

HHSC Contract No.

TEXAS HEALTH AND HUMAN SERVICES  
**TRAINING SERVICES AGREEMENT**  
(Verbalocity, Inc. / Tell Me Somethin' Good!)

This Training Services Agreement (the “**Agreement**”) is made and entered into by and between the Health and Human Services Commission (“**HHSC**”), an administrative agency within the executive branch of the state of Texas, for and on behalf of its Regulatory Services Division, and Verbalocity, Inc. (“**Provider**”), collectively sometimes referred to herein as the “**Parties**,” each a “**Party**.”

**Purpose:** HHSC desires to obtain the personal services of Clint Swindall (“**Trainer**”), who has been identified as an expert within his or her field with the skills, knowledge, and experience desired to train at the Engagement described in Section 1 of this Agreement. Speaker is an officer of the Provider.

**Legal Authority:** This Agreement is authorized by and in compliance with the provisions of *Texas Government Code* Chapter 531.

The Parties therefore agree as follows:

1. **Engagement.** Provider agrees to have Trainer design, develop, and pre-record three video presentations, with each video presentation being a minimum of 45 minutes in length, for the **HHSC Targeted Leadership Training Program for FY2021**, a HHSC sponsored event, to be delivered via three separate virtual meetings by Microsoft Teams. The videos presentations will be provided to HHSC no later than July 1, 2021. The training sessions will be based on a three-video series entitled *Brighter Days: Leading to the Other Side of the Pandemic* (the “**Engagement**”). In addition to providing the videos, the Trainer agrees to engage in live discussion during each training session and provide an additional 15-minute live discussion at the conclusion of the delivery of each pre-recorded video. The training sessions will take place on July 12, 2021, August 9, 2021, and September 13, 2021, between 1:00 PM CST and 2:00 PM CST. Provider acknowledges receipt of sufficient information concerning the requirements and location for the Engagement.

**Additional Presentation details:** Provider must provide the following at least **14 days** prior to the first event date: (i) a brief bio and session description for use in promotional materials; (ii) a session description, goals, and learning objectives that will allow event planners to obtain educational credit, if applicable; (iii) a copy of all materials, references, and resource materials for reproduction, if desired, or for HHSC website to be distributed to event attendees; and (iv) a list of special equipment needs required for completion of the session, if any. In no event shall HHSC be required to purchase any tools of the trade or equipment necessary for the Provider to complete the respective session(s). The date of the Engagement can be renegotiated if the need arises and the Parties agree in writing to renegotiate the date with no penalty paid by either Party.

2. **Payment and Taxes.** HHSC will pay Provider the not-to-exceed sum of **\$13,500.00**, which is based on the allocated amounts of \$6,750.00 for three video presentations and \$2,250 after the completion of each training session, and the submission of a correct invoice. Provider agrees that no additional costs will be charged to or paid by HHSC under this Agreement. Provider assumes sole responsibility for acquisition of and all costs associated with the event, including but not limited to, the Trainer’s travel, lodging accommodations, and meals, if applicable.

Provider acknowledges that the Trainer's timely performance is an essential element of this Agreement, and as such, Provider agrees that HHSC may deduct **\$0.00** from Provider's fee for every **15 minutes** delay in starting the session from the designated start time(s). Neither will HHSC pay or withhold federal, state or local income or other payroll taxes on behalf of the Provider or Trainer. Provider agrees to report and pay all applicable taxes.

**Payment for services rendered will be processed upon receipt of a valid invoice after program completion. Invoices must be sent to: [accountspayable@hhsc.state.tx.us](mailto:accountspayable@hhsc.state.tx.us).**

Each written invoice presented must include HHSC's contract number and the purchase order number. The invoice must also include Provider's taxpayer-identification number, a description of the services provided, and the name of HHSC's designated agreement representative.

Payment by HHSC under this Agreement will be made in accordance with the Texas Prompt Payment Act, *Texas Government Code* Chapter 2251.

**3. Recording of Presentation by HHSC:** *(Check one of the following)*

**No rights:** No recording of the Trainer's content or material is planned or permitted.

**Limited Rights:** Provider permits HHSC to record the Presentation in audio, video, or other media format. Trainer warrants that it is the sole owner(s) of (or has the right to use) the content and materials presented and grants HHSC, and its successor agency, a limited, free, perpetual, non-exclusive, irrevocable license to use the text and recordings of the content and materials only for internal HHSC use and replay in any manner, including copying, transcribing, displaying, broadcasting (including webcasting), as HHSC desires. Trainer also consents to the use of its name and in connection with HHSC's use of Trainer's materials.

