

**HHSC Contract No. HHS000772800004 TEXAS  
HEALTH AND HUMAN SERVICES CONTRACT  
UNDER THE  
CRS POST-ACUTE REHABILITATION SERVICES**

**I. PURPOSE**

The Health and Human Services Commission (“**HHSC**”), an administrative agency within the executive department of the State of Texas, and Tangram Rehabilitation Network (“**Contractor**” or “**Provider**”), each a “**Party**” and collectively the “**Parties**,” enter into the following contract for Post-Acute Rehabilitation Services (**PARS**) (the “**Contract**”).

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions of Title 40, Part 2, Chapter 107, Subchapter D, Texas Administrative Code and Chapter 531, Texas Government Code.

**III. STATEMENT OF SERVICES TO BE PROVIDED**

Contractor shall perform or cause to be performed rehabilitation services in accordance with the Statement of Work included as Section 8 of the Open Enrollment, attached hereto and incorporated herein as **Attachment A**.

**IV. DURATION**

The term of Contract will be effective on the date last signed by both the Provider and HHSC and will expire five years after the date of execution, unless terminated earlier pursuant to the terms and conditions of the Contract.

**V. PAYMENT FOR SERVICES PROVIDED**

Payment terms for services performed are in accordance with the Open Enrollment No. HHS0007728 **Section 8, Statement of Work**, in accordance with the current adopted rates for PARS Residential; Non-Residential Rates; and Outpatient Therapy Rates incorporated into , **Statement of Work**, attached hereto.

HHSC makes no guarantee or promise regarding the level or amount of services that may be requested or authorized under this Contract. Nothing in this Contract expresses or guarantees that HHSC will issue any Service Authorization to the Contractor on an as-needed basis and HHSC makes no guarantee of the minimum volume of usage under the Contract.

## VI. CONTRACT REPRESENTATIVES

The following will act as the designated Representative authorized to administer activities, including, but not limited to, non-legal notices, consents, approvals, requests, or other general communications provided for or permitted to be given under this Contract.

The designated Contract Representatives are:

<b>Contractor Representative</b>	<b>HHSC Representative</b>
Sherry Pemberton	Brettany Boozer, CTCM
805 North Whittington PKWY	701 West 51 <sup>st</sup> Street, MC 3084
Louisville, KY 40222	Austin TX 78751
502-272-3466	(512) 438-3014
spemberton@brightspringhealth.com	CRS_Contracts@hhsc.state.tx.us

Either Party may change its designated Representative by providing written notice to the other Party.

## VII. LEGAL NOTICES

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

<b>Contractor Representative</b>	<b>HHSC</b>
Tangram Rehabilitation Network	Health and Human Services Commission
Attn: Sherry Pemberton	Attn: Office of Chief Counsel
805 North Whittington PKWY	4900 N. Lamar Boulevard, MC 1100
Louisville, KY 40222	Austin TX 78751

Legal notice given by Contractor shall be deemed effective when received by HHSC. Either Party may change its address by written notice to the other Party.

## VIII. PRIVACY, SECURITY, AND BREACH NOTIFICATION FOR HHSC CONFIDENTIAL INFORMATION

**8.1 “HHSC Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the Contractor electronically or through any other means that consists of or includes any or all of the following:

- (a) Protected Health Information in any form including, without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (b) Sensitive Personal Information defined by *Texas Business and Commerce Code* Chapter 521;
- (c) Federal Tax Information;
- (d) Personally Identifiable Information;
- (e) Social Security Administration Data, including, without limitation, Medicaid information;
- (f) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the *Texas Health and Safety Code* and the Texas Public Information Act, *Texas Government Code* Chapter 552.

Any HHSC Confidential Information received by the Contractor under this Contract may be disclosed only in accordance with applicable law.

By signing this Contract, the Contractor certifies that the Contractor is, and intends to remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and Breach notification, including without limitation the following:

- (a) The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
- (b) 42 CFR Part 2 and 45 CFR Parts 160 and 164;
- (c) The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
- (d) The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
- (e) Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
- (f) OMB Memorandum 07-16;
- (g) Texas Business and Commerce Code Chapter 521;
- (h) Texas Health and Safety Code §§ 81.006 and 85.115, and Chapters 181, 595, and 611; (i) Texas Human Resources Code § 12.003;
- (j) Texas Government Code Chapter 552, as applicable;
- (k) Title 3 of the Texas Occupations Code, as applicable;
- (l) Constitutional and common law privacy laws and regulations; and
- (m) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract.

The Contractor further certifies that the Contractor shall comply with all amendments, regulations, and guidance relating to these laws, to the extent applicable.

Contractor shall ensure that any subcontractor of the Contractor who has access to HHSC Confidential Information will sign a HIPAA-compliant Business Associate Agreement with Contractor, and Contractor shall submit a copy of that Business Associate Agreement to HHSC upon request.

