Parties will use reasonable efforts to schedule such maintenance windows during utilization times that are not "high system utilization times". The maintenance window will be determined before the maintenance occurs. HHSC will have final authority to approve system maintenance times.
 - (iii) **Loss of Functionality**

- (A) During the Contract term, Contractor shall maintain all existing functions and compliance with applicable rules and regulations provided by MediMAR™ unless:
 - (1) HHSC agrees in writing to allow the removal of any specific functionality; or
 - (2) Removal of functions(s) as required by the Food and Drug Administration (FDA) or by other applicable federal law or regulation.
 - (B) A Level 2 Failure resulting from the application of an Update in the HHC production environment shall be treated by the Contractor as a Priority 1 Consultation during the 48-hour period immediately following the application of such Update.
 - (C) Contractor shall be in breach of Contract if an unexpected loss of functionality occurs due to a specific action of the Contractor. Contractor shall remain in default until such functionality is restored.
- 2. Compliance with delivery of reports and participation in conference calls as specified.
 - 3. Other performance metrics and SLA items as mutually agreed in writing by HHSC and Contractor.
- E. Deliverables
- 1. Contractor must supply Services as outlined in this RFO, including, but not limited to, the delivery of support services and Updates.
 - 2. Reports
 - (a) Contractor will provide HHSC service manager with written status reports in the timeframes noted below in a mutually agreed-upon format. Reports shall address, but are not necessarily limited to:
 - (i) Monthly - This report shall include a copy of a report generated from the log of Consultation requests and their current status. The report may be provided as a table in electronic format, and should include, for each Consultation request, the date the Consultation request was made, an index number, a title of the issue (if available), the nature of the request, the date it was resolved (or is scheduled to be resolved), the resolution provided, and any other information mutually agreed to by HHSC and Contractor.
 - (ii) Quarterly - This report should include information regarding performance metrics and compliance with SLAs and

performance measures in a format mutually agreed to by HHSC and Contractor.

- (b) The Contractor shall meet with HHSC staff through a conference call on a quarterly basis to review and discuss the status and progress of MediMAR™ on a mutually agreeable schedule. Other meetings or calls may be scheduled as needed and as mutually agreed to maintain the stability and functionality of MediMAR™. The Contractor will prepare an agenda and meeting notes.

F. Non-compliance

Sanctions Contractor's failure to meet SLA and performance measures during one quarter will result in payment sanctions issued as a credit to HHSC for the next invoice issued thirty (30) or more days following the end of such quarter, as a credit on a renewed Contract, or as a refund if the Contract is not renewed.

Notwithstanding anything herein to the contrary the maximum cumulative amount at risk for payment of credits for failure to meet SLAs and/or performance measures may not exceed five percent (5%) of the total annual fee to be paid.

In addition, there will be excluded from the measurement of compliance with any SLA and/or performance measure, any failure attributable to:

- (a) A force majeure event eliminating electricity, computer operations, or Internet access at or to HHSC hospitals;
- (b) Any acts or omissions of HHSC or its third-party contractors related to MediMAR™ operations;
- (c) Any significant change in the related business or operations of, or the manner in which the same are conducted by, HHSC (in each case during a reasonable transition period to be agreed upon by the Parties). SLA and/or performance measures will be measured and analyzed on a quarterly basis;
- (d) If a single incident results in the failure of Contractor to meet more than one SLA, HHSC shall have the right to select any one of such multiple credits but shall not be entitled to a credit for the other SLAs or performance standards missed resulting from the same incident.

2. For Consultations:

- (a) If more than five percent (5%) of Priority 1 Level Consultation issues are not addressed and resolved or a workaround provided within the agreed-upon period, Contractor will be

Sanctioned \$1200 per 24-hour period until a response and a resolution or workaround is provided to HHSC for each Priority 1 Level Consultation that is not addressed and resolved or a workaround provided within the agreed-upon period in excess of five percent (5%) of the total number of Priority 1 Consultations during such quarter.

- (b) If more than five percent (5%) of each Priority 2 Level Consultation issues not addressed and resolved or a workaround provided within the agreed-upon time period, Contractor will be sanctioned \$600 credit to HHSC per 24-hour period until responses and a resolution, workaround, or corrective action plan is provided to HHSC for each Priority 2 Level Consultation that is not addressed and resolved or a workaround provided within the agreed-upon period in excess of five percent (5%) of the total number of Priority 2 Consultations during such quarter.
- (c) If more than five percent (5%) of each Priority 3 Level Consultation issues not addressed and resolved within the agreed-upon time period, Contractor will be sanctioned \$300 credit to HHSC per 24-hour period until a resolution, workaround, or corrective action plan is provided to HHSC for each Priority 3 Level Consultation that is not addressed and resolved or a workaround provided within the agreed-upon period in excess of five percent (5%) of the total number of Priority 3 Consultations during such quarter.

