

# INTERAGENCY COOPERATION CONTRACT

## DEPARTMENT OF STATE HEALTH SERVICES

CONTRACT NO. HHS000793600001

The Department of State Health Services ("**Receiving Agency**" or the "**System Agency**" or "**DSHS**") and The University of Texas Rio Grande Valley ("**Performing Agency**" or the "**Contractor**"), each a "**Party**" and collectively the "**Parties**," enter into the following contract to conduct a contact tracing program for infectious diseases (the "**Contract**") pursuant to the provisions of "The Interagency Cooperation Act," Chapter 771 of the Texas Government Code.

### I. CONTRACT REPRESENTATIVES

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

#### Performing Agency

Name: The University of Texas Rio Grande Valley  
Address: 1201 W. University Drive  
City and Zip: Edinburg, TX 78539-2909  
Contact Person: Michael Dobbs

E-Mail Address: [michael.dobbs@utrgv.edu](mailto:michael.dobbs@utrgv.edu)

#### Receiving Agency

Name: Department of State Health Services  
Address: 1100 W. 49<sup>th</sup> Street, MC 1990  
City and Zip: Austin, TX 78756  
Contact Person: Susana Garcia

E-Mail Address: [susana.garcia@dshs.texas.gov](mailto:susana.garcia@dshs.texas.gov)

### II. STATEMENT OF SERVICES TO BE PROVIDED

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

### III. CONTRACT PERIOD AND RENEWAL

The Contract is effective upon the last signature date of the Contract (the "effective date"), and terminates on August 31, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. System Agency may renew this Contract for up to two (2) additional 24-month periods, if funds are available. The Parties may extend this Contract subject to mutually agreeable written terms and conditions.

### IV. AMENDMENT

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

### V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract shall not exceed **\$10,053,911.00**, as provided for in **Attachment B -- Budget**.

## **VI. BASIS FOR CALCULATING REIMBURSABLE COSTS**

Performing Agency will be paid on a cost reimbursement basis and in accordance with the Budget of this Contract.

## **VII. LEGAL NOTICES**

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

### **System Agency**

Department of State Health Services  
Attention: General Counsel  
1100 West 49<sup>th</sup> Street, MC 1911  
Austin, TX 78756

### **Performing Agency**

The University of Texas Rio Grande Valley  
Attention: Legal Services  
1201 W. University Drive  
Edinburg, TX 78539-2909

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

## **VIII. CERTIFICATIONS**

The undersigned Parties certify that:

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

The Receiving Agency further certifies that it has statutory authority to contract for the services described in this Contract under DSHS Contracting Authority, which is Texas Health and Safety Code Chapters 12 and 1001, and Texas Government Code Chapter 531, Subchapter D, to the extent applicable and under Chapter 81.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS000793600001**

**RECEIVING AGENCY**


  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Jennifer Sims  
Printed Name

\_\_\_\_\_  
Deputy Commissioner  
Title

\_\_\_\_\_  
May 11, 2020  
Date

**PERFORMING AGENCY**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
John H. Krouse, MD, PhD, MBA  
Printed Name

\_\_\_\_\_  
EVP, Health Affairs, UTRGV  
Title

\_\_\_\_\_  
05/11/2020  
Date

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS000793600001 ARE HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A -- STATEMENT OF WORK**
- ATTACHMENT B -- BUDGET**
- ATTACHMENT C -- UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D -- UT SYSTEM SUPPLEMENTAL CONDITIONS**
- ATTACHMENT E -- UT SYSTEM SPECIAL CONDITIONS**
- ATTACHMENT F -- CONTRACT AFFIRMATIONS**
- ATTACHMENT G -- TEXAS STATEWIDE DATA EXCHANGE COMPACT (TSDEC)**

# **ATTACHMENT A STATEMENT OF WORK**

## **I. PURPOSE**

Contractor shall work with DSHS and their data to reduce the spread of infectious diseases by performing contact tracing, identifying persons who may have come into contact with an infected person ("contacts") and subsequent collection of further information about these contacts. Contractor will assist with the recruitment and management of workforce assigned to contact tracing efforts overseen by DSHS in response to infectious disease events including the COVID-19 pandemic in Texas.

## **II. REQUIREMENTS**

**A.** Contractor shall perform contact tracing and case investigation at the direction of DSHS on novel infections such as COVID-19 and any other infectious disease as requested by DSHS.

**B.** Contractor, under the oversight of DSHS, will utilize the following key concepts:

1. Trace and monitor contacts of infected people.
2. Notify them of their exposure.
3. Use tools provided by DSHS.

**C.** Contractor must ensure all parties involved with contact tracing take the following trainings prior to obtaining data:

1. The Association of State and Territorial Health Official online contact tracing training (<https://learn.astho.org/p/ContactTracer>);
2. If applicable, DSHS contact tracing training;
3. Health Insurance Portability and Accountability Act (HIPAA) Security and Privacy training; and
4. Cyber Security training certified by the Department of Information Resources, <https://dir.texas.gov/View-About-DIR/Information-Security/Pages/Content.aspx?id=154> and submit the acknowledgement form found at the following link: <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/forms/3834/3834.pdf>, to DSHS Assigned Contract Manager.