**4. Warranty/Indemnification.** Provider and Trainer warrants that the Engagement is original, does not infringe the copyright of another, and agrees to release, discharge, and hold harmless HHSC, its employees and agents, all persons acting under its authority, and those for whom it is acting, from all claims, causes of action and liability of any kind, in law or equity, based upon or arising out of the use of the Engagement or this Agreement including without limitation, claims of libel, slander, invasions of privacy, right of publicity, defamation, trademark infringement, and copyright infringement.

**5. Trainer's Warranty.** If the Provider is signing on behalf of the Trainer, the Provider certifies and represents to HHSC that it is authorized to agree to each of the provisions of this Agreement on behalf of the Trainer.

**6. Independent Contractor.** The Provider, its officers, employees, trainers, agents, and subcontractors, if applicable, in the performance of this Agreement shall act in the capacity of an Independent Contractor and not as a state employee, partner, joint venture, or agent of HHSC.

**7. Publicity.** Provider must not use the name of, or directly or indirectly refer to, HHSC, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to this Agreement or its subject matter, including in any promotional or

marketing materials, customer lists, or business presentations, without the expressed written approval of HHSC.

8. **Immigration and Employment.** Provider agrees to comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 regarding employment of any individual who will perform labor or services under this Agreement.
9. **Inability to Perform.** If Trainer is unable to appear on the date scheduled due to illness, Provider shall attempt to provide an alternate Trainer that is mutually acceptable to both Parties. If Provider cannot provide an acceptable alternative Trainer then HHSC will have no obligation to make payment.
10. **Agreement Representatives.** The following will act as the designated representative authorized to administer activities under this Agreement on behalf of their respective Party:

**HHSC:**

Tisha Christopher, CTCM  
Health and Human Services Commission  
701 West 51st Street, Mail Code: E-370  
Austin, Texas 78751  
(512) 438-2638  
[tisha.christopher@hhs.texas.gov](mailto:tisha.christopher@hhs.texas.gov)

**Provider:**

Clint Swindall  
Verbalocity, Inc.  
6534 Western Way  
Bulverde, TX 78163  
(210) 637-7900  
[clint@verbalocity.com](mailto:clint@verbalocity.com)

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

11. **Legal Notices.** Any legal notice required under this Agreement shall be deemed delivered when deposited by HHSC either in the United State mail, postage paid, certified, return receipt required; or with a common carrier, overnight, signature required, to the appropriate address below:

**If sent to HHSC:**

Health and Human Services Commission  
Attn: Office of Chief Counsel  
4900 N. Lamar Boulevard; MC 1100  
Austin, Texas 78751

**If sent to Provider:**

Verbalocity, Inc.  
Attn: Clint Swindall  
6534 Western Way  
Bulverde, TX 78163

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

12. **Assignment.** Provider shall not assign any interest in this Agreement by assignment, transfer, or novation. This provision shall not be construed to prohibit Provider from assigning its bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent.
13. **Duration and Termination.** This Agreement shall commence on the date it has been executed by both Parties and remain in effect through the date of Engagement as identified in Section 1 herein, unless extended or terminated pursuant to the terms and conditions of this Agreement. HHSC, at its own discretion, may extend this Agreement for any period or periods of time

necessary to complete the purpose of this Agreement, subject to terms and conditions mutually agreeable to the Parties.

Except as otherwise provided herein, this Agreement may terminate by one of the following options: (i) HHSC, in its sole discretion, determines that termination is in the best interests of the state of Texas with the effective date being specified in HHSC's notice of termination; (ii) this Agreement may be terminated at any time by mutual consent of the Parties in writing; and (iii) this Agreement may be terminated immediately by either Party for breach of the terms of this Agreement.

