

**INTERAGENCY COOPERATION CONTRACT
HEALTH AND HUMAN SERVICES COMMISSION
CONTRACT NO. HHS001024200001**

THE HEALTH AND HUMAN SERVICES COMMISSION (“System Agency”) and the University of Texas Health Science Center at San Antonio, (“Performing Agency”), each a “Party” and collectively the “Parties,” enter into the following contract for mental health/psychiatric residency stipend program services (the “Contract”) pursuant to the provisions of “The Interagency Cooperation Act,” Chapter 771 of the Texas Government Code.

I. CONTRACT REPRESENTATIVES

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

Performing Agency

Name: The University of Texas Health
Science Center at San Antonio
Address: 7703 Floyd Curl Drive, MSC 7828
City and Zip: San Antonio, TX 78299-3901
Contact Person: Chris G. Green
Telephone: 210-567-2340
Fax number: 210-567-8107
E-Mail Address: grants@uthscsa.edu

Agency Number: 745

Receiving Agency

Name: Health and Human Services
Commission
Address: 701 W. 51st St.
City and Zip: Austin, TX 78751
Contact Person: Roland Cano
Telephone: 512-438-4816
Fax number: 512-438-4220
E-Mail Address:
HSCSFacilitycontracts@hhs.texas.gov
Agency Number: 529

II. STATEMENT OF SERVICES TO BE PROVIDED

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

III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on September 1, 2021 and terminates on August 31, 2026, unless extended, or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

IV. AMENDMENT

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

V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES

The total amount of this Contract shall not exceed \$672,680.00, which is allocated for State of Texas Fiscal Year 2022 as not to exceed \$134,536.00 as provided for in Attachment B-Budget.

VI. BASIS FOR CALCULATING REIMBURSABLE COSTS

Receiving Agency will pay Performing Agency for services provided in accordance with the requirements stated in **Attachment A – Statement of Work**.

VII. MAINTENANCE OF CONFIDENTIAL INFORMATION

The Parties will respect and observe the confidential nature of all information which may come to either or all of them, individually or collectively, with respect to any records of clients, patients, or residents of any Texas HHS facility. Participants are members of the Texas HHS facility's workforce for purposes of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 (“**HIPAA**”) and, therefore, may have access to patient medical information as provided for in the privacy rule of HIPAA. This Section applies solely to HIPAA privacy and security regulations applicable to TX HHS and does not establish an employment relationship.

To the extent applicable, the Parties will comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the “**HITECH ACT**”), and HIPAA and any current and future regulations promulgated under either the HITECH Act or HIPAA, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “**Federal Privacy Regulations**”), the federal security standards contained in 45 C.F.R. Parts 160, 162, and 164 (the “**Federal Security Regulations**”), and the federal standards for electronic transactions, all as may be amended from time to time, and all collectively referred to herein as “**HIPAA Requirements.**” The Parties will not use or disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d), other than as permitted by HIPAA Requirements and the terms of the Contract. Participants with direct access to TX HHS information resources must execute the HHS Acceptable Use Agreement attached as Attachment A-3 to the Supplement to the Contract (Form attached as Exhibit A) and comply with the HHS Acceptable Use Policy.

VIII. FAMILY EDUCATION RIGHTS AND PRIVACY ACT

The Parties will comply with all applicable provisions of all federal and state laws and regulations, including any applicable Executive Orders, applicable to the operation of any Texas HHS facility and the Practicum, including, without limitation, employment-related statutes and

education-related statutes such as the Family Education Rights and Privacy Act (“FERPA”). Any exchange by the Parties of student record information protected by FERPA will commit the receiving Party to limit the use of such information to the purposes for which the disclosure was made, and to impose such limits on any re-disclosure, and the Parties will comply with all applicable statutory and regulatory provisions, including, without limitation 34 CFR 99.31, 99.32, 99.33, 99.34, and 99.35. The Parties will not deny or discriminate on the basis of any legally protected criteria in the provision of any service or benefit, including, without limitation, access to the Practicum or use of any TX HHS facility.