**D.** Contractor must have the capacity to work seven days a week. Schedule and hours will be approved and coordinated with DSHS.

**E.** Data will not be shared with any external party outside the scope of this Contract.

**F.** Contractor may not share data or copy data as DSHS owns all data rights and privileges associated with the data.

### **G. Technical Requirements**

1. Contact tracing application (Texas Health Trace) will be utilized.

- a. Require a supported version of one of the following:
      - i. Microsoft Edge, Google Chrome, Mozilla Firefox or Apple Safari, as designated by the browser vendor. Microsoft Internet Explorer should not be used.
- 2. Telecom solutions:
  - a. Minimum PC hardware requirements:
    - i. Processor: 2.4 GHz Core 2 Duo or equivalent
    - ii. RAM: 2 GB
    - iii. Monitor Display: 1024 x 768, 16 colors
    - iv. Sound Card: Full Duplex sound system
    - v. USB 2.0 port for USB Headset
  - b. Minimum PC software requirements:
    - i. One of the following 32-bit or 64-bit operating systems:
    - ii. Microsoft Windows 7 Service Pack 1
    - iii. Microsoft Windows XP Professional with Service Pack 2 or 3
  - c. User-provided home network connection:
    - i. Minimum 5MB download broadband Internet speed
    - ii. Minimum 1MB upload broadband Internet speed

#### **H. Data Security/Data File Retention**

1. Contractor shall not copy or retain any data outside of the portal.
2. Data entered into the portal shall not be used for any purpose other than as described in this agreement.
3. Both Parties will limit access to the data only to those employees, students, and officials of the Parties who need it to perform their official duties in connection with this Contract.
4. Both Parties will notify all personnel of the Parties who will have access to the data of the confidential nature of the information, the safeguards required and the sanctions for non-compliance as set out in law including Texas Health and Safety Code, Chapter 81, Texas Business and Commerce Code, Ch. 522, as well as all other appropriate state and federal laws.
5. Contractor will immediately report to DSHS's Representative, listed in Section I, any inappropriate use, disclosure of, or security incident involving the information obtained by Contractor.
6. Contractor will have procedures in place for mitigating, to the maximum extent practicable, any harmful effects from the use or disclosure of information in a manner contrary to the Contract or from a failure to maintain appropriate security in a manner contrary to the Contract.
7. Contractor will ensure the destruction of any confidential information not held in the web portal in a manner that renders them unusable, unreadable or indecipherable to unauthorized individuals.

### **III. INVOICE AND PAYMENT**

- A.** Contractor will request payments by submitting monthly voucher and any supporting documentation. Vouchers can be either emailed, mailed or submitted by fax or electronic mail to the address/number below.

Department of State Health Services

Claims Processing Unit, MC 1940

1100 West 49<sup>th</sup> Street

P.O. Box 149347

Austin, TX 78714-9347

FAX: (512) 458-7442

EMAIL: [invoices@dshs.texas.gov](mailto:invoices@dshs.texas.gov) and [cmsinvoice@dshs.texas.gov](mailto:cmsinvoice@dshs.texas.gov)

- B.** Contractor will be paid on a cost reimbursement basis and in accordance with the Budget in Attachment B of this Contract.

**ATTACHMENT B**

**BUDGET**

	Year 1	Year 2	Total
PERSONNEL	3,970,995.00	4,335,215.00	8,306,210.00
FRINGE BENEFITS	409,924.00	436,065.00	845,989.00
TRAVEL			
EQUIPMENT			
SUPPLIES			
CONTRACTUAL			
OTHER			
TOTAL DIRECT CHARGES	4,380,919.00	4,771,280.00	9,152,199.00
INDIRECT CHARGES	458,356.00	443,356.00	901,712.00
TOTAL	4,839,275.00	5,214,636.00	10,053,911.00





# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions -  
Governmental Entity**

**Version 3.1**

Published and Effective - April 2020

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any attachments, and any Amendments, purchase orders, and Work Orders that may be issued by the System Agency.

“Deliverables” means the goods, services, Work, and Work Product to be provided to System Agency under the Contract.

“DSHS” means the Department of State Health Services.

“Effective Date” means 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.

“HHSC” means the Health and Human Services Commission.

“Health and Human Services” or “HHS” includes HHSC and DSHS.

“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.

“Local Government” means a Texas governmental unit defined under and authorized to enter this contract by Texas Government Code, Chapter 791.

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

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

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

“Receiving Agency” means HHSC or DSHS, as applicable, Agency receiving the benefit of the goods or services provided under this Contract.

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

“Solicitation” means the document, if any, 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 Performing Agency’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 Agency” means a Texas “Agency” as defined under Texas Government Code, Chapter 771.

“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 Texas Comptroller of Public Accounts’ state travel laws, rules, and policies.

“System Agency” means HHSC or DSHS, as applicable.

“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 Performing Agency in connection with Performing Agency’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, rule, or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, or supplementing the statute or regulation.
- D. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- E. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- F. 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.
- G. 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.”
- H. Time is of the essence in this Contract.