G. Customer/Contractor-Furnished Equipment and Work Space

Contractor shall perform work off-site and, if necessary, onsite. Due to agency constraints, HHSC can provide a limited amount of temporary work space and computer equipment for onsite activities. HHSC may at its discretion make available conference rooms and work areas as necessary.

IV. SERVICES DELIVERY LOCATION

Hybrid On-Site: Services may be provided remotely using virtual private network access or other similar connections (*e.g. WebEx*), or on-site at HHSC's location as specified.

Exhibit B – Budget and Payment Services

	Year 1	Year 2	Year 3	Year 4	Year 5
	2020	2021	2022	2023	2024
Support Year Start Date:	9/1/2019	9/1/2020	9/1/2021	9/1/2022	9/1/2023
Support Year End Date:	8/31/2020	8/31/2021	8/31/2022	8/31/2023	8/31/2024

Aggregate Annual Support: \$ 771,335.43 \$ 817,615.56 \$ 866,672.49 \$ 918,672.84 \$ 973,793.21 \$ 4,348,089.52

PAYMENT FOR SERVICES

1. Payment for Services

HHSC will reimburse Contractor in accordance with the Budget (above) and *Texas Government Code* Chapter 2251 for satisfactory performance under the Contract. HHSC measures satisfactory performance of the Contract based on Contractor’s adherence to the Contract terms and conditions and satisfactory completion of the Contract Deliverables and adherence to performance measures and Service Level Agreement delineated in Attachment A, the Statement of Work.

2. Invoicing

Contractor shall invoice HHSC based on successful completion of the Contract Deliverables.

Contractor must submit its invoices for reimbursement or payment to HHSC via email to **HHSC_AP@hhsc.state.tx.us**. Contractor must maintain and submit with each invoice documentation supporting the provision of service and substantiating the costs incurred and the invoice submitted for payment.

The invoice must comply with 34 TAC Part 1, Chapter 20, Subchapter F, Division 1, § 20.487, Invoicing Standards. Without limiting those requirements, the invoice must include:

- Contractor's Legal Name;
- State of Texas Vendor number or federal tax Identification number;
- Contractor's address;
- Contractor's Telephone number;
- Invoice number;
- State agency Contract Number;
- State agency and division name;
- Description of goods and services provided;
- Date(s) of Service;
- If a sub-Contractor(s) is required to provide SSPD, an attached explanation of benefits (“**EOB**”) for the sub-Contractor(s) services rendered;
- The name and telephone number of a person designated by Contractor to answer questions regarding the invoice; and
- Documentation supporting the services, and substantiating costs incurred for the invoice provided to HHSC.

Attachment C



TEXAS

Health and Human Services

Health and Human Services (HHS)

Uniform Terms and Conditions - Vendor

Version 3.0

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

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

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

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

“Deliverable” means a Work Product(s), including all reports and project documentation, prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

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

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

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

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

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

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

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

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

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

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

“Project” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“Scope of Work” means the description of Services and Deliverables specified in the Contract and as may be amended.

“Services” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

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

“Solicitation” means the document issued by the System Agency (including any published addenda, exhibits, and Attachments) under which the goods or Services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

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

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

“State of Texas Textravel” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontract” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“Subcontractor” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

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

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

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

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

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

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas *Textravel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 DEBT AND DELINQUENCIES

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

3.4 REFUNDS AND OVERPAYMENTS

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
 - ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
 - ii. that are not allowed under applicable laws, rules, or regulations; or,
 - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

Contractor warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

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

4.2 GENERAL AFFIRMATIONS

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

4.3 FEDERAL ASSURANCES

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

4.4 FEDERAL CERTIFICATIONS

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

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

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

5.2 CONTRACTOR'S PRE-EXISTING WORKS

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

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

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

5.3 THIRD PARTY IP

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

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

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

6.2 DAMAGE TO GOVERNMENT PROPERTY

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

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

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

ARTICLE VII. WORK ORDERS

7.1 WORK ORDERS

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

7.2 PROPOSALS

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

7.3 RESPONSIBILITY

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and any other information or special conditions as may be necessary for the Work assigned.