IX. 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

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

Performing Agency

The University of Texas Health Science Center at San Antonio
7703 Floyd Curl Drive, MSC 7828
San Antonio, TX 78229-3901
Attention: Chris G. Green, CPA

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

X. 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 Tex Gov't Code Chapter 531.

The Performing Agency further certifies that it has statutory authority to contract for the services described in this contract under Tex. Gov't Code, Chapter 771.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. HHS001024200001

HEALTH AND HUMAN SERVICES COMMISSION

**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT SAN ANTONIO**

DocuSigned by:
Mike Maples
D7419FC66FDF4FE...

Signature

Mike Maples

Printed Name

Deputy Executive Commissioner

Title

June 18, 2021

Date

DocuSigned by:
Chris Green
1B87034EE4C2480...

Signature

Chris Green

Printed Name

Senior Director, Office of Sponsored Programs

Title

June 18, 2021

Date

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS001024200001 ARE
HEREBY INCORPORATED BY REFERENCE:**

- ATTACHMENT A – STATEMENT OF WORK**
- ATTACHMENT B – BUDGET**
- ATTACHMENT C – UNIFORM TERMS AND CONDITIONS**
- ATTACHMENT D – SUPPLEMENTAL CONDITIONS**
- ATTACHMENT E – DATA USE AGREEMENT**
- ATTACHMENT F – ACCEPTABLE USE AGREEMENT**

ATTACHMENT A INTERAGENCY STATEMENT OF WORK

I. PURPOSE

The Texas Health and Human Services Commission (HHSC) (System Agency), and The University of Texas Health Science Center at San Antonio (Performing Agency), enter into the following Contract for the Psychiatric Residency Stipend Program (PRSP) (Program) services to provide stipend support for training rotations for the individuals enrolled in the residency program (Resident) with the Performing Agency. The program shall provide instruction in a public mental health care treatment setting at San Antonio State Hospital (Facility). The educational purpose of this program is to provide Psychiatric Residents with the instruction and experience necessary to acquire skills and proficiency in the evaluation and care of patients with mental illness who are treated in a public healthcare setting and to introduce them to the state hospitals and/or to various community settings where the most seriously mentally ill are treated.

A. Educational Goals and Objectives:

1. The educational purpose of this program is to provide Residents with the instruction and experience necessary to acquire skills and proficiency in the evaluation and care of patients with mental illness who are treated in a public healthcare setting.

PERFORMING AGENCY RESPONSIBILITIES

a) Performing Agency will train residents how to:

- 1) assess patients for possible admission to the state hospitals;
- 2) perform a psychiatric interview and diagnostic evaluation;
- 3) collaborate with other mental health professionals in a multidisciplinary setting;
- 4) develop an appropriate treatment plan in conjunction with the clinical team;
- 5) provide psychiatric care to patients; and
- 6) treat serious co-morbid medical conditions inpatients in psychiatric inpatient settings.

- ##### **b) Performing Agency will teach methods, occurring in the public healthcare setting, through both direct and indirect supervision. The direct supervision includes immediate availability to a supervising psychiatrist who will be physically located within the setting. Residents rotating in a state hospital will be directly supervised by a state hospital psychiatrist. Residents rotating in a community clinic will be directly supervised by a community clinic psychiatrist. For the avoidance of doubt, a Facility shall not be responsible for providing direct supervision to a Resident(s) rotating at another Facility's site. The supervising physician shall provide review and feedback after the following practices occur:**

- 1) procedures;

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- 2) encounters;
 - 3) documentation; and
 - 4) delivery of aftercare by the Resident(s).
- c) Conduct training in compliance with the Accreditation Council for Graduate Medical Education Common Program Requirements, VI. Resident Duty Hours and Working and Learning Environment, effective July 1, 2019.