## **8.2 Incident Notice, Reporting and Mitigation for Confidential Information**

The Contractor's obligation to report to HHSC Privacy Office any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information (collectively "**Incident**") begins at discovery of the Incident and continues until all effects of the Incident are resolved to the HHSC Privacy Office's satisfaction, hereafter referred to as the "Incident Response Period."

## **8.3 Privacy Breach Incident Reporting Requirements**

A. The Contractor must assure they can comply with these Incident Notice requirements and that its subcontractors take the necessary steps to assure that they can also comply with all of the following Incident notice requirements. B. Privacy Breach Incident Notification:

The privacy breach incident must be submitted to the HHSC Privacy Office as soon as possible and no later than 48 consecutive clock hours after discovery of an event or breach of confidential information or a time within which discovery reasonably should have been made.

Information for Reporting Privacy Breach Incidents may be accessed on the HHSC Website at: <https://hhs.texas.gov/about-hhs/communicationsevents/news/2018/01/reporting-privacy-breach-incidents>

HHSC Form 0402, Potential Privacy/Security Incident must be completed in its entirety and submitted by e-mail at: [privacy@hpsc.state.tx.us](mailto:privacy@hpsc.state.tx.us)

The Form 0402 must be submitted as soon as possible and no later than 48 consecutive clock hours after discovery of an event or breach of confidential information or a time within which discovery reasonable should have been made. Updates regarding the investigation and mitigation of the breach must be sent to the HHSC Privacy Office until the matter is resolved and closed.

The Form 0402 may be accessed at: <https://hhs.texas.gov/laws-regulations/forms/0-999/form-0402-potentialprivacysecurity-incident>

#### **8.4 Contractor Investigation, Response and Mitigation**

The Contractor must fully investigate and mitigate, to the extent practicable and as soon as possible or as indicated below, any Incident. Updates regarding the investigation and mitigation of the breach must be sent to the HHSC Privacy Office until the matter is resolved and closed.

At a minimum, the Contractor will:

1. Immediately commence a full and complete investigation;
2. Cooperate fully with HHSC in its response to the Incident;
3. Complete or participate in an initial risk assessment;
4. Provide a final risk assessment;
5. Submit proposed corrective actions to HHSC for review and approval;
6. Commit necessary and appropriate staff and resources to expeditiously respond;
7. Report to HHSC as required by HHSC and all applicable federal and state laws for Incident response purposes and for purposes of HHSC's compliance with report and notification requirements, to the satisfaction of HHSC;
8. Fully cooperate with HHSC to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
9. Fully cooperate with HHSC's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;
10. Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
11. Provide HHSC with a final report on the Incident explaining the Incident's resolution.

#### **8.5 Breach Notification to Individuals, Media, Secretary, and Reporting to Authorities**

A. In addition to the notices required in Section 8.3, the Contractor must provide

Breach

notification, in accordance with [Title 45, Subtitle A, Subchapter C, §§164.400-414, Subpart D, Code of Federal Regulations \(CFR\)](#) , or as specified by HHSC following an Incident.

- B. The Contractor must assure that the time, manner and content of any Breach notification required by this Section meets all federal, state, and local regulatory requirements. Breach notice letters must be in the Contractor's name and on the Contractor's letterhead and must contain contact information to obtain additional information, including the name and title of the Contractor's representative, an email address and a toll-free telephone number.
- C. The Contractor must provide the HHSC Privacy Office with copies of all distributed communications related to the Breach notification at the same time the Contractor distributes the communications.

The Contractor must demonstrate to the satisfaction of HHSC Privacy Office that any Breach notification required by applicable law was timely made. If there are delays outside of the Contractor's control, the Contractor must provide written documentation to the HHSC Privacy Office of the reasons for the delay.

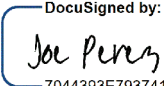
## **IX. SIGNATURE AUTHORITY**

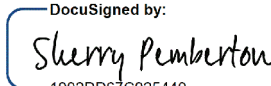
Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

**SIGNATURES FOR HHSC CONTRACT NO. HHS000772800004**

**Health and Human Services  
Commission**

**Tangram Rehabilitation Network**

By:  DocuSigned by:  
7044393E7937413...

By:  DocuSigned by:  
1902DD67C925440...