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PAYMENT**

Payment shall be made in accordance with Government Code, Chapter 771, Government Code, Chapter 791, or Government Code, Chapter 2251.051, as applicable.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Performing Agency in connection with its provision of the services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- 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 Texas Comptroller of Public Accounts’ *Textravel* accessible at the Texas Comptroller of Public Accounts 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. Performing Agency 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 Performing Agency 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 Performing Agency'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 Performing Agency 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**

Performing Agency 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 Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Performing Agency 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. Performing Agency 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. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.



## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS**

### **4.1 WARRANTY**

Performing Agency 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 Performing Agency has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Performing Agency, at its sole expense, to:

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

### **4.2 CONTRACT AFFIRMATIONS**

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

### **4.3 FEDERAL ASSURANCES**

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

### **4.4 FEDERAL CERTIFICATIONS**

Performing Agency certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal certifications and that Performing Agency is in compliance with all requirements. In addition, Performing Agency 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. Performing Agency and Performing Agency'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, Performing Agency 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. Performing Agency 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 Performing Agency has any rights in and to the Work Product that cannot be assigned to System Agency, Performing Agency 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 Performing Agency. Performing Agency shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

## 5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

- A. To the extent that Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or that Performing Agency acquired rights in prior to the Effective Date of this Contract (“**Incorporated Pre-existing Works**”), Performing Agency retains ownership of such Incorporated Pre-existing Works.
- B. Performing Agency 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. Performing Agency represents, warrants, and covenants to System Agency that Performing Agency 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 Performing Agency, Performing Agency 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. Performing Agency shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Performing Agency shall

notify System Agency on delivery of the Work Product if such materials include any Third Party IP.

- C. Performing Agency shall provide System Agency all supporting documentation demonstrating Performing Agency's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Performing Agency to use any Third Party IP that may be incorporated in the Work Product.

#### **5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

Performing Agency shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Performing Agency's compliance with Performing Agency'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, Performing Agency shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency will not retain any copies of the Work Product or any documentation or other products or results of Performing Agency'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 Performing Agency by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Performing Agency in the course of providing data processing services in connection with Performing Agency's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Performing Agency 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 Performing Agency to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Performing Agency 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. Performing Agency 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 Performing Agency's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Performing Agency's performance of its obligations hereunder.

## **ARTICLE VI. PROPERTY**

### **6.1 USE OF STATE PROPERTY**

- A. Performing Agency 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. Performing Agency shall not remove State Property from the continental United States. In addition, Performing Agency may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Performing Agency 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 Performing Agency, Performing Agency 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 Performing Agency's use of State Property that exceeds the Contract scope. Performing Agency shall fully reimburse such charges to System Agency within ten (10) calendar days of Performing Agency'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 Performing Agency or Performing Agency's employees, agents, Subcontractors, and suppliers, Performing Agency 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. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Performing Agency shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Performing Agency'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. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

### **7.1 RECORD MAINTENANCE AND RETENTION**

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

### **7.2 AGENCY'S RIGHT TO AUDIT**

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

### **7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- A. Performing Agency 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 Performing Agency's or its Subcontractor's sole expense. Whether Performing Agency's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Performing Agency must provide to System Agency upon request a copy of those portions of Performing Agency's and its subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Contract.

### **7.4 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 Performing Agency 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.

### **7.5 CONFIDENTIALITY**

Performing Agency 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 Performing Agency under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Performing Agency.

## **ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION**

### **8.1 CONTRACT REMEDIES**

To ensure Performing Agency's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Performing Agency 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 Performing Agency to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Performing Agency found to be in error;

- iv. suspending, limiting, or placing conditions on the Performing Agency'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.

## **8.2 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.

## **8.3 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 Performing Agency has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Performing Agency's duties under the Contract. Performing Agency's misrepresentation in any aspect of Performing Agency's Solicitation Response, if any, or Performing Agency'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 Performing Agency no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

## **8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

If the System Agency terminates the Contract for cause, the Performing Agency shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Performing Agency. 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 Performing Agency's failure to perform any Work in accordance with the terms of the Contract.

# **ARTICLE IX. GENERAL PROVISIONS**

## **9.1 AMENDMENT**

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

## **9.2 INSURANCE**

A. Unless otherwise specified in this Contract, Performing Agency 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. Performing Agency 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, Performing Agency 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, Performing Agency must produce renewal certificates for each type of coverage.

- B. These and all other insurance requirements under the Contract apply to both Performing Agency and its subcontractors, if any. Performing Agency is responsible for ensuring its subcontractors' compliance with all requirements.

### **9.3 LIMITATION ON AUTHORITY**

- A. The authority granted to Performing Agency by the System Agency is limited to the terms of the Contract.
- B. Performing Agency 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. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Performing Agency 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 Performing Agency, the Performing Agency shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### **9.4 LEGAL OBLIGATIONS**

Performing Agency 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. Performing Agency shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

### **9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Performing Agency 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.

#### **9.6 E-VERIFY PROGRAM**

Performing Agency certifies that for contracts for services, Performing Agency 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 Performing Agency to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Performing Agency to perform Work pursuant to the Contract within the United States of America.