B. Program Description:

1. Persons Responsible for Resident Education and Supervision:

The named personnel below are responsible for the administration, education, and/or supervision of the Resident(s) during their rotation (as hereinafter defined) at the Facility. If any assignment changes are made to the named personnel below, Performing Agency must notify System Agency within 14 calendar days of the new individual's start date.

Required Rotation

Name of Program: UT Health San Antonio Clinical Psychology Internship Program

Performing Agency: UT Health San Antonio

Program Director: Cindy McGeary, PHD

Facility: SASH

Medical Director: David Gonzalez, MD

Intern Supervisor: Dr. Steve Logsdon, Dr. Ebony Jackson, Dr. Roger Olivarri, Dr. Stephanie Carter, Dr. Nichole Sieracki

Elective Rotation

Name of Program: UT Health San Antonio Psychiatry Residency Program

Performing Agency: UT Health San Antonio

Program Director: Jason Schillerstrom, MD

Facility: SASH

Medical Director: David Gonzalez, MD

2. Resident Supervisor – Dr. Benita Walker -Resident Eligibility Requirements for Program Participation:

- a) Prior to the start of a clinical rotation, Performing Agency shall determine and verify Resident eligibility for the Program outlined in the program's policies and procedures. To be eligible for participation in the Program, each Resident must:
 - 1) Pass a criminal history check and registry clearances. This information shall be used to determine if an offense may be a prohibition or contraindication to Resident's eligibility to participate in the clinical rotation at the Hospital. Residents who have not passed the criminal background check are not eligible to participate in this Program or be permitted on Hospital premises. All costs associated with the criminal history and registry clearances shall be paid by

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Performing Agency or the Resident. The criminal history and registry clearances include but are not limited to:

- (a) Texas/Federal Bureau of Investigation (FBI) criminal history check which requires submitting fingerprints through a fingerprint service authorized by the Texas Department of Public Safety and the FBI;
 - (b) Nurse Aide Registry maintained by the System Agency;
 - (c) Employee Misconduct Registry maintained by System Agency; and
- 2) Secure and maintain all documentation required for Resident to enter and stay in the United States and to allow Resident to participate in the rotation.
 - 3) Satisfactorily complete all prerequisite courses and training required for participation in the Program prior to start of rotation.
 - 4) Be authorized by the Texas Medical Board to provide patient care services.
 - 5) Obtain his or her own health and accident insurance policy and provide verification of such coverage to Performing Agency.
- b) The Program and all related rotation activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law, including but not limited to race, color, national origin, religion, sex, age, veteran status, or disability.
- c) System Agency has the right to require Performing Agency to remove any Resident from this rotation with or without cause. System Agency has the right to immediately remove and/or require Performing Agency to remove any Resident from participation in any rotation if Performing Agency determines in its sole discretion that at least one of the following criteria apply:
- 1) The presence of the Resident has a detrimental effect upon Facility's facilities, patients, or personnel;
 - 2) Resident is compromising Facility's standards of care or performance, policies, or procedures;
 - 3) Resident fails to maintain appropriate licensure as required by Texas law; or
 - 4) The proper liability insurance coverage is not in effect.
3. Period of Assignment of Resident, Financial Support and Benefits:
- a) Resident shall rotate, as scheduled by Performing Agency's Program Director. Performing Agency shall provide prior notice to Facility, of any changes in these

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rotations. Facility will assure (for hospital rotations) that Resident is not assigned inhouse call.