Name: Joe Perez

Name: Sherry Pemberton

Title: Deputy Executive Commissioner

Title: VP Contracting

Date Signed: August 16, 2021

Date Signed: August 16, 2021

**The following documents are hereby attached and incorporated by reference into the Contract:**

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS000772800004 ARE HEREBY ATTACHED AND INCORPORATED BY REFERENCE:**

- Attachment A - Statement of Work
- Attachment B - HHSC Uniform Terms and Conditions - Vendor (Version 3.0)
- Attachment C - HHSC Supplemental Conditions to UTCs
- Attachment D - Contract Affirmations (Version 1.6)
- Attachment E – Contractor’s Application documentation
- Attachment F - HHSC Open Enrollment No. HHS0007728 including Addenda, if applicable

**HHS Open Enrollment No. HHS0007728**  
**Attachment A**  
**Statement of Work**

**TABLE OF CONTENTS**

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>2</b>
<b>2.</b>	<b>AUTHORIZED SERVICES FOR INDIVIDUALS SUPPORTED BY CRS.....</b>	<b>2</b>
2.1.	RESIDENTIAL SERVICES .....	2
2.2.	NON-RESIDENTIAL SERVICES .....	2
2.3.	OUTPATIENT THERAPY SERVICES .....	3
2.4.	ANCILLARY SERVICES .....	3
2.5.	THIRD PARTY BENEFITS .....	3
<b>3.</b>	<b>ELIGIBLE PERSON POPULATION .....</b>	<b>3</b>
3.1.	ELIGIBLE PERSON CHARACTERISTICS .....	4
3.1.1.	<i>Cognitive Deficits</i> .....	4
3.1.2.	<i>Speech and Language Deficits</i> .....	4
3.1.3.	<i>Sensory Deficits</i> .....	4
3.1.4.	<i>Perceptual Deficits</i> .....	4
3.1.5.	<i>Vision Deficits</i> .....	4
3.1.6.	<i>Hearing Deficits</i> .....	5
3.1.7.	<i>Smell Deficits</i> .....	5
3.1.8.	<i>Taste Deficits</i> .....	5
3.1.9.	<i>Seizures</i> .....	5
3.1.10.	<i>Physical Changes</i> .....	5
3.1.11.	<i>Social Emotional Deficits</i> .....	5
<b>4.</b>	<b>SERVICE PROVIDER LOCATION(S) .....</b>	<b>6</b>
<b>5.</b>	<b>CONTINGENCY DISASTER SERVICES .....</b>	<b>6</b>
<b>6.</b>	<b>GOAL AND PERFORMANCE MEASURES.....</b>	<b>6</b>
6.1.	GOAL .....	7
6.2.	PERFORMANCE MEASURES .....	7
6.3.	LICENSE ACTION NOTICE.....	7
6.4.	UTILIZATION REVIEW .....	8
6.5.	NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS.....	8
<b>7.</b>	<b>PAYMENT TERMS.....</b>	<b>9</b>
7.1.	PROHIBITED PAYMENTS.....	9
7.2.	THIRD PARTY PAYMENT .....	9
<b>8.</b>	<b>CRS PARS PAYMENT RATES .....</b>	<b>10</b>
8.1.	PARS RESIDENTIAL RATES .....	11
8.2.	PARS NON-RESIDENTIAL RATES .....	12
8.3.	OUTPATIENT THERAPY RATES .....	13
8.4.	ANCILLARY SERVICES .....	13
<b>9.</b>	<b>INVOICE PROCESS .....</b>	<b>14</b>
9.1.	INVOICE DUE DATE .....	14
9.2.	SUPPORTING DOCUMENTATION FOR SERVICES AND FINANCIAL INFORMATION.....	14
9.3.	INVOICE REQUIREMENTS .....	14



## 1. INTRODUCTION

The purpose of Health and Human Services Commission's (HHSC) Comprehensive Rehabilitation Services (CRS) program is to help eligible persons who have a traumatic brain injury (TBI) and/or traumatic spinal cord injury (TSCI) improve their ability to function independently in the home and the community. The program focuses to improve self-care, communication, and mobility.

Information and guidelines about the CRS program may be accessed at: The CRS Standards for Provider's Manual may be accessed at: <https://hhs.texas.gov/laws-regulations/handbooks/comprehensive-rehabilitation-services-crs-standards-providers>

## 2. AUTHORIZED SERVICES FOR INDIVIDUALS SUPPORTED BY CRS

CRS is authorized to offer Post-Acute Rehabilitation Services (PARS) for Residential, Non-Residential and Outpatient Therapy Services. To be eligible to receive these services the individual must have either a TBI or a TSCI. The services are provided through an interdisciplinary team approach and identified on the Individual Program Plan (IPP). The contractor will request specific services which must be pre-authorized by the CRS program Counselor. Once approved by the Counselor, a Service Authorization (SA) will be issued to the contractor and will outline approved services to be rendered. Any changes to treatment or the SA must be submitted to the Counselor for review and approval.

The services are defined in the CRS Standards for Provider's Manual and, unless otherwise specified, should be considered all-inclusive. The Contractor (Provider) is, at all times, responsible for complying with the most current version of the HHSC CRS Standards for Providers Manual.

The Contractor must provide all PARS in accordance with all Texas and HHSC statutes, regulations, rules, policies, and guidelines that govern the PARS, including, but not limited to, [Title 40, Part 2, Chapter 107, Subchapter D of the Texas Administrative Code](#) and the most current CRS Standards for Providers Manual.