#### **9.7 PERMITTING AND LICENSURE**

At Performing Agency's sole expense, Performing Agency 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 Performing Agency to provide the goods or services required by this Contract. Performing Agency shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Performing Agency shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

#### **9.8 SUBCONTRACTORS**

Performing Agency 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 Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

#### **9.9 INDEPENDENT PERFORMING AGENCY**

Performing Agency and Performing Agency's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Performing Agency nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Performing Agency 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 Performing Agency and System Agency.

#### **9.10 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.

### **9.11 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.

### **9.12 SURVIVABILITY**

Expiration or termination of the Contract for any reason does not release Performing Agency 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.

### **9.13 FORCE MAJEURE**

Neither Party 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.

### **9.14 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 Performing Agency'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 Performing Agency 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 Performing Agency 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 Performing Agency'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 Performing Agency 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 Performing Agency may suspend performance during the pendency of such claim or dispute if the Performing Agency 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.

#### **9.15 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 Performing Agency 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.

#### **9.16 MEDIA RELEASES**

- A. Performing Agency 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. Performing Agency 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. Performing Agency may publish, at its sole expense, results of Performing Agency 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.

#### **9.17 NO MARKETING ACTIVITIES**

Performing Agency is prohibited from using the Work for any Performing Agency 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 Performing Agency'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 Performing Agency as part of the Work.

#### **9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Performing Agency 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.

#### **9.19 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.

## **9.20 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.

## **9.21 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.

## **9.22 CIVIL RIGHTS**

- A. Performing Agency 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. Performing Agency 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. Performing Agency 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 Performing Agency 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 Performing Agency to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Performing Agency 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.
- D. Performing Agency 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>

- E. Performing Agency 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 Performing Agency to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Performing Agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- F. Performing Agency 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. Performing Agency 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.
- G. Upon request, Performing Agency shall provide the HHSC Civil Rights Office with copies of the Performing Agency's civil rights policies and procedures.
- H. Performing Agency 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.

### **9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Performing Agency 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.

### **9.24 DISCLOSURE OF LITIGATION**

- A. The Performing Agency 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 Performing Agency. "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 Performing Agency 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 Performing Agency'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.

#### **9.25 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.

#### **9.26 BINDING EFFECT**

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

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**ATTACHMENT D**  
**SUPPLEMENTAL CONDITIONS**

**The Uniform Terms and Conditions, Attachment C of this Contract, are revised as follows:**

**Section 5.0, Intellectual Property, is deleted in its entirety and replaced with the following:**

**5.01 Ownership of Work Product**

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

**5.02 Intellectual Property**

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

**5.03, Confidentiality:**

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

**5.04, Public Information Act**

Information related to the performance of this Contract may be subject to the PIA. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

**Section 9.2, Insurance, is deleted in its entirety and replaced with the following:**

## **9.2 Insurance**

As an agency of the State of Texas, Contractor agrees to maintain the highest levels of insurance as required by applicable law. Contractor is self-insured with respect to Worker's Compensation Insurance (Texas Labor Code title 5, Chapter 503, Workers' Compensation Insurance for Employees of The University of Texas System). Under the law of the State of Texas, Contractor is unable to obtain Employer's Liability, Comprehensive General or Public Liability, and Comprehensive Automobile Insurance. In lieu of this, the Texas Tort Claims Act provides for remedies against the State for legal proceedings for claimants for personal injuries or death (Texas Civil Code Title 5, Chapter 101, Governmental Liability).

**Section 9.7, Permitting and Licensure, is deleted in its entirety and replaced with the following:**

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

## **9.16 Media Releases**

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

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

**Section 9.19, No Waiver of Sovereign Immunity, is deleted in its entirety and replaced with the following:**

## **9.19 No Waiver of Sovereign Immunity**

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



**ATTACHMENT E**  
**UT SYSTEM GRANT SPECIAL CONDITIONS**

**ARTICLE X. SYSTEM AGENCY SPECIAL CONDITIONS**

**SECTION 10.01 NOTICE OF LEGAL MATTER OR LITIGATION.**

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

**SECTION 10.02 NOTICE OF A CONTRACT ACTION.**

Contractor shall notify their assigned contract manager assigned to the contract if Contractor has had any contract suspended or terminated for cause by any local, state or federal System Agency or agency or nonprofit entity 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 contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

**SECTION 10.03 NOTICE OF BANKRUPTCY.**

Contractor shall notify in writing their assigned contract manager assigned of its plan to seek bankruptcy protection within five days of such action by Contractor.

**SECTION 10.04 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS.**

- a. Contractor shall immediately report in writing their contract manager when the Contractor has knowledge or reason to believe any that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, subcontractor or volunteer that is providing services under this Contract has engaged in any activity that:
  1. Would constitute a criminal offense equal to or greater than a Class A misdemeanor; and
  2. Reasonably would constitute grounds for disciplinary action by a state or federal regulatory authority; or
  3. Has 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 System Agency.

**SECTION 10.05 CONTRACTOR'S NOTIFICATION OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL.**

Within ten days shall notify in writing the contract manager assigned to the Contract of any change enumerated in the Contractor's Contact Person or Key Personnel.