14. **Funding.** This Agreement is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Agreement, HHSC may restrict, reduce, or terminate funding under this Agreement without penalty to HHSC. In the event of cancellation or termination under this Section, HHSC will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.
15. **Force Majeure.** Neither Party to this Agreement is liable to the other Party for any failure to perform according to the terms of this agreement that is a result of acts of God, war, government regulations, disasters, strikes, civil disorders, or other emergencies making it illegal or impossible to substantially perform this Agreement. Government regulations include legislative mandates requiring restriction of travel by state agencies.
16. **Breach of Contract Claims.** To the extent that the *Texas Government Code* Chapter 2260, is applicable to this Agreement, the dispute resolution process provided for in the Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by HHSC and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. The Health and Human Services Commission Chief Counsel shall examine and any claim and negotiate with Provider in an effort to resolve the claim. **THE PARTIES SPECIFICALLY AGREE THAT (I) NEITHER THE EXECUTION OF THIS AGREEMENT BY HHSC NOR ANY OTHER CONDUCT, ACTION, OR INACTION BY ANY REPRESENTATIVE OF HHSC RELATING TO THIS AGREEMENT CONSTITUTES OR IS INTENDED TO CONSTITUTE A WAIVER OF HHSC'S OR THE STATE'S SOVEREIGN IMMUNITY TO SUIT; AND (II) HHSC HAS NOT WAIVED ITS RIGHT TO SEEK REDRESS IN THE COURTS.**

Neither the occurrence of an event nor the dependency of a claim constitute grounds for suspension of performance by the Provider, in whole or in part, or in suspension of payment for those services in accordance with this Agreement and as allowed by law.
17. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, except for its provisions regarding conflicts of laws. The venue for any suit arising from this Agreement or any agreement is fixed in any court of competent jurisdiction Travis County, Texas. Provider and Trainer irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of

any action or proceeding in such jurisdiction in respect of this Agreement or any agreement related hereto.

18. **Record Retention.** Provider agrees to keep records and other supporting documents relating to this Agreement for a period of seven years after submission of the final billing or seven years after the completion of any litigation or dispute involving this Agreement, whichever is later. All records must be available to HHSC or its authorized representatives at reasonable times for reasonable periods.
19. **Public Information Act.** All information and materials related to the performance of this Agreement may be subject to the *Public Information Act* (“PIA”), *Texas Government Code* Chapter 552, and will be withheld from public disclosure or released only in accordance therewith. Provider and Trainer must make all information not otherwise excepted from disclosure under the PIA available in portable document file (“.pdf”) format or any other format agreed between the Parties at no additional charge to HHSC.
20. **Texas Government Code Certifications.** In accordance with the Texas Government Code Chapter 2270, Provider affirms that it: (a) does not boycott Israel; and (b) will not boycott Israel during the term of this Agreement. Furthermore, Provider affirms that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization.
21. **Texas Family Code Child Support Certification.** Provider certifies that the following statement required by Section 231.006, *Texas Family Code*, regarding payment of child support is correct:

Under Section 231.006, *Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
22. **Payment of Debt or Delinquency to the State.** In accordance with *Texas Government Code* §§ 2107.008 and 2252.903, Provider acknowledges and agrees that any payments owing to Provider under this Agreement may be applied directly toward any debt or delinquency that Provider owes the state of Texas or any agency of the state of Texas regardless of when it arises, until such debt or delinquency is paid in full.
23. **SAO Audit.** Provider understands that acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor’s Office (“SAO”), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Provider agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Provider will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
24. **Miscellaneous.** Provider warrants it will comply with all federal, state, and local laws, as well as HHSC policies applicable to performance under this Agreement, including,

nondiscrimination, equal employment opportunity, and affirmative action. Additionally, HHSC expects all trainers to maintain a high standard of professionalism and that they will not discriminate or make discriminatory remarks based on race, color, religion, sex, national origin, age, disability, sexual preference, genetic information, veteran status, political affiliation, or religious beliefs.

25. **Agreement Execution.** The Parties may sign this Agreement in counterparts, each of which will be deemed an original but all of which together will constitute one document. Electronically transmitted signatures will be deemed originals for all purposes relating to this Agreement.

26. **Entire Agreement.** This Agreement contains all the terms and provisions between HHSC and Provider relating to the matter set for herein and no prior or contemporaneous agreement or understanding pertaining to the same, including, without limitation, any electronic mail correspondence between the Parties in connection with this Agreement, shall be of any force or effect, except for any correspondence regarding the start and end time for the Engagement. This Agreement may not be modified or altered except by written amendment executed by both Parties hereto.

The Parties represent that each Party has caused this Agreement to be signed and delivered by its respective authorized representative.

**Health and Human Services  
Commission**

**Verbalocity, Inc.**

DocuSigned by:  
By: Michelle Dionne-Vahalik  
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Michelle Dionne-Vahalik, DNP, RN  
Associate Commissioner for Long Term Care  
Regulation

DocuSigned by:  
By: Clinton Swindall  
ED479F5517CB4C3...  
Clint Swindall  
President

Date: 5/21/2021

Date: 5/20/2021