Services that are provided are based on an assessment of the individual's deficits with the goal of achieving independence in the home and community and/or establish new patterns of cognitive activity or compensatory mechanisms.

### 2.1. RESIDENTIAL SERVICES

To receive services in a residential setting, the individual must have a TBI or have a TBI with a TSCI.

### 2.2. NON-RESIDENTIAL SERVICES

To receive services in a non-residential setting, the individual may have a TBI, TSCI or both.

### **2.3. OUTPATIENT THERAPY SERVICES**

Outpatient therapy services are provided on a one-on-one basis by licensed therapists to participants who have a TBI, TSCI, or both. A physician must prescribe outpatient therapy services (as applicable), and the prescribed services are to be provided without admittance to a hospital. Outpatient therapy services are to be utilized as a continuum of PARS services and does not include residential or non-residential base services. Outpatient therapy services include core services, but are not limited to: occupational therapy, physical therapy, speech therapy, mental health counseling, and substance abuse services.

### **2.4. ANCILLARY SERVICES**

Goods or services approved by the CRS program that are not part of the approved rates for PARS are considered ancillary and must be preauthorized before goods or services are rendered. If goods or services are not preauthorized, then there is no guarantee of payment.

### **2.5. THIRD PARTY BENEFITS**

If an individual has third party benefits, the Contractor is required to provide HHSC CRS with the explanation of benefits (EOB) or denial from other pay sources(s).

It is the Contractor's responsibility to communicate with HHSC CRS staff regarding pre-authorizations or estimated third party payment prior to service delivery in order for HHSC CRS staff to provide appropriate authorization of services.

Payment by a financial agent, including but not limited to self-insured plans, commercial/private insurance plans, Medicare, Medicaid, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

HHSC CRS is considered a payor of last resort.

## **3. ELIGIBLE PERSON POPULATION**

A person eligible is determined by applicable law, [Title 40, Part 2, Chapter 107, §107.707, Texas Administrative Code](#) and the individual must meet eligibility requirements as outlined in the CRS Standards for Providers Manual.

Eligibility information about the HHSC CRS program may be accessed at:  
<https://hhs.texas.gov/services/disability/comprehensive-rehabilitation-services-crs>

### **3.1. ELIGIBLE PERSON CHARACTERISTICS**

Contractor must be prepared to serve individuals with characteristics, including but not limited to:

#### **3.1.1. Cognitive Deficits**

- a.** Attention
- b.** Concentration
- c.** Distractibility
- d.** Memory
- e.** Speed of Processing
- f.** Confusion
- g.** Perseveration
- h.** Impulsiveness
- i.** Language Processing
- j.** Executive functions

#### **3.1.2. Speech and Language Deficits**

- a.** Not understanding the spoken word (receptive aphasia)
- b.** Difficulty speaking and being understood (expressive aphasia)
- c.** Slurred speech
- d.** Speaking very fast or very slow
- e.** Problems reading
- f.** Problems writing

#### **3.1.3. Sensory Deficits**

Difficulties with interpretation of touch, temperature, movement, limb position and fine discrimination.

#### **3.1.4. Perceptual Deficits**

Difficulty with the integration or patterning of sensory impressions into psychologically meaningful data.

#### **3.1.5. Vision Deficits**

- a.** Partial or total loss of vision
- b.** Weakness of eye muscles and double vision (diplopia)
- c.** Blurred vision

- d. Problems judging distance
- e. Involuntary eye movements (nystagmus)
- f. Intolerance of light (photophobia)

#### **3.1.6. Hearing Deficits**

- a. Decrease or loss of hearing
- b. Ringing in the ears (tinnitus)
- c. Increased sensitivity to sounds

#### **3.1.7. Smell Deficits**

Loss or diminished sense of smell (anosmia)

#### **3.1.8. Taste Deficits**

Loss or diminished sense of taste

#### **3.1.9. Seizures**

The convulsions associated with epilepsy that can be several types and can involve disruption in consciousness, sensory perception, or motor movements.

#### **3.1.10. Physical Changes**

- a. Physical paralysis/spasticity
- b. Chronic pain
- c. Control of bowel and bladder
- d. Sleep disorders
- e. Loss of stamina
- f. Appetite changes
- g. Regulation of body temperature
- h. Menstrual difficulties

#### **3.1.11. Social Emotional Deficits**

- a. Dependent behaviors
- b. Emotional ability
- c. Lack of motivation
- d. Irritability
- e. Aggression
- f. Depression
- g. Disinhibition
- h. Denial / lack of awareness

#### **4. SERVICE PROVIDER LOCATION(S)**

The CRS program is state-wide, but specific provider service location(s) must be individually approved by HHSC.

The Contractor agrees that the individual's services provided under this Contract shall be provided at the approved location(s) specified on the Service Authorization(s) form issued by HHSC.

If the Contractor wishes to add or remove an approved location, the Contractor may request this modification via written request. HHSC, in its sole discretion, may approve or reject changes to the approved location(s).