- b) Resident shall be under the general direction of Performing Agency's Resident Policies and Procedures, including Performing Agency's policies related to benefits and leave time. Facility shall inform Resident of the requirements to maintain the confidentiality of all patient information in Facility's records, including but not limited to patient records, research designs and protocols in compliance with all state and federal laws and regulations, and System Agency and Performing Agency policies and procedures.
 - c) Resident participating in this Program shall not be employees of System Agency and have no claim against System Agency for any employment benefits including but not limited to wages, workers' compensation benefits, disability benefits, or health insurance. At no time will Resident or Performing Agency personnel be considered or represent themselves as agents, (either express or apparent), officers, servants, or employees of System Agency. Resident will wear Performing Agency-defined nametags identifying their status.
 - d) Performing Agency shall maintain copies of professional liability coverage for Performing Agency's Residents.
 - e) Resident assumes responsibility for his/her own uniforms, transportation, parking, housing, meals, laundry needs, and health care in the performance of activities under this Program, when such things are not provided for by Performing Agency.
 - f) Facility will arrange for emergency health care for a Resident, if needed, while the Resident is on-site at Facility, provided however, Facility is not responsible for costs, follow-up care, or hospitalization associated with such emergency care.
4. Responsibility for Teaching, Supervision, and Evaluation of Resident:
- a) Performing Agency has the responsibility for the Resident's educational program. Facility will have sole authority and control over all aspects of patient care and will designate those patients to whom Resident may be exposed during the rotation. Appropriately qualified Facility medical staff, on behalf of Performing Agency, will also be responsible for providing supervision of the Resident(s) during their educational experience at the Facility. Resident is expected to behave professionally with Facility peers, while being supervised by on-site faculty. Resident shall not replace Facility staff or provide service to patients except as identified for educational value and delineated in the Program. Resident shall respond appropriately to directions from Facility's staff.

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- b) At the end of the Resident's Facility rotation, Performing Agency shall provide an evaluation form to Facility medical staff who have had significant contact with Performing Agency's Resident. Facility medical staff will provide input to Performing Agency regarding a Resident's performance for purposes of evaluation in a mutually agreed upon format.
 - c) Resident shall complete evaluations for the Facility rotation and the teaching faculty. Performing Agency shall confer educational credit to Resident who successfully attains the goals set for this Program as applicable.
5. Policies and Procedures that Govern Resident Education:
Performing Agency is ultimately responsible for the Program per the ACGME Institutional Requirements and retains responsibility for the quality of graduate medical education, even when Resident education occurs in other institutions. Performing Agency graduate medical education (GME) policies and procedures shall apply to Resident. Facility's rules, regulations, policies, procedures, and (if applicable) medical staff bylaws will also govern the Resident's educational experience at the Facility. Facility will provide an orientation for Performing Agency's Resident to inform them of Facility's policies, procedures, rules, and regulations.
- C. Documentation of Resident Eligibility and Performance Measures:
- 1. Resident Roster:
Performing Agency shall provide HHSC State Hospital Central Administration with a written list of the names of eligible Residents assigned to the Facility (or Facilities) by September 1 on an annual basis. This list shall include:
 - a) Name of Resident;
 - b) Resident contact information including e-mail address;
 - c) Work assignment details including:
 - 1) rotation type;
 - 2) rotation location(s);
 - 3) telemedicine sites (if applicable);
 - 4) Post graduate year (PGY);
 - 5) required or elective residency;
 - 6) full-time employment, or equivalent (FTE) hours;
 - 7) assignment length in months;
 - 8) percentage of time in hours; and
 - 9) scheduled start/end dates for each Resident.

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- d) Confirmation that Performing Agency has completed a criminal background check on each Resident;
- e) Confirmation that Resident(s) meets eligibility requirements as stated in Section B.2.a.1;
- f) Confirmation that there are no bars to employment of the Resident as set forth in this Contract;
- g) Confirmation that each Resident is authorized by the Texas Medical Board to provide patient care services on or two weeks before Resident's start date; and
- h) Confirmation that each Resident has a health and accident insurance policy on or two weeks before Resident's start date.

2. Documentation of Resident Roster Changes:

Performing Agency shall provide HHSC State Hospital Central Administration with an updated Resident Roster within fourteen calendar days if any changes to the above-referenced contents (listed above in parts C.1. a-h) occur throughout the state fiscal year to accurately document resident participation.

3. Letter of Attestation:

Performing Agency shall provide HHSC State Hospital Central Administration with a letter of attestation by September 1 stating that all criteria listed in C.1 (Resident Roster) have been met for all assigned residents and that if any resident roster changes are made to the roster, written notification will be made to HHSC State Hospital Central Administration outlining the changes (within 14 calendar days) and attesting that all criteria listed in C.1 (Resident Roster) have been completed in response to documented changes.