**SECTION 10.06 EDUCATION TO PERSONS IN RESIDENTIAL FACILITIES.**

Contractor shall ensure that all persons, who are housed in System Agency-licensed and/or -funded residential facilities and are 22 years of age or younger, have access to educational services as required by Texas Education Code § 29.012.

Contractor shall notify the local education agency or local early intervention program as prescribed by this Section not later than the third calendar day after the date a person who is 22 years of age or younger is placed in Contractor's residential facility.

**SECTION 10.07 DISASTER SERVICES.**

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Contractor may be called upon to assist System Agency in providing the following services:

- 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.

**SECTION 10.08 CONSENT BY NON-PARENT OR OTHER STATE LAW TO MEDICAL CARE OF A MINOR.**

Unless federal law applies, when a Contractor provides medical, dental, psychological or surgical treatment to a minor without parental consent, either directly or through contracts with subcontractors, before the Contractor provides treatment to minor unless informed consent to treatment is obtained pursuant to Texas Family Code Chapter 32.

#### **SECTION 10.09 TELEMEDICINE/TELEPSYCHIATRY MEDICAL SERVICES.**

If Contractor or its subcontractor uses telemedicine/telepsychiatry, these services shall be in accordance with the Contractor's written procedures and using a protocol approved by Contractor's medical director and uses equipment that complies with the System Agency equipment standards, if applicable. Contractor's procedures for providing telemedicine service must include the following requirements:

- a. Clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
- b. Contraindication considerations for telemedicine use;
- c. Qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d. Safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e. Use by credentialed licensed providers providing clinical care within the scope of their licenses;
- f. Demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g. Priority in scheduling the system for clinical care of individuals;
- h. Quality oversight and monitoring of satisfaction of the individuals served; and
- i. Management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites. Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under 25 Texas Administrative Code Rule § 448.911.

#### **SECTION 10.10 SERVICES AND INFORMATION FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY.**

- a. Contractor shall take reasonable steps to provide services and information both orally and in writing, 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.
- b. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
- c. Contractor shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

**SECTION 10.11 THIRD PARTY PAYORS.**

Except as provided in this Contract, Contractor shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third-party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.

As applicable, the Contractor shall:

- a. Enroll as a provider in Children’s Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs and bill those programs for the covered services;
- b. Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
- c. Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the System Agency for the deductible;
- d. Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
- e. Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
- f. Bill all third party payors for services provided under this Contract before submitting any request for reimbursement to System Agency; and
- g. Provide third party billing functions at no cost to the client.

**SECTION 10.12 HIV/AIDS MODEL WORKPLACE GUIDELINES.**

Contractor shall implement System Agency’s policies based on the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS), AIDS Model Workplace Guidelines for Businesses at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>, State Agencies and State Contractors Policy No. 090.021.

Contractor shall also educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Texas. Health & Safety Code §§ 85.112-114.

**SECTION 10.13 MEDICAL RECORDS RETENTION.**

Contractor shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

#### **SECTION 10.14 NOTICE OF A LICENSE ACTION.**

Contractor shall notify their contract manager of any action impacting its 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.

#### **SECTION 10.15 INTERIM EXTENSION AMENDMENT.**

- a. Prior to or on the expiration date of this Contract, the Parties agree that this Contract can be extended as provided under this Section.
- b. System Agency/HHSC shall provide written notice of interim extension amendment to the Contractor under one of the following circumstances:
  1. Continue provision of services in response to a disaster declared by the governor; or
  2. To ensure that services are provided to clients without interruption.
- c. System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- d. Contractor will provide and invoice for services in the same manner that is stated in the Contract.
- e. An interim extension under Section (b)(1) above shall extend the term of the contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
- f. An interim extension under Section (b)(2) above shall be a one-time extension for a period of time determined by HHSC/System Agency.

#### **SECTION 10.16 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY AND SECURITY STANDARDS.**

##### **a. Applicability.**

The following Electronic and Information Resources (EIR) requirements apply to the Contract because the Contractor performs services that include EIR that SYSTEM AGENCY employees are required or permitted to access or members of the public are required or permitted to access.

This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by HHSC's clients or recipients after completion of the Agreement.

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

##### **b. DEFINITIONS.**

For purposes of this Section:

**“Accessibility Standards”** means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 TAC Chapter 206 and/or Chapter 213.

**“Electronic and Information Resources”** means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

**“Electronic and Information Resources Accessibility Standards”** means the accessibility standards for electronic and information resources contained in 1 Texas Administrative Code Chapter 213.

**“Product”** means information resources technology that is, or is related to EIR.

**“Web Site Accessibility Standards/ Specifications”** means standards contained in Volume 1 Tex. Admin. Code Chapter 206(c) Accessibility Requirements.