#### **5. CONTINGENCY DISASTER SERVICES**

In the event of a local, state, or federal emergency, including pandemic, epidemic, natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster declared by the appropriate federal official, Contractor may be called upon to assist HHSC in providing the following services for the persons in their care at the time of the declaration:

- a. Community evacuation;
- b. Health and medical assistance;
- c. Assessment of health and medical needs;
- d. Health surveillance;
- e. Medical care personnel;
- f. Health and medical equipment and supplies;
- g. Patient evacuation;
- h. In-hospital care and hospital facility status;
- i. Food, drug and medical device safety;
- j. Worker health and safety;
- k. Mental health and substance abuse;
- l. Public health information;
- m. Vector control and veterinary services; and
- n. Victim identification and mortuary services.

#### **6. GOAL AND PERFORMANCE MEASURES**

Contractor performance evaluation is based on assessment of the output and outcome measures outlined below and in compliance with the terms and conditions of the Contract, as indicated by HHSC contract management and contract monitoring performed by HHSC staff.

PARS residential and non-residential providers must administer the Mayo-Portland Adaptability Inventory (MPAI)-4 or Functional Independence Measure (FIM) to all

individuals receiving services and must be completed and signed by a licensed professional.

### 6.1. GOAL

The goal of the PARS program and any contract awarded under this Open Enrollment is to ensure that individuals who have a TBI or TSCI, or both, receive individualized rehabilitation services to aid in attaining independence in the home and community.

### 6.2. PERFORMANCE MEASURES

The Contractor must be in compliance with all contractual obligations, including but not limited to delineated outcome and customer satisfaction measures.

In addition to the Contractor's compliance with all of its obligations and duties under the Contract resulting from this Open Enrollment, HHSC will evaluate the performance of the Provider on the basis of the following performance measures:

<b>Performance Measures</b>
<b>Goal of the Contract:</b> To provide individualized rehabilitation services to eligible persons, which aid in achieving independence in the home and community.
<b>Outcome #1:</b> The individual is discharged to a home and community setting.
<b>Outcome Performance Period:</b> Contractor performance for this outcome is determined on a case by case basis, as the individual discharges from the facility.
<b>Outcome Indicator:</b> Percent of individuals in the discharged to home and community settings compared to admissions.
<b>Outcome Target:</b> 100%
<b>Purpose:</b> To ensure individuals are provided rehabilitation services that aid in achieving independence in the home and community.
<b>Data Source:</b> Data collection system as defined by CRS program management
<b>Methodology:</b> The facility must report discharge location to HHSC counselor upon discharge from the facility.

### 6.3. LICENSE ACTION NOTICE

Contractor shall notify its assigned HHSC contract manager of any action impacting Contractor's or subcontractor's license to provide services under this Contract within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the license action; and
- d. License or case reference number.

#### **6.4. UTILIZATION REVIEW**

The use of utilization and review activities ensures program fiscal integrity, addresses the state mandate requiring program funds be spent only as allowed under state laws and regulations, and ensure that services are based on medical necessity and efficacy of services provided.

Records are chosen for review through a random sample or if billing issues are noted by CRS field staff. Review of individual records with services and billing occur from the point of entry into the CRS program until after the individual ends/concludes treatment and may include prospective, concurrent, and retrospective review activities.

Additionally, Contractors are required to participate in cost reporting and cost surveys performed by the HHSC Rate Analysis Department.

#### **6.5. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS**

- A.** Contractor shall immediately report in writing to its assigned HHSC contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Contract has:
  1. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
  2. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- B.** Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have



direct contact with clients, unless otherwise directed in writing by the System Agency.

## 7. PAYMENT TERMS

HHSC will pay the Contractor for referred services provided and invoiced in accordance with the terms and conditions of the Contract. However, HHSC makes no guarantee or promise regarding the level or amount of services that may be requested or authorized under this Contract.

HHSC is the payor of last resort; therefore, all comparable benefits must be exhausted prior to payment of services.

HHSC will pay for services in accordance with applicable adopted [CRS PARS rates](#), unless otherwise specified.

All payments by HHSC under this Contract will be made in accordance with the Texas Prompt Payment Act, *Texas Government Code*, Chapter 2251. Contractor shall pay any subcontractors in accordance with *Texas Government Code* §2251.022.

Any Contract resulting from this Open Enrollment will be paid on a combination of fee-for-service and per diem reimbursement methods funded by state money based on services provided.

Total funding for these services for all Contracts is an estimated projection of \$12,000,000.00 annually.

HHSC does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Open Enrollment. Additionally, all HHS Agency contracts are subject to appropriations, the availability of funds, and termination.

### 7.1. PROHIBITED PAYMENTS

Contractor **will not** be paid for services provided:

- If a comparable benefit is available to fund services;
- Without a Service Authorization from HHSC;
- Outside the date range authorized in the Service Authorization; or
- Without a denial of benefits and explanation of benefits, as applicable.