4. Receipt of Requested Documentation

Without prejudice to the System Agency's other rights and remedies, System Agency may suspend current or future funding if Performing Agency fails to provide documentation of performance as required by this agreement.

D. Period of Assignment of Residents, Financial Support, and Benefits:

- 1. Performing Agency shall provide Residents for the following specialty areas to cover in equal proportions equivalent to 2.08 full time employees (FTE):
 - a) _____ for Children/Adolescent
 - b) 2 for Geriatric
 - c) _____ for Adult

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- d) ____ for Community
 - e) ____ for Forensic
 - f) 2 for General
 - g) 2 for Psychology
2. Performing Agency shall provide fourteen (14) calendar days prior notice to System Agency, when possible, of any changes in these rotations.
 3. Resident shall be provided with professional liability insurance coverage by the Performing Agency through its liability indemnification protocols routinely used for its Resident physicians-in-training and covered by self-insurance for professional liability at limits of \$100,000/occurrence and \$300,000/ aggregate.
 4. System Agency recognizes and agrees that Performing Agency is a political subdivision of the Sovereign State of Texas and is therefore subject to the Texas Tort Claims Act and the liability limitations and procedural requirements set forth therein (see Chapter 101, Texas Civil Practice and Remedies Code).

E. Performance Measures:

Responsibility for Teaching, Supervision, and Evaluation of Residents:

1. Performing Agency shall provide an evaluation form, to Facility medical staff who have had significant contact with Performing Agency's Resident(s) within thirty (30) calendar days of the conclusion of the Resident's Facility rotation.
2. Performing Agency shall submit completed evaluation forms (identified in Section II.E above) to System Agency, if requested, within 45 days.
3. Performing Agency shall meet with Facility via telecommunications as often as necessary to provide for adequate communication and planning and/or to evaluate progress of Resident.

II. RENEWALS

Prior to the start of each fiscal year, an amendment will be executed. Amendments will be executed for the next four years with a new contract beginning in state fiscal year 2026.

III. PAYMENT METHOD

The reimbursement methodology for this Contract is cost reimbursement. Performing Agency will bill System Agency for applicable gross salaries as specified in this Contract. The gross salaries and any other approved administrative charges will be processed as

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"professional/medical services," in accordance with CPA guidance. Benefits associated with these salaries will also be processed by the CPA guidance.

- A. This Program is 100% general revenue ("GR") funded, therefore, salary reimbursements must be deposited by the Performing Agency into the Treasury. The Performing Agency will provide System Agency with an appropriate recurring transaction index ("RTI") number and vendor/mail code that deposits salary reimbursements to the Treasury. The RTI should be set up by System Agency using transaction code ("T-code") 970 and comptroller object code ("COBJ") 3765 in the appropriate strategy in GR and program code. CPA advises that the Performing Agency set up a separate program cost account ("PCA") to track this Program.

- B. Performing Agency may bill System Agency for gross salaries; such salaries are payable from System Agency's operating budget. If the System Agency initially paid the employee with local funds, Performing Agency will enter a USAS payroll reimbursement into USAS to transfer the salary expense from local funds into the Institution's appropriation within the Treasury. If the Performing Agency initially paid the employee with local funds, the Performing Agency will enter a USAS payroll reimbursement into USAS to transfer the salary expense from local funds into the Performing Agency's appropriation within the Treasury.

- C. Performing Agency should follow procedures in the Comptroller's accounting policy statements (APS 005 and APS 019) to process and draw benefits associated with these GR salaries. The appropriation for Performing Agency's teacher retirement state match is made to the Teacher Retirement System ("TRS"). System Agency should follow their normal process in reporting GR salary expenditure data to TRS for state retirement contribution purposes.