7.4 TERMINATION

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

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

- A. Contractor shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives

sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

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

8.2 AGENCY'S RIGHT TO AUDIT

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Contractor must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.

- B. As part of the Services, Contractor must provide to System Agency upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

8.4 STATE AUDITOR'S RIGHT TO AUDIT

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

8.5 CONFIDENTIALITY

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

ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION

9.1 CONTRACT REMEDIES

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

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

9.2 TERMINATION FOR CONVENIENCE

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

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

9.3 TERMINATION FOR CAUSE

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

i. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the System for Award Management (SAM) will also constitute a material breach of the Contract.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Contract for cause, the Contractor shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

- A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES**

RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.

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

10.2 INTELLECTUAL PROPERTY

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

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

10.3 ADDITIONAL INDEMNITY PROVISIONS

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

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

11.3 LIMITATION ON AUTHORITY

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

11.4 LEGAL OBLIGATIONS

Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use

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

11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

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

11.6 E-VERIFY PROGRAM

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

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

11.7 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

11.8 SUBCONTRACTORS

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

11.9 INDEPENDENT CONTRACTOR

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

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

11.10 GOVERNING LAW AND VENUE

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

11.11 SEVERABILITY

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

11.12 SURVIVABILITY

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

11.13 FORCE MAJEURE

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

11.14 DISPUTE RESOLUTION

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

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

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

11.15 NO IMPLIED WAIVER OF PROVISIONS

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

11.16 MEDIA RELEASES

- A. Contractor shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

11.17 NO MARKETING ACTIVITIES

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

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Contractor shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

11.19 SOVEREIGN IMMUNITY

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

11.20 ENTIRE CONTRACT AND MODIFICATION

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

11.21 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

11.22 CIVIL RIGHTS

- A. Contractor shall comply with all applicable state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Contractor shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor shall take reasonable steps to provide services

and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Contractor shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- D. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring contractor to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the contractor can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- E. Contractor shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Contractor shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor shall provide the HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:
 - HHSC Civil Rights Office
 - 701 W. 51st Street, Mail Code W206
 - Austin, Texas 78751
 - Phone Toll Free: (888) 388-6332
 - Phone: (512) 438-4313
 - Fax: (512) 438-5885.

11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Contractor shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.24 DISCLOSURE OF LITIGATION

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

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

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

11.25 NO THIRD-PARTY BENEFICIARIES

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

11.26 BINDING EFFECT

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

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Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to certifications, representations, or warranties, refer to Respondent.

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
5. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.
6. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation are rejected unless expressly accepted by HHSC.
7. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.

8. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
9. Respondent acknowledges all addenda and amendments to the Solicitation.
10. Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
11. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
 - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas
 - Agricultural products offered by a Texas bidder
 - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Texas Vegetation Native to the Region
 - USA-produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - Energy efficient products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or reused computer equipment of other manufacturers
 - Foods of higher nutritional value
 - Commercial production company or advertising agency located in Texas
12. Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.

- 13. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 14. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 15. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____

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

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

- 16. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
- 17. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

18. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
20. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
21. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
22. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
23. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
24. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
25. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
 - providing equivalent access for effective use by both visual and non-visual means;
 - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

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

26. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
27. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
28. Should Respondent be awarded a contract resulting from this solicitation, Respondent represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of the contract, none of its employees including, but not limited to those will provide services under the contract, were employees of an HHS Agency.
29. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
30. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
31. Respondent understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
32. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I

nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.

33. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
34. Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Solicitation Response.
35. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
 - (a) all persons employed by Respondent to perform duties within Texas; and
 - (b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.
36. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.
37. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.

- 38. Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
- 39. By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

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

Legal Name of Respondent: WellSky Corporation

<p><small>DocuSigned by:</small>  <small>2BC145972671485...</small> Signature of Authorized Representative</p>	<p>October 28, 2019 Date Signed</p>
<p>David Beckwith, Product Manager Printed Name and Title of Authorized Representative</p>	<p>(913) 307-1058 Phone Number</p>
<p>11-2209324 Federal Employer Identification Number</p>	<p>(913) 871-9571 Fax Number</p>
<p>177240249 DUNS Number</p>	<p>David.beckwith@wellsky.com Email Address</p>
<p>11300 Switzer Road Physical Street Address</p>	<p>Overland Park, KS 66210 City, State, Zip Code</p>
<p>11300 Switzer Road Mailing Address, if different</p>	<p>Overland Park, KS 66210 City, State, Zip Code</p>