### 7.2. THIRD PARTY PAYMENT

Payment by a financial agent, including but not limited to self-insured



plans, commercial/private insurance plans, Medicare, Medicaid, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

HHSC CRS is considered a payor of last resort.

If an individual has third party benefits, the Contractor is required to provide HHSC CRS with the explanation of benefits (EOB) or denial from other pay sources(s).

It is the Contractor's responsibility to communicate with HHSC CRS Staff regarding pre-authorizations or estimated third party payment prior to service delivery in order for HHSC CRS staff to provide appropriate authorization of services.

## **8. CRS PARS PAYMENT RATES**

An indicator of the level of need for services under PARS is based on historical utilization data. However, no level of service is guaranteed by this Open Enrollment or constitutes any promise or guarantee of service utilization on the part of HHSC.

The methodology to determine a per diem and a fee for service state-wide rate includes:

- a.** PARS Residential includes a base component, which covers room and board, administration, personal assistance, and facility and operations costs and a tiered rate structure for core therapy services;
- b.** PARS Non-Residential includes a community and facility base and a core service component, which covers core therapy services and is billed in 15-minute increments.
- c.** PARS Outpatient Services includes individual services that covers core therapy services and is billed in 15-minute increments.

An overview, [reference to reimbursement methodology](#), CRS Rules and payment rate information for residential, non-residential and outpatient service for the CRS Program and the current adopted rates may be found under Payment Rate Information which may be accessed at:

<https://rad.hhs.texas.gov/long-term-services-supports/comprehensive-rehabilitation-services-program-crs>

HHSC will only pay for PARS that have been pre-approved by the CRS Counselor documented in the Individual Program Plan (IPP). Detailed service delivery data must be uploaded each month into the CRS Data Reporting System. This information collected will be utilized to evaluate the per diem and fee for service state-wide rates.

## **8.1. PARS RESIDENTIAL RATES**

PARS Residential includes a base component, which covers room and board, administration, personal assistance, and facility and operations costs and a tiered rate structure for core therapy services.

### **a. Daily Rate**

The Daily Rate is the total for the Core Services Tier Rate, Base Per Diem Rate and the Therapy Evaluation Per Diem Rate, as applicable to the services provided.

### **b. Base Per Diem Rate**

Rate covers room and board, administration, paraprofessional services, medical (physician and nursing services), dietary/nutritional services, case management, and facility and operations costs.

### **c. Therapy Evaluation Per Diem Rate**

The evaluation per diem is based on providing an average of one evaluation each month.

### **d. Core Services Tier Rate**

The core services tier rate is calculated by reviewing the reimbursement for core services and determining hourly proxy rate for those core services. The hourly rate is applied to the tiered rate structure at the prescribed hourly increment for each tier.

Core services include:

- 1.** Aquatic Therapy;
- 2.** Art Therapy;
- 3.** Behavior Management;
- 4.** Chemical Dependency Counseling Treatment;
- 5.** Cognitive Rehabilitation Therapy;
- 6.** Family Therapy;
- 7.** Massage Therapy;
- 8.** Mental Health Counseling;
- 9.** Music Therapy;
- 10.** Neuropsychological Services;
- 11.** Neuropsychiatric Services;
- 12.** Occupational Therapy;
- 13.** Physical Therapy;
- 14.** Recreational Therapy;
- 15.** Speech/Language Pathology

### **e. Transportation**

A transportation fee can be billed one time a day if the contractor transports the individual to appointments or community outings that are identified on the (IPTP).

## **8.2. PARS NON-RESIDENTIAL RATES**

PARS Residential includes a base component, which covers room and board, administration, personal assistance, and facility and operations costs and a tiered rate structure for core therapy services.

### **a. Hourly Base Rate for PARS- Non-Residential**

A standard facility or community base fee per hour and covers dietary and nutritional services, medical services, nursing services, and administrative and/or operational costs.

### **b. Core Services**

Core services are paid in 15-minute increments and can be provided as individual, group, small group, evaluation and re-evaluation as specified in the CRS Standards for Providers.

Core services include:

- 1.** Aquatic Therapy;
- 2.** Art Therapy;
- 3.** Behavior Management;
- 4.** Chemical Dependency Counseling Treatment;
- 5.** Cognitive Rehabilitation Therapy;
- 6.** Family Therapy;
- 7.** Massage Therapy;
- 8.** Mental Health Counseling;
- 9.** Music Therapy;
- 10.** Neuropsychological Services;
- 11.** Neuropsychiatric Services;
- 12.** Occupational Therapy;
- 13.** Physical Therapy;
- 14.** Recreational Therapy;
- 15.** Speech/Language Pathology
- 16.** Case Management
- 17.** Community Independence Supports-Certified Brain Injury Specialist
- 18.** Community Independence Supports-Paraprofessional
- 19.** Medical Team Conference
  - a. With individual supported and/or family present
  - b. Individual supported and/or family not present

### **c. Transportation**

A transportation fee can be billed one time a day if the contractor transports the individual to appointments or community outings that are identified on the (IPP).