IV. BILLING INSTRUCTIONS

- A. Performing Agency shall submit monthly invoices in a secure, non-alterable electronic format (.pdf is acceptable) emailed directly to: hhsc_ap@hhsc.state.tx.us with a copy to the Contract Manager.

- B. The subject line of each invoice must include the invoice number, purchase order number, and the Performing Agency's name. Alternate submission arrangements must be approved in writing by the assigned System Agency Contract Representative. At a minimum, invoices must include:
 - 1. Performing Agency number and purchase order number clearly stated;

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2. Performing Agency's legal name and "remit to" address, telephone number and fax number;
 3. A uniquely assigned invoice number;
 4. The date of the invoice;
 5. A description of the services provided;
 6. The corrective invoice amount (invoices that contain an incorrect amount or a disputed amount will need to be revised and resubmitted); and
 7. Any additional supporting documentation that is required by this Attachment or as requested by System Agency.
- C. Copies of invoices and supporting documentation must be submitted to:
- 4601 West Guadalupe Street
Mail Code 1400
Austin, TX 78751

Attachment B**Categorical Budget for Program Attachment SFY2022**

Performing Agency: University of Texas Health Science Center at San Antonio

SUPERVISORY PERSONNEL	\$0.00
RESIDENT PERSONNEL	\$104,415.00
FRINGE BENEFITS	\$30,121.00
TRAVEL	\$0.00
OTHER: _____ (list)	\$0.00
TOTAL DIRECT CHARGES	\$134,536.00
TOTAL INDIRECT CHARGES	\$0.00
TOTAL CONTRACT VALUE	134,536.00
TOTAL	\$134,536.00

ATTACHMENT C



TEXAS
Health and Human Services

Health and Human Services (HHS)

**Uniform Terms and Conditions -
Governmental Entity**

Version 3.2

Published and Effective - May 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’ *Texttravel* 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) exclusion list 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. 51st 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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The HHS Uniform Terms and Conditions - Governmental Entity are revised as follows:

Section 4.1, Warranty, is deleted in its entirety and replaced with the following:

4.1 Representations

Performing Agency represents that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract and shall conform to the specifications set forth in the Contract. The Performing Agency, at its sole expense, agrees to promptly repair or replace all Work that was defective or damaged Work upon delivery.

Section 5.1, Ownership of Work Product, is deleted in its entirety and replaced with the following:

5.1 Ownership of Intellectual Property Rights Resulting from Work Product

- A. To the extent any Work results in the creation of intellectual property and Intellectual Property Rights, all right, title, and interest in and to such intellectual property shall vest in the Party that creates such intellectual property.
- B. Performing Agency hereby grants 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 Performing Agency, Performing Agency's contractor, or a subcontractor in the performance of the work under this Contract.
- C. 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. The Performing Agency agrees to provide the System Agency with an advance copy of any such report, publication, or literature at least thirty (30) days prior to publication. The Performing Agency agrees to insert the following statement into any such report, publication or literature: "The views expressed in this publication are those of the authors and do not necessarily reflect the official policies, positions, or views of the State of Texas or the Health and Human Services Commission.

Section 5.2, Performing Agency's Pre-Existing Works, is deleted in entirety and replaced with the following:

5.2 Performing Agency's Pre-Existing Works

- A. To the extent the 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 to such Incorporated Pre-Existing Works. For avoidance of doubt, Performing Agency also retains ownership of any works developed by Performing Agency that are unrelated to the Work under this Contract.
- B. To the extent legally able to, Performing Agency hereby grants System Agency an irrevocable, perpetual, non-exclusive, royalty-free, worldwide right and license to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, the Incorporated Pre-Existing Works for the exclusive purpose of utilizing the Work Product for System Agency's non-commercial, governmental purposes.

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Section 5.4, Agreements with Employees and Subcontractors, is deleted in entirety and replaced with the following:

5.4 Applicability to Employees and Subcontractors

Performing Agency shall have written, binding agreements with its subcontractors and written policies applicable to its employees that include provisions sufficient to give effect to and enable Performing Agency's compliance with Performing Agency's obligations under this Article V.