Under Tex. Gov’t Code Chapter 2054, Subchapter M, and implementing rules of the Texas System Agency of Information Resources, System Agency must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

**c. EVALUATION, TESTING, AND MONITORING.**

1. System Agency may review, test, evaluate and monitor Contractor’s Products and services, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor the absence of review, testing, evaluation or monitoring, will result in a waiver of the State’s right to contest the Contractor’s assertion of compliance with the Accessibility Standards.
2. Contractor agrees to cooperate fully and provide System Agency and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

**d. REPRESENTATIONS AND WARRANTIES.**

1. Contractor represents and warrants that:
  - i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards

as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and

- ii. If the Products will be in the custody of the state or a System Agency client or recipient after the Contract expiration or termination, the Products will continue to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless System Agency or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.
2. In the event Contractor becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Contractor represents and warrants that it will, in a timely manner and at no cost to System Agency, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
  3. Contractor acknowledges and agrees that these representations and warranties are essential inducements on which System Agency relies in awarding this Contract.
  4. Contractor's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.
- e. **REMEDIES.**
1. Under Tex. Gov't Code § 2054.465, neither the Contractor nor any other person has cause of action against System Agency for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the System Agency of Information Resources.
  2. In the event of a breach of Contractor's representations and warranties, Contractor will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which System Agency may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which System Agency may be entitled under this Contract and other applicable law.

**SECTION 10.17 CONTRACTOR'S CERTIFICATION OF MEETING OR EXCEEDING TOBACCO-FREE WORKPLACE POLICY MINIMUM STANDARDS.**

Contractor certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:

- a. Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
- b. Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Contract are taking place, as well as Contractor owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
- c. Applying to all employees and visitors in this designated area; and
- d. Providing for or referring its employees to tobacco use cessation services.

If Contractor cannot meet these minimum standards, it must obtain a waiver from the System Agency.

### **Section 10.18 LIMITATIONS**

THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (LIMITATIONS) ON THE AUTHORITY OF CONTRACTOR (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON CONTRACTOR'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION AND BINDING ARBITRATION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON CONTRACTOR EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

### **Section 10.19 UT APPROVAL PROCESS**

The parties hereby acknowledge and agree that this Agreement is subject to the review and approval of the Board of Regents of The University of Texas System.



## **ATTACHMENT F**

### **CONTRACT AFFIRMATIONS**

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

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. Contractor represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. Contractor understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, if any, are rejected unless expressly accepted by HHSC in writing.
5. Contractor agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
6. Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of HHSC.
7. Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.
8. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in

this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

9. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
10. Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
11. Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.
12. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
13. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
14. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
15. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
16. Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

17. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
18. Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
19. Contractor agrees that upon request of HHSC, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.
20. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to HHSC that the technology provided to HHSC for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - A. providing equivalent access for effective use by both visual and non-visual means;
  - B. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - C. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

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

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

21. If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

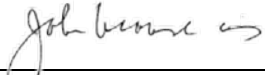
22. If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
23. Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.
24. Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.
25. If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following: (i) the nature of the previous employment with System Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time of the employment was terminated.
26. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
27. Contractor understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.

28. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and (c) neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.
29. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
30. Contractor represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of this Contract.
31. Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:
  - A. all persons employed by Contractor to perform duties within Texas; and
  - B. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.
32. Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

33. Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.
34. Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.
35. Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor.

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

**Legal Name of Contractor:** University of Texas Rio Grande Valley

	05/11/2020
<b>Signature of Authorized Representative</b>	<b>Date Signed</b>
John H. Krouse, MD, PhD, MBA EVP, Health Affairs	956-296-1445
<b>Printed Name and Title of Authorized Representative</b>	<b>Phone Number</b>
46-5292740	956-296-6840
<b>Federal Employer Identification Number</b>	<b>Fax Number</b>
069444511	john.krouse@utrgv.edu
<b>DUNS Number</b>	<b>Email Address</b>
1201 W. University Dr.	Edinburg, Texas 78539
<b>Physical Street Address</b>	<b>City, State, Zip Code</b>
<b>Mailing Address, if different</b>	<b>City, State, Zip Code</b>

**TEXAS STATEWIDE DATA EXCHANGE COMPACT  
AMONG  
PARTICIPATING AGENCIES OF THE STATE OF TEXAS**

This Texas Statewide Data Exchange Compact (TSDEC) is effective on the date the participating state agency signs this TSDEC. Any specific scope or exchange of information relating to a subset of participating state agencies under the terms of this TSDEC are identified in Attachment 1 to this TSDEC, “Scope of Information Exchange.”

**ARTICLE 1. PURPOSE**

The purpose of this TSDEC is to:

- (1) facilitate disclosure of or access to confidential information to receiving agency; and
- (2) to describe each participating state agency’s rights and obligations with respect to the confidential information and the limited purposes for which receiving agency may use or have access to confidential information.

**ARTICLE 2. AUTHORITY**

The participating state agencies enter into this TSDEC under the authority of the Texas Government Code Chapter 771 (Interagency Cooperation Act), the Texas Government Code § 2054.0286 (Statewide Data Coordinator), as well as the specific authority of each participating state agency. Under the Public Information Act the exchange of information between state agencies does not change the original classification of the data, including information classified as confidential by law.

**ARTICLE 3. DEFINITIONS**

These definitions as well as those found in 1 Tex. Admin. Code Chapter 202 (Information Security Standards), which incorporates the DIR Control Standards Catalog, will apply to this TSDEC. Other terms will be defined based on their plain meaning or other statutory definitions.