### **8.3. OUTPATIENT THERAPY RATES**

Outpatient Therapy Services is paid based upon the Non-residential rates schedule, but does not include case management, community independence supports, and facility or community-based fees.

#### **a. Core Services**

Core services are paid in 15-minute increments and can be provided as individual, group, small group, evaluation and re-evaluation as specified in the CRS Standards for Providers.

Core services include:

- 1.** Aquatic Therapy;
- 2.** Art Therapy;
- 3.** Behavior Management;
- 4.** Chemical Dependency Counseling Treatment;
- 5.** Cognitive Rehabilitation Therapy;
- 6.** Family Therapy;
- 7.** Massage Therapy;
- 8.** Mental Health Counseling;
- 9.** Music Therapy;
- 10.** Neuropsychological Services;
- 11.** Neuropsychiatric Services;
- 12.** Occupational Therapy;
- 13.** Physical Therapy;
- 14.** Recreational Therapy;
- 15.** Speech/Language Pathology
- 16.** Medical Team Conference
  - a. With individual supported and/or family present
  - b. Individual supported and/or family not present
- 17.**

#### **d. Transportation**

A transportation fee can be billed one time a day if the contractor transports the individual to appointments or community outings that are identified on the (IPP).

### **8.4. ANCILLARY SERVICES**

Ancillary services will be paid as fee-for-service and based on current HHSC rates. Ancillary services require an additional service authorization to the contractor or vendor provider providing the good and/or service. Ancillary services will be paid utilizing Current Procedural Terminology (CPT) that are

determined by HHSC Rate Analysis Department. For services and purchases for which a specific rate can be established without regard to the individual receiving the service or item, but for which a CRS rate has not yet been set at the time an individual's program planning team determines that the service is required, HHSC will establish an interim CRS rate.

## **9. INVOICE PROCESS**

Reference the CRS Standards for Providers manual, [Chapter 6](#) General Billing Guidelines, Subsection 6.4 Invoices.

The Contractor shall submit an invoice each month as referenced in the CRS Standards manual with the total amount for payment in accordance with the adopted rates and the requirements listed herein.

### **9.1. INVOICE DUE DATE**

Invoices are due by the 15<sup>th</sup> of each month for all services provided in the previous month.

Failure to submit invoices on time may be considered a Contract compliance issue and be used in evaluating renewal or termination of the Contract.

### **9.2. SUPPORTING DOCUMENTATION FOR SERVICES AND FINANCIAL INFORMATION**

Each monthly invoice must include the supporting detailed program services records, containing the established reporting information, which must be uploaded into the CRS Data Reporting System by the 15<sup>th</sup> of the following month. The CRS Data Reporting System is a repository data based that each contractor will be provided access to enter in the data or upload a csv file each month. PARS provider are also required to complete Cyber Training as outlined in the CRS Standards for Providers.

If there is a third-party benefit, the Contractor must provide all applicable communication and status of pending claims by the Program.

### **9.3. INVOICE REQUIREMENTS**

- Each invoice must contain, at a minimum, the information provided in the CRS Standards manual, [Subsection 6.4](#)
- Each monthly invoice submitted must be in accordance with [34 TAC Part 1, Chapter 20, Subchapter F, Division 1, § 20.487](#)