Section 5.5, Delivery Upon Termination or Expiration, is deleted in its entirety and replaced with the following:

5.5 Delivery Upon Termination or Expiration

Unless otherwise agreed in writing, no later than five (5) calendar days 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 versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency is permitted to retain copies of the Work Product and any documentation or other products or results of Performing Agency's activities under the Contract for its internal academic, educational, non-commercial patient-care, and/or research use.

Section 5.7, System Agency Data, is deleted in its entirety and replaced with the following:

5.7 System Agency Data

Performing Agency will comply with all applicable federal and state privacy, security and breach notification laws and regulations. The Parties do not anticipate this Agreement will require disclosure of confidential data. However, should the scope of this Agreement change and require the Performing Agency to receive confidential data from System Agency, the parties agree to execute a separate agreement to control the handling and protection of such data, which agreement will be incorporated herein by reference.

Section 6.2(B) is deleted in its entirety and replaced with the following:

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 30 calendar days after Performing Agency's receipt of System Agency's notice of amount due.

Section 7.1(B) is deleted in its entirety and replaced with the following:

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 three (3) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

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Section 7.5, Confidentiality, is deleted in its entirety and replaced with the following:

7.5 Confidentiality

The Parties do not anticipate this Agreement will require disclosure of confidential information. However, should the work under this Contract require the exchange of any confidential information, the parties agree to execute a separate agreement to control the handling and protection of such information, which agreement will be incorporated herein by reference.

Section 8.2, Termination for Convenience, is deleted in its entirety and replaced with the following:

8.2 Termination for Convenience

Either Party may terminate the Contract, with at least ten (10) business days' advance written notice at any time when, in its sole discretion, it determines that termination is in its best interest. The termination will be effective on the date specified in the terminating Party's notice of termination.

Section 8.4, Performing Agency Responsibility for System Agency's Termination Costs, is deleted in its entirety.

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

9.2 Insurance

Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," each Party is self-insured and, therefore, is not required to purchase insurance."

Section 9.5, Change in Laws and Compliance with Laws, is deleted in its entirety and replaced with the following:

9.5 Change in Laws and Compliance with Laws

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a state agency performing work as required by the Contract, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the Contract. System Agency and Performing Agency reserve the right to amend the Contract to incorporate any modifications necessary for the parties' compliance, as agencies of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

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

9.7 Permitting and Licensure

At Performing Agency's sole expense, Performing Agency will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Performing

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Agency to provide the goods or Services required by this Contract. Performing Agency will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law.

Section 9.10, Governing Law and Venue, is deleted in its entirety and replaced with the following:

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. Venue for any suit arising under this Contract shall be in a court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute that directly names or states its applicability to the System Agency. NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE SYSTEM AGENCY OR BY THE PERFORMING AGENCY.

Section 9.16, Media Releases, is deleted in its entirety and replaced with the following:

9.16 Media Releases

Except as provided in this Contract or required under applicable law, neither party shall use the other party's name, logo, or other likeness in any press release, marketing material, or other announcement without 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. However, Performing Agency will, if appropriate, acknowledge support received from the System Agency and/or other agency in any publication under 5.1(C).

Section 9.17, No Marketing Activities, is deleted in its entirety.

Section 9.19, Sovereign Immunity, is deleted in its entirety and replaced with the following:

9.19 Sovereign Immunity

Nothing in this Contract shall be construed as a waiver of the System Agency's, Performing 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 either party 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, Performing 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. Neither party waives any privileges, rights, defenses, or immunities available to it by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

Section 9.23, Enterprise Information Management Standards, is deleted in its entirety.

Section 9.24, Disclosure of Litigation, is deleted in its entirety.

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Article IX, General Provisions, is hereby amended by adding after Section 9.26, the following new Section 9.27:

9.27 Limitations

THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (LIMITATIONS) ON THE AUTHORITY OF A STATE AGENCY TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS CONTRACT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON A PARTY'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 A PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.