**“Authorized Purpose”** means the specific purpose or purposes described in Attachment 1, Scope of Information Exchange of this TSDEC for the specific participating state agencies to fulfill the obligations under the Scope of Information Exchange or any other purpose expressly authorized in writing in advance.

**“Authorized User”** means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze confidential information pursuant to this TSDEC;
- (2) For whom a specific participating state agency requesting information represents has a demonstrable need to create, receive, maintain, use, disclose, or have access to the confidential information;
- (3) Who has agreed in writing to be bound by a participating state agency’s requirements regarding disclosure and use of confidential information as required by this TSDEC; and
- (4) Who has completed training in privacy, security, and breach response and who has agreed to be bound by the terms of this TSDEC.

**“Metadata”** means data that describes or gives information about other data.

**“Record”** means a collection of information or facts registered on paper or electronic media as a means to preserve knowledge.

#### **ARTICLE 4. SCOPE OF INFORMATION EXCHANGE**

Specifics regarding the scope of information being disclosed, released, or exchanged are in Attachment 1, Scope of Information Exchange.

#### **ARTICLE 5. DUTIES OF A DISCLOSING AGENCY**

5.1 Disclosing agency will transmit confidential information as specified in the Scope of Information Exchange in a secure manner to receiving agency.

5.2 Disclosing agency will comply with all laws and regulations applicable to the type of confidential information.

#### **ARTICLE 6. DUTIES OF A RECEIVING AGENCY**

6.1 Receiving agency will exercise reasonable care to protect confidential information from being used in a manner other than the Authorized Purpose or by other than an Authorized User. Receiving agency will only disclose confidential information to Authorized Users ~~05/11/2020~~ to the extent necessary to accomplish the Authorized Purpose and as permitted by law. Receiving agency will establish, implement, and maintain administrative, physical, and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the confidential information.

6.2 Receiving agency will maintain updated privacy, security, and breach response policies and procedures as required by law or internal policies.

6.3 Receiving agency will not disclose confidential information to any person other than an Authorized User.

6.4 Receiving agency will establish, implement, and maintain corrective actions against any member of its workforce or subcontractor who fails to comply with this TSDEC.

6.5 Receiving agency will be directly responsible for the compliance of its subcontractors with this TSDEC and any enforcement of this TSDEC with respect to its subcontractors.

6.6 Receiving agency will promptly notify disclosing agency of any requests for amendments to confidential information, access to confidential information by the individual subject of the confidential information, or record of disclosures of confidential information.

6.7 Receiving agency will maintain an accounting of all disclosures of confidential information.

6.8 Upon termination of the Scope of Information Exchange, receiving agency will return or destroy confidential information received from disclosing agency to the extent reasonably feasible and permitted by law. If receiving agency is required by law or litigation hold to retain confidential information beyond the termination of the Scope of Information Exchange, receiving agency will continue to safeguard the confidential information in accordance with this TSDEC.

6.9 If receiving agency transmits or stores confidential information via electronic means, receiving agency will utilize secure file transfer protocol or encryption in motion and at rest and other applicable security controls in accordance with the most current version of the National Institute of Standards in Technology, Special Publication 800-53, or other equally protective security controls.

6.10 Receiving agency will designate a privacy official and a security official, who may be the same individual, authorized to act on behalf of the receiving agency with respect to implementing the



privacy and security requirements in this TSDEC. Receiving agency will provide contact information for these officials to disclosing agency.

6.11 Receiving agency will timely cooperate with any request for information, documentation, audit, inspection, or investigation by any applicable regulatory authority or as required by disclosing agency to comply with its regulatory requirements.

6.12 Receiving agency will comply with all laws and regulations applicable to the type of confidential information.

## **ARTICLE 7. NOTICES**

7.1 Notice will be given to the parties specified in the Scope of Information Exchange by email.

## **ARTICLE 8. SECURITY INCIDENT AND BREACH RESPONSE, REPORTING, AND CORRECTIVE ACTION**

8.1 The participating state agencies will comply with the Incident and Breach reporting, notification, and corrective action requirements in accordance with applicable laws in Article 9 or to specific requirements specified in Attachment 1, Scope of Information Exchange. Participating state agencies must report a Breach to the Texas Department of Information Resources (DIR).

8.2 For the purposes of the TSDEC, the following definitions apply unless otherwise agreed upon by parties to a specific Scope of Information Exchange.

**“Incident”** means an attempted or successful unauthorized access, use, disclosure, exposure, modification, destruction, release, theft, or loss of sensitive, protected, or confidential information or interference with systems operations in an information system.

**“Breach”** means an impermissible use or disclosure of electronic or non-electronic sensitive personal information (SPI) by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of confidential information such that the use or disclosure poses a significant risk of reputational harm, theft of financial information, identity theft, or medical identity theft.