# 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

**Open Enrollment No. HHS0007728**

**Attachment B**

## Table of Contents

<b>ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS .....</b>	<b>5</b>
<b>1.1    DEFINITIONS .....</b>	<b>5</b>
<b>1.2    INTERPRETIVE PROVISIONS .....</b>	<b>7</b>
<b>ARTICLE II. PAYMENT PROVISIONS .....</b>	<b>8</b>
<b>2.1    PROMPT PAYMENT .....</b>	<b>8</b>
<b>2.2    ANCILLARY AND TRAVEL EXPENSES.....</b>	<b>8</b>
<b>2.3    NO QUANTITY GUARANTEES .....</b>	<b>8</b>
<b>2.4    TAXES .....</b>	<b>8</b>
<b>ARTICLE III. STATE AND FEDERAL FUNDING .....</b>	<b>8</b>
<b>3.1    EXCESS OBLIGATIONS PROHIBITED .....</b>	<b>8</b>
<b>3.2    NO DEBT AGAINST THE STATE .....</b>	<b>8</b>
<b>3.3    DEBT AND DELINQUENCIES.....</b>	<b>9</b>
<b>3.4    REFUNDS AND OVERPAYMENTS .....</b>	<b>9</b>
<b>ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS.....</b>	<b>9</b>
<b>4.1    WARRANTY .....</b>	<b>9</b>
<b>4.2    GENERAL AFFIRMATIONS .....</b>	<b>9</b>
<b>4.3    FEDERAL ASSURANCES .....</b>	<b>10</b>
<b>4.4    FEDERAL CERTIFICATIONS.....</b>	<b>10</b>
<b>ARTICLE V. INTELLECTUAL PROPERTY.....</b>	<b>10</b>
<b>5.1    OWNERSHIP OF WORK PRODUCT .....</b>	<b>10</b>
<b>5.2    CONTRACTOR’S PRE-EXISTING WORKS.....</b>	<b>10</b>
<b>5.3    THIRD PARTY IP.....</b>	<b>11</b>
<b>5.4    AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS .....</b>	<b>11</b>
<b>5.5    DELIVERY UPON TERMINATION OR EXPIRATION .....</b>	<b>11</b>
<b>5.6    SURVIVAL.....</b>	<b>11</b>
<b>5.7    SYSTEM AGENCY DATA.....</b>	<b>12</b>
<b>ARTICLE VI. PROPERTY .....</b>	<b>12</b>
<b>6.1    USE OF STATE PROPERTY .....</b>	<b>12</b>
<b>6.2    DAMAGE TO GOVERNMENT PROPERTY.....</b>	<b>13</b>
<b>6.3    PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT.....</b>	<b>13</b>
<b>ARTICLE VII. WORK ORDERS.....</b>	<b>13</b>
<b>7.1    WORK ORDERS.....</b>	<b>13</b>

7.2	PROPOSALS .....	13
7.3	RESPONSIBILITY .....	13
7.4	TERMINATION.....	13
<b>ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY .....</b>		<b>13</b>
8.1	RECORD MAINTENANCE AND RETENTION .....	13
8.2	AGENCY’S RIGHT TO AUDIT .....	14
8.3	RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS .....	14
8.4	STATE AUDITOR’S RIGHT TO AUDIT .....	15
8.5	CONFIDENTIALITY.....	15
<b>ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION .....</b>		<b>15</b>
9.1	CONTRACT REMEDIES.....	15
9.2	TERMINATION FOR CONVENIENCE.....	15
9.3	TERMINATION FOR CAUSE .....	16
9.4	CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY’S TERMINATION COSTS .....	16
<b>ARTICLE X. INDEMNITY.....</b>		<b>16</b>
10.1	GENERAL INDEMNITY .....	16
10.2	INTELLECTUAL PROPERTY .....	17
10.3	ADDITIONAL INDEMNITY PROVISIONS .....	17
<b>ARTICLE XI. GENERAL PROVISIONS .....</b>		<b>18</b>
11.1	AMENDMENT .....	18
11.2	INSURANCE .....	18
11.3	LIMITATION ON AUTHORITY.....	18
11.4	LEGAL OBLIGATIONS .....	18
11.5	CHANGE IN LAWS AND COMPLIANCE WITH LAWS.....	19
11.6	E-VERIFY PROGRAM.....	19
11.7	PERMITTING AND LICENSURE.....	19
11.8	SUBCONTRACTORS .....	19
11.9	INDEPENDENT CONTRACTOR.....	19
11.10	GOVERNING LAW AND VENUE .....	20
11.11	SEVERABILITY .....	20
11.12	SURVIVABILITY.....	20
11.13	FORCE MAJEURE.....	20
11.14	DISPUTE RESOLUTION.....	20
11.15	NO IMPLIED WAIVER OF PROVISIONS .....	21



<b>11.16</b>	<b>MEDIA RELEASES</b> .....	<b>21</b>
<b>11.17</b>	<b>NO MARKETING ACTIVITIES</b> .....	<b>21</b>
<b>11.18</b>	<b>PROHIBITION ON NON-COMPETE RESTRICTIONS</b> .....	<b>21</b>
<b>11.19</b>	<b>SOVEREIGN IMMUNITY</b> .....	<b>22</b>
<b>11.20</b>	<b>ENTIRE CONTRACT AND MODIFICATION</b> .....	<b>22</b>
<b>11.21</b>	<b>COUNTERPARTS</b> .....	<b>22</b>
<b>11.22</b>	<b>CIVIL RIGHTS</b> .....	<b>22</b>
<b>11.23</b>	<b>ENTERPRISE INFORMATION MANAGEMENT STANDARDS</b> .....	<b>23</b>
<b>11.24</b>	<b>DISCLOSURE OF LITIGATION</b> .....	<b>23</b>
<b>11.25</b>	<b>NO THIRD-PARTY BENEFICIARIES</b> .....	<b>24</b>
<b>11.26</b>	<b>BINDING EFFECT</b> .....	<b>24</b>

## 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. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
Fax: (512) 438-5885.

### **11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

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

### **11.24 DISCLOSURE OF LITIGATION**

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

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

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

#### **11.25 NO THIRD-PARTY BENEFICIARIES**

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

#### **11.26 BINDING EFFECT**

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

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**