## **ARTICLE 9. APPLICABLE LAWS FOR CONFIDENTIAL INFORMATION**

- Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. § 1320d, et seq.) and corresponding regulations in 45 C.F.R. Parts 160 and 164, including all subsequent amendments and guidance issued
- Social Security Act, including Section 1137 (42 U.S.C. §§1320b-7), Title XVI of the Act, (42 U.S.C. 1396(a)(7)) and the corresponding regulations, including 42 C.F.R. § 431.300, et seq.
- Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a, and the corresponding regulations and guidance
- Internal Revenue Code, Title 26 of the United States Code and corresponding regulations and publications adopted, including IRS Publication 1075
- Office of Management and Budget Memorandum M-17-12 and corresponding laws and guidance referenced
- Family Educational Records Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99
- Texas Business and Commerce Code Chapters 501 and 521

- Texas Government Code § 2054.1125 and corresponding rules, including 1 Texas Administrative Code § 202
- Texas Health and Safety Code, Chapters 33, 81, 181, 611
- Texas Family Code Chapter 262
- Texas Human Resources Code §§ 12.003 and 21.012
- Any other laws specifically stated in Attachment 1, Scope of Information Exchange

## **ARTICLE 10. GENERAL PROVISIONS**

### 10.1 Ownership of Confidential information

Disclosing agency is the owner of the information shared under this agreement. Any receiving agency who receives a request for public information related to such shared information must timely notify the disclosing agency.

### 10.2 Certification

The participating state agencies certify that:

- (1) The services or resources specified in this TSDEC are necessary and authorized for activities that are properly within the statutory functions and programs for each of the participating agencies;
- (2) The proposed arrangements serve the interest of efficient and economical administration of state government; and
- (3) The services or resources agreed upon are not required by Article XVI, Section 21 of the Texas Constitution to be provided under a contract awarded to the lowest responsible bidder.

10.3 Terms of Agreement

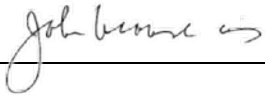
This agreement continues as long as the participating state agencies have the requisite authority to enter into this agreement or until this agreement is terminated by all participating state agencies. A participating state agency may terminate its participation in the TSDEC with 30 days' notice to all participating state agencies and the designated DIR TSDEC Administrator.

- (1) DIR will manage the TSDEC and any amendments. This TSDEC may not be amended without written agreement from all participants in the TSDEC.
- (2) Participating state agencies will manage the content of Attachment 1, Scope of Information Exchange.

By their signatures, the authorized representatives of the participating state agencies bind their respective agencies to the terms set forth in this TSDEC.

**PARTICIPATING STATE AGENCY**

**DIR**

**BY:**   
**NAME:** John H. Krouse, MD, PhD, MBA  
**TITLE:** EVP, Health Affairs, UTRGV  
**DATE:** 05/11/2020

**BY:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**ATTACHMENT 1. SCOPE OF INFORMATION EXCHANGE**

This Scope of Information Exchange incorporates the specific terms and requirements of the Texas Statewide Data Exchange Compact (TSDEC) by reference. The information contained in this Scope of Information Exchange is intended to assist the agencies with collecting information needed for compiling a Privacy Impact Assessment as defined in the federal Office of Management and Budget Guidance Memorandum M-03-22. Both the Disclosing Agency and Receiving Agency identified in this Attachment each certify to being a Participating Agency to the TSDEC as of the date of the last party to sign this Scope of Information Exchange.

1. Disclosing Agency (or Agencies): Department of State Health Services
2. Receiving Agency (or Agencies): University of Texas Rio Grande Valley
3. Statutory authority for the disclosure:
4. Applicable laws and regulations specific to this Scope:
  - a. Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. § 1320d, et seq.) and corresponding regulations in 45 C.F.R. Parts 160 and 164, including all subsequent amendments and guidance issued
  - b. Texas Business and Commerce Code Chapters 501 and 521
5. Authorized purpose for disclosure: Infectious disease contract tracing
6. Authorized users: University of Texas Rio Grande Valley Principal Investigators
7. Secure method of transmission and storage:
8. Contact information for notices:

<b>Receiving Agency</b>	<b>Disclosing Agency</b>
Michael Dobbs Chief Medical Officer  Edinburg, TX 77843-1260 Telephone: (979)458-8176 Email: Michael.dobbs@utrgv.edu	Susana Garcia, CTCM 1100 W. 49 <sup>th</sup> Street Mail Code 1990 Austin, Texas 78756 Telephone: (512) 776-2118 Email: <a href="mailto:susana.garcia@dshs.texas.gov">susana.garcia@dshs.texas.gov</a>

9. Privacy/ Security Official:

<b>Privacy Official</b>	<b>Security Official</b>
Name Privacy Officer  Telephone: Email:	Name: Security Officer Telephone: Email:

10. Term of Agreement:

11. Agency-specific requirements: \_\_\_\_\_ Outlined in the attached agreement. \_\_\_\_  
\_\_\_\_\_


12. Termination: \_\_\_\_\_

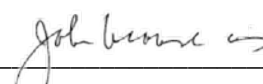
13. Fees/Costs: \$0

14. Description of records and data to be disclosed:

**DISCLOSING AGENCY**

**RECEIVING AGENCY**

BY: 

BY: 

NAME: Jennifer Sims

NAME: John H. Krouse, MD, PhD, MBA

TITLE: Deputy Commissioner DSHS

TITLE: EVP, Health Affairs, UTRGV

DATE: May 11, 2020

DATE: 05/11/2020